

BEFORE

THE OHIO POWER SITING BOARD

In the Matter of the Application of NTE)
Ohio, LLC for a Certificate of)
Environmental Compatibility and Public) Case No. 14-534-EL-BGN
Need to Construct an Electric Generation)
Facility in Middletown, Ohio.)

OPINION, ORDER, AND CERTIFICATE

The Board, coming now to consider the above-entitled matter, having appointed its administrative law judge to conduct the hearings, having reviewed all of the evidence presented, and being otherwise fully advised, hereby issues its Opinion, Order, and Certificate in this case, as required by R.C. 4906.10.

APPEARANCES:

Bricker & Eckler LLP, by Sally W. Bloomfield and Dylan F. Borchers, 100 South Third Street, Columbus, Ohio 43215-4291, on behalf of NTE Ohio, LLC.

Mike DeWine, Ohio Attorney General, by Steven L. Beeler and Katherine L. Johnson, Assistant Attorneys General, Public Utilities Section, 180 East Broad Street, 6th Floor, Columbus, Ohio 43215, and Sarah Bloom Anderson, Summer J. Koladin Plantz, Assistant Attorneys General, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3400, on behalf of Staff.

OPINION:

I. SUMMARY OF THE PROCEEDING

All proceedings before the Board are conducted according to the provisions of R.C. Chapter 4906 and Ohio Adm.Code Chapter 4906.

On April 1, 2014, NTE Ohio, LLC (NTE or the Applicant) filed a preapplication notification letter and a motion for waivers of Ohio Adm.Code 4906-13-03(A) and (B) and 4906-13-04(A)(4), pertaining to the site selection study, cross-sectional views, and test borings. On April 8, 2014, Staff filed a letter stating that it did not object to NTE's motion for waivers. On April 21, 2014, NTE filed its proof of publication of the notice of the public information meeting in *The Journal News*, a newspaper of general circulation in several counties, including Butler County. The public information meeting was held on April 17, 2014, in Middletown, Ohio. By Entry issued April 24, 2014, NTE's motion for waivers was granted.

On June 4, 2014, NTE filed its application for a certificate of environmental compatibility and public need to construct a new 510 to 525 megawatt (MW) natural gas-fired, combined cycle generating facility located in Middletown, Butler County, Ohio. Pursuant to Ohio Adm.Code 4906-5-05, within 60 days after receipt of an application for a major utility facility, the Chairman of the Board shall notify an applicant of the acceptance or rejection of the application as complete. By letter dated July 25, 2014, the Board notified NTE that its application was sufficiently complete to permit Staff to commence its review and investigation of the application. Further, the letter directed the Applicant to serve appropriate government officials and public agencies with copies of the application. Also on July 25, 2014, NTE filed a certificate of service of its accepted and complete application, in accordance with the requirements of Ohio Adm.Code 4906-5-07. On that same day, NTE submitted the application fee to the Board, pursuant to Ohio Adm.Code 4906-5-11.

By Entry dated August 7, 2014, a local public hearing was scheduled for October 28, 2014, in Middletown, Ohio, and an evidentiary hearing was scheduled for November 6, 2014, in Columbus, Ohio. Further, the August 7, 2014 Entry directed the Applicant to publish notice of the application and hearings, as required by Ohio Adm.Code 4906-5-08 and directed that petitions to intervene be filed within 30 days following publication of the first notice required by Ohio Adm.Code 4906-5-08, but by no later than September 22, 2014. No motions to intervene were filed.

NTE filed its proofs of publication of the hearings, pursuant to Ohio Adm.Code 4906-5-09, on August 12, 2014, and October 20, 2014. Notice of the hearings was published on August 12, 2014, and October 15, 2014, in *The Journal News*. On October 9, 2014, Staff filed its report of investigation of the application (Staff Report).

At the local public hearing, nine witnesses offered testimony in support of the project and one witness asked a question about the project. One letter opposing the project was filed in the public comment section of the docket. On November 4, 2014, a joint stipulation and recommendation (Stipulation) was filed by NTE and Staff. The evidentiary hearing was conducted on November 6, 2014. At the evidentiary hearing, NTE presented the testimony of Timothy Eves and Staff offered the testimony of Grant T. Zeto both in support of the Stipulation.

II. PROPOSED FACILITY

NTE describes the proposed facility as a natural gas-fired, combined-cycle generating facility, with one heat recovery steam generator and one steam turbine generator. The proposed project, which will also include a switchyard and other ancillary equipment, will have a nominal net output of 510 to 525 MW, and will be located on approximately 11.5 acres in Middletown, Ohio. Land surrounding the facility site is industrial in nature. The Applicant proposes to commence construction in the second

quarter of 2015, and begin commercial operation in the second quarter of 2018. (Staff Ex. 1 at 5-6.)

The proposed facility would interconnect to the regional transmission grid via Duke Energy Ohio's (Duke) Foster-Todhunter 345 kilovolt (kV) transmission line. The proposed facility will also utilize two available fuel supplies by interconnecting with the existing Texas Eastern interstate natural gas pipeline located north of the facility site, as well as with the Rockies Express interstate natural gas pipeline located south of the facility site. (Staff Ex. 1 at 21; NTE Ex.1 at 11.)

III. CERTIFICATION CRITERIA

Pursuant to R.C. 4906.10(A), the Board shall not grant a certificate for the construction, operation, and maintenance of a major utility facility, either as proposed or as modified by the Board, unless it finds and determines all of the following:

- (1) The basis of the need for the facility if the facility is an electric transmission line or natural gas transmission line.
- (2) The nature of the probable environmental impact.
- (3) The facility represents the minimum adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives, and other pertinent considerations.
- (4) In case of an electric transmission line or generating facility, such facility is consistent with regional plans for expansion of the electric power grid of the electric systems serving this state and interconnected utility systems, and that such facilities will serve the interests of electric system economy and reliability.
- (5) The facility will comply with R.C. Chapters 3704, 3734, and 6111 and all rules and standards adopted under those chapters and under R.C. 1501.33, 1501.34, and 4561.32.
- (6) The facility will serve the public interest, convenience, and necessity.
- (7) The impact of the facility on the viability as agricultural land of any land in an existing agricultural district established under R.C. Chapter 929 that is located within the site and alternative site of the proposed major facility.

- (8) The facility incorporates maximum feasible water conservation practices as determined by the Board, considering available technology and the nature and economics of various alternatives.

IV. SUMMARY OF THE EVIDENCE

A. Hearings

1. Local Public Hearing

The local public hearing was held on October 28, 2014, in Middletown, Ohio. Nine individuals offered testimony in support of the project, including: representatives of the area Chamber of Commerce, local skilled and construction trades, community college workforce development, and community improvement corporation for Middletown; the economic development director, city manager, and mayor of Middletown; and a resident of Middletown living near the proposed project site. These public witnesses endorsed the project for the positive impacts it will bring to the community and area, including jobs and particularly jobs for the skilled and construction trades, economic development, tax revenue, infrastructure development, and the generation of clean and efficient energy. One witness asked a question regarding the use of waste heat as a source of energy for the project. No public witnesses opposed the project (Public Hearing Tr. at 9-43.)

2. Evidentiary Hearing

The evidentiary hearing was held on November 6, 2014. Admitted into the record at the evidentiary hearing were: the application filed on June 4, 2014 (NTE Ex. 1); the proof of service of the application on local officials, libraries, and adjacent property owners (NTE Ex. 2); proof of publication for the description of the application and hearing dates (NTE Ex. 3); proof of publication for the second publication of the description of the application and the hearing dates (NTE Ex. 4); the direct testimony of Timothy Eves (NTE Ex. 5); the Staff Report (Staff Ex. 1); the direct testimony of Grant T. Zeto (Staff Ex. 2); and the Stipulation (Joint Ex. 1). In support of the Stipulation, NTE presented the testimony of Mr. Eves and Staff offered the testimony of Mr. Zeto.

B. Staff Report

1. Basis of Need - R.C. 4906.10(A)(1)

R.C. 4906.10(A)(1) specifies that this section applies only if the proposed facility is an electric transmission line or a gas or natural gas pipeline. In this case, the proposed project is an electric generation facility. Accordingly, Staff recommended the Board find that R.C. 4906.10(A)(1) is not applicable to this electric generating facility. (Staff Ex. 1 at 9.)

2. Nature of Probable Environmental Impact - R.C. 4906.10(A)(2)

R.C. 4906.10(A)(2) requires that the Board determine the nature of the probable environmental impact of the proposed facility. As part of the investigation, Staff reviewed the nature of the probable environmental impact of the proposed facility.

According to Staff, the proposed facility is located entirely in the city of Middletown, Butler County, which has a population of 48,694. The populations of each of the five cities and townships within five miles of the project area are projected to increase or remain the same by 2022. Staff indicated that the project is unlikely to limit future population growth or have a measurable impact on the demographics of the region. (Staff Ex. 1 at 10.)

Staff noted that NTE intends to construct the proposed facility on a 46-acre parcel of land currently used for agricultural production. Staff also explained that approximately 42 percent of the land uses within one mile of the proposed facility are utilized as an industrial area, or utility and/or rail easement. In addition, Staff observed that seven percent of the surrounding land within a one-mile radius of the site is comprised of residential parcels, while two percent of that area has a commercial land use. According to Staff, construction-related activities are not expected to lead to temporary impacts to land use on surrounding parcels. (Staff Ex. 1 at 10.)

According to the Staff Report, residents in the project area are likely to experience temporary noise and traffic impacts associated with project construction activities. The nearest neighboring residence is approximately 0.1 mile away from the proposed facility site. Additional residences within one mile of the proposed facility are located on Harkie Street, off of Oxford State Road. Notably, a single-family housing development is located off of Todhunter Road. (Staff Ex. 1 at 11.)

Staff documented that NTE conducted a literature review, archaeological surveys, and an assessment of potential impacts to historic structures prior to submitting the application. The records review revealed 222 previously identified archaeological sites, 17 cemeteries, and one historic bridge. Subsequent Phase I archaeological field testing at the project site identified three sites. Staff indicated that, because this site is located within the construction boundary of the proposed facility, complete avoidance would not be possible. As such, the Applicant developed a Phase II testing program of the site in coordination with Staff and the State Historic Preservation Office (SHPO) to evaluate the site further on the basis of National Register of Historic Places (NRHP) eligibility criteria. No cultural resource landmarks or historic structures are located within the proposed facility or construction site. Staff reported that the historic structures survey concluded that the facility would not adversely affect any of the recorded or unrecorded historic properties

and that a finding of no adverse effect was recommended for all the historic properties identified. (Staff Ex. 1 at 11.)

In addition, Staff indicated that the Applicant identified 46 parks, including recreation areas and golf courses, within five miles of the project site. According to Staff, none of the recreational areas identified within the five-mile radius are expected to be negatively impacted by the proposed facility, and recreational land use is not expected to be altered as a result of the construction or operation of the proposed facility. (Staff Ex. 1 at 12.)

Staff took note of the fact that, in the city of Middletown's master plan, the Greentree-Oxford State Road Development Opportunity Area currently hosts industrial sites, such as AK Steel, and is zoned as a general industrial district for future use. Staff found that the proposed facility is consistent with the goals of the city of Middletown's master plan. Staff stated that the facility would be located in an industrial setting with three active rail lines and overhead electric transmission structures currently extending around the facility site. Wooded areas nearly surround the proposed facility site to the east, south, and west and an industrial park is located to the east of the proposed facility. Further, industrial facilities, including AK Steel and Precision Strip, form the northern boundary of the facility. Staff concluded that, as a result of these visual buffers, the proposed facility is anticipated to have minimal aesthetic impacts. (Staff Ex. 1 at 12.)

Staff determined that the project area contains two perennial streams, one which extends across the northern portion of the project site, and is crossed by the northern access road used by AK Steel. Staff found that the existing access would not require any upgrading. Staff also noted that two wetlands were delineated near the project site and that both wetlands are low quality category 1 wetlands. Due to electric transmission easements and plans for future development, some fill of one of the wetlands would be necessary for the construction of one of the access roads. Staff also mentioned that the proposed facility is located within a Federal Emergency Management Agency (FEMA) flood zone. The city of Middletown administers the floodplain permits for the project area, and the Applicant would work with the city to obtain appropriate approvals once final decisions are made regarding stormwater management features, pending the conclusion of the Phase II archaeological study. (Staff Ex. 1 at 12-13.)

According to Staff, the majority of the site is an active agricultural field. Other vegetative communities present are old field meadows in the southeastern portion of the project area and a narrow tree/shrub riparian corridor bordering Dicks Creek. At this time, significant tree removal is not anticipated for the proposed facility. (Staff Ex. 1 at 13.)

Staff reported that the Applicant requested information from the Ohio Department of Natural Resources (ODNR) and U.S. Fish and Wildlife Service (USFWS) regarding state

and federally-listed threatened and endangered plant and animal species. Suitable habitat for the upland sandpiper is present in the southern portion of the project area, and would be crossed by the proposed access road. In order to avoid impacts to this species the ODNR Division of Wildlife (DOW) recommended that construction be avoided during the species nesting period of April 15 to July 31. Staff also noted that the project is within 700 feet of a great blue heron rookery. Due to the distance between the proposed facility site and the nesting location, this project is not likely to impact the great blue herons. Staff found that no additional wildlife impacts are anticipated for the project. The Applicant has committed to seasonal clearing dates between October 1 and March 31. (Staff Ex. 1 at 13-15.)

Staff reported that, in order to operate the natural gas interconnection and associated equipment safely and reliably, and to minimize the possibility of failure in the gas supply system, the equipment should be built, operated, and maintained to meet the requirements in: Title 49 CFR parts 191 and 192, Federal Minimum Pipeline Safety Standards; parts 199 and, Drug and Alcohol Regulations; R.C. 4905.90 through 4905.96, Natural Gas Pipeline Safety Standards; and Ohio Adm.Code 4901:1-16, Gas Pipeline Safety. In addition, a fire protection and detection system would be installed for the facility. Further, the Applicant has committed to prepare an emergency response plan prior to construction mobilization in consultation with Butler County, the city of Middletown, and local emergency responders. (Staff Ex. 1 at 15-16.)

Staff found that the electric and magnetic fields resulting from the generation equipment are expected to be confined to the site. The magnetic fields generated by the generation equipment are attenuated very rapidly as the distance from the equipment increases. (Staff Ex. 1 at 16.)

The Applicant performed a subsurface investigation that included test borings at 11 sites in the footprint of the proposed facility. Based on the results of the preliminary geotechnical investigation, geological issues are not expected to restrict facility development. Based on the soil conditions and anticipated foundation loading, the Applicant expects that facility structures would be supported on a combination of deep foundations, mats, and shallow footings. Staff also found that, while Ohio experiences some seismic activity, extensive considerations of the proposed facility's seismic stability are not necessary. (Staff Ex. 1 at 16.)

The proposed facility would not place major demands on local infrastructure. Additionally, there would not be significant impacts to local services. Construction staffing would be met regionally, with no significant need for workers to relocate to the area. Staff determined that the principle impacts on public services would be short-term increases in traffic on routes leading to the proposed facility due to deliveries of equipment and materials during construction. The Applicant's preliminary transportation

management plan considers delivery of major components and other materials for the construction phase of the proposed facility. Rail access to the site would be achieved through three separate rail spurs owned by Norfolk Southern, AK Steel, and Precision Strip. The equipment would be removed from rail cars by crane at the site. Road access to the site would be achieved by Cincinnati-Dayton Road, which is connected to interstate highways via State Routes 63 and 122. These two state routes may be accessed from Interstate 75 and can accommodate traffic with excessive weight. (Staff Ex. 1 at 17.)

Staff indicated that nearby residents are likely to experience temporary noise and traffic impacts associated with construction activities. As a result, Staff recommended the Applicant limit the hours of construction activities that would increase noise levels, and have a complaint resolution plan in place to address potential construction related conflicts with nearby residences. Staff also found that noise impacts from construction activities would include the operation of various trucks and heavy equipment. Many of these construction activities would generate significant noise levels. However, the adverse impact of construction noise would be temporary and intermittent, and most construction activities would be limited to daytime working hours. (Staff Ex. 1 at 17-18.)

Staff also reported that the Applicant conducted a background ambient noise level study in order to understand the existing noise levels in the vicinity of the proposed facility. Based on modeling results, the five short-term monitoring locations, representing the closest residential areas, are expected to have an operational noise impact of 4 decibels (dBA) or less. Staff determined that, in order to minimize adverse impacts associated with increased noise levels, Staff recommended that the Applicant use mitigation measures to achieve the level of impact as presented in the application and include procedures in its complaint resolution process for resolving noise complaints. (Staff Ex. 1 at 17-18.)

Based on its investigation, Staff recommended the Board find that the nature of the probable environmental impact has been determined for the proposed facility and, therefore, complies with the requirements set forth in R.C. 4906.10(A)(2). However, Staff further recommended that any certificate issued by the Board for the proposed facility include the conditions specified in the Staff Report. (Staff Ex. 1 at 18.)

3. Minimum Adverse Environmental Impact - R.C. 4906.10(A)(3)

Staff found that NTE's market analysis identified the southwest Ohio region as one where the planned shutdown of existing coal-fired capacity would create the need for new power generation. In addition, the Applicant further refined the facility's site selection. Locations deemed suitable for project siting required adequate size for a generating facility, compatible zoning and land use, proximity to electric, natural gas, water, and transportation infrastructure, and community support. Considering these factors in its preliminary evaluation, the Applicant identified several parcels and conducted site visits.

Staff explained that these sites were further evaluated based on the availability of a sufficient quantity of water for cooling, ability to discharge wastewater, interconnection feasibility without the need for significant upgrades, and economic feasibility of potential natural gas sources. NTE then identified three sites within Butler County that warranted further evaluation, and ultimately determined that the proposed site best met the criteria. According to Staff, while the site selection methodology utilized by the Applicant lacked a formal evaluation of alternative project locations, the chosen site nonetheless minimizes potential ecological and socioeconomic impacts and is suitable for a large-scale generation station. (Staff Ex. 1 at 19.)

Staff found that NTE has sited and designed the proposed facility to minimize potential impacts. The proposed project site is within land zoned by the city of Middletown as general industrial and adjacent to land zoned by the city of Monroe as light industrial. The facility site is adjacent to other commercial and industrial uses, including the nearby AK Steel complex. As a result, Staff found that land use and residential impacts would be minimal. (Staff Ex. 1 at 19.)

Staff also reported that the site is located adjacent to an existing 345 kV transmission lines, which have available capacity for power to be supplied to multiple distribution systems. In addition, there are two interstate gas transmission lines in the area that have the potential to serve the proposed facility. Further, the city of Middletown has adequate capacity to supply water to the project and process the wastewater at the local wastewater treatment plant. (Staff Ex. 1 at 19.)

Staff determined that there would be direct, indirect, and induced economic benefits to the region during construction and operation of the project, including purchases of construction materials from local vendors and the use of goods and services by facility personnel. The proposed facility would positively impact and generate revenue from construction spending, permanent employment, as well as local and state taxes. (Staff Ex. 1 at 19.)

Based on its investigation, Staff concluded that the project, as proposed, would result in both temporary and permanent impacts to the project area and surrounding areas. However, Staff reasons that, due to the limited potential impacts to land use, cultural resources, streams, wetlands, and noise sensitive receptors, in conjunction with the Applicant's commitments and Staff's recommended conditions to mitigate these impacts, the project represents the minimal adverse environmental impact. Accordingly, Staff recommended the Board find that the proposed facility represents the minimum adverse environmental impact and, complies with the requirements specified in R.C. 4906.10(A)(3), provided that any certificate issued by the Board for the proposed facility includes the conditions specified in the Staff Report. (Staff Ex. 1 at 20.)

4. Electric Grid - R.C. 4906.10(A)(4)

According to the Staff Report, PJM Interconnection LLC (PJM), the regional transmission operator, studied the interconnection as an injection tapping into Duke's Foster-Todhunter 345 kV transmission line. In addition, PJM completed the Feasibility Study and System Impact Study for the proposed facility, which includes local and regional transmission system impacts. Staff reviewed the System Impact Study report prepared by PJM. The study was evaluated for compliance with reliability criteria for 2017 summer peak load conditions. According to Staff, the study revealed reliability problems during certain double contingencies and contribution to previously identified overloads caused by prior queue positions. (Staff Ex. 1 at 21.)

Staff reported that PJM analyzed the bulk electric system, with proposed facility interconnected to the transmission grid, for compliance with Duke, North American Electric Reliability Corporation, and PJM reliability criteria. The PJM system studies indicated reliability violations. To correct these violations and meet the required compliance, PJM will require several upgrades to alleviate reliability violations during certain double contingencies, short circuits, and overloading. (Staff Ex. 1 at 23.)

According to Staff, the proposed facility is expected to provide reliable generation to the bulk electric transmission system, is consistent with plans for expansion of the regional power system, and will serve the interests of electric system economy and reliability. The facility will serve the public interest, convenience, and necessity by providing additional electrical generation to the regional transmission grid. (Staff Ex. 1 at 24.)

Staff recommended the Board find that the proposed facility is consistent with regional plans for expansion of the electric power grid of the electric systems serving this state and interconnected utility systems, and that the facility would serve the interests of electric system economy and reliability. Therefore, Staff reasoned the facility complies with the requirements specified in R.C. 4906.10(A)(4), provided that any certificate issued by the Board for the proposed facility include the conditions specified in the Staff Report. (Staff Ex. 1 at 24.)

5. Air, Water, and Solid Waste - R.C. 4906.10(A)(5)

According to the Staff Report, the proposed project site is within an area classified as attainment for all National Ambient Air Quality Standards criteria air pollutants except for ozone, for which the area is classified as marginal nonattainment. Operational impacts on air quality would be minimized through the use of efficient new gas turbine technology and incorporating air pollution controls. (Staff Ex. 1 at 25.)

Staff noted that the turbines would use natural gas, thereby ensuring low emission rates throughout its operation. The burning of natural gas produces nitrogen oxides (NO_x) and carbon dioxide, but in lower quantities than burning other fuel sources, such as coal or oil. The combustion of natural gas would also minimize particulate matter and sulfur dioxide. (Staff Ex. 1 at 25.)

According to the Staff Report, air pollution controls are proposed for the facility to minimize impacts to air quality. The primary air pollution control devices include dry low NO_x burners in the gas turbines, selective catalytic reduction (SCR) systems, and oxidation catalysts in the heat recovery steam generators. Emissions from the facility would be tracked using a continuous emissions monitoring system (CEMS). The CEMS would continuously extract flue gas samples near the exhaust of the heat recovery steam generators and measure flue gas parameters. The CEMS would detect a deterioration of performance before a failure of the catalyst occurs. The facility would not operate if its SCR system is not functioning properly. Project emissions under all operating conditions would comply with permit requirements. The air permit-to-install application for the project was submitted to Ohio Environmental Protection Agency (OEPA) on April 4, 2014. The dispersion modeling documentation was then provided to OEPA. In the Applicant's dispersion modeling report, details were provided on the modeling completed for the facility to demonstrate compliance with air quality standards. (Staff Ex. 1 at 25-26.)

Staff found that construction impacts on air quality primarily consist of relatively minor emissions from the construction equipment and from fugitive dust emissions. Construction vehicles would emit insignificant amounts of volatile organic compounds, sulfur dioxide, carbon monoxide, NO_x, and particulate matter. These emissions are not expected to cause any significant adverse impacts to air quality. (Staff Ex. 1 at 26.)

Staff explained that construction of the proposed facility would not require the use of significant amounts of water; however, operation of the proposed facility would require significant amounts of water. As a result, water would be obtained through the city of Middletown; thus, the requirements under R.C. 1501.33 and 1501.34 are not applicable to this project. The Applicant intends to submit a Notice of Intent for coverage under OEPA's National Pollutant Discharge Elimination System (NPDES) permit for stormwater discharges associated with construction and industrial activities. (Staff Ex. 1 at 26.)

Stormwater flows from the developed site would be controlled through the use of a detention pond and other best management practices which would be identified in the Storm Water Pollution Prevention Plan. Some fill of wetland 2 would be necessary for the construction of the southern access road. NTE would work with the U.S. Army Corps of Engineers to assure that the proper permitting is obtained. The proposed facility is located within a FEMA flood zone. The city of Middletown administers the floodplain permits for the project area, and the Applicant would work with the city to obtain appropriate

approvals once final decisions are made regarding stormwater management features, pending the conclusion of the Phase II archaeological study. (Staff Ex. 1 at 26.)

Sanitary wastewater sources would be discharged directly to the sewer and all other wastewater streams would be collected in a wastewater collection sump before discharge to the Middletown publicly-owned treatment works (POTW). The POTW discharges to the Great Miami River in accordance with its own NPDES requirements. The facility would discharge to the POTW in accordance with an Industrial Wastewater Discharge Permit that will be obtained from the city of Middletown. (Staff Ex. 1 at 26-27.)

NTE estimates that approximately 1,200 cubic yards of construction debris could be generated from the project. Solid waste generated from construction activities would include packing materials, office waste, scrap lumber, metals, cables, glass, cardboard containers, and other miscellaneous debris. In addition, during construction and preoperational cleaning, some solvents and flushing materials would be used. Solid waste that can be neither recycled nor reused would be stored in on-site containers for disposal. All solid waste generated would be trucked off-site by licensed contractors in accordance with applicable regulatory requirements and managed in licensed facilities. The Applicant's solid waste disposal plans comply with solid waste disposal requirements in R.C. Chapter 3734, and the rules and laws adopted under this chapter. (Staff Ex. 1 at 27.)

Staff reported that the nearest airport to the proposed facility is Hook Field Municipal Airport, located approximately 4.5 miles northwest of the proposed project site. A request for review by the Federal Aviation Administration (FAA) and the Ohio Department of Transportation Office of Aviation (ODOT-OA) was submitted on May 19, 2014, for the 200-foot stack. The Applicant received a Determination of No Hazard to Navigation for the proposed facility stack from the FAA on May 28, 2014; no lighting or marking requirements were identified. In accordance with R.C. 4561.32, Staff contacted ODOT-OA during the review of this application in order to coordinate review of potential impacts of the facility on local airports. No such concerns were identified by ODOT-OA. (Staff Ex. 1 at 27.)

Staff recommended the Board find that the proposed NTE generation facility complies with the requirements in R.C. 4906.10(A)(5) and that any certificate issued by the Board include the conditions set forth in the Staff Report. (Staff Ex. 1 at 27.)

6. Public Interest, Convenience, and Necessity - R.C. 4906.10(A)(6)

R.C. 4906.10(A)(6) requires the Board determine that the facility will serve the public interest, convenience, and necessity. Staff noted the opportunities for the public to be informed and comment on the proposed project, and pointed out that a public informational meeting was held on April 17, 2014, at the University of Miami, Middletown Campus. During the meeting, local residents were provided the opportunity to speak

with the Applicant's representatives concerning the proposed facility, as well as view detailed layout maps of the project area. In addition, Staff noted the public hearing was held in Middletown, Ohio on October 28, 2014, and the evidentiary hearing was held on November 6, 2014. (Staff Ex. 1 at 28.)

In its report, Staff determined that the project would have an overall positive impact on the economy in the northeast region of Ohio. The positive economic impact would be a result of construction spending, the purchasing of supplies, and the spending of construction workers and suppliers. According to the Staff Report, the direct, indirect, and induced economic benefits to the region during construction of the project. The economic impact to Butler and Warren counties includes \$80.7 million in annual economic impacts, 41.2 million in gross regional product, and \$26.1 million in wages. For southwest Ohio, there will be \$158.7 million in annual economic impacts, \$89.3 million in gross regional product, and \$55.3 million in wages. For the state of Ohio, there will be \$210.9 million in annual economic impacts, \$111.4 million in gross state product, and \$69 million in wages. (Staff Ex. 1 at 28-29.)

Staff recommended the Board find that the proposed facility would serve the public interest, convenience, and necessity, and that it complies with the requirements specified in R.C. 4906.10(A)(6), subject to the conditions set forth in the Staff Report (Staff Ex. 1 at 36).

7. Agricultural Districts - R.C. 4906.10(A)(7)

In accordance with provisions of R.C. Chapter 929, land is classified as agricultural district land through an application and approval process that is administered through the local county auditor's office. Staff found that no agricultural district land is located within the boundaries of the facility site or the construction laydown area. Therefore, no agricultural district would be impacted by the proposed facility and no impacts to field operations, irrigation, or field drainage systems associated with agricultural district lands would occur as a result of construction, operation, or maintenance of the project. (Staff Ex. 1 at 30.)

Staff recommended the Board find that the impact of the proposed facility on the viability of existing agricultural land in an agricultural district has been determined and, therefore, complies with the requirements in R.C. 4906.10(A)(7). Further, Staff recommended that any certificate issued by the Board include the conditions set forth in the Staff Report. (Staff Ex. 1 at 37.)

8. Water Conservation Practice - R.C. 4906.10(A)(8)

Staff found that the proposed facility would use water supplies obtained through a regulated water supplier for process water, fire protection, and domestic uses. Staff also noted that the proposed facility design incorporates significant water conservation measures. Accordingly, Staff recommended the Board find that the proposed facility meets the requirements specified in R.C. 4906.10(A)(8), provided any certificate issued for the proposed project includes the recommended conditions listed in the Staff Report. (Staff Ex. 1 at 31.)

V. STIPULATION

As previously noted, on November 4, 2014, NTE and Staff filed a Stipulation resolving all the issues presented in this case (Joint Ex. 1). At the evidentiary hearing, NTE witness Eves and Staff witness Zeto presented testimony in support of the Stipulation (Evidentiary Hearing Tr. at 8-13, 15-17). As part of the Stipulation, NTE and Staff agree and recommend that the Board should issue a certificate to NTE, subject to certain conditions. The following is a summary and is not intended to replace or supersede the language of the Stipulation:

- (1) The facility shall be installed at the Applicant's site as presented in the application, and as modified and/or clarified by the Applicant's supplemental filings and further clarified by recommendations in the Staff Report.
- (2) The Applicant shall utilize the equipment and construction practices as described in the application and as modified and/or clarified in supplemental filings, replies to data requests, and recommendations in the Staff Report.
- (3) The Applicant shall implement the mitigation measures as described in the application and as modified and/or clarified in supplemental filings, replies to data requests, and recommendations in the Staff Report.
- (4) The Applicant shall conduct a preconstruction conference prior to the start of any construction activities. Staff, the Applicant, and representatives of the prime contractor and all subcontractors for the project shall attend the preconstruction conference. The conference shall include a presentation of the measures to be taken by the Applicant and contractors to ensure compliance with all conditions of the certificate, and discussion of the procedures for

on-site investigations by Staff during construction. Prior to the conference, the Applicant shall provide a proposed conference agenda for Staff review. The Applicant may conduct separate preconstruction meetings for various stages of construction.

- (5) The Applicant shall use inert gases or compressed air for all cleaning of pipes during construction, consistent with the National Fire Protection Association 56 (PS) Standard for Fire and Explosion Prevention During Cleaning and Purging of Flammable Gas Pipeline Systems.
- (6) The Applicant shall coordinate with fire, safety, and emergency personnel during all stages of the project. At least 30 days before the preconstruction conference, the Applicant shall submit an emergency response plan to be used during construction for Staff's review to ensure compliance with this condition. This plan should be developed in consultation with the fire department(s) having jurisdiction over the area.
- (7) General construction activities shall be limited to the hours of 7:00 a.m. to 7:00 p.m., or until dusk when sunset occurs after 7:00 p.m. Impact pile driving, hoe ram, and blasting operations, if required, shall be limited to the hours between 10:00 a.m. to 5:00 p.m., Monday through Friday. Construction activities that do not involve noise increases above ambient levels at sensitive receptors are permitted outside of daylight hours when necessary. The Applicant shall notify property owners or affected tenants within the meaning of Ohio Adm.Code 4906-5-08(C)(3) of upcoming construction activities including potential for nighttime construction activities.
- (8) Prior to construction, the Applicant shall finalize Staff and State Historic Preservation Office (SHPO) coordination of the review of potential effects, if any, on historical architecture and the Phase II cultural resources archeological work at Site 33BU1071. If the resulting coordination discloses a find of cultural or archaeological significance, or a site that could be eligible for inclusion on the NRHP, then the Applicant shall submit an amendment, modification, or mitigation plan to Staff to ensure compliance with this condition. Any such mitigation effort, if needed, shall be developed in coordination with SHPO and submitted to Staff for review.

- (9) A geotechnical engineer shall be retained to provide soil engineering services to support the site preparation, excavation, and foundation phases of the proposed project.
- (10) The recommendations of TTL Associates must be followed in design and construction of the proposed facility. If project criteria or locations change, a geotechnical engineer should be permitted to determine whether the recommendations must be modified.
- (11) The Applicant shall repair damage to government-maintained (public) roads and bridges caused by construction activity. Any damaged public roads and bridges shall be repaired promptly to their preconstruction state. The Applicant shall also have its traffic study with recommendations addressing traffic, road repair, and transportation management to be approved by the city of Middletown. The final traffic study shall be submitted to Staff, the city of Monroe, and Butler County.
- (12) The Applicant shall not conduct any in-water work in perennial streams from April 15 to June 30 to reduce impacts to indigenous aquatic species and their habitat.
- (13) If in-water work is planned in any Group 1 streams or unlisted streams with a watershed of 10 miles or larger above the point of impact shall be assessed using the Reconnaissance Survey for Unionid Mussels to determine if mussels are present. This is further explained within the Ohio Mussel Survey Protocol. The Applicant shall provide information to indicate that no mussel impacts will occur. If this is not possible, a professional malacologist shall conduct a mussel survey in the project area. If mussels that cannot be avoided are found in the project area, as a last resort, the professional malacologist shall collect and relocate the mussels to suitable and similar habitat upstream of the project site. Mussel surveys and any subsequent mussel relocation should be done in accordance with the Ohio Mussel Survey Protocol.
- (14) Construction in upland sandpiper preferred nesting habitat types shall be avoided during the species' nesting period of April 15 to July 31.

- (15) The Applicant shall have a qualified environmental specialist on site during construction activities that may affect sensitive areas, as mutually agreed upon between the Applicant and Staff, and as shown on the Applicant's final approved construction plan. Sensitive areas include, but are not limited to, areas of vegetation clearing, designated wetlands and streams, and locations of threatened or endangered species or their identified habitat. The environmental specialist shall be familiar with water quality protection issues and potential threatened or endangered species of plants and animals that may be encountered during project construction.
- (16) The Applicant shall contact Staff, ODNR, and USFWS within 24 hours if state or federal species are encountered during construction activities. Construction activities that could adversely impact the identified plants or animals shall be halted until an appropriate course of action has been agreed upon by the Applicant, Staff, and ODNR in coordination with USFWS. Nothing in this condition shall preclude agencies having jurisdiction over the facility with respect to wildlife from exercising their legal authority over the facility consistent with law.
- (17) The Applicant shall provide a copy of any floodplain permit required for construction of this project, or a copy of correspondence with the floodplain administrator showing that no permit is required, to Staff within seven days of issuance or receipt by the Applicant.
- (18) At least 30 days before the preconstruction conference, the Applicant shall submit to Staff, for review and acceptance, one set of detailed engineering drawings of the final project design, including the facility, temporary and permanent access roads, any crane routes, construction staging areas, and any other associated facilities and access points so that Staff can determine that the final project design is in compliance with the terms of the certificate. The final project layout shall be provided in hard copy and as geographically referenced electronic data. The final design shall include all requirements of the certificate and references at the locations where the Applicant and/or its contractors must adhere to a specific requirement in order to comply with the certificate.

- (19) Prior to the commencement of construction activities that require permits or authorizations by federal or state laws and regulations, the Applicant shall obtain and comply with such permits or authorizations. The Applicant shall provide copies of permits and authorizations, including all supporting documentation, to Staff within seven days of issuance or receipt by the Applicant. The Applicant shall provide a schedule of construction activities and acquisition of corresponding permits for each activity at the preconstruction conference.
- (20) If any changes are made to the project layout after the submission of final engineering drawings, all changes shall be provided to Staff in hard copy and as geographically referenced electronic data. All changes outside the environmental survey areas and any changes within environmentally-sensitive areas shall be subject to Staff review and acceptance, to ensure compliance with all requirements of the certificate, prior to construction in those areas.
- (21) Within 60 days after the commencement of commercial operation, the Applicant shall submit to Staff a copy of the as-built specifications for the entire facility. If the Applicant demonstrates that good cause prevents it submitting a copy of the as-built specifications for the entire facility within 60 days after commencement of commercial operation, it may request an extension of time for the filing of such as-built specifications. The Applicant shall use reasonable efforts to provide as-built drawings in both hard copy and as geographically-referenced electronic data.
- (22) The Applicant shall restrict public access to the facility with appropriately placed warning signs or other necessary measures.

In addition, the parties recommended that the certificate should become invalid if the Applicant has not commenced a continuous course of construction of the proposed facility within five years of the date of journalization of the certificate. (Joint Ex. 1 at 2-5.)

VI. CONCLUSION

Ohio Adm.Code 4906-7-09 authorizes parties to Board proceedings to enter into stipulations concerning issues of fact. Although not binding on the Board, pursuant to Ohio Adm.Code 4906-7-09(C), the terms of such an agreement are accorded substantial weight. The standard of review for considering the reasonableness of a stipulation has been discussed in a number of prior Board proceedings. See, e.g., *In re Northwest Ohio Wind Energy, LLC*, Case No. 13-197-EL-BGN (Dec. 16, 2013); *In re American Transm. Systems*

Inc., Case No. 12-1727-EL-BSB (Mar. 11, 2013); *In re Rolling Hills Generating, LLC*, Case No. 12-1669-EL-BGA (May 1, 2013); *In re AEP Transm. Co., Inc.*, Case No. 12-1361-EL-BSB (Sept. 13, 2013); *In re Hardin Wind LLC*, Case No. 13-1177-EL-BGN (Mar. 17, 2014). The ultimate issue for the Board's consideration is whether the stipulation, which embodies considerable time and effort by the signatory parties, is reasonable and should be adopted. In considering the reasonableness of a stipulation, the Board has used the following criteria:

- (1) Is the settlement a product of serious bargaining among capable, knowledgeable parties?
- (2) Does the settlement, as a package, benefit ratepayers and the public interest?
- (3) Does the settlement package violate any important regulatory principle or practice?

In the Stipulation, NTE and Staff agree that the Stipulation results from discussion between the parties who acknowledge that this agreement is amply supported by the record and, thus, is entitled to careful consideration by the Board (Joint Ex. 1 at 1). NTE witness Eves contended that the Stipulation is the product of serious discussion among capable, knowledgeable parties. Mr. Eves explained that the Stipulation represents a reasonable compromise that balances competing positions and, therefore, does not necessarily reflect the position that either one of the parties would have taken if these issues had been fully litigated. (NTE Ex. 5 at 4.) Staff witness Zeto testified that the issues raised were thoroughly reviewed and addressed during negotiations and that the parties are very knowledgeable in regulatory matters and were represented by experienced competent counsel. (Staff Ex. 2 at 3.)

The Board finds that the Stipulation appears to be the product of serious bargaining among capable, knowledgeable parties. The Board notes that all the parties to the proceeding are signatories of the Stipulation. Consequently, the Board finds that, based upon the record, the first prong is satisfied.

NTE and Staff claimed that the Stipulation, as a package, benefits the public interest. Mr. Eves testified that the Stipulation provides for clarity with respect to several of the conditions in the Staff Report and, therefore, serves the public interest. In addition, Mr. Eves claimed that avoidance of a more lengthy contested hearing serves the public interest. (NTE Ex. 5 at 4.) Staff witness Zeto testified that the Stipulation provides benefits for all customer groups and interested stakeholders, while advancing and remaining consistent with state policy. (Staff Ex. 2 at 4.)

Upon review, the Board finds that, as a package, the Stipulation benefits the public interest by resolving the issues raised in this matter without resulting in litigation. The Stipulation reflects, with some modification, consideration of Staff's recommendations and conditions. The Board notes that the project was overwhelmingly endorsed at the public hearing, we believe that the Staff Report evaluates and addresses the concerns raised in regards to the project site and its proximity to near by residences, noise, water and wastewater, and site access and the Stipulation contains conditions that address such concerns. We find that, based on the evidence of record, the project will generate clean electric energy, increase tax revenue for schools and local government, create construction and manufacturing jobs, and assist economic development efforts in Butler County and the surrounding communities.

In addition, NTE witness Eves stated that the provisions of the Stipulation are in harmony with regulatory principles and practice (NTE Ex. 5 at 12). Staff similarly claimed that the Stipulation does not violate any important regulatory principle or practice (Staff Ex. 2 at 3). The Board finds that the Stipulation does not violate any important regulatory principle or practice. Moreover, the conditions contained within the Stipulation adequately address all statutory requirements for such projects.

As a final matter, the Board finds that, in addition to the conditions set forth in the Stipulation, it is necessary to require that the Applicant shall not commence construction of the facility until it has a signed interconnection service agreement with PJM, which includes construction, operation, and maintenance of system upgrades necessary to reliably and safely integrate the proposed generating facility into the regional transmission system. The Applicant shall provide a letter stating that the agreement has been signed or a copy of the signed interconnection service agreement to Staff.

Based upon the record in this proceeding, the Board finds that all of the criteria established in R.C. Chapter 4906 are satisfied for the construction, operation, and maintenance of the generation facility, as described in NTE's application filed on June 4, 2014, subject to the conditions set forth in the Stipulation and this Order. Accordingly, based upon all of the above, the Board approves and adopts the Stipulation and hereby issues a certificate to NTE in accordance with R.C. Chapter 4906. Unless otherwise ordered by the Board, this certificate shall become invalid if the Applicant does not commence a continuous course of construction of the proposed facility within five years of the date of journalization of the certificate.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

- (1) NTE is a person under R.C. 4906.01(A) and is licensed to do business in the state of Ohio.

- (2) The proposed electric generation facility is a major utility facility, as defined in R.C. 4906.01(B).
- (3) On April 1, 2014, NTE filed a preapplication notification letter and a motion for waivers of Ohio Adm.Code 4906-13-03(A) and (B) and 4906-13-04(A)(4). On April 8, 2014, Staff filed a letter stating that it did not object to NTE's motion for waivers. By Entry issued April 24, 2014, NTE's motion for waivers was granted.
- (4) On April 21, 2014, NTE filed its proof of publication of the notice of the public information meeting in *The Journal News*.
- (5) The public information meeting was held on April 17, 2014, in Middletown, Ohio.
- (6) On June 4, 2014, NTE filed its application for a certificate of environmental compatibility and public need to construct a new 510 to 525 MW natural gas-fired, combined cycle generating facility.
- (7) By letter dated July 25, 2014, the Board notified NTE that its application had been found to be sufficiently complete, pursuant to Ohio Adm.Code 4906-1, et seq.
- (8) By Entry dated August 7, 2014, a local public hearing was scheduled for October 28, 2014, in Middletown, Ohio and an evidentiary hearing was scheduled for November 6, 2014, in Columbus, Ohio. The August 7, 2014 Entry also directed that petitions to intervene be filed within 30 days following publication of the first notice, but no later than September 22, 2014. No petitions to intervene were filed.
- (9) NTE filed its proofs of publication of the hearings, pursuant to Ohio Adm.Code 4906-5-09 on August 12, 2014, and October 20, 2014. Notice of the hearings was published on August 12, 2014, and October 15, 2014, in *The Journal News*.
- (10) On October 9, 2014, Staff filed its Staff Report.
- (11) The local public hearing was held on October 28, 2014, in Middletown, Ohio.
- (12) On November 4, 2014, NTE and Staff filed a Stipulation.

- (13) The adjudicatory hearing was held on November 6, 2014, in Columbus, Ohio.
- (14) Adequate data on the proposed facility has been provided to make the applicable determinations required by R.C. 4906.10(A).
- (15) The record evidence in this matter provides sufficient factual data to enable the Board to make an informed decision.
- (16) The proposed project is an electric generation facility and does not include an electric transmission line or gas pipeline. Accordingly, the record establishes that the basis of need, under R.C. 4906.01(A)(1) is not applicable to this project.
- (17) The record establishes the nature of the probable environmental impact from construction, operation, and maintenance of the generation facility under R.C. 4906.10(A)(2).
- (18) The record establishes that the site for the proposed facility, subject to the conditions set forth in the Stipulation, represents the minimum adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives, and other pertinent considerations under R.C. 4906.10(A)(3).
- (19) The record establishes that, subject to the conditions set forth in the Stipulation, the generation facility is sited to be consistent with regional plans for expansion of the electric power grid and will serve the interests of electric system economy and reliability, under R.C. 4906.10(A)(4).
- (20) The record establishes, as required by R.C. 4906.10(A)(5), that the generation facility, as described in the application, and subject to the conditions in the Stipulation, will comply with R.C. Chapters 3704, 3734, and 6111 and R.C. 1501.33 and 1501.34, and all rules and standards adopted under these chapters and under R.C. 4561.32.
- (21) The record establishes that the generation facility, as described in the application, and subject to the conditions in the Stipulation, will serve the public interest, convenience, and necessity, as required under R.C. 4906.10(A)(6).
- (22) The record establishes that the generation facility as described in the application, and subject to the conditions in the Stipulation, will

not impact the viability as agricultural land of any land in an existing agricultural district, under R.C. 4906.10(A)(7).

- (23) The record establishes that the proposed generation facility, as described in the application, and subject to the conditions set forth in the Stipulation, incorporates water conservation practices consistent with the requirements of R.C. 4906.10(A)(8).
- (24) The Stipulation satisfies the criteria established by the Board for review and consideration of stipulations.
- (25) Based on the record, the Board should approve the application and issue a certificate, pursuant to R.C. Chapter 4906 for the construction, operation, and maintenance of the generation facility at the preferred site, subject to the conditions set forth in the Stipulation and this Order.

ORDER:

It is, therefore,

ORDERED, That the Stipulation be approved and adopted. It is, further,

ORDERED, That a certificate be issued to NTE for the construction, operation, and maintenance of the generation facility at the proposed site subject to the conditions set forth in the Stipulation and this Order. It is, further,

ORDERED, That a copy of this Opinion, Order, and Certificate, be served upon all parties and interested persons of record.

THE OHIO POWER SITING BOARD



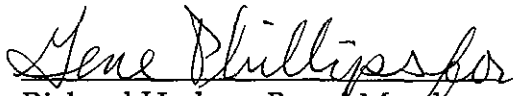
Thomas W. Johnson, Chairman
Public Utilities Commission of Ohio



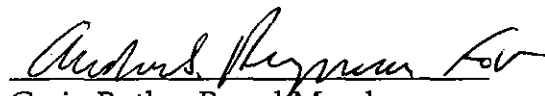
David Goodman, Board Member
and Director of the Ohio
Development Services Agency



James Zehringer, Board Member
and Director of the Ohio
Department of Natural Resources



Richard Hodges, Board Member
and Director of the Ohio
Department of Health



Craig Butler, Board Member
and Director of the Ohio
Environmental Protection Agency



David Daniels, Board Member
and Director of the Ohio
Department of Agriculture

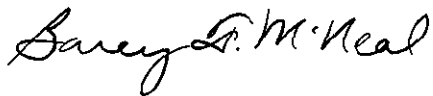


Jeffrey J. Lechak, Board Member
and Public Member

SEF/dah

Entered in the Journal

NOV 24 2014



Barcy F. McNeal
Secretary