

**BEFORE
THE OHIO POWER SITING BOARD**

In the Matter of the Application of NRG Ohio)	
Pipeline Company, LLC, for a Letter of)	
Notification to Construct, Own, and Operate)	Case No. 14-1717-GA-BLN
a Natural Gas Pipeline to be Located in Lorain)	
County, Ohio)	

**PETITION TO INTERVENE
BY
LORAIN COUNTY PROPERTY OWNERS**

For the reasons set forth in the accompanying Memorandum in Support, various property owners¹ in Lorain County (“Property Owners”) collectively petition the Ohio Power Siting Board (“Board”) for leave to intervene in the above-captioned case pursuant to Ohio Revised Code 4906 and Ohio Administrative Code 4906-7-04, and to grant to the Property Owners the full powers and rights specifically authorized by statute or by the provisions of the Ohio Administrative Code in order to protect their interests in this case.

¹ The Lorain County Property Owners that are a part of this intervention are: Wesley Parker; Brandon & Mary Thorne; Charles Borling; Samuel Dennis; Carlos & Sonia Llado; Edmund & Angie Carter; Gary & Kathleen Conlin; Stephanie K. Unger; Edward Kurianowicz; Lawrence R. Plas; Mary B. Miller; Richard & Carol Petersen; Richard & Ellen Braatz; Thomas & Johanna Julius; Louis & Gale Betzel; Fathers of St. Joseph Church; and K. Hovnanian Oster Homes, LLC. Since these property owners have substantially similar interests as described in Rule 4906-7-04(D)(2), and in the interest of judicial economy, these property owners now respectfully submit their petition for collective intervention in this proceeding.

Respectfully submitted,

/s/ Michael Braunstein

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**MEMORANDUM IN SUPPORT OF PETITION TO INTERVENE OUT OF TIME
OF THE
LORAIN COUNTY PROPERTY OWNERS**

I. Introduction

The Property Owners seek intervention in this proceeding where NRG Ohio Pipeline Company, LLC (“NRG” or “Company”) has submitted an Application to construct, own and operate a natural gas pipeline in Lorain County, Ohio (“Application”). The Property Owners seek to participate in this proceeding because they may be adversely affected by the Board’s ruling in this case, as the proposed pipeline will be constructed on Property Owners’ land. The Application and subsequent proceedings present several issues of interest to the Property Owners as set forth in Section III below. Because the interests of the Property Owners are substantially similar, and because no other entity in the case will adequately protect their interests, the Property Owners now petition for collective intervention in this proceeding.

II. Legal Standard

Ohio law states that “the parties to a certification shall include [...] any other person, if the person has petitioned the board for leave to intervene as a party within thirty days after the date of publication of the notice required by division (C) of section 4906.06 of the Revised Code, and if that petition has been granted by the board for good cause shown.”²

The Ohio Administrative Code states that a party may intervene in a Board proceeding if that party prepares “a petition for leave to intervene setting forth the grounds for the proposed intervention and the interest of the petitioner in the proceedings.”³ In the determination of whether a party may be granted intervention, the Board or administrative law judge (“ALJ”) may consider:

- (a) The nature and extent of the person’s interest.
- (b) The extent to which the person’s interest is represented by existing parties.
- (c) The person’s potential contribution to a just and expeditious resolution of the issues involved in the proceeding;
- (d) Whether granting the requested intervention would unduly delay the proceeding or unjustly prejudice an existing party.

Ohio Adm. Code 4906-7-04(B)(1). The Board’s rules also provide for the Board or ALJ to grant a petition for leave to intervene out of time for good cause shown, provided that “extraordinary circumstances justify the granting of the petition” and that “the intervenor agrees to be bound by agreements, arrangements, and other matters previously made in

² R.C. 4906.08(A)(3).

³ Ohio Adm. Code 4906-7-04(B)(1).

the proceeding.”⁴ As presented below, each of the factors to be considered by the Board or ALJ support the Property Owners’ intervention. In addition, extraordinary circumstances related to the timing of the publication justify the granting of the petition to intervene by the Property Owners.

III. The Board or the Administrative Law Judge should grant the Property Owners’ petition because good cause exists to support the intervention in this proceeding.

This proceeding presents issues that will significantly impact the Property Owners’ rights to use and enjoy their properties, and pose risks to the Property Owners’ health and safety. These issues include: (1) whether the proposed pipeline routing adequately considers the close proximity to homes and other structures; (2) whether the proposed routing adequately considers development plans and future development potential of the land to be affected; (3) whether the proposed route adequately considers woodlands and wetlands that will be affected by pipeline construction; 4) whether the proposed route adequately protects agricultural land and the drain tile systems located thereon, and (5) whether the proposed easements adequately protect the health and safety of land occupants, including children living on the land in close proximity to pipeline construction. Because the Application represents a project that will significantly affect their interests, the Property Owners respectfully request that their Petition for Intervention be granted.

Second, no other party or intervenor represents the interests of the Property Owners. NRG and the FirstEnergy Companies are not in a position to adequately

⁴ Ohio Adm. Code 4906-7-04(C).

represent the interests of the Property Owners as described above. Therefore, the Property Owners should be granted intervention to protect their interests.

Third, intervention by the Property Owners will significantly contribute to a just and expeditious resolution of the issues involved in this proceeding, and granting the Property Owners' petition will not unduly delay the proceeding. Property Owners will comply with any procedural deadlines set forth as a part of this proceeding.

Finally, granting the Property Owners' intervention will not prejudice any existing party.

IV. Due to the Extraordinary Circumstances of the timing of the filing and the difficulty in accessing the interim rules, good cause exists to grant the Property Owners' petition.

Property Owners are filing this Petition in accordance with the current statutory deadline of thirty days, as presented in Ohio Revised Code 4906.08 and current Ohio Administrative Code Rule 4906-7-04(A)(2)(b). Property Owners only became aware of the interim rules governing these proceedings upon the filing of the public notice on the case docket.⁵ The timing of the two notices, occurring just before, during and between major holidays obscured the publication of the notice from the Property Owners and their counsel. Upon becoming aware of the expedited requirements of the interim rules, counsel for Property Owners moved quickly to file this Petition.

The Ohio Supreme Court recently held that statutes and rules governing intervention should be "generally and liberally construed in favor of intervention."⁶ Thus, the Property Owners respectfully ask the Board to consider that the timing of the

⁵ The public notice was filed by NRG's on January 8, 2015.

⁶ *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384 (2006), quoting *State ex rel. Polo v. Cuyahoga Cty. Bd. Of Elections*, 74 Ohio St.3d 143, 144(1995).

publications as an extraordinary circumstance that obscured the ability to receive notice through publication, evaluate the case, and submit a petition within the 10-day deadline established by the interim rules in Case No. 12-1981-GE-BRO.

In addition, Board case precedent supports granting the petition. In a recent case before the Board, the ALJ disagreed with an applicant's assertion that petitions to intervene by citizen groups and other individuals did not show extraordinary circumstances existed to support the interventions.⁷ The ALJ noted that "the citizen groups have established that members of their organizations would be directly affected by the proposed facility."⁸ The ALJ also noted a conflict between the statutory intervention deadline and the deadline established by a procedural Entry, and held that inconsistencies between the deadlines "should not prejudice the parties seeking intervention in this proceeding."⁹

The Property Owners in seeking intervention in this case have demonstrated that they will be directly affected by NRG's proposed pipeline. Additionally, the Property Owners agree to be bound by any and all agreements, arrangements and other matters previously made in the proceeding per Rule 4906-7-04(C)(2). Therefore, the Property Owners now respectfully petition to intervene.

⁷ *In the Matter of the Application of American Municipal Power-Ohio, Inc., for a Certificate of Environmental Compatibility and Public Need for an Electric Generation Station and Related Facilities in Meigs County, Ohio*, Case No. 06-1358-EL-BGN, Entry at ¶4 (December 4, 2007).

⁸ *Id.* at ¶4.

⁹ *Id.*

V. Conclusion

For the foregoing reasons, the Property Owners respectfully request that this Petition to Intervene be granted, and the Property Owners be authorized to participate as a full party to this proceeding.

Respectfully submitted,

/s/ Michael Braunstein

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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing *Petition to Intervene and the Memorandum in Support* has been filed with the Public Utilities Commission of Ohio and has been served upon the following parties via electronic mail and hard copy via U.S. Mail on January 9, 2015.

/s/ Michael Braunstein

Michael Braunstein (0060898)

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Summary: Petition to Intervene by Lorain County Property Owners electronically filed by Mr. MICHAEL BRAUNSTEIN on behalf of Betzel, Louis & Gale and Borling, Charles & David and Braatz, Richard & Ellen and Carter, Edmund & Angie and Conlin, Gary & Kathleen and Dennis, Samuel and Julius, Thomas & Johanna and K. Hovnanian Oster Homes LLC and Kurianowicz, Edward and Llado, Carlos & Sonia and Miller, Mary B. and Parker, Wesley A. and Petersen, Richard & Carol and Plas, James A. and Plas, Lawrence R. and Fathers of St. Joseph and Thorne, Brandon & Mary and Unger, Stephanie K. and Vajda, Sheryl L.