

**BEFORE
THE OHIO POWER SITING BOARD**

In the Matter of the Application of NRG :
Ohio Pipeline Company, LLC, for : Case No. 14-1717-GA-BLN
Approval of a Letter of Notification for :
the Avon Lake Gas Addition Project in :
Lorain County, Ohio. :

POST-HEARING BRIEF
SUBMITTED ON BEHALF OF THE STAFF OF
THE PUBLIC UTILITIES COMMISSION OF OHIO

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**On Behalf of the Staff of
The Ohio Power Siting Board**

May 5, 2015

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INTRODUCTION

This Letter of Notification application for a certificate qualifies for an accelerated review by the Ohio Power Siting Board because it involves a natural gas pipeline project that satisfies the criteria of R.C. 4906.03(F)(3). The pipeline is needed to provide a natural gas fuel source to meet the requirements of a specific customer - Avon Lake Power Plant in Lorain County, Ohio. In addition to the pipeline, the project includes a metering station and regulating station. Specifically, after reviewing and investigating NRG's Application, Supplemental Information, and Responses to Staff's Data Requests, it is the Staff's recommendation that the Applicant's Letter of Notification satisfies the requirements of Ohio Admin. Code 4906-11-01 in this case. The Staff recommends the conditions listed in its Staff Report be adopted by the Board to minimize any potential social and environmental impacts from the construction, operation, and maintenance of this facility.

After NRG's preferred route was identified through two site routing feasibility studies, it was further refined by identifying areas where route placement was physically constrained ("pinch points") and through landowner requests for re-routes during land negotiations. In all, NRG made over 200 minor route revisions at the requests of landowners. NRG underwent a comprehensive and iterative process to determine the route proposed in its application. All projects impose burdens. Those burdens will be borne by some more than others. That is inherent in siting any energy infrastructure. Those in the vicinity will feel more effects than those further removed. Those affected are afforded the opportunity to be heard, and the Board should address those concerns. Neither the goal in this process, nor the law requires that all negative impacts be eliminated, for that would be impossible. Rather, the Board should endeavor to reduce them.

Ultimately, the Board has to determine whether the proposed project and associated conditions meet the applicable criteria. In this case, the Staff's investigation, report, recommendations and conditions, remain uncontested following a hearing in this matter. In its report, the Staff recommends that the Board find that the proposed facility represents minimal social and environmental impacts. Furthermore, the pipeline will be constructed and operated by NRG in accordance with both federal and state gas pipeline safety ("GPS") standards. Accordingly, the Staff recommends that the project be approved with the specified conditions set forth in the Staff Report of Investigation.

PROCEDURAL HISTORY

On December 19, 2014, NRG Ohio Pipeline Company LLC (“NRG” or “Applicant”) filed a letter of notification (LON) to construct, operate, and maintain the Avon Lake Gas Addition Project, which consists of a proposed natural gas pipeline, metering station, and regulating station in Lorain County, Ohio. The proposed pipeline would extend south for approximately 20 miles from the Avon Lake power plant in the city of Avon Lake to a proposed supply tap location southwest of the village of Grafton.

On January 6, 2015, Ohio Edison Company (“OE”), The Cleveland Electric Illuminating Company (“CEI”), and American Transmission Systems, Inc. (“ATSI”) (collectively, “FirstEnergy”) moved to intervene in this proceeding. On January 9, 2015, various property owners in Lorain County, Ohio (“Lorain County Property Owners” or “LCPO”) petitioned to intervene in this proceeding. On March 3, 2015, the Administrative Law Judge (“ALJ”) granted FirstEnergy and LCPO intervention in this proceeding.

On March 9, 2015, the Board found that additional investigation was necessary to complete a thorough review of the application. The Board found good cause to suspend the application and the 90-day automatic certification process, pursuant to R.C. 4906.03(F), in order for the Board and its Staff to further review the matter. The Board, pursuant to Ohio Admin. Code 4906-5-02(A)(3)(a), directed NRG to provide additional information regarding the route selection process it used to determine the proposed route for the project, as a supplement to its LON. The Board directed NRG to file the supplement by March 20, 2015. Additionally, the Board ordered a local public hearing and an adjudicatory hearing pursuant to Ohio Admin. Code 4906-5-02(A)(3)(c).

On March 25, 2015, the ALJ scheduled a local public hearing on April 8, 2015 and the adjudicatory hearing on April 23, 2015. The Staff Report of Investigation was filed by Staff on March 27, 2015. The Applicant prefiled testimony on April 6, 2015. The Intervenors and Staff prefiled testimony on April 15, 2015. On April 22, 2015, a Joint Stipulation and Recommendation of NRG and FirstEnergy agreeing to a single condition was filed. On this same date, LCPO filed a motion for leave to file the direct testimony of Brandon and Mary Thorne, Instanter. At the adjudicatory hearing, testimony was provided by the Applicant, Intervenors, and the Staff. After the hearing concluded, the ALJ directed the parties to file briefs on May 5, 2015.

This post hearing brief is submitted on behalf of the Board's Staff.

PROJECT DESCRIPTION

The Applicant proposes to construct, operate, and maintain a 24-inch, high-grade steel natural gas pipeline that is approximately 20 miles in length, in addition to a proposed metering station and regulating station, in Lorain County, Ohio.¹ The proposed pipeline will have a maximum pipeline delivery pressure of 539 pounds per square inch gauge ("PSIG") and a minimum pipeline delivery pressure of 100 PSIG.²

¹ Letter of Notification, Application for the Avon Lake Gas Addition Project, Vol. 1 of 3 at 1 (Dec. 19, 2014).

² *Id.* at 13.

The pipeline will provide a natural gas fuel source to the 734 megawatt Avon Lake Power Plant in Avon, Ohio.³ The proposed metering station will be located at the proposed supply tap southwest of the village of Grafton where the proposed pipeline will tap into an existing natural gas pipeline owned and operated by Dominion East Ohio.⁴ The proposed regulating station will be located at the Avon Lake Power Plant.⁵ The regulating station will reduce the pressure of the gas to 50 PSIG, as required by the boiler facilities at the plant.⁶

The project is located within the city of Avon Lake, the city of Avon, the city of North Ridgeville, the city of Elyria and unincorporated portions of Carlisle, Eaton and LaGrange Townships in Lorain County, Ohio.⁷ The pipeline will require a new permanent right-of-way (“ROW”) of typically 50-feet in width for operation and maintenance and a temporary ROW of 100-feet for construction.⁸

The proposed ROW generally occurs along the transitional areas between more densely developed population centers and exterior undeveloped areas.⁹ Land use along

³ Letter of Notification, Application for the Avon Lake Gas Addition Project, Vol. 1 of 3 at 3 (Dec. 19, 2014).

⁴ *Id.*

⁵ *Id.* at 14.

⁶ *Id.*

⁷ *Id.* at 2-3

⁸ *Id.* at 14.

⁹ *Id.* at 4.

the proposed ROW generally consists of industrial, mixed developed, undeveloped and varying densities of residential uses.¹⁰ Some agricultural uses do occur along the pipeline.¹¹ The project mostly crosses lands already developed and parallels existing previously disturbed rights-of-way.¹²

ARGUMENT/STAFF CONDITIONS

A. The Law

The governing law is straightforward. The Ohio Power Siting Board is created by statute and its powers and duties are delineated under Chapter 4906 of the Ohio Revised Code. Simply, the Board must approve, disapprove, or modify and approve applications for certificates.¹³ The Board adopted rules to provide for an accelerated review of a Letter of Notification (“LON”) application for, among other things, a gas pipeline that is primarily needed to meet the requirements of a specific customer or specific customers.¹⁴ In response to the Ohio General Assembly establishing an accelerated review process for certain facilities under R.C. 4906.03(F), through Amended Substitute Senate Bill 315 (SB 315), the Board created an interim process for review and approval of accelerated cases.

¹⁰ Letter of Notification, Application for the Avon Lake Gas Addition Project, Vol. 1 of 3 at 4 (Dec. 19, 2014).

¹¹ *Id.*

¹² *Id.* at 5.

¹³ R.C. 4906.03(D).

¹⁴ R.C. 4906.03(F)(3).

The process is described in two ALJ orders in Case No. 12-1981-GE-BRO. The first order includes an interim application matrix which outlines the required application type for each type of facility.¹⁵ The second order describes additional requirements of the interim process for LON applications.¹⁶ In attachment A, Appendix B, of the first order, an interim application requirement matrix is provided for gas transmission lines. This matrix shows a LON application is required for a new gas transmission line, and associated facilities, which is greater than five miles in length and is primarily needed to meet the requirements of a specific customer or customers. The interim process will remain in place until final approval of the Board's five-year rule review.

The information contained within the LON must contain the information requested by Ohio Admin. Code 4906-11-01.¹⁷ Upon good cause, the Board may suspend consideration of a LON for up to ninety days.¹⁸ The Board here acted to suspend consideration of the LON application and directed NRG to furnish additional information, pursuant to

¹⁵ *In the Matter of the Ohio Power Siting Board's Review of Chapters 4906-1/4906-5/4906-7/4906-9/4906-11/4906-13/4906-15 and 4906-17 of the Ohio Administrative Code*, Case No. 12-1981-GE-BRO (Finding and Order, Appendix B) (Sep. 4, 2012).

¹⁶ *Id.* (Second Finding and Order) (Dec. 17, 2012).

¹⁷ Ohio Admin. Code 4906-5-02(A)(2).

¹⁸ Ohio Admin. Code 4906-5-02(A)(3).

Ohio Admin. Code 4906-5-02(A)(3)(a), on the route selection and evaluation processes it analyzed and considered.¹⁹

The Board must evaluate and decide whether the applicant's proposal in its application, with any supplemental information, meets the applicable criteria. Again, the Board must render a decision based upon the record either granting or denying the application, as filed, or granting it upon such terms, conditions, and modifications as it deems appropriate.²⁰ A LON must meet the following requirements under Ohio Admin. Code 4906-11-01 (B) through (E), as applied to gas transmission lines and summarized below:

(B) General information:

- (1) Name and brief description of the project, and why it meets the requirements for a LON.
- (2) Statement explaining the need for the proposed facility.
- (3) The location of the project in relation to existing or proposed lines and stations shown on maps and overlays.
- (4) The alternatives considered and reasons why the proposed location or route is best suited for the proposed facility; the discussion to include impacts associated with socio-economic, natural environment, construction, or engineering aspects of the project.
- (5) The anticipated construction schedule and proposed in-service date of the project.

¹⁹ *In the Matter of the Application of NRG Ohio Pipeline Company, LLC, for Approval of a Letter of Notification for the Avon Lake Gas Addition Project in Lorain County, Ohio*, Case No. 14-1717-GA-BLN (“*In re NRG*”) (Entry) (Mar. 9, 2015).

²⁰ R.C. 4906.03(D).

(6) An area map depicting the facility's centerline with clearly marked streets, roads, and highways, and instructions for locating the facility.

(7) A list of properties for which applicant has obtained easements and a list of properties for which such agreements have not been obtained.

(C) Technical features of the project:

(1) Operating characteristics, estimated number and types of structures required, and right-of-way and/or land requirements.

(3) The estimated cost of the project.

(D) Socioeconomic data:

(1) A general description of land use within the vicinity of the proposed project, including (a) a list of municipalities, townships, and counties affected; and (b) estimates of population density adjacent to rights-of-way within the study corridor.

(2) The location and general description of all agricultural land.

(3) A description of the applicant's investigation (concerning the presence or absence of significant archeological or cultural resources), a statement of the findings of the investigation, and any document produced as a result of the investigation.

(4) Documentation that each municipal corporation and county, and each public agency charged with planning land use have been notified of the project and served a copy of the LON. Describe the company's public information program.

(5) A brief description of any current or pending litigation involving the project at the time of the LON.

(6) A listing of the local, state, and federal governmental agencies known to have requirements that must be met in connection with the construction of the project and the list of documents filed with them.

(E) Environmental data:

(1) A description of the applicant's investigation concerning the presence or absence of federal and state designated species that may be located within the area likely to be disturbed by the project, a statement of the findings of the investigation, and a copy of any document produced as a result of the investigation.

(2) A description of the applicant's investigation concerning the presence or absence of areas of ecological concern that may be located within the areas likely to be disturbed by the project, a statement of the findings of the investigation, and a copy of any document produced as a result of the investigation.

The Board is asked to apply its judgment and expertise to evaluate the merits of the application. It must interpret the criteria of R.C. 4906.03(F)(3) and Ohio Admin. Code 4906-11-01 in the context of current law and regulations. The sufficiency of the evidence is a matter for the Board's judgment.

Based upon the detailed information contained in the application and supplements, the Staff's interrogatories and investigation of that information, Intervenor and Applicant discovery, and the evidentiary record, the Staff recommends that the Board find that each applicable criterion enumerated in R.C. 4906.03(F)(3) and Ohio Admin. Code 4906-11-01 have been met.

B. Staff Report of Investigation

The Staff's Report of Investigation was filed on March 27, 2015, as required by the Board's procedural schedule.²¹ The Staff evaluated the application in light of the factual findings that the Board must make. Staff's analysis and comprehensive recommendations are intended to assist the Board in its deliberations. It is part, but only part, of the evidentiary record in a case. The Staff's report reflects its investigation of the application, supplemental information, and its findings up to the date of docketing its report. The Report was not required, intended, or physically able to represent a consensus reflecting the views of the parties to the case. Rather, the Staff Report is just that – a report compiled by Staff that summarizes Staff recommendations, at the time of publication of the report, on topics specifically addressed in Ohio Admin. Code 4906-11-01.

The Staff carefully fulfilled its statutory and Board defined role in this case. It fully evaluated the application, analyzed it in light of the applicable criteria, and developed recommendations and conditions that it believes will ameliorate project impacts. The Staff performed its role in a fair and balanced manner. The role of the Applicant is to defend its application. Finally, the role of the opposing parties is to challenge the application with their own guidance. A brief discussion of Staff's analysis and conclusions in this case are provided below.

²¹ *In re NRG* (Entry) (Mar. 9, 2015).

1. Route Selection

NRG proposes to construct a 24-inch, high grade steel natural gas pipeline from the existing Avon Lake power plant in the city of Avon Lake, extending approximately 20 miles to the south, and terminating in the village of Grafton. The entire pipeline would be located within Lorain County.²² The Applicant conducted an exhaustive route selection study that evaluated and weighed two final potential routes between those two points before selecting the proposed route.

In its application to operate as an intrastate pipeline company in Ohio (“Certification Case”), NRG proposed two pipeline corridors depicted on a map in exhibit B attached to that application.²³ The map shows an eastern corridor and a western corridor.²⁴ The eastern corridor was not analyzed in the LON application.²⁵ Sometime after the Certification Case application was filed in November 2013, but before the route selection studies began for this LON application, NRG decided the eastern corridor was not feasible.²⁶ NRG made this decision after having conversations with Dominion East Ohio (“DEO”) about the best tap location when comparing the two corridors.²⁷ The DEO tap

²² Staff Report of Investigation (“Staff Ex. 2”) at 1 (Mar. 27, 2015).

²³ *In the Matter of the Application of NRG Ohio Pipeline Company, LLC, for Authority to Operate as an Ohio Pipeline Company*, Case no. 13-2315-PL-ACE (Application at 1) (Jan. 27, 2013) (“LCPO Ex. 1”); see also, Tr. Vol. I at 51-52.

²⁴ Tr. Vol. I at 53.

²⁵ *Id.* at 54-55, 132.

²⁶ *Id.* at 55-58, 60, 100-101.

²⁷ *Id.* at 58.

in the western corridor would provide higher pressure than the tap in the eastern corridor.²⁸ The DEO tap location in the eastern corridor could require a compressor station and a different sized pipe, so technically that is an inferior option.²⁹ NRG had ongoing communications with DEO between spring/summer of 2013 and spring/summer 2014 about the two corridors and which one would provide the best option for a tap location.³⁰

Although the March 9, 2015 Board Entry at ¶ 8 directed NRG to produce additional information on the major alternatives considered, addressing both of the corridors depicted in the application in the Certification Case, the Board did not expect NRG to undertake any new analysis.³¹ The Board only wanted NRG to provide the evaluating process it had already completed.³² There was no written analysis concluding that the eastern corridor was inferior or infeasible.³³ It was just a culmination of many conversations and site visits and walks downs.³⁴ NRG complied with the Board's March 9th Entry and no other analysis or studies were required to be undertaken for the eastern corridor.

28 Tr. Vol. I at 102.

29 *Id.* at 101-102.

30 *Id.* at 63-64.

31 *In re NRG* (Entry at ¶ 8) (Mar. 9, 2015).

32 *Id.*

33 Tr. Vol. I at 102.

34 *Id.*

The first documented routing feasibility study was done by AECOM in January 2014.³⁵ The report presented two routes that contain a 40% overlap, Preferred Route 1 and Preferred Route 2.³⁶ The key components considered in the study are listed in a Table under the Executive Summary.³⁷ How the key components relate to the two routes presented is detailed within the report.

A second routing feasibility study was prepared by Environmental Resources Management (“ERM”) for NRG in March 2014.³⁸ ERM’s route development and selection methodology was generally aimed to reduce proximity to existing buildings and other above and below-ground infrastructure or features, while also taking into consideration or balancing trade-offs with other routing criteria (environmental, constructability and cost related).³⁹ The comparative evaluation of these criteria allowed for the identification of ERM’s representative Project route and alternative route segment.⁴⁰ ERM did

³⁵ NRG Ohio Pipeline Company LLC Supplement to the Letter of Notification, Applicant Ex. 7, Attachment A.

³⁶ *Id.* at ES-1.

³⁷ *Id.*

³⁸ NRG Ohio Pipeline Company LLC Supplement to the Letter of Notification, Applicant Ex. 7, Attachment B – Parts 1-3, Attachments C and D (Population Study).

³⁹ NRG Ohio Pipeline Company LLC Supplement to the Letter of Notification, Applicant Ex. 7, Attachment B – Part 1 at 6.

⁴⁰ *Id.* at 7; also see Attachment B – Part 2 for maps depicting the representative Project route and alternative route segment.

an independent analysis of determining a route from what AECOM provided in its route work.⁴¹

Finally, in February 2014, Hanover Engineering Associates (“Hanover”) and ERM took over route development for the pipeline project.⁴² Hanover reviewed the route studies from AECOM and ERM as it related to engineering and constructability considerations.⁴³ Several “pinch points” were identified from a desktop review of the route.⁴⁴ Pinch points were defined areas where route placement was physically constrained.⁴⁵ Four pinch point re-routes were identified by Hanover and described in its route refinement and analysis.⁴⁶ The next phase of re-routes occurred through land negotiations with landowners.⁴⁷ This process resulted in over 200 minor route revisions and ten major re-routes, including the re-route to the west edge of Flint Ridge development to follow existing sewer and high tension corridors.⁴⁸

⁴¹ Tr. Vol. I at 117.

⁴² NRG Ohio Pipeline Company LLC Supplement to the Letter of Notification, Applicant Ex. 7, Attachment E.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*; also see Tr. Vol. I at 128-130, 148-149.

2. Socioeconomic Impacts

This section of the Staff Report addresses land use, and cultural and archeological resources. Overall socioeconomic impacts are expected to be minimal.

a. Land Use

Land use in proximity to the facility is comprised of multiple uses, including a large segment of transitional area between more dense population centers.⁴⁹ Commercial, industrial, undeveloped, and agricultural areas are also present, as well as varying densities of residential uses.⁵⁰ This project would not significantly alter existing land use.

b. Cultural and Archaeological Resources

The Applicant conducted a literature/desktop review and phase I archaeological surveys for the project area.⁵¹ The phase I fieldwork identified five newly recorded archaeological sites within the survey area, each of which was recommended as not eligible for listing in the National Register of Historic Places (“NRHP”).⁵² The Ohio Historic Preservation Office (“OHPO”) has concurred with the recommendation that the project would not affect historic properties.⁵³ In December 2014, Applicant submitted additional

⁴⁹ Staff Ex. 2 at 7.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

information to the OHPO pertaining to route adjustments for the proposed pipeline.⁵⁴ An updated phase I fieldwork survey identified one newly recorded archaeological site.⁵⁵ This site was recommended as not eligible for listing in the NRHP.⁵⁶

Given the Staff’s evaluation of information on these matters, and subject to the Staff’s recommended conditions, the Staff recommends a Board finding that this criterion has been met.

3. Ecological Impacts

The Staff evaluated NRG’s proposed pipeline impacts to surface waters, and threatened and endangered species. The Staff has recommended several conditions to address and minimize potential ecological impacts in its Staff Report.

a. Surface Waters

The Applicant has proposed best management practices (“BMP”) in its Storm-water Pollution Prevention Plan to avoid impacts to surface water resources to the greatest extent practical. As NRG developed its erosion sediment control plan it went through a comprehensive exercise of looking at all of the applicable jurisdictional requirements.⁵⁷ That included the four municipal jurisdictions: the city of Avon, the city of Avon Lake,

⁵⁴ Staff Ex. 2 at 8.

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ Tr. Vol. I at 152.

city of North Ridgeville, and the city of Elyria.⁵⁸ NRG also looked at the Ohio Environmental Protection Agency's ("OEPA") best management practices and the Ohio Department of Natural Resources Rainwater Land Development Manual.⁵⁹ NRG looked at the various conditions that pertain to federal and state permitting through OEPA and U.S. Army Corp of Engineers.⁶⁰

NRG identified the most stringent of those collective requirements and developed its erosion and sediment control plan to meet or exceed those stringent requirements.⁶¹ For instance, NRG has committed to permanent and temporary stabilization in both wetland and upland areas following a ground disturbance within two days that exceeds both Lorain County as well as state requirements.⁶²

Staff recommends that the Applicant be required to provide a construction access plan for review prior to the preconstruction conference.⁶³ By applying for all the applicable surface water permits, as listed in the Staff Report, the Applicant would be bound to restrictions specified by the permits.⁶⁴ All of these steps would ensure that impacts to surface water resources would be minimized.

⁵⁸ Tr. Vol. I at 152.

⁵⁹ *Id.*

⁶⁰ *Id.* at 152-153.

⁶¹ *Id.* at 153.

⁶² *Id.*

⁶³ Staff Ex. 2 at 9.

⁶⁴ *Id.*

b. Threatened and Endangered Species

The Applicant requested and received information from the Ohio Department of Natural Resources (“ODNR”) and the U.S. Fish and Wildlife Service (“USFWS”) regarding state and federally listed threatened and endangered plant and animal species.⁶⁵

Additional information was provided through field assessments and review of ecological information.⁶⁶

Through coordination with wildlife agencies, the Applicant, the agencies, and Staff have determined that the species listed in the Staff Report could be impacted by the project.⁶⁷ But with specified precautions, adverse impacts are not expected.⁶⁸ To provide additional assurance, Staff recommends that the Applicant have an environmental specialist on site when working in listed species’ potential habitats.⁶⁹ No national or state parks or forests, wilderness areas, wildlife refuges, wildlife management areas or wildlife sanctuaries are located in the immediate vicinity of the project.⁷⁰

⁶⁵ Staff Ex. 2 at 9.

⁶⁶ *Id.*

⁶⁷ *Id.* at 10.

⁶⁸ *Id.*

⁶⁹ *Id.* at 9-10.

⁷⁰ *Id.* at 10.

4. Engineering and Safety

The proposed pipeline will meet or exceed Class 3 specifications of the U.S. Department of Transportation Pipeline and Hazardous Materials Safety Administration (“PHMSA”).⁷¹ This designation is utilized by PHMSA in high-density, residential land use areas. The only higher class designation is Class 4, where buildings with four or more stories above ground are prevalent.

The pipeline would be constructed of high-grade steel with a wall thickness of 0.312 inches and a yield strength of 52,000 pounds per square inch.⁷² Sections of the pipeline would be installed via boring or horizontal directional drilling.⁷³ A section of pipeline in close proximity and adjacent to a housing development at Mile Post 12 and the Chestnut Ridge Road crossing would have a wall thickness of 0.5 inches.⁷⁴ This increase in pipeline wall thickness goes beyond the mandated federal safety requirements.⁷⁵ The pipeline would be cathodically protected by a rectifier and externally coated with 14-16 mils of fusion bonded epoxy.⁷⁶

⁷¹ Staff Ex. 2 at 11.

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Id.* at 12.

⁷⁶ *Id.* at 11.

Mr. Salvatore Caiazzo, is employed by Hanover and assisted with the engineering and design of the pipeline.⁷⁷ He made sure that the design met all federal regulations, CR 192 specifically was examined.⁷⁸ The entire length of the pipeline was designed to be compliant with the Class 3 location. Class location study is ranked numerically using 1-4 based on population adjacent to pipeline within 660 foot corridor.⁷⁹

The Applicant has sited the proposed pipeline route to avoid potential impacts to sensitive institutional land uses, such as schools and park lands.⁸⁰ The Applicant has coordinated extensively with affected landowners to avoid impacts where practicable.⁸¹

5. Specific customer

The project qualifies for a LON application because it meets the criteria under R.C. 4906.03(F)(3). In this application, the sole customer is the Avon Lake Power Plant and the primary purpose of the project is to provide natural gas as a fuel source to the plant.⁸²

⁷⁷ Tr. Vol. I at 124-125.

⁷⁸ *Id.* at 126.

⁷⁹ *Id.* at 126-127.

⁸⁰ Staff Ex. 2 at 11-12.

⁸¹ *Id.* at 12.

⁸² NRG Ohio Pipeline Company LLC, Letter of Notification, Applicant Ex. 1, Vol. 1 at 3.

The pipeline was sized to be able to provide the specific needs of the power plant.⁸³ If at anytime the power plant is asked to run, all of the gas in the pipeline or its design capacity to flow could be consumed by the power plant.⁸⁴ And if it operates at 100 percent, it will consume all the gas that can flow through the pipeline.⁸⁵ The plans for this facility does not provide a physical mechanism to offload gas from the pipeline to any customer other than Avon Lake Power Plant.⁸⁶ The pipeline has been designed with no taps to serve any other load.⁸⁷ The Avon Lake Power Plant is the sole customer.⁸⁸

Notwithstanding the fact that NRG is proposing to serve one specific customer in its LON application, NRG reserves the right to add other specific customers.⁸⁹ The question of whether NRG can add other specific customers (one or more) and show that the pipeline is primarily needed to meet the requirements of those customers, as well under R.C. 4906.03(F)(3), is a speculative and hypothetical or academic issue that is not ripe for consideration here. No application has been made by NRG to add any other specific customers to this pipeline. This issue is not before the Board because it goes beyond the scope of NRG's LON application. It certainly is not an issue in this case.

⁸³ Tr. Vol. I at 94.

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.* at 95.

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *Id.* at 80, 86.

Based upon its analysis and subject to the Staff's recommended conditions, Staff recommends a Board finding that this criterion has been met.

6. Affiliation between Plant and Pipeline

In the March 9, 2015 Entry, the Board inquired as to whether the pipeline would be used to serve an affiliate.⁹⁰ NRG Ohio Pipeline Company LLC is a subsidiary of NRG Energy, Inc.⁹¹ The Avon Lake Power Plant is owned by NRG Power Midwest LP, which is a subsidiary of NRG Energy, Inc., as well.⁹² The Avon Lake Power Plant and Ohio Pipeline Company LLC are affiliates.⁹³

Although the record establishes that an affiliate relationship does exist between the power plant and pipeline, no issues were raised by any party to suggest any harm or impropriety because of this relationship. Furthermore, the affiliation relationship was properly disclosed in the Certification Case, before the PUCO, which is better suited to address such issues regarding the regulation of the LLC as a public utility. Corporate separation agreements and affiliation issues do not appear to be subjects typically addressed by Chapter 4906 of the Ohio Revised Code.

⁹⁰ *In re NRG* (Entry at ¶ 7) (Mar. 9, 2015).

⁹¹ Tr. Vol. I at 23; also see LCPO Ex. 1 at 1.

⁹² Tr. Vol. I at 23-24; also see LCPO Ex. 1 at 1.

⁹³ Tr. Vol. I at 77.

C. Staff Conditions

In addition to discussing each of the applicable criteria, the Staff Report of Investigation contains a number of conditions recommended by the Staff.⁹⁴ These recommended conditions are supported by the record of evidence in this case. The Staff's overall recommendation is that if the Board finds sufficient evidence to support NRG's LON application under the applicable criteria, it should require compliance with all of Staff's recommended conditions to ensure that project impacts are minimized.

CONCLUSION

The Staff has concluded that the proposed project represents minimal social and environmental impacts. After an exhaustive investigation, the Staff has developed a number of conditions that, if adopted by the Board, would minimize environmental and other impacts to the project area. Additionally, the facility will be subject to federal and state gas pipeline standards for operation and maintenance of the pipeline. Per federal and state standards and regulations, the facility will be required to undergo periodic testing and inspections for safety.

Based upon the foregoing, the Staff believes that the record in this case supports an affirmative Board finding on each of the applicable criteria. The Staff recommends that, if a certificate is issued to the Applicant for this project, the Board require Applicant to comply with all of Staff's recommended conditions.

⁹⁴

Staff Ex. 2 at 12-13.

Respectfully submitted,

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**On Behalf of the Staff of
The Ohio Power Siting Board**

PROOF OF SERVICE

I hereby certify that a true copy of the foregoing **Post-Hearing Brief** submitted on behalf of the Staff of the Public Utilities Commission of Ohio, was served via electronic mail upon the following Parties of Record, this 5th day of May, 2015.

/s/ John H. Jones

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