

FILE

BEFORE
THE OHIO POWER SITING BOARD

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) Case No. 14-1717-GA-BLN
County, Ohio)
)

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NRG OHIO PIPELINE COMPANY LLC
POST HEARING BRIEF

I. INTRODUCTION

Pursuant to the Administrative Law Judge's ruling at the April 23 and 24, 2015 evidentiary hearing, NRG Ohio Pipeline Company LLC ("NRG Ohio Pipeline") files this Post Hearing Brief. On December 19, 2014, NRG Ohio Pipeline filed its Letter of Notification ("LON") Application for the Avon Lake Gas Addition Project in Lorain County, Ohio (the "Project"). The Project is comprised of a proposed natural gas pipeline, twenty-four inches in diameter and approximately twenty-miles in length, in addition to a proposed metering station and proposed regulating station. The Project is intended to provide the pipeline infrastructure to deliver natural gas to the Avon Lake Power Plant. Applicant Ex. 1, pp. 1-4 (summarizing the Project and its need). Because the Project "is primarily needed to meet the requirements of a specific customer or specific customers" it qualifies for the Ohio Power Siting Board's ("OPSB" or "Board") LON application process.¹ Ohio Revised Code Section ("R.C.") 4906.03(F)(3); OPSB Interim Application Requirement Matrix, Appendix B.

On January 6, 2015 and January 9, 2015, the Ohio Edison Company, The Cleveland Electric Illuminating Company, and American Transmission Systems, Inc. (collectively,

¹ At this time the Avon Lake Power Plant is the only customer of the Project.

“FirstEnergy Intervenors”), and various property owners in Lorain County, Ohio (collectively, “LCPO Intervenors”), respectively, filed petitions for leave to intervene in the case, which were later granted on March 3, 2015. By entry dated March 9, 2015, the Board found that good cause existed to suspend NRG Ohio Pipeline’s LON Application and ordered that a local public hearing and an adjudicatory hearing be held in this matter. The local public hearing was held April 8, 2015, and the adjudicatory hearing was held April 23 and 24, 2015.

As an LON application, NRG Ohio Pipeline’s Application must adhere to Ohio Administrative Code (“O.A.C.”) Rule 4906-11-01. The LON Application filed by NRG Ohio Pipeline more than satisfies these requirements. The Project proposed by NRG Ohio Pipeline is the result of significant and substantial accommodations to landowner concerns and requests and represents the minimal social and environmental impacts. As such, the Board should approve NRG Ohio Pipeline’s LON Application.

II. NRG OHIO PIPELINE IS REQUIRED TO PRESENT ONLY A SINGLE ROUTE UNDER THE LON PROCESS, AND NRG OHIO PIPELINE’S PROPOSED ROUTE IS THE RESULT OF AN EXHAUSTIVE ROUTE SELECTION PROCESS.

Unlike the requirements that pertain to a non-accelerated standard certificate application, the LON process under O.A.C. Rule 4906-11-01 does not require NRG Ohio Pipeline to submit specific alternative routes as part of its LON Application. *Compare* O.A.C. Rules 4906-5-02 and 4906-11-01 *with* O.A.C. Rule 4906-5-03 to -04.² Rather, O.A.C. Rule 4906-11-01 requires the LON application to present a discussion of the alternatives considered, as well as the numerous factors and constraints that led to the proposed route, including the population of the surrounding

² Recent Board precedent affirms that an applicant is not required to submit specific alternative routes for its LON application. *See, In the Matter of North Coast Transmission, LLC*, Case No. 14-1754-GA-BLN (Entry dated April 6, 2015), at ¶ 27, where the Board expressly rejected the assertion by the OLCC (Oregon Lateral Citizens Coalition) that North Coast Transmission, LLC was required to submit specific alternative routes for its LON application (“contrary to OLCC’s claims, North Coast was not required to submit specific alternative routes for its letter of notification”).

areas, public safety concerns, increased traffic congestion, and environmental impact. NRG Ohio Pipeline's LON Application satisfies these requirements. Applicant Ex. 1, pp. 4-9.

The route proposed by NRG Ohio Pipeline in its LON Application is the result of a comprehensive and iterative process to determine that the proposed route is best suited for the pipeline. *See*, Staff Ex. 2, pp. 7, 11, finding and concluding that NRG Ohio Pipeline "conducted an exhaustive route selection study," and that NRG Ohio Pipeline "conducted a thorough route analysis in preparation of the application." NRG Ohio Pipeline's comprehensive route selection process considered thirteen (13) routing objectives aimed to reduce proximity to existing buildings and other above and below-ground infrastructure or features, while also taking into consideration, and balancing, other routing criteria, such as environmental impacts, constructability, and cost. Applicant Ex. 1, pp. 6-9; Applicant Ex. 7; Staff Ex. 2, p. 7; Applicant Ex. 8, pp. 3-5. To this end, NRG Ohio Pipeline conducted two feasibility studies of potential routes. Applicant Ex. 7, Attachments A & B; Tr. Vol. I, pp. 173-174 (Witness Murphy discussing that each study was based a separate independent reviews).

NRG Ohio Pipeline's route selection process included extensive analysis of alternative routes. Multiple potential route corridors or alternatives, or iterations thereof, were identified and comparatively evaluated, in accordance with the routing considerations identified above. Applicant Ex. 7, Attachments A & B; Staff Ex. 2, p. 7. As required by O.A.C. Rule 4906-11-01(B)(4), NRG Ohio Pipeline's LON Application presents a discussion of the alternatives considered, as well as the numerous considerations and constraints that led to its proposed pipeline route. Applicant Ex. 1, pp. 6-9; *see also*, Applicant Ex. 7.

III. THE PROPOSED ROUTE IS THE RESULT OF SIGNIFICANT AND SUBSTANTIAL ACCOMMODATIONS TO LANDOWNER CONCERNS AND REQUESTS.

A. NRG Ohio Pipeline has worked closely with landowners to address their concerns.

NRG Ohio Pipeline's comprehensive and iterative process to determine the route with minimal social and environmental impacts, described in Section IV below, included modifications to the route due to landowner requests. Throughout the process of refining the final proposed route, NRG Ohio Pipeline worked diligently and in good faith to address concerns raised by landowners. Tr. Vol. I, p. 16. In all, NRG Ohio Pipeline made over 200 minor route revisions and nearly a dozen major reroutes to accommodate landowner requests. Applicant Ex. 1, Attachment E (defining "minor" and "major" route revisions and providing examples of the latter).

In instances where reroutes were not possible, NRG Ohio Pipeline also worked diligently to address landowner concerns and minimize the Project's impact. Examples of such accommodations include horizontally drilling under an *entire* property to eliminate *any* surface work, identifying and plotting trees on a property so they can be avoided, and reducing the size of the requested easement. Tr. Vol. I, pp. 16-19.

The extent of NRG Ohio Pipeline's efforts to minimize impacts to landowners is well illustrated by its efforts to identify alternative routes around the Flint Ridge Development. In all, NRG Ohio Pipeline analyzed four alternative routes, independent of cost, to avoid or minimize the impact to the Flint Ridge Development. Tr. Vol. I, pp. 128-130. However, none of these alternatives were ultimately feasible. *Id.* (Witness Caiazza explaining the reasons why none of

the alternatives were feasible.)³; Tr. Vol. I, p. 104 (Witness Sawyer discussing that, in the case of examining potential reroutes around the Flint Ridge Development, the analysis of these alternatives was completed independent of costs).

Open communication with landowners was, and is, critical for NRG Ohio Pipeline to respond to landowner questions and concerns. As described in Section IV(C), below, NRG Ohio Pipeline's communication efforts about the Project exceeded the requirement of the LON process under O.A.C. Rule 4906-11-01. In some instances, however, the ability to communicate with landowners is stymied by their retention of counsel. Tr. Vol. I, p. 15 (Witness Sawyer describing NRG Ohio Pipeline's protocol that once counsel is retained all communications directly with landowners cease); *see, e.g.*, LCPO Intervenor Ex. 12 (Witness Thorne acknowledging that direct communication with NRG Ohio Pipeline and its land agents ceased when counsel was retained). Although easement negotiations with specific landowners are matters outside of the scope of the OPSB proceeding, NRG Ohio Pipeline remains committed to addressing and minimizing landowner concerns as they are communicated.

1. Accommodating specific landowner requests must be balanced with other permitting requirements, ecological and constructability impacts, and impacts to other landowners.

Accommodating landowner reroute requests cannot be made in a vacuum. Each time one reroute is requested, there are impacts to other portions of the route that must be considered and evaluated. Simply put, if one piece of the route is moved, another piece often has to change. Applicant Ex. 10, p. 5.

Other accommodations to landowners not involving a reroute must also be made on a case-by-case basis. Therefore, general conditions imposed on the Project intended to address

³ Witness Caiazzo's testimony regarding NRG Ohio Pipeline's efforts to avoid the Flint Ridge Development directly addresses the concerns raised in a letter from former State Representative Matt Lundy. Staff Ex. 2, p. 8.

specific landowner concerns will often be unworkable or have unintended consequences. Tr. Vol. I, pp. 41-43 (Witness Sawyer describing why double ditching cannot be applied to all properties, for reasons including landowner requests for narrower easements that would inhibit double-ditching); Tr. Vol. I, pp. 46-48 (Witness Sawyer explaining why septic system restoration must be conducted on a case-by-case basis); Tr. Vol. I, pp. 154-155 (Witness Murphy explaining that removing stumps and tilling the easement, as requested by a landowner, would impact wetlands and violate environmental permits).

For these reasons, NRG Ohio Pipeline opposes the application of the Ohio Department of Natural Resources' Pipeline Standards and Construction Specifications (the "ODNR Pipeline Standards").⁴ The application of these guidelines to the Project would result in additional adverse environmental impacts. Tr. Vol. I, p. 154. Adhering to the ODNR Pipeline Standards will require additional workspace in areas where NRG Ohio Pipeline has already narrowed its intended workspace in order to reduce the impact to environmentally sensitive areas. *Id.* Increasing the workspace to comply with the ODNR Pipeline Standards will result in increased impact to wetlands and will require additional tree clearing. *Id.* As discussed in Section IV. A. 3, below, the Project has already committed to an Erosion and Sediment Control ("E&SC") Plan that in many instances exceeds the regulatory standard. The application of the ODNR Pipeline Standards to the Project would undermine these objectives.

2. Issues primarily related to monetary compensation and other contractual terms for easements are not matters within the scope of this proceeding.

As illustrated by the testimony offered in the proceeding, many of the LCPO Intervenor's concerns with the Project are impacts to valuation of property. *See, e.g.*, LCPO Intervenor Ex. 8, pp. 1-3 (Witness Oster explaining the projected financial injury to K. Hovnanian Oster Homes,

⁴ The standards can be found here: <http://bit.ly/pipelinestandards>.

LLC's Arlington Place development due to the Project); *see also*, LCPO Intervenor Ex. 13 (Witness Davis explaining that one of his primary concerns with the Project was the potential affect to resale value). These are compensation issues. And they are not within the scope of this proceeding.

A very recent Board decision reinforces the point. In *In the Matter of the Application of North Coast Gas Transmission, LLC, for a Certificate Relative to the Oregon Lateral*, the Board considered the application for rehearing of a Mr. Michael Tiller, who opposed the approval of North Coast's LON application to build a twenty-two (22) mile natural gas pipeline. Case No. 14-1754-GA-BLN (Entry, April 6, 2015). Among other issues, Mr. Tiller argued that if the proposed pipeline was built, it would restrict the development of his land. *Id.* at ¶22. However, the Board rejected this basis for rehearing, stating:

The Board notes that Mr. Tiller raises issues primarily related to monetary compensation and other contractual terms for an easement on his commercial property, which, as they are matters to be negotiated between North Coast and Mr. Tiller, are not matters within the scope of this proceeding.

Id. at ¶24.

Thus, to the extent that the issues raised by the LCPO Intervenor are primarily related to monetary compensation and other contractual terms for easements, they should not be considered by the Board.

IV. THE PIPELINE PROPOSED IN NRG OHIO PIPELINE'S LON APPLICATION REPRESENTS THE MINIMAL SOCIAL AND ENVIRONMENTAL IMPACTS.

A. The LON Application demonstrates that the proposed pipeline will have minimum adverse socioeconomic impacts.

1. The Project will have minimal land use impacts.

NRG Ohio Pipeline commissioned a comprehensive routing study to assure that the selected route for the pipeline would have a minimal impact on the surrounding land usage. Staff Ex. 2, p. 7; Applicant Ex. 8, p. 3. The selected route consists of industrial, mixed developed, undeveloped and varying densities of residential uses, along with some agricultural uses towards the southern end. Applicant Ex. 1, pp. 4-5. Because the route mostly crosses lands already developed and parallels existing, previously disturbed rights-of-way, there has already been prior ground disturbance and maintenance in the area of the Project route. Applicant Ex. 1, p. 5; Applicant Ex. 9, p. 3.

Consistent with its efforts to present a Project with minimal impact on existing land uses, NRG Ohio Pipeline entered a stipulation with the FirstEnergy Intervenors wherein NRG Ohio Pipeline agreed to work closely with the FirstEnergy Intervenors to keep them fully informed of the Project details in an effort to minimize the potential for disturbances to the FirstEnergy Intervenors' facilities that may be proximate to the Project. Joint Ex. 1. As will be discussed in greater detail below, this same concern regarding existing land uses will be given to the entire Project route.

The LON Application demonstrates, and the Staff Report concludes that the Project will not significantly alter existing land use along the route and will neither cross existing recreational or public parkland, nor will it require the removal of any residences. Staff Ex. 2, p. 7; Applicant Ex. 8, p. 2 (Witness Sawyer noting that the "present route presents the optimal option for the

Pipeline in light of environmental, construction, and project timing concerns.”); Applicant Ex. 9, p. 5 (Witness Murphy stating that “[b]ased on balancing all of the objectives set forth in the LON, I believe the current proposed route is the optimal route for the pipeline.”); Applicant Ex. 10, p. 2 (Witness Caiazzo explaining “why the proposed route is the optimal alternative, when considering environmental constraints, conflicting utilities in the project corridor, constructability and cost evaluation, and constraints/special conditions requested by landowners.”).

2. The Project will have minimal cultural & archaeological impacts.

NRG Ohio Pipeline contracted with Environmental Resources Management (“ERM”), to conduct the appropriate literature/desktop review and Phase I Archaeological Field Survey to determine the potential impact, if any, on archeological resources located in the Project path. The results of the survey indicated no impacts to archaeological and cultural resources, and no further archaeological work is recommended for the Project prior to construction. Applicant Ex. 9, p. 4; Applicant Ex. 1, Attachment C, p. 53. The Ohio Historic Preservation Office has concurred with the recommendation that the pipeline Project would not affect historic properties and no further archaeological investigations are required for the Project. Applicant Ex. 9, p. 4; Applicant Ex. 1, Attachment C.

3. The LON demonstrates that the Project will have minimum adverse species and ecological impacts.

NRG Ohio Pipeline consulted the U.S. Fish and Wildlife Service and the Ohio Department of Natural Resources concerning federal and state designated species. Three species of potential concern were identified, the Indiana bat (*Myotis sodalis*), the Northern long-eared bat (*Myotis septentrionalis*), and Kirtland’s warbler (*Setophaga kirtlandii*). NRG Ohio Pipeline

will adhere to seasonal tree removal practices for the identified species in order to avoid any potential impact to these species. Applicant Ex. 9, p. 4; Staff Ex. 2, pp. 9-10.

Similar to the archaeological review, ERM conducted a field delineation of wetland and water resources along the Project path. Based on these studies, no areas of ecological concern were identified. Applicant Ex. 1, p. 29; Applicant Ex 9, p. 4. No high quality streams would be impacted and NRG Ohio Pipeline has sited the Project route and proposed best management practices to avoid impacts to surface water resources to the greatest extent practical. Staff Ex. 2, pp 8-9.

In developing the E&SC Plan for the Project, ERM compared all the different requirements among the various jurisdictional agencies and municipalities and identified and incorporated the most stringent of the collective requirements into the plan. As a result, the Project's E&SC Plan exceeds many federal, state and local regulations. Tr. Vol. I., pp. 152-153.

B. The proposed Project will exceed safety requirements.

NRG Ohio Pipeline will construct the Project to federal Class 3 location requirements for its entire length though sections of the project are Class 1, 2 and 3, exceeding the federally-mandated pipeline safety standards otherwise applicable to the Project. 49 CFR 192.5; Tr. Vol. I, pp. 126-127. The maximum operating pressure ("MOP") of 539 psig corresponds to only 39.9% of the specified minimum yield strength ("SMYS") of the 0.312 inches wall thickness pipe specified as minimum standard for the project, while 49 CFR 192 Subpart C requires that the pipeline operate at 50% SMYS in a Class 3 location. Further, in response to OPSB Staff concerns about the proximity of the Project to houses near the Mile Post 12 area, NRG Ohio Pipeline agreed to use pipe with a wall thickness of 0.500 inches, in place of the above-mentioned minimum wall thickness of 0.312 inches. At the MOP, this section of the pipeline

will be operating at only 24.9% SMYS. Staff Ex. 2, p. 11; Applicant Ex. 6; *see also*, Applicant Ex. 10, p. 3.

C. NRG Ohio Pipeline exceeded the public interaction requirements under the LON process.

NRG Ohio Pipeline exceeded the LON application requirements set forth in O.A.C. Rule 4906-11-01 in its efforts to notify and educate the affected communities regarding the Project. Beyond the Board's notifications requirements and prior to filing the LON Application, NRG Ohio Pipeline held two public meetings, the first on August 27, 2014, in the Village of Grafton, the second on August 28, 2014, in the City of Avon. Staff Ex. 2, p. 8; Applicant Ex. 8, p. 7; Applicant Ex. 1, p. 23.

Although not part of the LON Application process, the Board set this matter for a local public hearing, held on April 8, 2015. At this hearing the Project received overwhelming support for the Project from the members of the public giving testimony. *See generally*, Public Hearing ("PH") Tr., April 8, 2008. Witnesses in support included the Mayors of Avon Lake (PH Tr. p. 14) and the City of Avon (PH Tr. p. 53) and the State Representative for the 57th District (PH Tr. p. 36); *see also*, testimony of affected landowner Mike Foor (PH Tr. pp. 61-61) (indicating that negotiating an easement with NRG Ohio Pipeline was a "very positive" experience and describing NRG Ohio Pipeline as accommodating requested changes "at least a half dozen times"). Letters in support for the Project have also been filed with Docketing by the current State Representative from the 55th District and the State Senator for the 13th District. This overwhelming expression of support underscores the importance of this Project to this area of Ohio.

V. CONCLUSION

For the foregoing reasons, NRG Ohio Pipeline's LON Application satisfies the Board's requirements, and NRG Ohio Pipeline respectfully requests that the Board expeditiously approve the LON Application.

Respectfully submitted on behalf of
NRG OHIO PIPELINE COMPANY LLC



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Post Hearing Brief has been served upon the following parties listed below via electronic mail, this 5th day of May 2015.



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