

BEFORE

THE OHIO POWER SITING BOARD

In the Matter of the Application of Clean)
Energy Future-Lordstown, LLC for a)
Certificate of Environmental Compatibility) Case No. 14-2322-EL-BGN
and Public Need to Construct an Electric)
Generation Facility in Lordstown, Ohio,)
Trumbull County.)

OPINION, ORDER, AND CERTIFICATE

The Ohio Power Siting Board, considering the above-entitled matter, grants the application filed by Clean Energy Future-Lordstown, LLC, for the construction, operation, and maintenance of an electric generation facility, associated transmission line and five-breaker ring bus in Lordstown, Trumbull County, Ohio, subject to the conditions set forth in this Opinion, Order, and Certificate. Further, the Board approves and adopts the joint stipulation and recommendation filed by Clean Energy Future-Lordstown, Ohio Edison Company, American Transmission Systems, Inc., and Staff.

APPEARANCES:

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

Porter, Wright, Morris & Arthur, LLP, by Robert J. Schmidt, Jr., 41 South High Street, Columbus, Ohio 43215, on behalf of Ohio Edison Company and American Transmission Systems, Inc.

Mike DeWine, Ohio Attorney General, by Thomas Lindgren, Assistant Attorney General, Public Utilities Section, 180 East Broad Street, 6th Floor, Columbus, Ohio 43215-3793, on behalf of the Staff of the Ohio Power Siting Board.

OPINION:

I. Procedural History of this Case

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

On December 24, 2014, Clean Energy Future-Lordstown, LLC. (CEFL or the Applicant) filed a preapplication notification letter regarding its intent to file an application with the Board for authority to construct, own, and operate an electric generation facility in Lordstown, Trumbull County, Ohio, called the Lordstown Energy Center. On January 14, 2015, CEFL filed proof of publication of notice of a public informational meeting held on January 13, 2015, in Lordstown, Ohio (Lordstown).

On December 24, 2014, CEFL filed a motion for waivers of Ohio Adm.Code 4906-13-03(A) and (B), which require that an applicant conduct a site selection study, evaluating all practicable sites for the proposed facility and provide a summary table comparing the sites evaluated. CEFL states that it engaged in a site selection process, which considered most, if not all, of the criteria set forth in the rule. The Applicant stated that it will provide sufficient information to support a finding by the Board that the site represents the minimum adverse environmental impact pursuant to R.C. 4906.10(A)(3). CEFL also requested a waiver of Ohio Adm.Code 4906-13-04(A)(4), which requires an applicant to provide a map showing, among other things, cross sectional views and the location of proposed test borings. CEF requests that it be permitted to defer this requirement until four weeks prior to the preconstruction conference. In response, Staff did not object to the waiver requests. By Entry issued January 23, 2015, CEFL's request for waivers was granted.

On March 23, 2015, as amended on March 27, 2015, and supplemented on April 23, 2015, CEFL filed its application for a certificate of environmental compatibility and public need to construct an 800-megawatt (MW) electric generation facility, a five-breaker ring bus,¹ and an approximately 0.75-mile, 345-kilovolt (kV) interconnection to connect the generation facility to the ring bus (collectively, project) (App. Ex. 1).

On May 12, 2015, the chairman of the Board notified CEFL that the application had been found to comply with the content requirements of Ohio Adm.Code Chapters 4906-1, et seq. On May 13, 2015, CEFL filed its proof of service of the application upon local public officials, as required under Ohio Adm.Code 4906-5-06 and 4906-5-07 (App. Ex. 2).

On May 18, 2015, Ohio Edison Company (OE) and American Transmission Systems, Inc. (ATSI) (collectively, FirstEnergy) filed a motion to intervene in this proceeding. FirstEnergy's request to intervene was granted by Entry issued on July 28, 2015.

By Entry issued on May 26, 2015, the administrative law judge (ALJ) scheduled the local public hearing for July 28, 2015, at 6:00 p.m., at the Lordstown Administration Center Community Room, 1455 Salt Springs Road, Lordstown, Ohio and scheduled the adjudicatory hearing to commence on August 11, 2015, at 10:00 a.m., at the offices of the

¹ A ring bus is a system of circuit breakers used to isolate the generation facility for ease of maintenance, without interruption, and the isolation of a fault on any circuit which improves electric grid reliability.

Board in Columbus, Ohio. Further, the May 26, 2015 Entry directed CEFL to publish notice of the hearings, as required by Ohio Adm.Code 4906-5-08 and directed that petitions to intervene by interested persons be filed by July 13, 2015, or within 30 days following publication of the notice required by Ohio Adm.Code 4906-5-08, whichever was later. CEFL filed its proofs of publication in local newspapers of the notice of the application and the hearings on June 4, 2015 (App. Ex. 3), and August 3, 2015 (App. Ex. 4).

On July 13, 2015, Staff filed its report of investigation of the application (Staff Report) (Staff Ex. 1). On July 31, 2015, CEFL filed the direct testimony of William Siderewicz (App. Ex. 5). The local public hearing was held, as scheduled, on July 28, 2015. At the local public hearing, 14 individuals offered testimony regarding the project.

The adjudicatory hearing commenced, as scheduled on August 11, 2015. Admitted into evidence at the adjudicatory hearing were: CEFL's application and supplements (App. Ex. 1); the Staff Report (Staff Ex. 1), the direct testimony of William Siderewicz (App. Ex. 5) and Jessica L. Thacker (ATSI Ex. 1); the a joint stipulation and recommendation (stipulation) filed by CEFL and FirstEnergy (CEFL/FirstEnergy Joint Ex. 1); the proofs of publication (App. Exs. 3 and 4); and the proof of service of the application (App. Ex. 2). As explained further below, the stipulation provides that, upon completion of construction, CEFL would transfer the ring bus facility to ATSI. At the hearing, the ALJ also granted Staff's request to reserve an opportunity to file an exhibit in the docket indicating whether Staff supports, opposes, or is neutral as to the stipulation. By letter filed on August 25, 2015, as amended on August 31, 2015, Staff joined as a signatory party to the stipulation (Staff Ex. 2). By letter dated August 18, 2015, FirstEnergy filed a notice of acceptance of the certificate conditions upon the transfer of the ring bus to FirstEnergy.

II. Summary of Ohio Revised Code and Ohio Administrative Code Certification Criteria

CEFL and ATSI are corporations and persons under R.C. 4906.01(A). Pursuant to R.C. 4906.04, before construction can begin on any major utility facility within the state of Ohio, such as the project proposed by CEFL in its application, a certificate of environmental compatibility and public need must be obtained from the Board.

Among other things, R.C. 4906.06 requires that an application for a certificate must contain the following information:

- (1) A description of the location and of the major utility facility.
- (2) A summary of studies made of the environmental impact of the facility.
- (3) A statement explaining the need for the facility.

- (4) A statement of the reasons why the proposed location is best suited for the facility.

Ohio Adm.Code Chapter 4906-13 and 4906-15 set forth the specific information an applicant must provide in its application, in regards to electric generation facilities and electric transmission facilities, respectively, including the factors and rationale used to determine the preferred and alternate sites; technical and financial data; and socioeconomic, land use, and ecological impact analyses.

R.C. 4906.10(A) provides that 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.

With regard to the request to transfer of the ring bus facility from CEFL to ATSI upon completion of construction, as provided for in the stipulation, R.C. 4906.04 provides that a certificate may be transferred, subject to the approval of the Board, to a person who agrees to comply with the terms, conditions, and modifications contained in the certificate.

III. Summary of the Record and Consideration of the Criteria in R.C. 4906.10

The Board has reviewed the evidence presented by the parties and has also considered the eight criteria set forth in R.C. 4906.10 in evaluating CEFL's application. Any evidence not specifically addressed herein has nevertheless been considered and weighed by the Board in reaching its final determination.

A. Applicant's Description of the Proposed Facility

According to the application, the project would include a generation facility, a five-breaker ring bus and an electric transmission line to connect the generation facility to the ring bus. The generation facility would consist of two combined-cycle, natural gas fired, high-efficiency combustion turbine generators (CTG) with a nominal output of approximately 285 MW and a maximum output of approximately 312 MW. Each CTG will be equipped with a cooling tower capable of augmenting power production. The generation facility will also include a heat recovery steam generator (HRSG), a condensing steam turbine generator, two duct burners, and state of the art environmental controls. The generation facility will utilize an auxiliary steam boiler for heating steam to accommodate a faster facility start-up and include three approximately 20- to 345-kV step-up transformers, one for each generator and on-site gas compressors to prepare the natural gas for use at the facility. The generation facility will have a nominal net capacity of 800 MW² and be located on approximately 17 acres within the Lordstown Industrial Park, which is a designated Enterprise Zone with Foreign Trade Zone status. Just south of the facility site would be a 23.5-acre area used during construction as a laydown area. (App. Ex. 1 at 1-3, 11-12, 17-21.)

The five-breaker ring bus, with a footprint of approximately 3.5 acres, would be located on property adjacent to and east of the Lordstown Energy Center. The approximately 71-acre property optioned for the ring bus would also be used as a temporary construction laydown area and an employee parking area when the project is

² The application indicates that the maximum designed net power capacity of the Lordstown Energy Center would be 940 MW. However, at this time, the Applicant is requesting authority to operate at a net generation capacity of 800 MW. CEFL acknowledges that it will have to file with the Board for approval to operate at any generation capacity level above 800 MW. (App. Ex. 1 at 1-2.)

completed. The ring bus will be connected to two existing FirstEnergy transmission lines in the area, Highland to Sammis and Highland to Mansfield circuits. (App. Ex. 1 at 1-3, 22-23.)

To connect the Lordstown Energy Center to the ring bus, the project includes the construction of a 345-kV transmission line extending less than a mile. Two FirstEnergy 345-kV transmission line corridors extend across the ring bus property in a north-south direction east of the generation facility site. The project, associated structures and facilities, construction laydown areas, and access roads will be on approximately 182 acres in Lordstown, Trumbull County, Ohio. (App. Ex. 1 at 3, 23-26.)

B. Testimony at the Local Public Hearing

At the local public hearing on July 28, 2015, 14 individuals offered testimony regarding CEFL's proposed project. All of the testimony offered at the local public hearing was in support of the project, including the mayor of the Lordstown, Ohio; the mayor of Warren, Ohio; and a member of the Lordstown Board of Education. The mayor of Lordstown, members of the Lordstown Board of Education and a representative of the Lordstown Teachers' Association testified that this project will provide much needed financial support and stability for the school district. CEFL has committed to provide financial assistance to the school district commencing with ground breaking through the expiration of the 15-year tax agreement. (July 28, 2015, Local Hearing Tr. at 11). The mayor of Lordstown also noted that the cities of Warren (Warren) and Niles would benefit from the revenue received from sales for the project. Several other witnesses noted the number of skilled construction jobs and permanent jobs the project will bring to the area to the benefit of the entire Mahoning Valley. Among benefits cited by other witnesses are: the reduced carbon emissions in comparison to coal generation facilities; the provision of sustainable and cost efficient energy; the provision of construction jobs and permanent jobs once the facility is completed; and the introduction of additional revenue to other local businesses in Trumbull and Mahoning counties. Warren has partnered with Lordstown to provide drinking water to the project. The mayor of Warren expressed support for the project and the economic benefits the project will bring to the area (July 28, 2015, Local Hearing Tr. at 36-38.) Additionally, two persons submitted written public comments regarding the project. One commentor inquired as to the criteria for locating the project adjacent to his property. The other commentor, the superintendent of Lordstown Local Schools, expressed support for the project because of the financial benefits for the local school district.

C. Summary of the Facts and Board's Conclusion for the Basis of Need Criterion in R.C. 4906.10(A)(1)

R.C. 4906.10(A)(1) requires the Board to consider the basis of the need for the facility if the facility is an electric transmission line or gas or natural gas transmission line. According to the Applicant, the Lordstown Energy Center will help ensure electric reliability in northeastern Ohio, particularly in light of the approximately 16 gigawatts of generation facilities retired or planned to be retired throughout the state. Staff notes that, with regard to the electric generation facility R.C. 4906.10(A)(1) is not applicable. However, the project will also include a 0.75-mile electric transmission line to connect the Lordstown Energy Center to the ring bus. (App. Ex. 1 at 1-3; Staff Ex. 1 at 11.)

Upon review of the application, the Board finds that the basis of need for the project, with regard to the electric transmission line, has been demonstrated consistent with R.C. 4906.10(A)(1). The evidence indicates the generation facility will support the electricity demands in the region, in light of recently retired and planned retirements of coal-fired generation plants in the state. The electric transmission line is essential to the project to connect the generation facility to the ring bus and, ultimately, the generation facility to the electric grid. Accordingly, the Board concludes that the project will contribute to the reliability of the electric grid in Ohio and throughout the PJM Interconnection, LLC (PJM) region.

D. Summary of the Facts and Board's Conclusion for Nature of Probable Environmental Impact and Minimum Adverse Environmental Impact Criteria in R.C. 4906.10(A)(2) and (A)(3)

R.C. 4906.10(A)(2) and (A)(3) require the Board to consider the nature of the probable environmental impact of the project and whether the project 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.

In the Staff Report, Staff recommends that the Board approve the CEFL project, subject to certain conditions, and find that the project represents minimal adverse social and environmental impacts (Staff Ex. 1 at 21, 23). Staff reviewed the environmental information contained in the application, as amended and supplemented, and determined the nature of the probable impact to the environment. The following is a summary of Staff's findings.

- (1) Based on 2010 population information, the population of Trumbull County is projected to decrease approximately 0.95

percent between 2010 and 2020. Accordingly, the proposed project is unlikely to limit future population growth or have a measurable impact on the demographics of the region.

- (2) CEFL proposes to construct the generation facility, the ring bus, and the ring bus interconnection line, including construction laydown, staging, parking, and access on approximately 182 acres. The facility site is zoned for industrial development, within an industrial park but is currently in agricultural use. The tallest structures at the facility site would be the two 160-foot tall exhaust stacks. The facility site and laydown area are located within an area of Lordstown that has been designated for industrial development, and industrial use exists on properties adjacent to the facility site. The ring bus site is located in an area designated for residential development and adjacent to existing electric transmission corridors. The proposed project is consistent with the zoning map and planning of Lordstown.
- (3) The majority of the land use within one mile of the facility site is currently utilized for agricultural purposes (30 percent), forested or open space (39 percent) or utilized as an industrial area or utility/rail easement (19 percent). Only 10 percent of the surrounding land within a one-mile radius of the site is compromised of residential parcels.
- (4) With the exception of some residential impacts during construction, the proposed facility is compatible with, and would not permanently impact, surrounding land uses. Staff recommends that the Applicant limit the hours of construction and have a complaint resolution plan in place to address potential construction related concerns from nearby residents. No residences are located on the facility site. However, one structure exists on facility site, and is used as a Lion's Club meeting place. The Lion's Club will move to another location and the structure will be demolished or repurposed. The closest residences are located approximately 0.35 mile to the northwest, southwest, and southeast. A neighborhood of approximately 35 residences is also located approximately 0.6 mile from the facility. Nearby residents are likely to experience temporary noise and traffic impacts associated with construction activities, however, the project is compatible with surrounding land use.

- (5) The ring bus site is bounded on the north by a railroad line and to the east and west by existing 345-kV transmission corridors. Existing vegetation would help screen the ring bus site from the residences on Goldner Lane, a short distance to the south. For security purposes, the ring bus site would be lit, activated either by darkness or motion sensors around the perimeter of the site and focused inward on the ring bus.
- (6) The six proposed poles located in the ring bus interconnection corridor would not exceed 100 feet in height. The Applicant would clear a 100-foot right-of-way through the wooded interconnection property, and remaining vegetation would partially screen the structures from view.
- (7) Due to the visual buffers described above and the primarily industrial nature of the immediate vicinity, the facility, ring bus interconnection corridor, and ring bus site are anticipated to have minimal permanent aesthetic impacts to the surrounding area. Impacts associated with construction activities would be temporary in nature.
- (8) CEFL completed a cultural resources management investigation for the project, including a literature review, a Phase I archaeological survey and investigation, and an historic structures report. In November 2014, CEFL conducted an archaeological resources literature review within a one-mile study radius of the facility site. The review identified seven previously recorded archaeological sites, five sites within the project area and two additional sites within the study radius. The literature review also revealed that earlier Phase I surveys had been conducted within the project area. The earlier surveys identified five archaeological sites within the project area. None of these sites were regarded as significant or National Register of Historic Places (NRHP)-eligible. In December 2014, CEFL conducted archaeological field work on portions of the project area that had not already been surveyed. The field investigation did not identify any previously unrecorded archaeological sites. In its initial Phase I findings, CEFL recommended no further archaeological survey work for the 31-acre project area and by letter dated April 16, 2015, the Ohio Historic Preservation Office (OHPO) concurred with CEFL's recommendation. In May 2015, CEFL identified a broader potential facility site and returned to the site. CEFL's

subsequent field work yielded one previously unrecorded archaeological site (33TR0269) and one previously unrecorded historic structure (OHI TRU0294222). The Applicant recommended that the archeological site not be eligible for listing in the NRHP and that the historic structure not be considered for further cultural resource management. In June 2015, the Applicant filed an addendum to the Phase I results for the 146-acre expansion area. The OHPO concurred with the Applicant's initial recommendation that the project would not affect historic properties.

- (9) The Applicant's cultural historic review identified 11 previously recorded Ohio Historic Inventory properties within the survey area, six of which have been razed and are no longer present. One property listed on the NRHP is located within the area of potential effect and another within the area of potential effect is considered NRHP-eligible by the OHPO.
- (10) The project area contains two perennial streams, Mud Creek and an unnamed tributary to Mud Creek. No in-water work is proposed for the project. A permanent access road across Mud Creek would be required for the ring bus site. This crossing would be via an existing culverted crossing and it is not anticipated that the existing culvert would require any upgrading. The unnamed tributary would be crossed by both the proposed and alternative interconnection routes to the ring bus site. No structures would be placed within the stream and, if access across the stream becomes necessary, Staff recommends that the Applicant use timber matting or other raised bridge structures. The proposed facility is not located within a Federal Emergency Management Agency flood zone.
- (11) Twenty-four wetlands have been delineated near the project site, including one category 3 wetland. Of the 24 wetlands in the project area, five would need to be filled for a total of 1.95 acres of permanent wetland fill. No poles or fill of any kind would be placed within the category 3 wetland. However, approximately 0.1 acres of tree clearing within the category 3 wetland would be necessary for the proposed ring bus interconnection route, and approximately 0.5 acres would be necessary for the alternative. No mechanized clearing would occur within any delineated wetland boundaries. The Applicant has taken measures to avoid wetland fill where it

would not be necessary, including working around certain wetlands identified within the laydown areas. The Applicant would clearly mark these wetlands and leave a vegetative buffer of approximately 25 feet to minimize indirect impacts. As a part of separate activities associated with the Lordstown Industrial Park, the United States (U.S.) Army Corps of Engineers (USACE) issued a permit for the fill on the facility site. Wetland fill permits were previously issued for the site by the USACE to another applicant for a project that was not constructed. The Applicant has been coordinating with the USACE and the Ohio Environmental Protection Agency (EPA) to obtain, transfer ownership, and update all applicable wetland fill permits for wetland impacts associated with construction of the facility on the site. Mitigation required by the current USACE permit includes the creation of a 2.64 acre wetland and a conservation easement to protect the property containing the category 3 wetland. The mitigation wetland has already been created and CEFL plans to assume monitoring responsibilities. Wetlands would be further protected by the Applicant's erosion and sedimentation controls outlined in the Stormwater Pollution Prevention Plan (SWPPP).

- (12) The proposed facility is located primarily within fallow agricultural fields. Selection of the proposed interconnection route would result in approximately seven acres of total forest clearing, while selection of the alternative interconnection route would result in approximately 10.3 acres of total clearing.
- (13) CEFL requested information from the Ohio Department of Natural Resources (ODNR) and the U.S. States Fish and Wildlife Service (USFWS) regarding state and federally-listed threatened and endangered plant and animal species. Additional information was provided through field assessments and review of published ecological information. The state and federally endangered listed species known to be within the range of the project area include the Indiana bat, clubshell, and snuffbox, the federally threatened Northern long-eared bat, that state endangered Northern harrier, upland sandpiper, Eastern massasauga, black bear and Northern brook lamprey, and state threatened spotted turtle and black sandshell.

- (14) Suitable habitat for the upland sandpiper or the Northern harrier is not present within the facility site or laydown area. However, the balance of the project area has the potential for small areas that could be suitable. In order to avoid impacts to these species, ODNR recommends that construction in areas of potential habitat be avoided during their nesting periods, April 15 through July 31, and May 15 through August 1, respectively.
- (15) CEFL retained an ODNR-approved herpetologist to conduct a habitat suitability survey for the Eastern massasauga. Suitable habitat was found to be present at the project site, a presence/absence survey was conducted and the results of the survey submitted to the ODNR and the USFWS.
- (16) To avoid impacts to the Indiana bat and Northern long-eared bat, suitable habitat and surrounding trees shall be saved wherever possible. If tree removal is unavoidable, any tree removal should only occur between October 1 and March 31. If seasonal clearing for these bat species cannot be implemented, then a summer survey shall be conducted to document the presence or likely absence of the Indiana bat and the northern long-eared bat within the project area during the summer. The survey must be conducted by a permitted surveyor and be designed and conducted in coordination with the ODNR and the USFWS.
- (17) The Applicant conducted a preliminary geotechnical investigation to determine the suitability of the site for construction and operation of the proposed facility. The investigation included six soil borings and two bedrock borings to determine the character of the subsurface materials. The collected samples were evaluated in the field and laboratory to determine various chemical and physical attributes such as grain size distribution, Atterberg limits, and permeability. The geotechnical investigation revealed no major obstacles to site development, records show no karst features or abandoned underground mines in the area.
- (18) CEFL and the U.S. Department of Agriculture Soil Survey of Trumbull County have identified the dominant soil component on the project site to be Wadsworth silt loam, which is subject to frost-heaving. Accordingly, the geotechnical investigation recommends an inspection of all subgrade surfaces by a

qualified engineer to identify any frost-heaving soils and that such soil be excavated and replaced with suitable fill. Seismic risk, while difficult to determine, is associated with liquefaction of soils. Liquefaction of the identified soils in the project area is relatively low. Therefore, the geotechnical consultant concluded that the potential for earthquake damage to the proposed facility is unlikely.

- (19) Construction staffing would be met regionally, with no significant need for workers to relocate to the area. Workers arriving and departing during construction would increase traffic. However, the principal impact 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. Some traffic management during the construction phase may be necessary in the immediate vicinity of the project area to ensure safe and efficient maintenance of existing traffic patterns and usages. CEFL has committed to coordinating with local officials regarding shift times and travel routes.
- (20) The proposed project would permanently employ 25 to 27 people during operation. Workers would commute to the project area on a daily basis and would not place major demands on local infrastructure. Potential emergency service requirements would be coordinated with local officials. Local emergency response personnel would be familiar with the facility's emergency response system.
- (21) The Applicant's preliminary transportation management plan considers delivery of major components and other materials for the construction phase of the proposed facility. Transportation to the site would be via road or rail spur from rail nodes, regional ports, and/or major highways in the vicinity of the project. The transportation management plan would be finalized following the selection of a construction contractor, as well as finalized calculations of the load and dimensional requirements for equipment transportation. Equipment deliveries to the site would be primarily by truck and would be planned as to minimize impact to local traffic patterns.
- (22) Rail access to the site would be achieved through the Ohio Commerce Center, a 1.5 million square foot storage and

distribution facility located approximately two miles north of the proposed facility. Facility components would be delivered to the Ohio Commerce Center via rail car. When ready for installation, components would be loaded onto specially-designed, multi-wheeled trailers and driven via State Route 45 to the proposed facility site. The equipment would be removed from the trailers by crane at the site. All systems, including rail and rail car capacity, crane access and lifting capacity, and impact to rail traffic patterns, would be analyzed in a detailed off-loading plan prior to transportation.

- (23) Road access to the site would be achieved by Henn Parkway, which is connected to the U.S. Interstate Highway system via State Route 45, and U.S. routes 80 and 76. State Route 45 can accommodate traffic with excessive weight. No upgrades to local roads and bridges are anticipated for the transportation of construction vehicles and facility equipment. Lordstown has planned for industrial traffic within the area and has upgraded road bearing capacities. Staff recommends that the Applicant be required to develop a final transportation management plan that would include a road use agreement. Any damaged public roads and bridges would be repaired promptly to their previous condition by the Applicant under the guidance of the appropriate regulatory agency. Any temporary improvements would be removed, unless the appropriate regulatory agency requests that they remain in place.
- (24) Many of the construction activities would generate significant noise levels, particularly during the final four to six months of construction. However, the adverse impact of construction noise would be temporary and intermittent, would occur away from most residential structures, and would be limited to daytime working hours. CEFL would use equipment mitigation practices, personal protective equipment such as hearing protection devices, and limitations on duration of noise exposure in high noise areas in order to reduce noise impacts further.
- (25) CEFL conducted a background ambient noise study of existing noise in the vicinity of the project at five locations. On November 20 and 21, 2014, the equivalent continuous noise level (Leq) for the two-day monitoring period was 53 decibel A-weighting (dBA) for daytime hours and 52 dBA for

nighttime hours at location 1; 60 dBA for daytime hours and 54 dBA for nighttime hours at location 2; 49 dBA for daytime hours and 45 dBA for nighttime hours at location 3; 48 dBA for daytime hours and 45 dBA for nighttime hours at location 4; and 46 dBA for daytime hours and 38 dBA for nighttime hours at location 5. Construction noise levels would increase during certain phases and would vary over time. Based on the U.S. EPA methodology for predicting noise levels, construction noise levels are predicted to range from 38-56 dBA. However, the overall noise levels would generally be lower. No adverse or long-term effects from construction are expected. Operational noise levels, based on computer noise modeling, would range from 34-46 dBA Leq at the five noise measurement locations. Ambient nighttime noise levels range from 38-54 dBA Leq. The largest net increase in sound level at a monitoring location was modeled to be 4 dBA. Therefore, the project would be expected to have minimal adverse impacts on the adjacent community.

- (26) In order to minimize adverse impacts associated with increased noise levels, CEFL has committed to use the mitigation measures included in the mitigated model and include procedures in its complaint resolution process for resolving noise complaints.

(Staff Ex. 1 at 12-21.)

The Staff Report indicates that CEFL identified the Northeastern Ohio region as an area where the planned shutdown of existing coal-fired capacity will create the need for new power generation. After identifying this region, the Applicant proceeded to further refine the facility's site selection based on a several key characteristics, including: location; suitable size of property; compatible zoning and land use, natural gas alternatives; proximity to an electric, natural gas, water, and transportation infrastructure; transmission interconnection alternatives; and community support. As potential sites in Northeastern Ohio were identified, considered, and evaluated, the Lordstown Industrial Park site met all of the characteristics and minimizes potential ecological and socioeconomic impacts. (Staff Ex. 1 at 22.)

The Lordstown Energy Center is sited and designed to minimize potential impacts. The proposed project site is currently in agricultural use, but is located in a designated industrial park. The project site is compatible with other properties in proximity consistent with the current local zoning plan. Land use and residential impacts would be minimal. Staff notes that impacts to ecological resources would be achieved by avoiding

wildlife habitat during breeding seasons, continued coordination with ODNR and the USFWS, and protecting surface waters by obtaining USACE and Ohio EPA permits. Further, Staff recommends that the ring bus interconnection be installed along the proposed route, as opposed to the alternative, due to ecological impacts associated with tree clearing, including reduced clearing within a category 3 wetland. With mitigation measures in place, potential noise impacts associated with the operation of the proposed facility would comply with the Lordstown noise ordinance and are expected to be minimal. The project is expected to have direct and indirect positive impacts on the local economy as a result of the purchase of construction materials, the use of goods and services, permanent employment, and state and local taxes. Staff concludes that, while the project will result in temporary and permanent impacts to the area, the project represents the minimum adverse environmental impact because of its low potential to impact land use, cultural resources, streams, wetlands, and residences. (Staff Ex. 1 at 22-23.)

The Staff recommends that the Board find that the nature of the probable environmental impact has been determined for the proposed project and that the project represents the minimum adverse environmental impact and, therefore, complies with the requirements specified in R.C. 4906.10(A)(2) and (3), provided the certificate issued is subject to the conditions set forth in the Staff Report.

Upon review of the record, the Board finds that there is sufficient evidence on the record in this case to enable the Board to determine the nature of the probable environmental impact of the project and, considering the state of available technology and the nature and economics of the various alternatives, that the project represents the minimum adverse environmental impact, consistent with R.C. 4906.10(A)(2) and (A)(3).

E. Summary of the Facts and Board's Conclusion for the Electric Power Grid Criterion in R.C. 4906.10(A)(4)

R.C. 4906.10(A)(4) requires that, in the case of an electric transmission line or generating facility, the Board must ensure that 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 such facility will serve the interests of electric system economy and reliability.

PJM conducted the Feasibility Study and System Impact Study for the Lordstown Energy Center, which includes local and regional transmission system impacts. These studies summarize the impacts of adding the proposed generating facility to the regional bulk electric system and identify any transmission system upgrades necessitated by the project that would be required to maintain the reliability of the regional transmission system. The project is also evaluated for compliance with reliability criteria for 2018 summer peak load conditions. In addition to PJM reliability criteria, the project is

analyzed for compliance with the North American Electric Reliability Corporation's (NERC) Reliability Standards under four levels of various outage conditions and contingencies. NERC defines a contingency as an unexpected failure or outage of a system component, such as a generator, transmission line, circuit breaker, switch, or other electrical element. In addition to NERC reliability requirements, NERC reliability councils, PJM, and transmission owners reliability planning criteria must be followed. These studies revealed only one issue with 11 circuit breakers during the short circuit analysis. The Lordstown Energy Center would be responsible for replacing the affected circuit breakers at a cost of \$13.2 million. (Staff Ex. 1 at 24-26.)

According to the Staff Report, the five-breaker ring bus configuration is more reliable than other types and allows for isolation of bus sections and circuit breakers for maintenance without circuit disruption. Thus, Staff recommends that the Board find the proposed project would provide reliable generation to the bulk electric transmission system, is consistent with plans for expansion of the regional power system, will serve the interests of electric system economy and reliability, and will serve the public interest, convenience, and necessity by providing additional electrical generation to the regional transmission grid. Further, Staff believes the project complies with the requirements of R.C. 4906.10(A)(4), provided any certificate issued by the Board includes the conditions specified in the Staff Report. (App. Ex. 1 at Appendix B; Staff Ex. 1 at 24-27.)

The Board concludes that sufficient evidence has been admitted into the record to demonstrate that the proposed project complies with the requirements of R.C. 4906.10(A)(4). Further, the Board finds that the Lordstown Energy Center project would 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. For these reasons, the Board determines that the project will serve the public interest, convenience, and necessity by providing additional electrical generation to the regional transmission grid.

F. Summary of the Facts and Board's Conclusion for the Air, Water, Solid Waste, and Aviation Criterion in R.C. 4906.10(A)(5)

R.C. 4906.10(A)(5) requires that the Board consider whether the facility will comply with the following provisions in the Revised Code and all rules and standards adopted under these provisions: Chapter 3704, air pollution control standards; Chapter 3734, solid and hazardous waste standards; Chapter 6111, water pollution control standards; R.C. 1501.33, criteria to be followed when applying to ONDR for a permit for a major increase in withdrawal of waters in the state of Ohio; R.C. 1501.34, criteria to be applied by ODNR when considering an application under R.C. 1501.33; and R.C. 4561.32, rules regarding the Ohio Department of Transportation's (ODOT) regulation of airports located in Ohio.

1. Air

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. Operational impacts on air quality would be minimized through the use of efficient new gas turbine technology, which produces nitrogen oxides and carbon dioxide, but in lower quantities than burning other fuel sources, such as coal or oil. The generation facility will also incorporate air pollution controls to minimize impacts to air quality, including dry low nitrogen oxides burners in the gas turbines, selective catalytic reduction (SCR) systems, and oxidation catalysts, to control emissions of carbon monoxide and volatile organic compounds. The SCR systems reduce emissions of nitrogen oxides to 2 parts per million by volume (ppmv) and the oxidation catalysts would reduce emissions of carbon monoxide to 2 ppmv and volatile organic compounds to between 1.0 and 2 ppmv. Emissions from the generation facility would be tracked using a Continuous Emissions Monitoring System (CEMS). The CEMS would continuously extract flue gas samples near the exhaust of the HRSG and measure flue gas parameters to 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. Construction impacts on air quality primarily consist of relatively minor emissions from the construction equipment and from fugitive dust emissions, insignificant amounts of volatile organic compounds, sulfur dioxide, carbon monoxide, nitrogen oxides, and particulate matter which are not expected to cause any significant adverse impacts to air quality. (Staff Ex. 1 at 28-29.)

The air permit-to-install application for the project was submitted to the Ohio EPA in February 2015. According to CEFL's air dispersion modeling report, the project would comply with air quality standards. The permit-to-install serves as the air construction permit and the initial operating permit. CEFL would be required to apply for a Title V air operating permit within 12 months after initial startup and submit a Title IV Acid Rain Program permit application, at least 24 months before commencing operations, for emissions of sulfur dioxide and nitrogen oxides. (Staff Ex. 1 at 28-29.)

Fugitive dust rules adopted pursuant to the requirements of R.C. Chapter 3704 (air pollution control laws) are applicable to the proposed facility. Fugitive dust would be controlled, when necessary, through best management practices. (Staff Ex. 1 at 29.)

2. Water

Construction of the Lordstown Energy Center and associated facilities would not require the use of significant amounts of water. Operation of the proposed facility would require the use of up to 5.5 million gallons per day (mgd) of water per day and obtained through Warren and Meander Water (also known as Mahoning Valley Sanitary District).

Thus, the requirements under R.C. 1501.33 and 1501.34 are not applicable to this project. (Staff Ex. 1 at 29.)

CEFL intends to submit a notice of intent for coverage under Ohio EPA's National Pollutant Discharge Elimination System (NPDES) general permit for stormwater discharges associated with construction and industrial activities. The Applicant would submit a SWPPP to the Ohio EPA as part of the NPDES permit. This SWPPP would be developed for the project pursuant to the Ohio EPA regulations and would conform to ODNR's Rainwater and Land Development Manual and associated requirements of the Lordstown. Prior to operation of the facility, CEFL would obtain a general NPDES permit for stormwater discharges associated with operation, if necessary. (Staff Ex. 1 at 29.)

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 SWPPP. The preliminary design reflects discharge of clean stormwater runoff from the stormwater collection pond into Mud Creek. If the outfall structure requires placement in any USACE-jurisdictional portion of Mud Creek, authorization from the USACE would also be obtained. (Staff Ex. 1 at 29.)

Wetland fill permits were previously issued for the site by the USACE to another applicant for a project that was not constructed. CEFL has been coordinating with the USACE and the Ohio EPA to obtain, transfer ownership, and update all applicable wetland fill permits for wetland impacts associated with construction of the facility on the site. (Staff Ex. 1 at 29.)

Sanitary wastewater sources would be discharged directly to the sanitary sewer system. All other wastewater streams would be collected in a wastewater collection sump before discharge to the Lordstown wastewater collection system and then Warren's publicly-owned treatment works (POTW). The POTW discharges to the Mahoning River in accordance with NPDES requirements. The facility would discharge to the POTW in accordance with Warren's industrial pretreatment program regulations and limits developed by the city. The Ohio EPA would also provide review under its wastewater permit-to-install program where required. (Staff Ex. 1 at 29.)

3. Solid Waste

According to the Staff Report, CEFL estimates that approximately 1,200 cubic yards of construction debris could be generated from the project, including 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. SCR catalysts would be removed and returned to a catalyst vendor for regeneration, salvage, or disposal. Solid waste that can be neither recycled nor reused would be stored in on-site containers for disposal. CEFL

would develop procedures to ensure that potentially hazardous wastes are separated from normal waste, including segregation of storage areas and proper labeling of containers. (Staff Ex. 1 at 30.)

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 would have a Spill Prevention, Containment, and Countermeasure Plan in place and would follow manufacturers' recommendations for any spill cleanup. Staff states that 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 that chapter. (Staff Ex. 1 at 30.)

4. Aviation

The closest public-use airport is located approximately 8.8 miles from the project site. The tallest anticipated project structures would be two 160-foot tall stacks. CEFL requested review of the proposed project by the Federal Aviation Administration (FAA) and, on April 17, 2015, the FAA issued a Determination of No Hazard for each stack. In addition, Staff contacted ODOT's Office of Aviation, as a part of the review of CEFL's application, to coordinate review of potential impacts of the facility on local airports. As of the date of this filing, no such concerns have been identified. (Staff Ex. 1 at 30.)

5. Conclusion for the Air, Water, Solid Waste, and Aviation

Based on its review, Staff recommends that the Board find that the proposed facility complies with the requirements specified in R.C. 4906.10(A)(5), provided that any certificate issued by the Board for the facility include the conditions specified in the Staff Report. (Staff Ex. 1 at 30.)

The Board finds that the project will comply with R.C. Chapters 3704, 3734, and 6111 and the rules and standards adopted under those chapters. Accordingly, the Board concludes the project will comply with the requirements specified in R.C. 4906.10(A)(5), to the extent that they are applicable, and provided that the certificate includes the conditions set forth below.

G. Summary of the Facts and Board's Conclusion for Public Interest, Convenience, and Necessity Criterion in R.C. 4906.10(A)(6)

R.C. 4906.10(A)(6) provides that the Board must consider whether the facility will serve the public interest, convenience, and necessity.

According to the application, CEFL has had on-going communication with officials in Lordstown regarding the project since 2013. CEFL held a public informational meeting

on the project on January 13, 2015, where attendees were provided the opportunity to speak with facility representatives. Public notices of the meeting were published in local newspapers. CEFL states that it also participated in several meetings with local officials since the informational meeting and has committed to continue engaging with the public prior to, during, and after construction of the facility. (App. Ex. 1 at 157-160; Staff Ex. 1 at 31.)

CEFL retained an independent economic consulting firm, Calypso Communications, LLC, to analyze both the direct and indirect economic impact of constructing and operating the proposed facility in Trumbull and Mahoning counties, as well as the state of Ohio (App. Ex. 1 at 148, Appendix H; Staff Ex. 1 at 31).

The consultant estimates potential indirect and direct economic impacts during the construction and operational phases of the facility to result in construction expenditures of \$241 million, which would be directly spent in the Trumbull and Mahoning county region and would generate approximately \$453.7 million in total economic activity in Ohio. Further, construction of the project would support 1,026 jobs in Trumbull and Mahoning counties and potentially another 261 jobs in other parts of Ohio. Construction and ancillary economic activity is expected to produce \$14.5 million in additional state and local tax revenues, not including property taxes. In 2019, the Lordstown Energy Center's first full year in operation, the consultant estimates: \$17 million annually would be generated in associated business activity in the Trumbull and Mahoning county region; approximately 28 full-time workers would be employed; and there would be an increase in state and local, (non-property tax, revenues of \$1.6 million annually. Property tax payments of \$1 million to \$1.5 million would be made by the facility to Lordstown and its school district in each of the first 15 years of operation, after which time property tax payments would be based on the depreciated value of the facility times the local tax rate. (App. Ex. 1 at 70-71, 146-149, Appendix H; Staff Ex. 1 at 31-32.)

CEFL has committed to construct, operate, and maintain the facility in accordance with applicable safety regulations, including Occupational Safety and Health Administration requirements, and industry standards and to train facility personnel to operate the equipment in a safe and reliable manner. CEFL would secure pertinent federal and state environmental permits, and construct and operate the facility in accordance with all applicable environmental and safety regulations. The Applicant has committed to incorporate appropriate safety measures to prevent and contain any accidental spill of on-site chemicals. (Staff Ex. 1 at 32.)

In its report, Staff notes that a complete fire protection/detection system would be provided for the facility, including fire suppression systems, extinguishers, and smoke/heat/flame/gas detection and control systems designed and installed in accordance with National Fire Protection Association (NFPA) standards, Underwriters'

Laboratory-approved and in compliance with the local fire department's and CEFL's insurance carrier's requirements. In addition, CEFL has committed to coordinate emergency service requirements with local emergency responders. Staff recommends that this coordination be incorporated into an Emergency Response Plan that would address different potential emergencies, levels of response, and resources, such as equipment or personnel. (Staff Ex. 1 at 32.)

Transmission lines, when energized, generate electromagnetic fields (EMF). The Applicant is required to compute the EMF associated with the new circuits. EMF values were computed based on the maximum loadings of the lines; however, daily current load levels would normally operate below the maximum load conditions. Electric fields are produced by voltage or electric charge. For example, according to the Staff Report, a plugged in lamp cord produces an electric field, even if the lamp is turned off. The electric field for the transmission line from the project site to the ring bus site would be less than 1.7 kV/meter. The magnetic fields were estimated at the right-of-way edge to be less than 114 milligauss. The EMF resulting from the generation equipment is expected to be confined to the facility site. The magnetic fields generated by the generation equipment are attenuated very rapidly as the distance from the equipment increases. The nearest residence is located more than 300 feet from the proposed ring bus site. Electric fields are easily shielded by physical structures such as the walls of a house, foliage, or other barriers. (App. Ex. 1 at Appendix C; Staff Ex. 1 at 32-33.)

Staff recommends that the Board find that the proposed facility would serve the public interest, convenience, and necessity and, therefore, complies with the requirements specified in R.C. Section 4906.10(A)(6), provided that any certificate issued by the Board for the proposed facility include the conditions specified in the Staff Report. (Staff Ex. 1 at 33.)

With the adoption of the conditions set forth below, the Board finds that the record supports our finding that the project will serve the public interest, convenience, and necessity, consistent with R.C. 4906.10(A)(6). We find that the project will further ensure the reliability of the electric grid for northeastern Ohio and the PJM region, provide economic, and employment benefits for Trumbull and Mahoning counties, as well as the state of Ohio. The record also reflects that the project has been designed to meet or exceed all applicable safety standards. On that basis, the Board finds that the project will serve the public interest, convenience, and necessity.

H. Summary of the Facts and Board's Conclusion for Agricultural Districts and Agricultural Lands Criterion in R.C. 4906.10(A)(7)

R.C. 4906.10(A)(7) requires the Board to consider 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 utility facility. According to the application, no agricultural district land is located within the site for the proposed project or associated facilities and, therefore, no impact to agricultural district land as a result of the construction, operation, or maintenance of the project. Further, CEFL commits to work with Lordstown and appropriate land owners to repair, relocate, or facilitate suitable drainage alternatives where field tiles are damaged or disrupted. (App. Ex. 1 at 160-161.)

Staff confirmed the claims in the application regarding agricultural district lands. Further, Staff recommends that the Board find that the impact of the proposed project on the viability of existing agricultural district has been determined consistent with the requirements listed in R.C. 4906.10(A)(7), subject to the conditions listed in the Staff Report. (Staff Ex. 1 at 34.)

The Board finds that, consistent with R.C. 4906.10(A)(7), the record supports a finding that the impact of the project on the viability of existing farmland and agricultural districts has been determined and will be minimal.

I. Summary of the Facts and Board's Conclusion for Water Conservation Practice Criterion in R.C. 4906.10(A)(8)

R.C. 4906.10(A)(8) requires the Board to consider whether the proposed facility incorporates maximum feasible water conservation practices, considering available technology and the nature and economics of the various alternatives. According to the application, operation of the facility will utilize approximately 5.5 mgd maximum for process, fire protection, and domestic use. The facility's average water use is estimated at 3.6 mgd. CEFL is considering a contract with the Warren and Meander Water District to supply water and will likely connect to both suppliers. Warren and the Meander Water District have evaluated their systems and can meet the water needs of the project. The facility's wastewater discharge will vary seasonally, ranging from approximately 0.3 to 1.1 mgd, and discharge to Warren's existing publicly-owned treatment plant via existing facilities. (CEFL Ex. 1 at 15-17)

Staff reviewed the Applicant's proposed water balance and water consumption for the project and notes that the proposed facility design incorporates significant water conservation measures, which maximizes the cycles of concentration to reduce water intake requirements, utilizes a state-of-the-art cooling tower drift elimination system, and returns recovered boiler blowdown to the cooling tower. Staff also notes that water for the construction and operation of the proposed facility would be obtained through the Warren and Meander Water District, both regulated public water suppliers. Therefore, Staff submits that the requirements set forth in R.C. 1501.33 and 1501.34 are not applicable to

this project. For that reason, Staff recommends that the Board find that the requirements of R.C. 4906.10(A)(8) are not applicable to this project. (Staff Ex. 1 at 35.)

The Board finds that, to the extent that the project requires the use of water, the project will incorporate maximum feasible water conservation practices and, therefore, is consistent with R.C. 4906.10(A)(8).

J. Summary of the Stipulation and the Board's Conclusion on the Stipulation

As stated previously, admitted into evidence is the stipulation filed by CEFL, FirstEnergy, and Staff (signatory parties). In the stipulation, the signatory parties recommend that the Board approve the application, subject to the conditions listed in the Staff Report and the following condition:

CEFL acknowledges the need to secure the permission of American Transmission Systems, Incorporated (ATSI) to cross existing ATSI easements and transmission lines, in order to construct the new transmission lines that will connect its proposed generation facility to a new 5-breaker ring bus, such permission not to be unreasonably withheld. Applicant also acknowledges that it will need to reimburse ATSI for any costs ATSI incurs that are reasonably necessary to mitigate for impacts to the existing ATSI transmission system as a result of the crossing. Applicant further agrees to continue to collaborate with ATSI with respect to the specifications required for Applicant's transmission line crossing under ATSI transmission lines such that the parties can establish a workable solution in a timely manner and consistent with standard utility practices. Applicant further agrees to timely provide ATSI its engineering plans and schedules for the construction of its proposed new transmission lines below ATSI's lines. In addition, Applicant agrees to work cooperatively with ATSI to implement the design of the new 5-breaker ring bus, including reasonable design criteria and specifications provided by ATSI. Such ring bus, including the real estate, will be built by Applicant and transferred to ATSI without cost to ATSI.

(CEFL/FirstEnergy Ex. 1 at 2-3.)

CEFL witness Siderewicz testified that the Lordstown Energy Center needs to be connected to the electric grid. To connect the generation facility to the electric grid

requires the generation facility's wires to pass underneath existing transmission lines owned, operated, and managed by ATSI. According to Mr. Siderewicz, CEFL and ATSI continue to work together cooperatively to ensure that the generation facility is safely and properly connected to ATSI's transmission facilities, and that ATSI's transmission system and the Lordstown Energy Center function effectively and safely after the interconnection. To that end, CEFL witness Siderewicz avers that CEFL has had numerous discussions with ATSI's engineers and other technical staff and with PJM regarding the generation facility's wires extending underneath ATSI's existing transmission lines and connecting to ATSI facilities. (App. Ex. 5 at 2-4; Adjudicatory Tr. at 9-11.)

Mr. Siderewicz explained that the stipulation represents the product of serious bargaining among capable and knowledgeable parties. Further, the witness noted that the details of CEFL's and FirstEnergy's coordination will ultimately be memorialized in an Interconnection Service Agreement. Additionally, Mr. Siderewicz testified that it is reasonable, practical, and technically wise for CEFL to interconnect the Lordstown Energy Center to ATSI's electric transmission facilities, as ATSI has the responsibility to maintain the electric system in the area. CEFL witness Siderewicz continued that, as a private entity, it is impossible for CEFL to build, finance, own, and operate a power plant if it is not coordinated to operate properly with the surrounding electric facilities. According to the witness, the stipulation promotes the public interest in light of the significant number of coal plants retirements in the Greater Cleveland area. The proposed project, according to Mr. Siderewicz, is the only replacement generation planned in the area. Mr. Siderewicz commented that it is in the public interests to have a reliable electric grid and this project supports reliability. Finally, Mr. Siderewicz testified that the stipulation is in harmony with regulatory principles and practice and all the recommendation set forth in the Staff Report. (Adjudicatory Tr. at 8-13.) On August 25, 2015, as amended on August 31, 2015, Staff filed a letter joining the Stipulation as a signatory party.

Although not binding on the Board, stipulations are given careful scrutiny and consideration, particularly where no party objects to the stipulation. Accordingly, based upon all of the above, the Board finds that the stipulation is the product of serious bargaining among capable, knowledgeable parties, will promote the public interest, convenience and necessity, and does not violate any important regulatory principle or practice. Further, the Board finds that the stipulation is not inconsistent with the conditions listed in the Staff Report. (Tr. at 8-13; CEFL/FirstEnergy Joint Ex. 1 at 2-3). Therefore, the Board finds that the stipulation should be approved and adopted, as it is a reasonable resolution of the issues between CEFL and FirstEnergy. Accordingly, the condition in the stipulations should be included as a condition of the certificate.

K. Board's Overall Conclusion and Certificate Conditions

Based upon the record, the Board finds that the requirements for a certificate, as set forth in R.C. 4906.10 and the Board's rules, are satisfied for the construction, operation, and maintenance of the proposed project, as described in the application filed with the Board on March 23, 2015, as amended on March 27, 2015, and supplemented on April 23, 2015, and subject to certain conditions adopted by the Board. Accordingly, the Board finds that the application, as amended and supplemented, should be approved and a certificate should be issued to CEFL for the construction, operation, and maintenance of the proposed project, at the proposed interconnection route, subject to the conditions set forth below:

- (1) The facility shall be installed at the Applicant's site and proposed ring bus interconnection route 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 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 Staff with either a letter stating that the agreement has been signed or a copy of the signed interconnection service agreement.
- (5) 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.

- (6) At least 30 days prior to the preconstruction conference, the Applicant shall have in place a complaint resolution procedure to address potential public grievances resulting from project construction. The resolution procedure must provide that the Applicant will work in good faith to mitigate or resolve any issues with those who submit a complaint. The Applicant shall provide the complaint resolution procedure to Staff, for review and confirmation that it complies with this condition.
- (7) At least 30 days prior to the preconstruction conference, the Applicant shall submit to Staff, for review, 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.
- (8) 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 to ensure compliance with all requirements of the certificate, prior to construction in those areas.
- (9) 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. The Applicant shall

use reasonable efforts to provide as-built drawings in both hard copy and as geographically-referenced electronic data.

- (10) 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.
- (11) Prior to the commencement of construction, the Applicant shall finalize coordination of the assessment of potential effects of the proposed facility on cultural resources, if any, with Staff and the OHPO. If the resulting coordination discloses a find of cultural or archaeological significance, or a site that could be eligible for inclusion in the NRHP, then the Applicant shall submit an amendment, modification, or mitigation plan to Staff. Any such mitigation effort, if needed, shall be developed in coordination with the OHPO and submitted to Staff for review.
- (12) The Applicant shall limit general construction activities 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 any potential for nighttime construction activities.
- (13) The Applicant shall avoid, where possible, or minimize, to the maximum extent practicable, any damage to field tile drainage systems and soils resulting from construction, operation, and/or maintenance of the facility in agricultural areas.

Damaged field tile systems will be promptly repaired to at least original requirements at the Applicant's expense. If applicable, excavated topsoil will be segregated and restored in accordance with the Applicant's lease agreement with the landowner. Severely compacted soils will be plowed or otherwise decompacted, if necessary, to restore them to original requirements, unless otherwise agreed to by the landowner.

- (14) The Applicant shall comply with fugitive dust rules by the use of water spray or other appropriate dust suppressant measures whenever necessary.
- (15) The Applicant shall retain a geotechnical engineer to provide soil engineering services during the site preparation, excavation, and foundation phases of the proposed project.
- (16) As the information becomes known, the Applicant shall provide to Staff the date on which construction will begin, the date on which construction was completed, and the date on which the facility begins commercial operation.
- (17) The certificate shall 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.
- (18) The Applicant shall use inert gases or compressed air for all cleaning of pipes during construction, consistent with the NFPA 56 (PS) "Standard for Fire and Explosion Prevention during Cleaning and Purging of Flammable Gas Pipeline Systems."
- (19) 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.

- (20) The Applicant shall restrict public access to the facility with appropriately placed warning signs or other necessary measures.
- (21) Should site-specific conditions warrant blasting, the Applicant shall submit a blasting plan, at least 30 days prior to blasting, to Staff for review and confirmation that it complies with this condition. The Applicant shall submit the following information as part of its blasting plan:
 - (a) The name, address, and telephone number of the drilling and blasting company;
 - (b) A detailed blasting plan for dry and/or wet holes for a typical shot. The blasting plan shall address blasting times, blasting signs, warnings, access control, control of adverse effects, and blast records; and
 - (c) A plan for liability protection and complaint resolution.
- (22) Prior to commencement of construction activities that require transportation permits, the Applicant shall obtain all such permits. The Applicant shall coordinate with the appropriate authority regarding any temporary or permanent road closures, lane closures, road access restrictions, and traffic control necessary for construction and operation of the proposed facility. The Applicant's process for coordination shall be detailed as part of a final traffic plan submitted to Staff prior to the preconstruction conference for review and confirmation that it complies with this condition.
- (23) 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 condition by the Applicant under the guidance of the appropriate regulatory agency. Any temporary improvements shall be removed unless the appropriate regulatory agency requests that they remain. The Applicant shall provide financial assurance to the appropriate regulatory agency that it will restore the public roads it uses to their preconstruction condition. If county or township roads

are utilized for the construction of this project, then the Applicant shall also enter into a road use agreement with the county engineer(s) prior to construction and submit to Staff for review to ensure compliance with this condition. The road use agreement shall contain provisions for the following:

- (a) A preconstruction survey of the conditions of the roads;
 - (b) A post-construction survey of the conditions of the roads;
 - (c) An objective standard of repair that obligates the Applicant to restore the roads to the same or better condition as they were prior to construction; and
 - (d) A timetable for posting of the construction road and bridge bond prior to the use or transport of heavy equipment on public roads or bridges.
- (24) The Applicant shall avoid construction in upland sandpiper preferred nesting habitat types during the species' nesting period of April 15 to July 31.
- (25) The Applicant shall avoid construction in Northern harrier preferred habitat types during the species' nesting period of May 15 to August 1.
- (26) The Applicant shall coordinate the results of the Eastern massasauga presence/absence surveys with ODNR, the USFWS, and Staff to determine if any further measures will be necessary to avoid or minimize impacts to this species.
- (27) The Applicant shall adhere to seasonal cutting dates of October 1 to March 31 for the removal of trees to avoid impacts to Indiana bats and Northern long-eared bats. If tree clearing must occur outside of these dates, the Applicant shall coordinate with ODNR, the USFWS, and Staff for further recommendations to avoid or minimize impacts to these species.

- (28) 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.
- (29) The Applicant shall contact Staff, ODNR, and the 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 the USFWS. Nothing in this condition shall preclude agencies having jurisdiction over the construction activities with respect to wildlife from exercising their legal authority over the facility consistent with law.
- (30) The Applicant shall have a construction access plan, based on final plans for the access roads and types of equipment to be used, that addresses the concerns outlined in the Staff Report. Prior to commencement of construction, the Applicant shall submit the plan to Staff, for review and confirmation that it complies with this condition.
- (31) The Applicant shall have a vegetation management plan that addresses the concerns outlined in the Staff Report. Prior to commencement of construction, the Applicant shall submit this plan to Staff, for review and confirmation that it complies with this condition.
- (32) During construction and maintenance, the Applicant shall limit, to the greatest extent possible, the use of herbicides in proximity to surface waters. Individual treatment of tall-growing woody plant species is preferred, while general, widespread use of herbicides during initial clearing or maintenance should only be used where no other options exist,

and with prior approval from the Ohio EPA. Prior to commencement of construction, the Applicant shall submit a plan to Staff for review and confirmation that it complies with this condition, describing the planned herbicide use for all areas in or near any surface waters during initial project construction and/or maintenance.

- (33) CEFL and ATSI shall comply with the requirements of the stipulation. The following is a summary of the stipulation and does not supersede or replace the language in the stipulation. Specifically, CEFL shall secure ATSI's permission to cross existing ATSI easements and transmission lines, in order to construct the new transmission lines that will connect its proposed generation facility to a new 5-breaker ring bus. ATSI shall not unreasonably withhold permission. The Applicant will reimburse ATSI for any costs ATSI incurs that are reasonably necessary to mitigate for impacts to the existing ATSI transmission system as a result of the crossing. The Applicant will continue to collaborate with ATSI with respect to the specifications required for Applicant's transmission line crossing under ATSI transmission lines such that the parties can establish a workable solution in a timely manner and consistent with standard utility practices. The Applicant will timely provide ATSI its engineering plans and schedules for the construction of its proposed new transmission lines below ATSI's lines. In addition, the Applicant will work cooperatively with ATSI to implement the design of the new 5-breaker ring bus, including reasonable design criteria and specifications provided by ATSI. Such ring bus, including the real estate, will be built by the Applicant and transferred to ATSI without cost to ATSI.

The Ohio Supreme Court has recognized that the Board is vested with the authority to issue certificates upon such conditions as the Board considers appropriate. As acknowledged by the Court, the construction of projects subject to the Board's authority necessitates a dynamic process that does not end with the issuance of a certificate. The Court concluded that the Board has the authority to allow Staff to monitor compliance with the conditions that the Board has set. *In re Buckeye Wind, LLC*, 131 Ohio St.3d 449, 2012-Ohio-878, 966 N.E.2d 869. Such monitoring includes the convening of preconstruction conferences and the submission of follow-up studies and plans by an applicant. Additionally, as with all certificates, the Board emphasizes that, if Staff should discover, through its continued monitoring and review of the progress of the project, that

CEFL is not complying with any of these conditions, Staff should bring such concern to the attention of the Board. If CEFL fails to comply with any of the established conditions, the Board may take appropriate action to ensure compliance, in accordance with R.C. Chapter 4906. The Board notes that should the Applicant find that any it needs an extension of time for any of the time frame established in this Order, the Applicant may file a request for extension. Finally, as acknowledged by CEFL, the Applicant is requesting authority to operate at a net generation capacity of 800 MW; however, the maximum designed net power capacity of the Lordstown Energy Center would be 940 MW. Therefore, should CEFL wish, at a future time, to operate at any generation capacity level above 800 MW, it will have to file an application with the Board for approval prior to increasing the capacity level.

L. Transfer of the Certificate as to the Ring Bus Facility to FirstEnergy

Upon completion of construction of the project, CEFL plans to transfer the ring bus and a portion of the surrounding land to ATSI, at no costs. As counsel for ATSI represented at the adjudicatory hearing and confirmed in the notice filed on August 18, 2015, ATSI would accept the transfer of the CEFL certificate as to the ring bus, subject to the conditions applicable to the ring bus as ordered by the Board in this proceeding, upon the transfer to ATSI and ATSI's acceptance of ownership of the ring bus facility. ATSI states that CEFL will provide notice to the Board that construction of the ring bus facility is complete and that ATSI is willing to accept ownership of the ring bus facility. (Adjudicatory Tr. 16-17; App. Ex. 5 at 4-5.)

Pursuant to R.C. 4906.04 certificates may be transferred provided the new owner agrees to comply with the terms, conditions, and modifications of the certificate. In light of ATSI's commitment to accept and abide by the conditions of the certificate granted to CEFL as to the ring bus facility, the Board finds that the request to transfer the certificate to ATSI, as to the ring bus facility and the surrounding land, should be granted, and such transfer should occur upon completion of construction of the project. ATSI shall be bound by and comply with all the terms and conditions of the certificate as to the ring bus. Once the transfer is complete, CEFL shall file a letter in this docket verifying completion of the transfer.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

- (1) CEFL and ATSI are corporations and persons under R.C. 4906.01(A).
- (2) The project is a major utility facility as defined in R.C. 4906.01(B)(1).

- (3) R.C. 4906.04 provides that a certificate may be transferred, subject to the approval of the Board, to a person who agrees to comply with the terms, conditions, and modifications contained in the certificate.
- (4) On January 14, 2015, CEFL filed proof of publication of notice of a public informational meeting held on January 13, 2015, in the Lordstown.
- (5) On March 23, 2015, as amended on March 27, and supplemented on April 23, 2015, CEFL filed its application for a certificate of environmental compatibility and public need to construct the Lordstown Energy Center.
- (6) On May 12, 2015, the chairman of the Board notified CEFL that the application had been found to comply with the content requirements of Ohio Adm.Code Chapters 4906-1, et seq.
- (7) On May 13, 2015, CEFL filed its proof of service of the application upon local public officials.
- (8) On May 18, 2015, OE and ATSI filed a joint motion to intervene in this proceeding, which was granted on July 28, 2015.
- (9) CEFL filed its proofs of publication in local newspapers of the notice of the application and the hearings on June 4, 2015, and August 3, 2015.
- (10) On July 13, 2015, Staff filed its Staff Report.
- (11) A local public hearing was held, as scheduled, on July 28, 2015. At the local public hearing, 14 individuals offered testimony in support of the project.
- (12) Admitted into evidence at the evidentiary hearing, was a stipulation filed by CEFL, FirstEnergy, and Staff, wherein the signatory parties agreed to an additional condition of the certificate for the project.
- (13) The evidentiary hearing was held, as scheduled, on August 11, 2015.
- (14) The record establishes the need for the project, consistent with R.C. 4906.10(A)(1).

- (15) The record establishes the nature of the probable environmental impact from construction, operation, and maintenance of the project, consistent with R.C. 4906.10(A)(2).
- (16) The record establishes that the project, subject to the conditions set forth in this Opinion, Order, and Certificate, represents the minimum adverse environmental impact, considering the available technology and nature and economics of the various alternatives, and other pertinent considerations, consistent with R.C. 4906.10(A)(3).
- (17) The record establishes that the project is not an electric transmission line or generating facility and that R.C. 4906.10(A)(4) is, therefore, inapplicable.
- (18) The record establishes that the project, subject to the conditions set forth in this Opinion, Order, and Certificate, will comply with R.C. Chapters 3704, 3734, and 6111; R.C. 1501.33, 1501.34, and 4561.32; and all rules and regulations thereunder, to the extent applicable, consistent with R.C. 4906.10(A)(5).
- (19) The record establishes that the project, subject to the 34 conditions set forth in this Opinion, Order, and Certificate, will serve the public interest, convenience, and necessity, consistent with R.C. 4906.10(A)(6).
- (20) The record establishes that the project has been assessed as to viability of agricultural land in an existing agricultural district, consistent with R.C. 4906.10(A)(7).
- (21) The record establishes that, to the extent that the use of water is required, the project will incorporate maximum feasible water conservation practices, consistent with R.C. 4906.10(A)(8), and subject to the conditions set forth in this Opinion, Order, and Certificate.
- (22) The stipulation filed by CEFL and FirstEnergy is reasonable and should be adopted.
- (23) The evidence supports a finding that all of the criteria in R.C. 4906.10(A) are satisfied for the construction, operation, and maintenance of the project as proposed by CEFL, subject to the conditions set forth in this Opinion, Order, and Certificate. The

ring bus interconnection line shall be constructed along the proposed route.

- (24) Based on the record, the Board should issue a certificate of environmental compatibility and public need, pursuant to R.C. Chapter 4906, for construction, operation, and maintenance of the project, subject to the conditions set forth in this Opinion, Order, and Certificate.
- (25) Based on the record, the CEFL should transfer that portion of the certificate applicable to the ring bus facility, pursuant to R.C. 4906.04, for operation and maintenance of the ring bus to ATSI subject to the conditions set forth in this Opinion, Order, and Certificate.

ORDER:

It is, therefore,

ORDERED, That the stipulation filed by CEFL, FirstEnergy, and Staff be approved and adopted. It is, further,

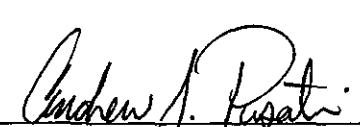
ORDERED, That a certificate be issued to CEFL for the construction, operation, and maintenance of the project, subject to the 33 conditions set forth in Section III(K) of this Opinion, Order, and Certificate. It is, further,

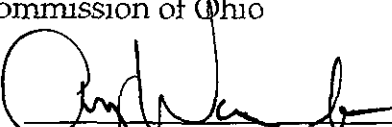
ORDERED, That the request to transfer the certificate, as to the operation and maintenance of the ring bus, upon the completion of the transfer and ownership from CEFL to ATSI is granted. CEFL is directed to file a letter in this docket upon transfer of the certificate for the ring bus. It is, further,

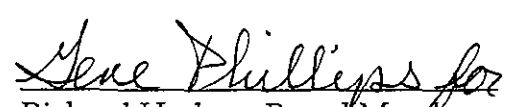
ORDERED, That a copy of this Opinion, Order, and Certificate be served upon all parties and interested persons of record.

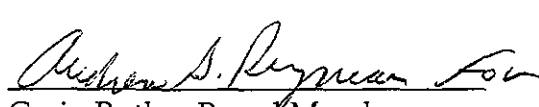
THE OHIO POWER SITING BOARD

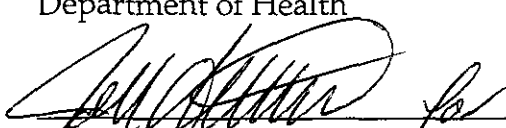

Andre T. Porter, Chairman
Public Utilities Commission of Ohio

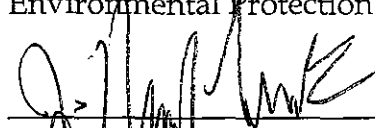

David Goodman, Board Member
and Director of the Ohio
Development Services Agency


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

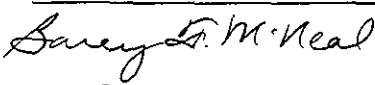

Craig Butler, Board Member
and Director of the Ohio
Environmental Protection Agency


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


Jeffrey J. Letnak, Board Member
and Public Member

GNS/dah/vrm

Entered in the Journal



Barcy F. McNeal
Secretary