

BEFORE THE OHIO POWER SITING BOARD

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In the Matter of the :
Application of South Field :
Energy LLC for a Certificate:
of Environmental : Case No. 15-1716-EL-BGN
Compatibility and Public :
Need to Construct an :
Electric Generation Facility:
in Columbiana County, Ohio :

In the Matter of the :
Application of South Field :
Energy LLC for a Certificate:
of Environmental : Case No. 15-1717-EL-BTX
Compatibility and Public :
Need for a 345kV :
Transmission Line in :
Columbiana County, Ohio :

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PROCEEDINGS

before Mr. Nicholas Walstra, Administrative Law
Judge, at the Public Utilities Commission of Ohio,
180 East Broad Street, Room 11-D, Columbus, Ohio,
called at 10:00 a.m. on Wednesday, June 29, 2016.

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APPEARANCES:

Vorys, Sater, Seymour & Pease, LLP
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52 East Gay Street
Columbus, Ohio 43215

On behalf of South Field Energy, LLC.

Ice Miller, LLP
By Mr. Christopher Miller
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Columbus, Ohio 43215-7509

GAH Associates, LLC
By Mr. Greg Hanahan
13900 State Route 725
Germantown, Ohio 45327

On behalf of Yellow Creek Township,
Columbiana County, Ohio.

Porter, Wright, Morris & Arthur, LLP
By Mr. Robert J. Schmidt
41 South High Street
Columbus, Ohio 43215

On behalf of American Transmission
Systems, Incorporated, and
The Ohio Edison Company.

Mike DeWine, Ohio Attorney General
By Mr. John Jones
Mr. Robert Eubanks
Assistant Attorneys General
Public Utilities Section
30 East Broad Street, 16th Floor
Columbus, Ohio 43215

On behalf of the Staff of the Ohio
Power Siting Board.

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15
16
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19
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22
23
24
25

INDEX

- - -

WITNESS

PAGE

Jonathan Winslow
Direct Examination by Mr. Settineri 12

- - -

COMPANY EXHIBITS

IDENTIFIED ADMITTED

1 - Application in Case No. 15-1716-EL-BGN	11	18
2 - Application in Case No. 15-1717-EL-BTX	11	18
3 - Letter to B. McNeal, dated April 22, 2016, with attached Proof of Publication, newspaper tear sheet, and mailing list	11	18
4 - Letters to property owners, dated June 2, 2016	11	18
5 - Letter from Wayne Smith, dated June 13, 2016	9	--
6 - Direct Testimony of Jonathan Winslow	11	18
7 - Direct Testimony of Lynn Gresock	7	9

- - -

FE EXHIBIT

IDENTIFIED ADMITTED

1 - Initial Testimony of William R. Beach	8	9
----------------------------------------------	---	---

- - -

INDEX (Continued)

- - -

STAFF EXHIBITS IDENTIFIED ADMITTED

1 - Staff Report of Investigation, 19 19
Case No. 15-1716-EL-BGN

2 - Staff Report of Investigation, 19 19
Case No. 15-1717-EL-BTX

3 - Prefiled Testimony of 19 19
James O'Dell

- - -

JOINT EXHIBITS IDENTIFIED ADMITTED

1 - Joint Stipulation and 11 18
Recommendation,
Case No. 15-1716-EL-BGN

2 - Partial Joint Stipulation 11 18
and Recommendation,
Case No. 15-1717-EL-BTX

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Wednesday Morning Session,
June 29, 2016.

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ALJ WALSTRA: The Ohio Power Siting Board has assigned for hearing in two cases, Case No. 15-1716-EL-BGN, being captioned In the Matter of the Application of South Field Energy, LLC, for a Certificate of Environmental Compatibility and Public Need to Construct an Electric Generation Facility in Columbiana County, and in Case No. 15-1717-EL-BTX, being captioned In the Matter of the Application of South Field Energy, LLC, for a Certificate of Environmental Compatibility and Public Need to Construct an Electric Transmission Line in Columbiana County.

My name is Nick Walstra. I'm the Administrative Law Judge assigned by the Power Siting Board to hear this case.

A public hearing was held in this matter on June 6th, 2016, in Columbiana County, Ohio, where public testimony was taken.

We originally convened for this hearing on June 21st, which was the original published date, and we are reconvening today for the evidentiary hearing.

We'll start by taking appearances from the

1 parties.

2 MR. SETTINERI: Thank you, your Honor. On
3 behalf of South Field Energy, LLC, Michael Settineri
4 and Scott Guttman, with the law firm of Vorys, Sater,
5 Seymour and Pease, 52 East Gay Street, Columbus,
6 43215.

7 ALJ WALSTRA: Thank you.

8 MR. SCHMIDT: Rob Schmidt, with the law
9 firm of Porter Wright Morris & Arthur, here in
10 Columbus, on behalf of intervenors American
11 Transmission Systems, Incorporated, and The Ohio
12 Edison Company.

13 ALJ WALSTRA: Thank you.

14 MR. MILLER: Christopher L. Miller, with
15 the law firm of Ice Miller, 250 West Street,
16 Columbus, Ohio 43215, on behalf of intervening party
17 Yellow Creek Township, Columbiana County, Ohio.

18 ALJ WALSTRA: Thank you.

19 MR. HANAHAN: Greg Hanahan, GAH
20 Associates, LLC, on behalf of Yellow Creek Township,
21 13900 State Route 725, Germantown, Ohio 45327.

22 ALJ WALSTRA: Thank you.

23 MR. JONES: On behalf of the staff of the
24 Ohio Power Siting Board, Ohio Attorney General
25 Michael DeWine, Assistant Attorneys General, Robert

1 Eubanks and John Jones, 30 East Broad Street,
2 Columbus, Ohio 43215.

3 ALJ WALSTRA: Thank you.

4 I know a stipulation has been filed in
5 both case numbers, and then we can discuss anything
6 procedurally, if the Company wants to go ahead.

7 MR. SETTINERI: Your Honor, to start with,
8 we have just a few procedural matters. We do have --
9 South Field has one -- or two witnesses from out of
10 town; one is here today, one is not. The person who
11 is not here is Lynn Gresock, as an out-of-town, and
12 we've discussed with the parties and my understanding
13 is that the parties do not have cross-examination for
14 Ms. Gresock today, and that the parties would be
15 agreeable to stipulating to the admission of her
16 testimony into the record.

17 At this time I would like to mark her
18 testimony as Company Exhibit 7.

19 ALJ WALSTRA: So marked.

20 (EXHIBIT MARKED FOR IDENTIFICATION.)

21 MR. SETTINERI: And at this time I will
22 pause, and let Counsel for ATSI discuss the
23 procedural issue as to his out-of-town witness.

24 MR. SCHMIDT: Your Honor, in a similar
25 way, we have discussed with the parties, with Mike's

1 lead, the Direct Testimony of Mr. William Beach that
2 was filed on behalf of both of the FirstEnergy
3 intervenors in these two cases, ATSI and Ohio Edison.

4 It is my understanding that the parties
5 will also agree to the stipulation of the
6 admissibility of Mr. Beach's testimony without
7 cross-examination. He is actually based in Akron and
8 was not available for the hearing today.

9 ALJ WALSTRA: Okay. Do you want to mark
10 that testimony?

11 MR. SCHMIDT: We can. I'd be happy to
12 mark that as FE Exhibit 1.

13 ALJ WALSTRA: So marked.

14 (EXHIBIT MARKED FOR IDENTIFICATION.)

15 MR. SETTINERI: Your Honor, if I may, I
16 have received communication from Mr. Herold, the
17 Columbiana County Development Department Director,
18 and he is agreeable to admission of the testimony, in
19 my prior e-mail that I sent to all parties as well as
20 that you received.

21 ALJ WALSTRA: Okay. Thank you.

22 Any objections?

23 MR. MILLER: No objections.

24 MR. JONES: No objections.

25 ALJ WALSTRA: Are you moving to admit

1 those at this point?

2 MR. SETTINERI: Yes. I'll just make a
3 joint motion, on behalf of both counsel for
4 FirstEnergy as well as South Field, to admit Company
5 Exhibit 7 and FirstEnergy Exhibit 1.

6 ALJ WALSTRA: Okay. I'm assuming no
7 objections --

8 MR. SETTINERI: Assuming no objections
9 from the other parties as well as subject to your
10 approval.

11 ALJ WALSTRA: And I don't have any
12 questions for those witnesses. I want to note that
13 the Columbiana County Development Department is not
14 here, but you're conveying that they have no
15 objections; they conveyed to you no objections.

16 MR. SETTINERI: That is correct, your
17 Honor.

18 ALJ WALSTRA: So those will be admitted to
19 both cases.

20 (EXHIBITS ADMITTED INTO EVIDENCE.)

21 ALJ WALSTRA: You may proceed.

22 MR. SETTINERI: Yes. Another item, your
23 Honor. At this time we'd like to mark as Company
24 Exhibit 5, it is a letter from the public comment
25 docket in this proceeding, from Wayne Smith, dated

1 June 13th, 2016.

2 ALJ WALSTRA: So marked.

3 (EXHIBIT MARKED FOR IDENTIFICATION.)

4 MR. SETTINERI: In discussions with
5 counsel for staff and at the request of counsel for
6 staff, although we've marked it as an exhibit, our
7 intent was previously to enter this into the record
8 as evidence. In the alternative, I think jointly
9 with counsel for staff, correct me if I'm wrong, we
10 would move that the Bench take administrative notice
11 of this correspondence, subject to approval of the
12 other parties.

13 ALJ WALSTRA: Any objections?

14 MR. JONES: No objections.

15 MR. MILLER: No objections.

16 ALJ WALSTRA: The Bench will take
17 administrative notice.

18 MR. SETTINERI: The next step, your Honor,
19 then would be I would like to mark a series of
20 exhibits. We start with, first, Exhibit 1, which is
21 the Application in Case No. 15-1716-EL-BGN. We will
22 mark as Exhibit 2, the Application in Case No.
23 15-1717-EL-BTX, and I'm going -- those exhibit labels
24 should be Company Exhibit 1 and Company Exhibit 2.

25 We will mark as Company Exhibit 3, a

1 series of documents with the cover page dated
2 April 22nd, correspondence titled "Proof of
3 Publication."

4 We would like to mark as Company
5 Exhibit 4, a series of documents with the first page
6 dated June 2nd, 2016, with the "Re:" line being
7 "Notice Regarding Use of Alternate Transmission Line
8 Route."

9 We'd like to mark as Company Exhibit 6,
10 the Direct Testimony of Jonathan Winslow.

11 We'd like to mark as Joint Exhibit 1, the
12 Joint Stipulation and Recommendation filed in
13 Case No. 15-1716-EL-BGN. And we would mark as Joint
14 Exhibit 2, the Partial Joint Stipulation and
15 Recommendation filed in Case No. 15-1717-EL-BTX.

16 ALJ WALSTRA: So marked.

17 (EXHIBITS MARKED FOR IDENTIFICATION.)

18 MR. SETTINERI: And at this time, your
19 Honor, we would like to call Mr. Jonathan Winslow to
20 the stand.

21 ALJ WALSTRA: Raise your right hand.

22 (Witness sworn.)

23 ALJ WALSTRA: You may be seated.

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JONATHAN WINSLOW

being first duly sworn, as prescribed by law, was
examined and testified as follows:

DIRECT EXAMINATION

By Mr. Settineri:

Q. Good morning, Mr. Winslow.

A. Good morning.

Q. Can you please state your name and
business address for the record, please?

A. It's Jonathan Winslow. Business address
is 31 Milk Street, Suite 1001, Boston, Massachusetts,
zip code 02109.

Q. And do you have before you what's been
marked as Company Exhibit 6?

A. I do.

Q. And can you identify that, please, for the
record?

A. It's my Direct Testimony.

Q. And was that prepared by you or under your
direction?

A. It was.

Q. Do you have any revisions or corrections
to your testimony today?

A. I have one.

Q. Can you please read that for us into the

1 record?

2 A. Page 10, lines 16 and 17, the phrase
3 "contained in a two-volume set" and the commas on
4 both sides should be deleted.

5 Q. Do you have any other corrections or
6 revisions to your testimony?

7 A. I do not.

8 Q. If I was to ask you the questions in your
9 testimony as you have revised, would your answers, as
10 revised, be the same today?

11 A. They would be.

12 Q. And do you have before you what's been
13 marked as Company Exhibit 1?

14 A. I do.

15 Q. Can you identify that for the record,
16 please?

17 A. It is the South Field Energy's generator
18 site application.

19 Q. And do you have what's been marked as
20 Company Exhibit 2 before you?

21 A. I do. It's South Field Energy's
22 transmission line application.

23 Q. And do you have before you what's been
24 marked as Company Exhibit 3?

25 A. I do. And this is various notices

provided during the application process that are also referenced in my prefiled testimony in response to Question 16.

Q. And then, turning to Exhibit 4, can you please identify that for the record, please?

A. Exhibit 4 are letter notices that went out to nearby and adjacent landowners that let those landowners know that South Field Energy was considering consult -- constructing its transmission line on its alternate route. And these were provided for the purposes of letting folks know that we were considering constructing on the alternate route and it allowed them time to be able to come to the public hearing process which took place in the local community.

Q. And Exhibit 4 is referenced in your testimony as well, correct?

A. That's correct.

Q. Turning to what's been marked as Joint Exhibit 1.

A. I have it in front of me.

Q. Could you please identify that for the record, please?

A. Joint Exhibit 1 is the Joint Stipulation and Recommendation that was agreed to by all the

1 parties.

2 Q. And that was filed --

3 A. -- in the generator -- for the generator
4 application.

5 Q. That was filed in this proceeding,
6 correct?

7 A. It was.

8 Q. And could you please identify what's been
9 marked as Joint Exhibit 2 for the record?

10 A. Joint Exhibit 2 is a Partial Joint
11 Stipulation and Recommendation for the transmission
12 line application, and it was also agreed to by all
13 parties.

14 Q. Okay. Going back to your direct
15 testimony, I want to ask one question. Can you
16 expand on why South Field is seeking flexibility to
17 construct either the alternate route or the preferred
18 route in this proceeding?

19 A. Sure. Today, South Field Energy is going
20 through a debt and equity raise process that will
21 result in over a billion dollars worth of project
22 financing, and the project is looking for flexibility
23 around the primary and the alternate route, both have
24 been studied, for the purposes of reducing an
25 additional or eliminating an additional

1 administrative process that would be required for us
2 to come back and present information which has
3 already been presented in our application and request
4 the alternate route. Such an administrative process
5 could result in additional time that could delay the
6 financing of the project and the overall beginning of
7 construction of the project.

8 Q. And if I didn't hear you correctly, is
9 this project currently going through financing?

10 A. That's correct. The project is currently
11 going through the due-diligence process which is
12 required to raise the debt and equity financing
13 necessary to construct the facility.

14 Q. Turning back to Joint Exhibits 1 and 2,
15 and those are the stipulations in this proceeding,
16 correct?

17 A. That's correct.

18 Q. As to each stipulation, is each
19 stipulation a product of serious bargaining among
20 capable and knowledgeable parties?

21 A. It is. I was involved in the negotiation
22 of these joint stipulations as were the other
23 parties. The other parties and myself were
24 represented by counsel. And different people's
25 positions were taken into consideration and these are

1 the result of that negotiation.

2 Q. Does each stipulation, as a package,
3 benefit the public interest?

4 A. It does. The project, in general, is a
5 major infrastructure project and a major capital
6 investment; it benefits the community. But these
7 stipulations further benefit the community requiring
8 the project to take certain steps or meet certain
9 requirements during the construction and operation of
10 the facility.

11 Q. And does either stipulation violate any
12 important regulatory principle or practice?

13 A. No.

14 MR. SETTINERI: Your Honor, at this time,
15 the witness is available for cross-examination and
16 questions from the Bench.

17 ALJ WALSTRA: Thank you.

18 Mr. Schmidt?

19 MR. SCHMIDT: No questions, your Honor.

20 MR. MILLER: No questions.

21 MR. JONES: No questions, your Honor.

22 ALJ WALSTRA: Okay. Thank you.

23 THE WITNESS: Thank you.

24 MR. SETTINERI: Your Honor, at this time,
25 we would move then for the admission of Company

Exhibits 1, 2, 3, 4, 6, and 7 -- well, 7's already been admitted, and Joint Exhibit 1 and Joint Exhibit 2.

ALJ WALSTRA: Are there any objections?

MR. JONES: No objection.

MR. MILLER: No objection.

MR. SCHMIDT: No objection.

ALJ WALSTRA: Those will all be admitted.

(EXHIBITS ADMITTED INTO EVIDENCE.)

ALJ WALSTRA: Anything further?

MR. SETTINERI: No, your Honor. Thank you.

ALJ WALSTRA: Anything?

MR. SCHMIDT: Nothing from FirstEnergy intervenors.

MR. MILLER: No.

ALJ WALSTRA: Mr. Jones.

MR. JONES: Thank you, your Honor. Your Honor, staff would like to have marked three exhibits. Staff Exhibit 1, being the Staff Report of Investigation filed in Case No. 15-1716-EL-BGN on May 20th, 2016, as Staff Exhibit 1.

Further, staff would like to have marked as Staff Exhibit 2, the Staff Report of Investigation filed in Case No. 15-1717-EL-BTX, filed May 20th,

1 2016.

2 Further, staff would like to have marked
3 as Staff Exhibit 3, the prefiled testimony of James
4 O'Dell, filed June 17th, 2016.

5 (EXHIBITS MARKED FOR IDENTIFICATION.)

6 MR. JONES: Your Honor, it's my
7 understanding that the parties stipulate to the
8 admission of these three exhibits into the record and
9 waive any cross-examination of these exhibits.

10 ALJ WALSTRA: Okay.

11 MR. JONES: So I would ask for admission
12 of Staff Exhibits 1, 2, and 3.

13 ALJ WALSTRA: Any objections?

14 MR. SETTINERI: None from the company,
15 your Honor.

16 MR. MILLER: No.

17 ALJ WALSTRA: Those three will all be
18 admitted.

19 (EXHIBITS ADMITTED INTO EVIDENCE.)

20 MR. JONES: Thank you.

21 ALJ WALSTRA: Anything further?

22 MR. SETTINERI: Your Honor, if I may, just
23 for the record, I was hoping to do a very, very short
24 closing on the flexibility issue, that is the one
25 open issue in this proceeding, subject to Counsels'

1 agreement.

2 ALJ WALSTRA: Any objection?

3 MR. JONES: No objection.

4 MR. MILLER: No objection.

5 MR. SETTINERI: I'm willing to take a
6 short recess if staff counsel would like.

7 MR. JONES: That's fine.

8 MR. SETTINERI: Okay. Well, for everyone
9 in the room, I think you've heard Mr. Winslow explain
10 the size of this project, and when you have the size
11 of a project of this nature, over a billion dollars,
12 the need for flexibility is very important.

13 The only open issue in this case remaining
14 now is South Field's request to have the flexibility
15 to select either the preferred or the alternate
16 route, and we would do that by giving the Board
17 120-day notice before the start of the construction
18 of that route. And the way it's set up is the
19 alternate and preferred route are shared, for the
20 majority, with the exception of just under a mile
21 where the lines split briefly and come back together.

22 The preferred route has four landowners on
23 it. The alternate route only has one landowner.
24 That landowner has sent a letter, that's the
25 Exhibit 5 we had marked and we took administrative

1 notice of, that's the letter where he supports having
2 the flexible approach.

3 But I think in terms of there are concerns
4 will this set case precedent, issues of that nature.
5 This is a very unique case, not only for the size of
6 the project, but here you have a transmission line
7 that's linked to a generation facility. It's not a
8 30-, 20-mile transmission line. We're only looking
9 at, again, less than a mile, .9 miles on each route
10 approximately. And the impact between both are
11 almost identical, and you'll see that written in the
12 staff report that both routes are viable, and Lynn
13 Gresock's testimony addresses that as well.

14 The only real difference is ag district
15 land where the alternate has 21 acres of agricultural
16 district, it's been designated as such, versus
17 6 acres for the preferred route. But the good news
18 is we have Wayne Smith, the landowner for the
19 alternate route, does support this approach for
20 flexibility.

21 So I think these facts give the Board --
22 gives the Board a unique set of circumstances that it
23 can distinguish this request. We think the Board has
24 authority, under 4906.10, to allow this modification.

25 And the alternative here is really for all

1 of us to come back, I don't know when, it depends on
2 when the decision comes out, we have to do an
3 amendment, do all the notices, come back, and we're
4 going to have the same evidence, the same route.

5 So if the Board approves the preferred
6 route and doesn't give us the flexibility, we're
7 going to be back here, asking to do the alternate
8 route. And so, we're going to spend all this time
9 for an amendment. And as Mr. Winslow indicated, you
10 have financing ongoing and we need to move at the
11 speed of business here.

12 And I think the unique circumstances here
13 allow us to have the flexibility, with landowner
14 support, to be able to give the Board notice, yes,
15 we're going to construct the alternate piece or we're
16 going to construct the preferred.

17 So I would ask that the Board,
18 respectfully request, give careful consideration, and
19 our goal was to give all the facts and evidence on
20 this issue so the Board would consider the unique
21 nature of it. We ask that the Board allow us the
22 flexibility to construct either on that alternate or
23 the preferred portion, our election, but we would
24 give the Board notice, written notice, 120 days
25 before construction starts. Thank you.

1 ALJ WALSTRA: Thank you.

2 Mr. Schmidt, anything?

3 MR. SCHMIDT: No, your Honor.

4 MR. MILLER: Your Honor, if I may. Yellow
5 Creek Township wants to make sure it's reflected on
6 the record that we are fully supportive of the
7 Company's approach in regards to both routes and
8 would support either route, and our -- in a situation
9 where we would be completely happy with either route
10 as its approached -- on the approach for the
11 construction. And in regards to the alternate route,
12 we have no preference between the two and, if that is
13 their desire, we would stand behind that.

14 ALJ WALSTRA: Thank you.

15 Mr. Jones.

16 MR. JONES: Thank you, your Honor.

17 Your Honor, on behalf of the staff, staff
18 has investigated both routes and recommends the
19 preferred route in this case, and they found that the
20 alternative route provides a great degree of
21 potential adverse impact to agricultural district
22 lands and that's the distinction between these two
23 routes.

24 This is the route that was preferred to
25 the Applicant, South Field Energy. This was the same

1 situation all the way through the course of the
2 staff's investigation when they prepared their
3 report, and they came up with their findings,
4 independent of the Applicant, making its request for
5 the recommended route.

6 And we think this does provide a dangerous
7 precedent for future cases where other applicants in
8 the future might ask for a similar arrangement to
9 look to have the Board approve two routes and then
10 for the choice to be made, post-certificate, for the
11 Applicant to decide which route to go with. We just
12 think that's a dangerous precedent to set.

13 We believe that, you know, the law
14 provides that a recommendation by staff is required
15 as to all the criteria or elements of 4906.10(A) and
16 that goes to also the least-minimum adverse
17 environmental impact, and staff made the
18 determination with the preferred route being the best
19 route in this case.

20 So based on the staff's investigation and
21 findings, and reliance on the Applicant with the
22 preferred route that they preferred starting off
23 their application with and continued through the
24 course of the staff's investigation, we would
25 recommend the preferred be approved only, and not to

1 have both routes be approved subject to a choice,
2 post-certificate, of the Applicant.

3 MR. JONES: Thank you.

4 ALJ WALSTRA: Thank you.

5 MR. SETTINERI: Your Honor, if I may,
6 briefly?

7 ALJ WALSTRA: Briefly.

8 MR. SETTINERI: Very briefly.

9 As to the ag district, I just want to note
10 that it is true there's a difference in the ag
11 district acreage, but this is a transmission line, so
12 the farming can still go on, and the landowners
13 support it, and the one landowner that owns that 21
14 acres of ag district land supports us.

15 I appreciate staff's concern about the
16 precedent-setting nature of this, but we do have
17 unique circumstances. Hopefully, we've got enough
18 information on the record as to that. Thank you.

19 ALJ WALSTRA: Thank you.

20 Anything else?

21 MR. MILLER: No.

22 ALJ WALSTRA: Anything else before we wrap
23 up?

24 I want to thank everyone. The Board will
25 take into consideration all the evidence, as well as

the public comments that were made at the public hearing, and they will issue their ruling in due course. Thank you.

MR. JONES: Thank you.

MR. MILLER: Thank you.

MR. SETTINERI: Thank you.

(Thereupon, the proceedings concluded at 10:28 a.m.)

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CERTIFICATE

I do hereby certify that the foregoing is a true and correct transcript of the proceedings taken by me in this matter on Wednesday, June 29, 2016, and carefully compared with my original stenographic notes.

Carolyn M. Burke, Registered
Professional Reporter.

My commission expires July 17, 2018.

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This foregoing document was electronically filed with the Public Utilities

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in

Case No(s). 15-1716-EL-BGN, 15-1717-EL-BTX

Summary: Transcript In the matter of the Application of South Field Energy LLC for a Certificate of Environmental Compatibility and Public Need to Construct an Electric Generation Facility in Columbiana County, Ohio & In the matter of the Application of South Field Energy LLC for a Certificate of Environmental Compatibility and Public Need for a 345KV Transmission Line in Columbiana County, Ohio, hearing held on Wednesday, June 29, 2016. electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Burke, Carolyn