

**BEFORE  
THE OHIO POWER SITING BOARD**

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

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**MOORE ROAD LLC's RESPONSE IN OPPOSITION TO NRG'S MOTION  
TO EXTEND THE DURATION OF THE CERTIFICATE FOR THE CONSTRUCTION,  
OPERATION AND MAINTENANCE OF A NATURAL GAS PIPELINE, METERING  
STATION, AND REGULATING STATION IN LORAIN COUNTY, OHIO**

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Now comes Moore Road, LLC, by and through its undersigned counsel, and sets forth its opposition to NRG Pipeline Company LLC's ("NRG") Motion to Extend the Duration of the Certificate for the Construction, Operation and Maintenance of Natural Gas Pipeline, Metering Station and Regulating Station in Lorain County, Ohio, and respectfully requests that the Board deny NRG Pipeline's Motion to extend the duration of the certificate.

Respectfully submitted,



Jay R. Carson (0068526)  
Robert W. McIntyre (0006768)  
WEGMAN HESSLER & VANDERBURG  
6055 Rockside Woods Blvd., Ste. 200  
Cleveland, Ohio 44131  
(216) 642-3342  
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[rwmcintyre@wegmanlaw.com](mailto:rwmcintyre@wegmanlaw.com)

## MEMORANDUM IN SUPPORT

Moore Road LLC (“Moore Road”) is an Ohio limited liability company located in Lorain County, Ohio. Like the Lorain County Property Owners who have filed a brief opposing NRG’s motion to extend the duration of its certificate, Moore Road is a property owner along the proposed pipeline’s course, and is a defendant in an eminent domain proceeding related to the pipeline. *See NRG Pipeline Company, LLC v. Moore Road, LLC*, Lorain County Common Pleas Court, Case No. 15 CV 18715. A copy of the case docket is attached as Exhibit A.

In the interest of brevity, Moore Road hereby incorporates by reference the facts, legal analysis and exhibits filed by the Lorain County Property Owners, and adds its voice to theirs in opposing any extension of the certificate. Moore Road has experienced the same unreasonable and initially inexplicable delay tactics by NRG as the Plaintiff (as well as the stonewalling in discovery by its “NRG” affiliate, the actual Avon power plant owner, NRG Power Midwest LLC ) in Moore’s litigation that the Lorain County Property Owners have complained of in theirs. Extending the certificate in light of NRG’s continued foot-dragging would improperly reward this conduct.

In the Moore Road eminent domain proceeding, NRG and its sister subsidiary, NRG Power Midwest LP (“NRG Power”), have consistently ignored or outright defied Moore Road’s discovery requests, adding significant cost and delay to that action. Specifically, On April 19, 2016, Moore Road served Notices of Deposition upon NRG in connection as well as subpoenas to (non-party) NRG Power.

The deposition notice to NRG Pipeline and Power both sought persons most knowledgeable as to the gas conversion plans, which goes to the necessity of the eminent domain taking. In the six months that have passed since Moore Road served its Notice of Deposition, NRG and Power have consistently refused to provide the requested representative. This has

required Moore Road to seek the Court's assistance in getting the depositions scheduled. And still, in spite of NRG's belated representations to the Court that it would cooperate in discovery and provide appropriate witnesses, document requests have not been answered nor have any depositions taken place. Thus, Moore Road was in the process of preparing a Motion to Compel when NRG's Motion to Extend came to its attention.

Moore Road also sought the deposition of NRG Power's corporate representatives /designees and the production of documents by way of NRG Power's Records Custodian relating to any plans to convert the plant from coal to gas. NRG Power refused to accept service of the Notices and Subpoenas by way of its Statutory Agent, CT Corporate Services. Moore Road reported this refusal in writing to Power's parent, NRG Energy's general counsel on May 9, 2016. Subsequently a telephone inquiry on May 16, 2016 resulted in a phone discussion and follow up e-mail with NRG Energy's Assistant General Counsel, Chris Holtz, who refused to accept service for Power or discuss Moore's discovery; but instead demanded that service again be attempted on Power by way of CT. A copy of the collected Discovery correspondence is attached as Exhibit B.

Moore Road re-served its discovery on Power on May 18, 2016, and obtained good service via the designated statutory agent. However, NRG Power has still not responded to the subpoenas; and as noted above, its parent's legal department had previously refused to either identify an attorney to represent Power or respond on its behalf. In summary, NRG Power has consistently objected to all discovery and Moore Road's efforts to obtain documents and witnesses by negotiation have been unsuccessful.

Moore Road does not seek to litigate its discovery dispute before this Board. But to the extent that NRG claims it needs additional time to secure easements by eminent domain litigations, its dilatory conduct in those proceedings is relevant here.

In addition to the failure to respond to discovery, in the Moore Road litigation, NRG has “participated” in two court-ordered mediations with Moore Road. “Participation,” however, may be overstating NRG’s actual involvement in the mediation process, because in those two mediations, NRG and refused to budge off one cent off its initial pre-suit offer. This, too, is indicative of NRG’s intent to delay.

Finally, EPA records acquired through public records request show that NRG Power, NRG’s sister subsidiary and owner of the power plant that the pipeline would ostensibly serve has not pursued its application to convert the Avon Power Plant from coal to gas. In contrast, NRG Power has filed an application to continue operation as a coal-fired plant. A copy of the Application attached as Exhibit C. The exhibits attached by Lorain County Property Owners also make clear that NRG has no present intention to convert the plant to natural gas, but instead install MACT scrubbing compliance equipment to operate indefinitely on coal or be exempt from MACT based on a nominal number of hours (<100 annually) on an emergency basis. All of this clearly calls into question the very necessity of the pipeline, NRG’s authority to acquire land for it, and indeed whether NRG is proceeding in the litigations and this proceeding candidly and in good faith.

Simply put, this is a pipeline to nowhere. The Board should not allow NRG an additional year to continue dubious litigation to acquire land for a gas pipeline to a coal-fired plant that is highly unlikely to ever be converted to natural gas.

Additionally, the Board is also urged to look at the practical absurdity of NRG’s arguments and most candidly, that there no genuine need for the pipeline and that NRG has not diligently and in good faith prosecuted the actions to obtain the land, but has done nothing at all to even take baby steps towards actual construction. NRG, despite its early attestations to the PUCO and this Board, is not a real company, it has no employees, no assets, no money, no actual facility, and no



experience in constructing operating or maintain a complex pipeline and ancillary equipment and facilities; it was at the time of the original proceedings and remains today, an asset less shell corporation that is incapable of even producing documents and representatives *in lawsuits it filed*, let alone construct a multi-million dollar pipeline.

For all of the foregoing reasons, as well as those set forth in the Lorain County Property Owners' brief, NRG's motion should be denied, and if the deadline established by law is missed without a pipeline being constructed, then the property owners should be permanently left alone.

Respectfully submitted,



Jay R. Carson (0068526)

Robert W. McIntyre (0006768)

WEGMAN HESSLER & VANDERBURG

6055 Rockside Woods Blvd., Ste. 200

Cleveland, Ohio 44131

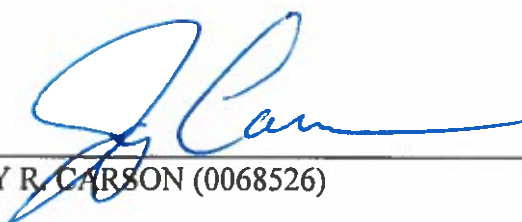
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[rwmcintyre@wegmanlaw.com](mailto:rwmcintyre@wegmanlaw.com)

**CERTIFICATE OF SERVICE**

I hereby certify that on the 20th day of October, 2016 the foregoing *Moore Road LLC's Response in Opposition to NRG's Motion to Extend the Duration of the Certificate for the Construction, Operation and Maintenance of a Natural Gas Pipeline, Metering Station, and Regulating Station in Lorain County, Ohio* was filed electronically with The Ohio Power Siting Board which will send notification to the registered attorney(s) an/or parties of record that the document has been filed and is available for viewing and downloading.

  
\_\_\_\_\_  
JAY R. CARSON (0068526)

# Exhibit A



## Public Docket Information

**NRG OHIO PIPELINE COMPANY LLC V/S MOORE ROAD LLC**Case Number: **15CV187151****Case Details**

Type Of Action: Other Civil-CV  
 Judge: Rothgery, Judge Christopher  
 Filed On: 8/5/2015

**Parties**

| Name                          | Birth Date | Party | Address  | Attorney(s)   |
|-------------------------------|------------|-------|--|---|
| NRG OHIO PIPELINE COMPANY LLC | N/A        | P     | 211 CARNEGIE CENTER<br>PRINCETON, NEW JERSEY 08540   | LATCHNEY, JOHN D<br>5455 DETROIT RD<br>SHEFFIELD VILLAGE,<br>OHIO 44054<br><br>O'TOOLE, DENNIS M<br>OMDP<br>5455 DETROIT RD<br>SHEFFIELD VLG, OHIO<br>44054   |
| MOORE ROAD LLC                | N/A        | D     | C/O R/A ROBERT MCINTYRE<br>1301 EAST NINTH ST<br>STE 1200<br>CLEVELAND, OHIO 44114                       | MCINTYRE, ROBERT W<br>WEGMAN HESSLER,<br>VANDERBURG<br>6055 ROCKSIDE WOODS<br>RD STE 200<br>INDEPENDENCE, OHIO<br>44131<br><br>CARSON, JAY R<br>WEGMAN HESSLER &<br>VANDERBURG<br>6055 ROCKSIDE WOODS<br>BLVD SUITE 200<br>CLEVELAND, OHIO<br>441312302 |
| MOORE ROAD LLC                | N/A        | D     | C/O REGISTERED AGENT<br>ROBERT W. MCINTYRE<br>6055 ROCKSIDE WOODS BLVD, STE 200<br>CLEVELAND, OHIO 44131 | MCINTYRE, ROBERT W<br>WEGMAN HESSLER,<br>VANDERBURG<br>6055 ROCKSIDE WOODS<br>RD STE 200<br>INDEPENDENCE, OHIO<br>44131<br><br>CARSON, JAY R<br>WEGMAN HESSLER &<br>VANDERBURG  |

6055 ROCKSIDE WOODS  
BLVD SUITE 200  
CLEVELAND, OHIO  
441312302

LORAIN COUNTY  
TREASURER

N/A D 226 MIDDLE AVE  
ELYRIA, OHIO 44035

PYANOWSKI, CHRIS A  
225 COURT ST, 3RD FL

ELYRIA, OHIO 44035

LORAIN COUNTY  
AUDITOR

N/A D 226 MIDDLE AVE  
ELYRIA, OHIO 44035

PYANOWSKI, CHRIS A  
225 COURT ST, 3RD FL

ELYRIA, OHIO 44035

#### Filter Docket

- ☐ Show All ☐ FILING ☐ (CRR)  
☐ REQUEST ☐ MOTION ☐ (MAGISTRATE)  
☐ SERVICE

Filter

| Date       | Type    | Description  |
|------------|---------|--|
| 08/05/2015 | N/A     | Filing fee of \$300.00, paid by: DENNIS O'TOOLE  |
| 08/05/2015 | N/A     | Receipt #: 15-0023873 Processed.   |
| 08/05/2015 | FILING  | VERIFIED PETITION TO APPROPRIATE PROPERTY AND TO FIX VALUE THEREOF FILED WITH SERVICE REQUEST ATTACHED.  |
| 08/05/2015 | N/A     | PRELIMINARY JUDICIAL REPORT FILED.   |
| 08/07/2015 | N/A     | SUMMONS W/COPY OF VERIFIED PETITION TO APPROPRIATE PROPERTY SENT CERTIFIED MAIL TO: MOORE ROAD LLC ARTICLE #9414726699042010942566   |
| 08/07/2015 | N/A     | SUMMONS W/COPY OF VERIFIED PETITION TO APPROPRIATE PROPERTY SENT CERTIFIED MAIL TO: LORAIN COUNTY TREASURER ARTICLE #9414726699042010942559  |
| 08/07/2015 | N/A     | SUMMONS W/COPY OF VERIFIED PETITION TO APPROPRIATE PROPERTY SENT CERTIFIED MAIL TO: LORAIN COUNTY AUDITOR ARTICLE #9414726699042010942542  |
| 08/12/2015 | N/A     | Certified Mail Return : Article # : 9414726699042010942559, Delivered Date : 08/11/2015, Reason : Signed Receipt for Certified Mail Returned and Filed., Party : LORAIN COUNTY TREASURER, Note : |
| 08/12/2015 | N/A     | Certified Mail Return : Article # : 9414726699042010942542, Delivered Date : 08/11/2015, Reason : Signed Receipt for Certified Mail Returned and Filed., Party : LORAIN COUNTY AUDITOR, Note :   |
| 08/17/2015 | N/A     | Certified Mail Return : Article # : 9414726699042010942566, Delivered Date : , Reason : Attempted Not Known, Party : MOORE ROAD LLC, Note : ATTORNEY NOTIFIED                                    |
| 08/17/2015 | N/A     | Cost Bill Entry  |
| 08/19/2015 | FILING  | ANSWER OF LORAIN COUNTY TREASURER AND LORAIN COUNTY AUDITOR FILED  |
| 08/20/2015 | (CRR)   | PURSUANT TO CIV.R. 53, THE INSTANT MATTER IS HEREBY REFERRED TO MAGISTRATE JAMES BLASZAK. ALL FUTURE FILINGS SHALL BE TO THE ATTENTION OF MAGISTRATE BLASZAK. IT IS SO ORDERED.                  |
| 08/25/2015 | REQUEST | REQUEST FOR SERVICE FILED.   |

|                   |  |
|-------------------|--|
| 08/28/2015 N/A    | SUMMONS W/COPY OF COMPLAINT SENT CERTIFIED MAIL TO:<br>MOORE ROAD LLC ARTICLE #9414726699042024962543  |
| 09/04/2015 N/A    | Certified Mail Return : Article # : 9414726699042024962543, Delivered<br>Date : 08/31/2015, Reason : Signed Receipt for Certified Mail Returned<br>and Filed., Party : MOORE ROAD LLC, Note :  |
| 09/24/2015 N/A    | Mail return-Moore Road LLC-Resent to 6055 Rockside Woods Blvd., Ste.<br>200 Cleveland, OH 44131  |
| 09/28/2015 MOTION | STIPULATED MOTION FEXTENSION OF TIME TO RESPOND OR<br>OTHERWISE PLEAD TO PLTF'S COMPLAINT FILED<br><br>(MAGISTRATE JAMES L BLASZAK)UPON CONSIDERATION OF PLTF,<br>NRG OHIO PIPELINE CO LLC AND DEFT MOORE RD LLC,<br>STIPULATED MOTION FOR EXTENSION OF TIME TO RESPOND OR<br>OTHERWISE PLEAD TO PLTF'S COMPLAINT FOR 30 DAYS OR   |
| 10/01/2015 (CRR)  | UNTIL 10/28/2015, THE COURT FINDS THIS MOTION TO WELL<br>TAKEN. DEFT MOORE RD LLC'S ANSWER OR OTHER RESPONSIVE<br>PLEADING TO PLTF'S COMPLAINT IS DUE 10/28/2015. IT IS SO<br>ORDERED.   |
| 10/29/2015 N/A    | Receipt #: 15-0033316 Processed.   |
| 10/29/2015 FILING | ANSWER AND COUNTERCLAIM OF MOORE ROAD LLC FILED  |
| 12/02/2015 N/A    | PLTF NRG OHIO PIPELINE COMPANY LLC'S REPLY TO<br>COUNTERCLAIM OF MOORE RD LLC FILED.<br><br>ON 8/20/2015, THE INSTANT MATTER WAS REFERRED TO<br>MAGISTRATE JAMES BLASZAK. THAT REFERRAL IS HEREBY<br>RESCINDED AND THE MATTER IS RETURNED TO THIS COURT'S<br>DOCKET. THE MATTER IS SCHEDULED FOR A TELEPHONE STATUS<br>CONFERENCE WITH THIS COURT ON 12/9/2015 AT 10:30 AM.  |
| 12/08/2015 (CRR)  | PLTF'S COUNSEL SHALL INITIATE SAID PHONE CONFERENCE BY<br>CONTACTING ALL COUNSEL AND THEN THE COURT AT 440-329-<br>5573 OR 440-329-5571. ALL PARTIES SHALL NOTIFY PLTF'S<br>COUNSEL OF THE PHONE NUMBER THAT THEY WOULD LIKE TO<br>BE REACHED AT TO PARTICIPATE IN SAID CONFERENCE. IT IS SO<br>ORDERED.   |
| 12/15/2015 (CRR)  | IT IS HEREBY ORDERED THAT THE ABOVE-CAPTIONED CASE IS<br>REFERRED TO MEDIATION. MEDIATION WILL BE HELD 1/25/2016 AT<br>8:30 AM. SEE JOURNAL.   |
| 12/18/2015 N/A    | MEDIATION CONFERENCE HAS BEEN SCHEDULED FOR JANUARY<br>25, 2016 AT 8:30 IN ROOM 301.<br><br>Mediation was scheduled for January 25, 2016. Attorney Dennis O'Toole<br>appeared for Plaintiff NRG Ohio Pipeline Company LLC. Plaintiff was<br>unable to attend due to local weather conditions. Attorney Robert<br>McIntyre and Steve Alex appeared for Defendant Moore Road LLC.<br>Mediation has been re-scheduled for February 22, 2016 at 12:30. |
| 01/25/2016 N/A    | MEDIATION CONFERENCE HAS BEEN RE-SCHEDULED TO<br>FEBRUARY 22, 2016 AT 12:30 IN ROOM 301.<br><br>Mediation was held on February 22, 2016. Attorney Dennis O'Toole and<br>Alan Sawyer appeared for Plaintiff NRG Ohio Pipeline Company LLC.<br>Attorney Robert McIntyre and Steve Alex appeared for Defendant Moore<br>Road LLC. Mediation will continue by telephone on March 7, 2016.  |
| 02/23/2016 N/A    | Mediation efforts continued by telephone on March 9, 2016 and will<br>continue further by telephone on March 23, 2016.   |
| 03/09/2016 N/A    | PLNTFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT FILED.  |
| 03/16/2016 MOTION | STIPULATED MOTION FOR EXTENSION OF TIME TO RESPOND TO<br>PLTF'S MOTION FOR PARTIAL SUMMARY JUDGMENT (FILED<br>3/16/16)   |
| 03/31/2016 N/A    | Mediation efforts continued by telephone on March 23, 2016. The case is<br>not settled and is returned to the Court for further proceedings.   |
| 04/01/2016 N/A    | The above captioned case has been scheduled for STATUS<br>CONFERENCE before the Honorable Judge Christopher R. Rothgery, in<br>Court Room 602, 6th floor, at the Lorain County Justice Center, Elyria,<br>Ohio on April 28, 2016 at 10:00 A.M. cc: Atty. O'Toole Atty. Carson APA<br>Pyanowski   |
| 04/04/2016 N/A    | STIPULATED MOTION FOR EXTENSION OF TIME TO RESPOND TO<br>PLTF'S MOTION FOR PARTIAL SUMMARY JUDGMENT (FILED MAR<br>16 2016).IT IS ORDERED(SEE JR)(JCF FOR CRR)  |
| 04/05/2016 (CRR)  | NOTICE OF FILING NOTICES OF DEPOSITION FILED<br><br>STATUS CONFERENCE HELD. DISCOVERY REMAINS ONGOING.<br>THE MSJ BRIEFING SCHEDULE PREVIOUSLY SET BY THIS COURT<br>IS HELD IN ABEYANCE UNTIL FURTHER ORDER OF THIS COURT.   |
| 04/21/2016 N/A    |  |

|                         |   |
|-------------------------|---|
| 04/29/2016 (MAGISTRATE) | THE CASE IS SET FOR A FURTHER TELEPHONE STATUS CONFERENCE ON FRIDAY, 5-20-16 AT 10:00 AM. PLTF'S COUNSEL SHALL INITIATE SAID CONFERENCE BETWEEN COUNSEL AND THEN WITH THE COURT AT 440/329-5573 OR 440/329-5571. (MAG JCF FOR CRR)                      |
| 05/20/2016 (CRR)        | STATUS CONFERENCE HELD.THE FACT DISCOVERY DEADLINE IS HEREBY EXTENDED TO JUL 28 2016.THE CASE IS SET FOR A TELEPHONE STATUS CONFERENCE ON THURSDAY JUL 28 2016 AT 11:00AM.(SEE JR) (JCF FOR CRR)  |
| 05/27/2016 N/A          | NOTICE OF FILING SUBPOENAS AND NOTICES OF DEPOSITION FILED BY DEFT MOORE ROAD LLC.  |
| 07/27/2016 MOTION       | DEFTS' MOTION TO EXTEND DISCOVERY DEADLINE FILED  |
| 07/29/2016 (MAGISTRATE) | STATUS CONFERENCE HELD THIS DATE. THE MATTER IS SCHEDULED FOR A LIVE PRETRIAL ON TUESDAY, 8-16-16 AT 2:30 PM. COUNSEL SHALL BE PRESENT FOR SAID PRETRIAL AND READY TO DISCUSS ALL OUTSTANDING DISCOVERY ISSUES. (SEE JOURNAL.) (MAG JCF FOR CRR)        |
| 08/10/2016 SERVICE      | PROCESS SERVER RETURN: I MADE CORPORATE SERVICE UPON NRG POWER MIDWEST LP BY LEAVING WITH CORPORATE OPERATIONS SPECIALIST BY LEAVING WITH DEBBIE JUSTICE, ON 8/8/16. (2) BRIAN D. SCHALL, ATTONREY FOR DEFT.  |
| 08/15/2016 N/A          | DEFT'S NOTICE OF FILING SUBPOENAS AND NOTICES OF DEPOSITION FILED   |
| 08/17/2016 (MAGISTRATE) | PRETRIAL HELD WITH ALL COUNSEL PRESENT.THE PARTIES ARE WORKING TO RESOLVE ALL DISCOVERY ISSUES ON OR BEFORE SEPT 22 2016.THE CASE IS SET FOR A FURTHER TELEPHONE STATUS CONFERENCE ON FRIDAY SEPT 30 2016 AT 11:30AM.(SEE JR) (JCF FOR CRR)             |
| 08/22/2016 N/A          | NOTICE OF CONTINUATION OF DEPOSITIONS OF NRG POWER MIDWEST LP FILED   |
| 10/03/2016 (CRR)        | STATUS CONFERENCE HELD.THE CASE IS SET FOR A FURTHER TELEPHONE STATUS CONFERENCE ON FRIDAY OCT 7 2016 AT 2:30PM.PLTF SHALL PRODUCE THE DOCUMENTS AGREED UPON BY COUNSEL AT THE PRETRIAL ON AUG 16 2016 BY THE NEXT STATUS CONFERENCE DATE.(JCF FOR CRR) |
| 10/12/2016 (CRR)        | STIPULATED PROTECTIVE ORDER GRANTED. (SEE JOURNAL.) (CRR)   |
| 10/17/2016 (CRR)        | STATUS CONFERENCE HELD.PLTF IS TO RESPOND TO THE DOCUMENT REQUESTS AT ISSUE ON OR BEFORE NOV 11 2016.THE MATTER IS SCHEDULED FOR A FURTHER TELEPHONE STATUS CONFERENCE ON NOV 22 2016 AT 10:00AM.IT IS ORDERED(SEE JR) (JCF FOR CRR)                    |

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# Exhibit B





**WEGMAN  
HESSLER &  
VANDERBURG**

*Legal Professional Association*  
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**Robert W. McIntyre**

*Of Counsel*  
[rwmcintyre@wegmanlaw.com](mailto:rwmcintyre@wegmanlaw.com)

April 19, 2016

**VIA CERTIFIED MAIL**

NRG Power Midwest, LP  
c/o CT Corporation System, Statutory Agent  
1300 East Ninth Street  
Cleveland, Ohio 44114

Re: NRG Ohio Pipeline Company, LLC v. Moore Road, LLC, et al.  
Lorain County Court of Common Pleas Case No. 15-CV-187151

Dear Sir or Madam:

Please find enclosed the following, which have been prepared with regard to the referenced matter:

1. Subpoena and Notice of Deposition for A Representative of NRG Power Midwest, LP; and
2. Subpoena and Notice of Deposition for A Records Custodian of NRG Power Midwest, LP.

Thanks for your anticipated cooperation, if you have any questions, don't hesitate to contact me or Jay Carson.

Very truly yours,

WEGMAN HESSLER & VANDERBURG

Robert W. McIntyre

RWM/smm  
Encl.

# Subpoenas

IN THE COURT OF COMMON PLEAS  
LORAIN COUNTY, OHIO

NRG Ohio Pipeline Company, LLC

Plaintiff,

VS.

Moore Road, LLC, et al.

Defendant.

**General Division - CIVIL**

Subpoena and Return

Case No. 15CV187151

TO: (Print name and address below)

NRG Power Midwest, LP - Corp. Representative

c/o Statutory Agent - CT Corporation System

1300 East Ninth Street

Cleveland, Ohio 44114

Attorney: Robert W. McIntyre, Esq.

Attorney for: Defendant Moore Road, LLC

Telephone: 216-642-3342

E-mail (optional): rwmcintyre@wegmanlaw.com

If you have any questions concerning this subpoena, please contact the attorney whose name and contact information are listed above.

YOU ARE HEREBY COMMANDED TO, AT THE DATE, TIME, AND LOCATION LISTED BELOW:

- ☒ attend and give testimony at a trial, hearing, or deposition.  
☐ produce the following documents, electronically stored information, or tangible things at a trial, hearing, or deposition:

☐ produce and permit inspection and copying of the following documents or electronically stored information that are in your custody, possession, or control: \_\_\_\_\_

☐ produce and permit inspection and copying, testing, or sampling of the following tangible things that are in your custody, possession, or control: \_\_\_\_\_

☐ permit entry upon designated land or other property that is in your possession or control described as (see Civ. R. 34): \_\_\_\_\_

DATE: 29th day of April, 2016 TIME: 9:00 o'clock a.m./p.m.

LOCATION: Wegman Hessler & Vanderburg, 6055 Rockside Woods Blvd., Ste 200, Independence, Ohio 44131

WITNESS my signature and seal of said Court at Elyria, Ohio, this 19th day of April, 2016.

~~XXXXXXXXXXXXXXXXXXXX~~

Attorney

~~XXXXXXXXXXXXXXXXXXXX~~

## OHIO RULES OF CIVIL PROCEDURE – PARTIAL TEXT OF RULE 45 (revised 07/17/2014)

**C) Protection of persons subject to subpoenas.**

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena.

(2)(a) A person commanded to produce under divisions (A)(1)(b), (iii), (iv), (v), or (vi) of this rule need not appear in person at the place of production or inspection unless commanded to attend and give testimony at a deposition, hearing, or trial.

(b) Subject to division (D)(2) of this rule, a person commanded to produce under divisions (A)(1)(b), (iii), (iv), (v), or (vi) of this rule may, within fourteen days after service of the subpoena or before the time specified for compliance if such time is less than fourteen days after service, serve upon the party or attorney designated in the subpoena written objections to production. If objection is made, the party serving the subpoena shall not be entitled to production except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena, upon notice to the person commanded to produce, may move at any time for an order to compel the production. An order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the production commanded.

(3) On timely motion, the court from which the subpoena was issued shall quash or modify the subpoena, or order appearance or production only under specified conditions, if the subpoena does any of the following:

(a) Fails to allow reasonable time to comply;

(b) Requires disclosure of privileged or otherwise protected matter and no exception or waiver applies;

(c) Requires disclosure of a fact known or opinion held by an expert not retained or specially employed by any party in anticipation of litigation or preparation for trial as described by Civ. R. 26(B)(5), if the fact or opinion does not describe specific events or occurrences in dispute and results from study by that expert that was not made at the request of any party;

(d) Subjects a person to undue burden.

(4) Before filing a motion pursuant to division (C)(3)(d) of this rule, a person resisting discovery under this rule shall attempt to resolve any claim of undue burden through discussions with the issuing attorney. A motion filed pursuant to division (C)(3)(d) of this rule shall be supported by an affidavit of the subpoenaed person or a certificate of that person's attorney of the efforts made to resolve any claim of undue burden.

(5) If a motion is made under division (C)(3)(c) or (C)(3)(d) of this rule, the court shall quash or modify the subpoena unless the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated.

**(D) Duties in responding to subpoena.**

(1) A person responding to a subpoena to produce documents shall, at the person's option, produce them as they are kept in the usual course of business or organized and labeled to correspond with the categories in the subpoena. A person producing documents or electronically stored information pursuant to a subpoena for them shall permit their inspection and copying by all parties present at the time and place set in the subpoena for inspection and copying.

(2) If a request does not specify the form or forms for producing electronically stored information, a person responding to a subpoena may produce the information in a form or forms in which the information is ordinarily maintained if that form is reasonably useable, or in any form that is reasonably useable. Unless ordered by the court or agreed to by the person subpoenaed, a person responding to a subpoena need not produce the same electronically stored information in more than one form.

(3) A person need not provide discovery of electronically stored information when the production imposes undue burden or expense. On motion to compel discovery or for a protective order, the person from whom electronically stored information is sought must show that the information is not reasonably accessible because of undue burden or expense. If a showing of undue burden or expense is made, the court may nonetheless order production of electronically stored information if the requesting party shows good cause. The court shall consider the factors in Civ. R. 26(B)(4) when determining if good cause exists. In ordering production of electronically stored information, the court may specify the format, extent, timing allocation of expenses and other conditions for the discovery of the electronically stored information.

(4) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials under Civ. R. 26(B)(3) or (4), the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(5) If information is produced in response to a subpoena that is subject to a claim of privilege or of protection as trial preparation material, the person making the claim may notify any party that received the information of the claim and basis for it. After being notified, a receiving party must promptly return, sequester, or destroy the specified information and any copies within the party's possession, custody or control. A party may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim of privilege or of protection as trial-preparation material. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The person who produced the information must preserve the information until the claim is resolved.

COURT OF COMMON PLEAS  
GENERAL DIVISION  
LORAIN COUNTY, OHIO

NRG Ohio Pipeline Company, LLC

Plaintiff,

VS.

Moore Road, LLC, et al.

Defendant.

CASE NO. 15CV187151

JUDGE Christopher R. Rothgery

RETURN OF SERVICE  
OF SUBPOENA

**NAME AND ADDRESS OF PERSON ON SUBPOENA:** NRG Power Midwest LP - Corporate Representative  
c/o Statutory Agent, CT Corporation System, 1300 East Ninth Street, Cleveland, Ohio 44114

**DATE, TIME AND LOCATION OF TRIAL OR HEARING:** \_\_\_\_\_

Deposition: April 29, 2016 at 9:00am at Wegman Hessler & Vanderburg, 6055 Rockside Woods Blvd., Ste 200, Independence, Ohio 44131

(The following to be completed by Sheriff, process server, or attorney)

I received this Subpoena on \_\_\_\_\_, 20\_\_\_\_, and served the same on the person herein  
named on \_\_\_\_\_, 20\_\_\_\_\_.

Service was accomplished by \_\_\_\_\_  
\_\_\_\_\_.

I was unable to complete service for the following reason(s): \_\_\_\_\_  
\_\_\_\_\_.

**SHERIFF'S FEES**

Service and Return \_\_\_\_\_ \$ \_\_\_\_\_  
Mileage \_\_\_\_\_ # miles \_\_\_\_\_ \$ \_\_\_\_\_  
Copies \_\_\_\_\_ \$ \_\_\_\_\_  
Total: \$ \_\_\_\_\_

PHIL R. STAMMITT, Lorain Co. Sheriff

BY: \_\_\_\_\_  
Deputy

**PROCESS SERVER/ATTORNEY CERTIFICATION**

I certify that the foregoing information is correct to the  
best of my knowledge and belief.

\_\_\_\_\_  
(signature of individual performing service)

Print name: \_\_\_\_\_

# Exhibit “A”

IN THE COURT OF COMMON PLEAS  
LORAIN COUNTY, OHIO

|                                 |   |                                |
|---------------------------------|---|--------------------------------|
| NRG OHIO PIPELINE COMPANY, LLC, | ) | CASE NO. 15CV187151            |
|                                 | ) |                                |
| Plaintiff,                      | ) | JUDGE Christopher R. Rothgery  |
|                                 | ) |                                |
| v.                              | ) | Magistrate James Blaszak       |
|                                 | ) |                                |
| MOORE ROAD, LLC, <i>et al.</i>  | ) | NOTICE OF DEPOSITION OF        |
|                                 | ) | REPRESENTATIVE DESIGNATED BY   |
| Defendants.                     | ) | NRG POWER MIDWEST, LP PURSUANT |
|                                 | ) | TO OHIO RULE 30(B)(5)          |

Please take notice that on April 29, 2016 beginning at 9:00 a.m., counsel for Defendant, Moore Road, LLC, will take the deposition of a person or persons identified and designated by NRG Power Midwest, LP, pursuant to ORCP 30(B)(5), who is knowledgeable to testify with respect to the matters set forth on Exhibit A. The deposition will take place at the offices of Wegman Hessler & Vanderburg, 6055 Rockside Woods Blvd., Ste. 200, Independence, Ohio 44131. The deposition shall proceed in accordance with the Ohio Rules of Civil Procedure in the presence of a notary public, and be recorded by a stenographer, and shall continue from day-to-day until complete.

Respectfully submitted,



---

Robert W. McIntyre (0006768)  
Jay R. Carson (0068526)  
WEGMAN, HESSLER & VANDERBURG  
6055 Rockside Woods Boulevard, Suite 200  
Cleveland, Ohio 44131  
Phone: (216) 642-3342 / Fax: (216) 642-8826  
E-Mail: [rwmcintyre@wegmanlaw.com](mailto:rwmcintyre@wegmanlaw.com)  
[jrcarson@wegmanlaw.com](mailto:jrcarson@wegmanlaw.com)  
*Attorneys for Defendant Moore Road, LLC*

**CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of the foregoing Notice Of Deposition Of Representative Designated By NRG Power Midwest, LP Pursuant To Ohio Rule 30(B)(5) was served this 19<sup>th</sup> day of April, 2016 upon the following via e-mail:

Dennis M. O'Toole, Esq.  
O'Toole, McLaughlin, Dooley & Pecora Co., L.P.A.  
5455 Detroit Road  
Sheffield Village, Ohio 44054  
(dotoole@omdplaw.com)

*Attorney for Plaintiff  
NRG Ohio Pipeline Company, LLC*



---

Robert W McIntyre (0006768)

*An attorney for Defendant Moore Road, LLC*



## **EXHIBIT A**

**(to Notice of Deposition of Representative of NRG Power Midwest LP  
Pursuant to Ohio Rule 30(B)(5))**

1. Matters and topics for examination of each designated witness:
  - a. The facts and circumstances relating to the NRG Ohio Pipeline LLC (Pipeline) and NRG Power Midwest LLC (Power) regarding the construction of that certain pipeline (the NRG Pipeline) described in the Affidavit of Alan Sawyer *attached hereto as attachment 1* (Affidavit) or otherwise.
  - b. The facts and circumstances relating to Pipeline and NRG Energy Inc. regarding the construction of that certain pipeline (the NRG Pipeline) described in the Affidavit of Alan Sawyer attached hereto as attachment 1 (Affidavit) or otherwise.
2. The facts and circumstances relating to or which establishes the necessity for the construction of the NRG Pipeline asset forth at Paragraph 12 of the Affidavit or otherwise.
3. Each and every record and document provided to Pipeline by Power setting forth the usage of natural gas as a fuel for the Avon Generating facility.
4. The facts and circumstances relating to any contract or agreement by and between Pipeline and Power for the delivery of fuel gas for the generating facility described and identified at Paragraph 5 of the Affidavit or otherwise.
5. The facts and circumstances relating to any 'plans to add natural gas as a fuel source' as set forth and described at Paragraph 6 of the Affidavit.
6. The facts and circumstances relating to or which demonstrates and/ or substantiates the assertion that "NRG Pipeline" is a wholly owned subsidiary of NRG Energy Inc. and/or any relationship between NRG Power Midwest LLC, Pipeline and NRG Energy Inc.
7. The facts and circumstances relating to or which demonstrates that Pipeline was 'organized to construct and operate approximately 20 miles of ...pipeline'. As set forth in Paragraph 8 of the Affidavit or otherwise.
8. The facts and circumstances relating to or which demonstrate that Pipeline has the technical, financial, and managerial capability needed to operate a natural gas transmission system as well as the requisite financial means to construct its proposed pipeline.
9. The facts and circumstances relating to any decision or decisions process by which Power and/or NRG Energy Inc. have elected to continue fueling the generating facility with coal and not natural gas and/or defer the conversion of the generating facility from coal to natural gas.

10. All contacts, applications, or other materials submitted to and or received from the Ohio EPA:
  - a. For the construction/installation of emissions control equipment on the generating facility for the purpose of continuing to use coal as fuel for the generating facility and/or not natural gas as a fuel;
  - b. The designation of one or more boilers as a standby coal fueled unit that will not be converted to natural gas fuel; and
  - c. The decision to not operate any boiler at the generating facility in the future.
11. The facts and circumstances relating to or regarding the acquisition, construction/installation of machinery and equipment for converting any boiler at the generating facility to natural gas.
12. The facts and circumstances relating to or regarding the acquisition, construction/installation of machinery and equipment for controlling the emission of any boiler at the generating facility that would be fueled by coal.
13. The facts and circumstances relating to or which demonstrates or describes any projected or estimated cost of obtaining natural gas from Pipeline and or the revenue stream of Pipeline from the sale of natural gas to the generating facility described in Paragraph 5 of the Affidavit or otherwise.
14. Any studies, consultant's reports, or other facts or circumstances regarding or related to any safety set-back or buffer zone associated with the construction and operation of a high pressure gas pipeline.
15. Any studies, consultant's reports, or other facts or circumstances regarding or related to any safety set-back or buffer zone associated with the construction and operation of a high pressure gas pipeline and the damages to or restriction of property adjacent to the proposed pipeline and or operation of a high pressure pipeline.

# Attachment No. 1

**AFFIDAVIT**

STATE OF OHIO                    )  
                                      )  
COUNTY OF LORAIN            )     SS:

I, Alan Sawyer, being duly sworn under oath state the following is true.

1. I am over the age of eighteen (18) and competent to give the following declaration.

2. I am presently, and was at all relevant times, the Vice President of NRG Ohio Pipeline Company LLC ("NRG Pipeline" or "Company").

3. NRG Pipeline is a Delaware limited liability company that is registered to do business in the State of Ohio.

4. NRG Pipeline is a wholly-owned subsidiary of NRG Energy, Inc. ("NRG").

5. One of NRG's subsidiaries, NRG Power Midwest LP, owns a 735 MW coal-fired generating facility in Avon Lake, Ohio ("the Avon Lake facility").

6. NRG Power Midwest LP plans to add natural gas as a fuel source for the boilers at the Avon Lake facility.

7. NRG Pipeline was organized for transporting and transmitting natural gas through pipes to NRG Power Midwest LP's Avon Lake facility.

8. More specifically, NRG Pipeline was organized to construct and operate approximately 20 miles of 24-inch to 30-inch high pressure steel pipeline in Lorain County, Ohio to transport and transmit natural gas to NRG Power Midwest LP's Avon Lake facility.

9. On November 27, 2013, NRG Pipeline filed an application with the Public Utilities Commission of Ohio ("PUCO"), pursuant to R.C. 4905.02, R.C. 4905.03 and 4905.63,

---

for authority to operate as an intrastate pipeline company in the state of Ohio. The application was amended on February 12, 2014. See, Exhibit No. 1 attached hereto, *In the Matter of the Application of NRG Ohio Pipeline Company LLC for Authority to Operate as an Ohio Pipeline Company*, Case No. 13-2315-PL-ACE (P.U.C.O. Feb. 26, 2014) ("PUCO Finding and Order").

10. On February 26, 2014, the PUCO approved NRG Pipeline's application to operate as an intrastate pipeline company in the State of Ohio. PUCO Findings and Order at ¶4.

11. In approving NRG Pipeline's application, the PUCO found that "NRG Pipeline is a public utility and pipeline company, pursuant to R.C. 4905.02 and 4905.03, and, as such, is subject to the Commission's jurisdiction." PUCO Findings and Order at ¶4.

12. On November 6, 2014, NRG Pipeline determined that it was necessary to appropriate and acquire perpetual easement rights for the installation, construction, maintenance, operation and repair of a natural gas pipeline in, on, across, through and over the real property described in Paragraph 4 of NRG Pipeline's Verified Petition to Appropriate Property and to Fix Value Thereof ("Petition") to transport and transmit natural gas to NRG Power Midwest LP's Avon Lake facility.

13. On December 19, 2014, NRG Pipeline filed a letter of notification application, pursuant to Ohio Adm. Code 4906-11-01.

FURTHER AFFIANT SAYETH NAUGHT.

  
Alan Sawyer

SWORN TO BEFORE ME and subscribed in my presence this 25<sup>th</sup> day of March, 2015

  
NOTARY PUBLIC



KIM J. BEHM  
Notary Public - State of Ohio  
My Commission Expires  
September 18, 2018

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of NRG )  
Ohio Pipeline Company LLC for ) Case No. 13-2315-PL-ACB  
Authority to Operate as an Ohio Pipeline )  
Company. )

FINDING AND ORDER

The Commission finds:

- (1) On November 27, 2013, as amended on February 12, 2014, NRG Ohio Pipeline Company LLC (NRG Pipeline or Company) filed an application, pursuant to R.C. 4905.02, 4905.03(F), and 4905.63, for authority to operate as an intrastate pipeline company in the state of Ohio. In the application, NRG Pipeline states that it is a Delaware limited liability company that is registered to do business in Ohio. NRG Pipeline further states that it is a wholly-owned subsidiary of NRG Energy, Inc. (NRG), which is one of the largest power companies in the country, with nearly 100 generation assets producing more than 47,000 megawatts (MW), and retail energy providers serving more than 2 million customers in 16 states. NRG Pipeline notes that one of NRG's subsidiaries, NRG Power Midwest LP, owns a 753 MW coal-fired generating facility in Avon Lake, Ohio, and plans to add natural gas as a fuel source for the boilers at the facility. NRG Pipeline explains that it intends to provide the pipeline infrastructure to deliver natural gas to the facility, and plans to construct and operate approximately 20 miles of 24-inch to 30-inch high pressure steel pipeline in Lorain County, Ohio, which would be installed adjacent to road right-of-way to the extent practicable.
- (2) In support of the application, NRG Pipeline states that it has the technical, financial, and managerial capability needed to operate a natural gas transmission system of the type planned to serve the Avon Lake facility, as well as the requisite financial means to construct the proposed pipeline. NRG Pipeline notes that it has provided, along with the application, proof of the Company's registration with the Ohio Secretary of State, a map depicting the corridors of two

potential pipeline routes, a summary of the Company's technical and managerial background, and financial information pertaining to NRG.

- (3) Additionally, NRG Pipeline explains that, at the appropriate time, it plans to file an application with the Ohio Power Siting Board for a certificate to construct and operate the proposed pipeline. NRG Pipeline further explains that, after the pipeline is constructed, the Company or one of its affiliates will enter into a special contract with any customer served by the pipeline, pursuant to R.C. 4905.31, with any such contracts being filed with the Commission for approval prior to commencement of service. For that reason, NRG Pipeline notes that it has not proposed a tariff at this time, and that the appropriate filing will be made with the Commission, if the Company or an affiliate later decides to establish a tariff. NRG Pipeline emphasizes that, although a limited number of other commercial or manufacturing customers may seek transportation of natural gas through the proposed pipeline, its purpose is to serve the Avon Lake facility, such that natural gas may be used in place of coal for the generation of electricity at the facility.
- (4) Upon review of NRG Pipeline's application, the Commission finds that the application is reasonable and should be approved. Specifically, we find that NRG Pipeline's request for authority to operate as an intrastate pipeline company in the state of Ohio should be granted. NRG Pipeline has provided sufficient information in support of its application, including several exhibits intended to document that the Company and its affiliates have the necessary technical and managerial expertise and financial resources to construct and operate the proposed pipeline. Accordingly, we find that NRG Pipeline is a public utility and pipeline company, pursuant to R.C. 4905.02 and 4905.03, and, as such, is subject to the Commission's jurisdiction. We further find that, pursuant to R.C. 4905.63, NRG Pipeline is subject to R.C. Chapters 4901, 4903, 4905, 4909, and any other applicable chapter set forth therein. We also emphasize that NRG Pipeline is subject to the ongoing jurisdiction and supervision of the Commission with respect to the gas pipeline safety standards and requirements, as set forth in R.C. 4905.90 through 4905.96 and Ohio Adm.Code Chapter
-

4901:1-16. Finally, we note that our approval of NRG Pipeline's application in this case does not relieve the Company of the obligation to file a proper application with the Commission, at the appropriate time, for approval of a proposed tariff or reasonable arrangement entered into with any customer, or to file the necessary application with the Ohio Power Siting Board for a certificate to construct and operate the proposed pipeline.

It is, therefore,

ORDERED, That NRG Pipeline's application be approved. It is, further,


ORDERED, That NRG Ohio Pipeline Company LLC be added to the roll of public utilities regulated by this Commission. It is, further,

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

THE PUBLIC UTILITIES COMMISSION OF OHIO

  
Todd A. Smitchler, Chairman

  
Steven D. Lesser

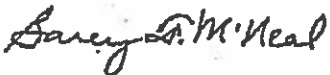
  
Lynn Slaby

  
M. Beth Trombold

  
Asim Z. Haque

SJP/sc

Entered in the Journal FEB 28 2014

  
Barry F. McNeal  
Secretary



IN THE COURT OF COMMON PLEAS  
LORAIN COUNTY, OHIO

NRG Ohio Pipeline Company, LLC

Plaintiff,

VS.

Moore Road, LLC, et al.

Defendant.

**General Division - CIVIL**

Subpoena and Return

Case No. 15CV187151

TO: (Print name and address below)

NRG Power Midwest, LP- Records Custodian

c/o Statutory Agent - CT Corporation System

1300 East Ninth Street

Cleveland, Ohio 44114

Attorney: Robert W. McIntyre, Esq.

Attorney for: Defendant Moore Road, LLC

Telephone: 216-642-3342

E-mail (optional): rwmcintyre@wegmanlaw.com

If you have any questions concerning this subpoena, please contact the attorney whose name and contact information are listed above.

YOU ARE HEREBY COMMANDED TO, AT THE DATE, TIME, AND LOCATION LISTED BELOW:

- ☐ attend and give testimony at a trial, hearing, or deposition.
- ☐ produce the following documents, electronically stored information, or tangible things at a trial, hearing, or deposition:
- ☒ produce and permit inspection and copying of the following documents or electronically stored information that are in your custody, possession, or control: Please see attached Exhibit A
- ☐ produce and permit inspection and copying, testing, or sampling of the following tangible things that are in your custody, possession, or control: \_\_\_\_\_
- ☐ permit entry upon designated land or other property that is in your possession or control described as (see Civ. R. 34): \_\_\_\_\_

DATE: 29th day of April, 20 16 TIME: 9:00 o'clock a.m./p.m.

LOCATION: Wegman Hessler & Vanderburg, 6055 Rockside Woods Blvd., Ste 200, Independence, Ohio 44131

WITNESS my signature and seal of said Court at Elyria, Ohio, this 19th day of April, 20 16.

~~THESE ARE THE ORIGINALS OF THE SUBPOENA~~

Attorney

~~THESE ARE THE ORIGINALS OF THE SUBPOENA~~

## OHIO RULES OF CIVIL PROCEDURE – PARTIAL TEXT OF RULE 45 (revised 07/17/2014)

**C) Protection of persons subject to subpoenas.**

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena.

(2)(a) A person commanded to produce under divisions (A)(1)(b), (iii), (iv), (v), or (vi) of this rule need not appear in person at the place of production or inspection unless commanded to attend and give testimony at a deposition, hearing, or trial.

(b) Subject to division (D)(2) of this rule, a person commanded to produce under divisions (A)(1)(b), (iii), (iv), (v), or (vi) of this rule may, within fourteen days after service of the subpoena or before the time specified for compliance if such time is less than fourteen days after service, serve upon the party or attorney designated in the subpoena written objections to production. If objection is made, the party serving the subpoena shall not be entitled to production except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena, upon notice to the person commanded to produce, may move at any time for an order to compel the production. An order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the production commanded.

(3) On timely motion, the court from which the subpoena was issued shall quash or modify the subpoena, or order appearance or production only under specified conditions, if the subpoena does any of the following:

(a) Fails to allow reasonable time to comply;

(b) Requires disclosure of privileged or otherwise protected matter and no exception or waiver applies;

(c) Requires disclosure of a fact known or opinion held by an expert not retained or specially employed by any party in anticipation of litigation or preparation for trial as described by Civ. R. 26(B)(5), if the fact or opinion does not describe specific events or occurrences in dispute and results from study by that expert that was not made at the request of any party;

(d) Subjects a person to undue burden.

(4) Before filing a motion pursuant to division (C)(3)(d) of this rule, a person resisting discovery under this rule shall attempt to resolve any claim of undue burden through discussions with the issuing attorney. A motion filed pursuant to division (C)(3)(d) of this rule shall be supported by an affidavit of the subpoenaed person or a certificate of that person's attorney of the efforts made to resolve any claim of undue burden.

(5) If a motion is made under division (C)(3)(c) or (C)(3)(d) of this rule, the court shall quash or modify the subpoena unless the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated.

**(D) Duties in responding to subpoena.**

(1) A person responding to a subpoena to produce documents shall, at the person's option, produce them as they are kept in the usual course of business or organized and labeled to correspond with the categories in the subpoena. A person producing documents or electronically stored information pursuant to a subpoena for them shall permit their inspection and copying by all parties present at the time and place set in the subpoena for inspection and copying.

(2) If a request does not specify the form or forms for producing electronically stored information, a person responding to a subpoena may produce the information in a form or forms in which the information is ordinarily maintained if that form is reasonably useable, or in any form that is reasonably useable. Unless ordered by the court or agreed to by the person subpoenaed, a person responding to a subpoena need not produce the same electronically stored information in more than one form.

(3) A person need not provide discovery of electronically stored information when the production imposes undue burden or expense. On motion to compel discovery or for a protective order, the person from whom electronically stored information is sought must show that the information is not reasonably accessible because of undue burden or expense. If a showing of undue burden or expense is made, the court may nonetheless order production of electronically stored information if the requesting party shows good cause. The court shall consider the factors in Civ. R. 26(B)(4) when determining if good cause exists. In ordering production of electronically stored information, the court may specify the format, extent, timing allocation of expenses and other conditions for the discovery of the electronically stored information.

(4) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials under Civ. R. 26(B)(3) or (4), the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(5) If information is produced in response to a subpoena that is subject to a claim of privilege or of protection as trial preparation material, the person making the claim may notify any party that received the information of the claim and basis for it. After being notified, a receiving party must promptly return, sequester, or destroy the specified information and any copies within the party's possession, custody or control. A party may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim of privilege or of protection as trial-preparation material. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The person who produced the information must preserve the information until the claim is resolved.

COURT OF COMMON PLEAS  
GENERAL DIVISION  
LORAIN COUNTY, OHIO

NRG Ohio Pipeline Company, LLC

Plaintiff,

VS.

Moore Road, LLC, et al.

Defendant.

CASE NO. 15CV187151

JUDGE Christopher R. Rothgery

RETURN OF SERVICE  
OF SUBPOENA

**NAME AND ADDRESS OF PERSON ON SUBPOENA:** NRG Power Midwest, LP - Records Custodian  
c/o Statutory Agent, CT Corporation System, 1300 East Ninth Street, Cleveland, Ohio 44114

**DATE, TIME AND LOCATION OF TRIAL OR HEARING:** \_\_\_\_\_  
Deposition: April 29, 2016 at 9:00am at Wegman Hessler & Vanderburg, 6055 Rockside Woods Blvd., Ste 200, Independence, Ohio 44131

(The following to be completed by Sheriff, process server, or attorney)

I received this Subpoena on \_\_\_\_\_, 20\_\_\_\_, and served the same on the person herein  
named on \_\_\_\_\_, 20\_\_\_\_.

Service was accomplished by \_\_\_\_\_  
\_\_\_\_\_.

I was unable to complete service for the following reason(s): \_\_\_\_\_  
\_\_\_\_\_.

**SHERIFF'S FEES**

Service and Return \_\_\_\_\_ \$ \_\_\_\_\_  
Mileage \_\_\_\_\_ # miles \_\_\_\_\_ \$ \_\_\_\_\_  
Copies \_\_\_\_\_ \$ \_\_\_\_\_  
Total: \$ \_\_\_\_\_

PHIL R. STAMMITT, Lorain Co. Sheriff

BY: \_\_\_\_\_  
Deputy

**PROCESS SERVER/ATTORNEY CERTIFICATION**

I certify that the foregoing information is correct to the  
best of my knowledge and belief.

\_\_\_\_\_  
(signature of individual performing service)

Print name: \_\_\_\_\_

# Exhibit “A”

IN THE COURT OF COMMON PLEAS  
LORAIN COUNTY, OHIO

|                                 |   |                                 |
|---------------------------------|---|---------------------------------|
| NRG OHIO PIPELINE COMPANY, LLC, | ) | CASE NO. 15CV187151             |
|                                 | ) |                                 |
| Plaintiff,                      | ) | JUDGE Christopher R. Rothgery   |
|                                 | ) |                                 |
| v.                              | ) | Magistrate James Blaszak        |
|                                 | ) |                                 |
| MOORE ROAD, LLC, <i>et al.</i>  | ) | NOTICE OF DEPOSITION OF RECORDS |
|                                 | ) | CUSTODIAN DESIGNATED BY NRG     |
| Defendants.                     | ) | POWER MIDWEST, LP               |

Please take notice that on April 29, 2016 beginning at 9:00 a.m., counsel for Defendant, Moore Road, LLC, will take the deposition of a person or persons identified and designated by NRG Power Midwest, LP as Records Custodian who is knowledgeable to testify with respect to the matters set forth on Exhibit A. The deposition will take place at the offices of Wegman Hessler & Vanderburg, 6055 Rockside Woods Blvd., Ste. 200, Independence, Ohio 44131. The deposition shall proceed in accordance with the Ohio Rules of Civil Procedure in the presence of a notary public, and be recorded by a stenographer, and shall continue from day-to-day until complete.

Respectfully submitted,

---

Robert W. McIntyre (0006768)  
Jay R. Carson (0068526)  
WEGMAN, HESSLER & VANDERBURG  
6055 Rockside Woods Boulevard, Suite 200  
Cleveland, Ohio 44131  
Phone: (216) 642-3342 / Fax: (216) 642-8826  
E-Mail: rwmcintyre@wegmanlaw.com  
jrcarson@wegmanlaw.com  
*Attorneys for Defendant Moore Road, LLC*

**CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of the foregoing Notice Of Deposition Of  
Records Custodian Designated By NRG Power Midwest, LP was served this 19<sup>th</sup> day of  
April, 2016 upon the following via e-mail:

Dennis M. O'Toole, Esq.  
O'Toole, McLaughlin, Dooley & Pecora Co., L.P.A.  
5455 Detroit Road  
Sheffield Village, Ohio 44054  
(dotoole@omdplaw.com)

*Attorney for Plaintiff*  
*NRG Ohio Pipeline Company, LLC*



---

Robert W McIntyre (0006768)

*An attorney for Defendant Moore Road, LLC*

## **EXHIBIT A**

(to Notice of Deposition of  
Records Custodian of NRG Power Midwest LP)

### **-Records-**

1. All correspondence by and between:
  - a. Pipeline and Power regarding the construction of that certain pipeline (the NRG Pipeline) described in the Affidavit of Alan Sawyer attached hereto as *Attachment 1* or otherwise.
  - b. Power and NRG Energy Inc. regarding the construction of that certain pipeline (the NRG Pipeline) described in the Affidavit of Alan Sawyer attached hereto as Attachment 1 (Affidavit), or otherwise.
2. Each record or document which establishes the necessity for the construction of the NRG Pipeline asset forth at Paragraph 12 of the Affidavit, or otherwise.
3. Each and every record regarding the acquisition, construction/installation of machinery and equipment for converting any boiler at the generating facility to natural gas.
4. Each and every record regarding the acquisition, construction/installation of machinery and equipment for controlling the emission of any boiler at the generating facility to natural gas.
5. Each record or document which describes or is related to the following:
  - a. Acquisition of real estate and /or easements for the construction of the NRG Pipeline;
  - b. Any construction contracts, bids, requests for bids or quotations for the construction of the NRG Pipeline; and
  - c. The interconnection of the NRG Pipeline with any gas transmission facility or pipeline owned by others than NRG Pipeline.
6. Each record or document which describes or is related to the following:
  - a. The acquisition of gas transmission pipe, pipeline materials, machinery and equipment or facilities for the construction and/or installation of the NRG Pipeline; and
  - b. The design, engineering, geotechnical investigation, or other scientific or technical investigations and/or work undertaken for the construction and installation of the NRG Pipeline.

7. Each record or document which describes or is related to any communication, administrative filing or application, or other submission to or with the following relating to the NRG Pipeline:
  - a. The Ohio Department of Natural Resources;
  - b. The Ohio Public Utilities Commission;
  - c. The Ohio Power Siting Board;
  - d. The Ohio Environmental Protection Agency;
  - e. City of Avon Ohio;
  - f. The City of Avon Lake Ohio;
  - g. Lorain County;
  - h. Any other agency of the State of Ohio; and
  - i. Any agency of the United States Government.
8. Each record or document which describes or is related to the following:
  - a. Acquisition of machinery or equipment for the conversion of any boiler at the Avon Generating facility to natural gas as a fuel;
  - b. Any construction contracts, bids, requests for bids or quotations for the construction of the natural gas fuel boiler conversion; and
  - c. The interconnection of the NRG Pipeline with the generating facility.
9. Each record or document which describes or is related to the following:
  - a. The acquisition of machinery, equipment or the construction of facility for the construction and/or installation of any emission control systems to enable the generating facility to continue to burn coal as a fuel;
  - b. The design, engineering, geotechnical investigation, or other scientific or technical investigations and/or work undertaken for the construction and installation of any emission control systems to enable the generating facility to continue to burn coal as a fuel; and
  - c. The purchase of coal fuel for the operation of the generating facility including but not limited to supply contracts, options, or other commercial undertakings to obtain a supply of coal for fuel at the generating facility.



10. Each record or document which describes or is related to any communication, administrative filing or application, or other submission to or with the following relating to conversion of any boiler at the generating facility to the use of natural gas as a fuel
  - a. The Ohio Department of Natural Resources;
  - b. The Ohio Public Utilities Commission;
  - c. The Ohio Power Siting Board;
  - d. The Ohio Environmental Protection Agency;
  - e. City of Avon Ohio;
  - f. The City of Avon Lake Ohio;
  - g. Lorain County;
  - h. Any other agency of the State of Ohio; and
  - i. Any agency of the United States Government.
11. Each record or document which describes or is related to any communication, administrative filing or application, or other submission to or with the following relating to conversion of any boiler at the generating facility to the use of coal as a fuel:
  - a. The Ohio Department of Natural Resources;
  - b. The Ohio Public Utilities Commission;
  - c. The Ohio Power Siting Board;
  - d. The Ohio Environmental Protection Agency;
  - e. City of Avon Ohio;
  - f. The City of Avon Lake Ohio;
  - g. Lorain County;
  - h. Any other agency of the State of Ohio; and
  - i. Any agency of the United States Government.
12. Each and every record or document that describes or refers to any contract or agreement by and between Pipeline and Power for the delivery of fuel gas for the generating facility described and identified at Paragraph 5 of the Affidavit, or otherwise.

13. Each and every record or document that evidences any 'plans to add natural gas as a fuel source' as set forth and described at Paragraph 6 of the Affidavit, or otherwise.
14. Each and every record or document that establishes, demonstrates and/ or substantiates the statement in Para 4 that "NRG Pipeline" is a wholly owned subsidiary of NRG Energy Inc.
15. Each and every record and document that demonstrates that plaintiff was 'organized to construct and operate approximately 20 miles of ...pipeline'. As set forth in Paragraph 8 of the Affidavit.
16. Each and every record and document that demonstrates that Pipeline has the technical, financial, and managerial capability needed to operate a natural gas transmission system as well as the requisite financial means to construct its proposed pipeline.
17. Each and every record and document that describes or is related to any decision or decisions process by which Power and/or NRG Energy Inc. have elected to continue fueling the generating facility with coal and not natural gas and or defer the conversion of the generating facility from coal to natural gas.
18. Each and every record and document that describes any projected or estimated costs to acquire natural gas for the generating facility described in Paragraph 5 of the Affidavit.
19. Each and every record and document that describes any studies, consultant's reports, or other facts or circumstances regarding or related to any safety set-back or buffer zone associated with the construction and operation of a high pressure gas pipeline.
20. Each and every record and document that describes any studies, consultant's reports, or other facts or circumstances regarding or related to any safety set-back or buffer zone associated with the construction and operation of a high pressure gas pipeline and the damages to or restriction of property adjacent to the proposed pipeline and or operation of a high pressure pipeline.

# Attachment No. 1

**AFFIDAVIT**

STATE OF OHIO            )  
                                  )    SS:  
COUNTY OF LORAIN        )

I, Alan Sawyer, being duly sworn under oath state the following is true.

1. I am over the age of eighteen (18) and competent to give the following declaration.

2. I am presently, and was at all relevant times, the Vice President of NRG Ohio Pipeline Company LLC ("NRG Pipeline" or "Company").

3. NRG Pipeline is a Delaware limited liability company that is registered to do business in the State of Ohio.

4. NRG Pipeline is a wholly-owned subsidiary of NRG Energy, Inc. ("NRG").

5. One of NRG's subsidiaries, NRG Power Midwest LP, owns a 735 MW coal-fired generating facility in Avon Lake, Ohio ("the Avon Lake facility").

6. NRG Power Midwest LP plans to add natural gas as a fuel source for the boilers at the Avon Lake facility.

7. NRG Pipeline was organized for transporting and transmitting natural gas through pipes to NRG Power Midwest LP's Avon Lake facility.

8. More specifically, NRG Pipeline was organized to construct and operate approximately 20 miles of 24-inch to 30-inch high pressure steel pipeline in Lorain County, Ohio to transport and transmit natural gas to NRG Power Midwest LP's Avon Lake facility.

9. On November 27, 2013, NRG Pipeline filed an application with the Public Utilities Commission of Ohio ("PUCO"), pursuant to R.C. 4905.02, R.C. 4905.03 and 4905.63,

---

for authority to operate as an intrastate pipeline company in the state of Ohio. The application was amended on February 12, 2014. See, Exhibit No. 1 attached hereto, *In the Matter of the Application of NRG Ohio Pipeline Company LLC for Authority to Operate as an Ohio Pipeline Company*, Case No. 13-2315-PL-ACE (P.U.C.O. Feb. 26, 2014) ("PUCO Finding and Order").


10. On February 26, 2014, the PUCO approved NRG Pipeline's application to operate as an intrastate pipeline company in the State of Ohio. PUCO Findings and Order at ¶4.

11. In approving NRG Pipeline's application, the PUCO found that "NRG Pipeline is a public utility and pipeline company, pursuant to R.C. 4905.02 and 4905.03, and, as such, is subject to the Commission's jurisdiction." PUCO Findings and Order at ¶4.

12. On November 6, 2014, NRG Pipeline determined that it was necessary to appropriate and acquire perpetual easement rights for the installation, construction, maintenance, operation and repair of a natural gas pipeline in, on, across, through and over the real property described in Paragraph 4 of NRG Pipeline's Verified Petition to Appropriate Property and to Fix Value Thereof ("Petition") to transport and transmit natural gas to NRG Power Midwest LP's Avon Lake facility.

13. On December 19, 2014, NRG Pipeline filed a letter of notification application, pursuant to Ohio Adm. Code 4906-11-01.

FURTHER AFFIANT SAYETH NAUGHT.

  
Alan Sawyer

SWORN TO BEFORE ME and subscribed in my presence this 25<sup>th</sup> day of March, 2015

  
NOTARY PUBLIC



KIM J. BEHM  
Notary Public - State of Ohio  
My Commission Expires  
September 18, 2018

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of NRG )  
Ohio Pipeline Company LLC for ) Case No. 13-2315-PL-ACE  
Authority to Operate as an Ohio Pipeline )  
Company. )

FINDING AND ORDER

The Commission finds:

- (1) On November 27, 2013, as amended on February 12, 2014, NRG Ohio Pipeline Company LLC (NRG Pipeline or Company) filed an application, pursuant to R.C. 4905.02, 4905.03(F), and 4905.63, for authority to operate as an intrastate pipeline company in the state of Ohio. In the application, NRG Pipeline states that it is a Delaware limited liability company that is registered to do business in Ohio. NRG Pipeline further states that it is a wholly-owned subsidiary of NRG Energy, Inc. (NRG), which is one of the largest power companies in the country, with nearly 100 generation assets producing more than 47,000 megawatts (MW), and retail energy providers serving more than 2 million customers in 16 states. NRG Pipeline notes that one of NRG's subsidiaries, NRG Power Midwest LP, owns a 753 MW coal-fired generating facility in Avon Lake, Ohio, and plans to add natural gas as a fuel source for the boilers at the facility. NRG Pipeline explains that it intends to provide the pipeline infrastructure to deliver natural gas to the facility, and plans to construct and operate approximately 20 miles of 24-inch to 30-inch high pressure steel pipeline in Lorain County, Ohio, which would be installed adjacent to road right-of-way to the extent practicable.
- (2) In support of the application, NRG Pipeline states that it has the technical, financial, and managerial capability needed to operate a natural gas transmission system of the type planned to serve the Avon Lake facility, as well as the requisite financial means to construct the proposed pipeline. NRG Pipeline notes that it has provided, along with the application, proof of the Company's registration with the Ohio Secretary of State, a map depicting the corridors of two

potential pipeline routes, a summary of the Company's technical and managerial background, and financial information pertaining to NRG.

- (3) Additionally, NRG Pipeline explains that, at the appropriate time, it plans to file an application with the Ohio Power Siting Board for a certificate to construct and operate the proposed pipeline. NRG Pipeline further explains that, after the pipeline is constructed, the Company or one of its affiliates will enter into a special contract with any customer served by the pipeline, pursuant to R.C. 4905.31, with any such contracts being filed with the Commission for approval prior to commencement of service. For that reason, NRG Pipeline notes that it has not proposed a tariff at this time, and that the appropriate filing will be made with the Commission, if the Company or an affiliate later decides to establish a tariff. NRG Pipeline emphasizes that, although a limited number of other commercial or manufacturing customers may seek transportation of natural gas through the proposed pipeline, its purpose is to serve the Avon Lake facility, such that natural gas may be used in place of coal for the generation of electricity at the facility.
- (4) Upon review of NRG Pipeline's application, the Commission finds that the application is reasonable and should be approved. Specifically, we find that NRG Pipeline's request for authority to operate as an intrastate pipeline company in the state of Ohio should be granted. NRG Pipeline has provided sufficient information in support of its application, including several exhibits intended to document that the Company and its affiliates have the necessary technical and managerial expertise and financial resources to construct and operate the proposed pipeline. Accordingly, we find that NRG Pipeline is a public utility and pipeline company, pursuant to R.C. 4905.02 and 4905.03, and, as such, is subject to the Commission's jurisdiction. We further find that, pursuant to R.C. 4905.63, NRG Pipeline is subject to R.C. Chapters 4901, 4903, 4905, 4909, and any other applicable chapter set forth therein. We also emphasize that NRG Pipeline is subject to the ongoing jurisdiction and supervision of the Commission with respect to the gas pipeline safety standards and requirements, as set forth in R.C. 4905.90 through 4905.96 and Ohio Adm.Code Chapter
-

4901:1-16. Finally, we note that our approval of NRG Pipeline's application in this case does not relieve the Company of the obligation to file a proper application with the Commission, at the appropriate time, for approval of a proposed tariff or reasonable arrangement entered into with any customer, or to file the necessary application with the Ohio Power Siting Board for a certificate to construct and operate the proposed pipeline.

It is, therefore,

ORDERED, That NRG Pipeline's application be approved. It is, further,

ORDERED, That NRG Ohio Pipeline Company LLC be added to the roll of public utilities regulated by this Commission. It is, further,

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

THE PUBLIC UTILITIES COMMISSION OF OHIO

  
Todd A. Snitchler, Chairman

  
Steven D. Lesser

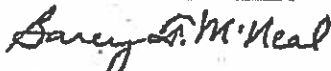
  
Lynn Slaby

  
M. Beth Trombold

  
Asim Z. Haque

SJP/sc

Entered in the Journal FEB 28 2014



Barry F. McNeal  
Secretary





8314 8699 0430 0022 4080 62  
RETURN RECEIPT (ELECTRONIC)



FROM

**WEGMAN, HESSLER & VANDERBURG**  
*A Legal Professional Association*  
SUITE 200  
6055 ROCKSIDE WOODS BOULEVARD  
CLEVELAND, OHIO 44131

(RWM)

To:

NRG Power Midwest, LP  
c/o CT Corporation System, Statutory Agent  
1300 East Ninth Street  
Cleveland, Ohio 44114

# Jon Husted Ohio Secretary

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Agent/Contact Name - Exact  
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### Corporation Details

| Corporation Details  |                             |                       |
|--|-----------------------------|-----------------------|
| Entity Number  | 1150880                     |                       |
| Business Name  | NRG POWER MIDWEST LP        |                       |
| Filing Type  | FOREIGN LIMITED PARTNERSHIP |                       |
| Status   | Active                      |                       |
| Original Filing Date   | 04/21/2000                  |                       |
| Expiry Date  |                             |                       |
| Location:  | County:                     | State: DELAWARE       |
| Agent / Registrant Information   |                             |                       |
| CT CORPORATION SYSTEM<br>1300 EAST NINTH STREET<br>CLEVELAND, OH 44114<br>Effective Date: 12/26/2012<br>Contact Status: Active |                             |                       |
| Filings  |                             |                       |
| Filing Type  | Date of Filing              | Document Number/Image |
| REGISTRATION OF FOREIGN LIMITED PARTNERSHIP  | 04/21/2000                  | 200011500523          |
| DOMESTIC AGENT SUBSEQUENT APPOINTMENT  | 09/04/2003                  | 200324800600          |
| AGENT ADDRESS CHANGE/LIMITED/LIABILITY/PARTNERS  | 08/20/2004                  | 200423301050          |
| AGENT ADDRESS CHANGE/LIMITED/LIABILITY/PARTNERS  | 12/06/2004                  | 200501301310          |
| CORRECTION/FOREIGN LIMITED PARTNERSHIP   | 12/16/2010                  | 201035100117          |
| DOMESTIC AGENT SUBSEQUENT APPOINTMENT  | 12/26/2012                  | 201236201663          |
| CORRECTION/FOREIGN LIMITED PARTNERSHIP   | 10/09/2013                  | 201328300291          |
| CORRECTION/FOREIGN LIMITED PARTNERSHIP   | 05/28/2014                  | 201414900473          |
| Old Names  |                             |                       |
| Effective Date   | Old Name                    |                       |
| 12/16/2010   | ORION POWER MIDWEST, L.P.   |                       |
| 05/28/2014   | GENON POWER MIDWEST, LP     |                       |

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Ohio Secretary of State

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Detailed Business Search  
Number Search  
Agent/Contact Name  
Agent/Contact Name - Exact  
Prior Business Name

### Corporation Details

| Corporation Details  |                                   |                       |
|--|-----------------------------------|-----------------------|
| Entity Number  | 2236402                           |                       |
| Business Name  | NRG POWER MIDWEST GP LLC          |                       |
| Filing Type  | FOREIGN LIMITED LIABILITY COMPANY |                       |
| Status   | Active                            |                       |
| Original Filing Date   | 10/09/2013                        |                       |
| Expiry Date  |                                   |                       |
| Location:  | County:                           | State: DELAWARE       |
| Agent / Registrant Information   |                                   |                       |
| CT CORPORATION SYSTEM<br>1300 EAST NINTH STREET<br>CLEVELAND, OH 44114<br>Effective Date: 10/09/2013<br>Contact Status: Active |                                   |                       |
| Filings  |                                   |                       |
| Filing Type  | Date of Filing                    | Document Number/Image |
| REG. OF FOR. PROFIT LIM. LIAB. CO.   | 10/09/2013                        | 201328300290          |

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Apr. 28. 2016 3:33PM Judge Rothgery

No. 2596 P. 2/2



CLERK'S ENDORSEMENT

COURT OF COMMON PLEAS  
LORAIN COUNTY, OHIO

Tom Orlando, Clerk

**JOURNAL ENTRY**

**Christopher R. Rothgery, Judge**

Date 4/28/16

Case No. 15CV187151

NRG OHIO PIPELINE COMPANY LLC

Plaintiff

DENNIS M O'TOOLE

Plaintiff's Attorney (440)930-4001

VS

MOORE ROAD LLC

Defendant

ROBERT MCINTYRE

Defendant's Attorney (216)642-3342

Status Conference held. Discovery remains ongoing. The MSJ briefing schedule previously set by this Court is held in abeyance until further Order of this Court. The Case is set for a further telephone Status Conference on Friday, May 20, 2016 at 10:00 a.m. Plaintiff's counsel shall initiate said conference between counsel and then with the Court at 440-329-5573 or 440-329-5571.

Copies provided to Counsel by fax.

VOL \_\_\_\_\_ PAGE \_\_\_\_\_

  
for Christopher R. Rothgery, Judge Magistrate

CC: ATTY. O'TOOLE by fax -440-934-7200  
ATTY. MCINTYRE by fax 216-642-8826

## Shannon M. Mussehl

---

**From:** Shannon M. Mussehl  
**Sent:** Tuesday, April 19, 2016 5:05 PM  
**To:** Dennis O'Toole (dotoole@omdplaw.com)  
**Cc:** Robert W. McIntyre; Jay R. Carson  
**Subject:** NRG Ohio Pipeline Company, LLC v. Moore Road // Lorain County Court of Common Pleas Case No. 15-CV-187151  
**Attachments:** LTR RWM to Dennis O'Toole encl Notices of Depo (NRG v. Moore Rd) 4-19-2016.pdf

Attached please find correspondence from Attorney Robert W. McIntyre, which has been prepared with regard to the subject matter. Should you have any questions, please feel free to contact Mr. McIntyre directly.

Shannon M. Mussehl  
Wegman, Hessler & Vanderburg  
6055 Rockside Woods Boulevard, Suite 200  
Cleveland, OH 44131  
Telephone: 216.642.3342

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*Legal Professional Association*  
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Cleveland, OH 44131  
Telephone: (216) 642-3342  
Facsimile: (216) 642-8826  
www.wegmanlaw.com

**Robert W. McIntyre**

**Of Counsel**  
rwmcintyre@wegmanlaw.com

April 19, 2016

**VIA E-MAIL: dotoole@omdplaw.com**

**AND REGULAR U.S. MAIL**

Dennis M. O'Toole, Esq.  
O'Toole, McLaughlin, Dooley & Pecora Co., L.P.A.  
5455 Detroit Road  
Sheffield Village, Ohio 44054

Re: **NRG Ohio Pipeline Company, LLC v. Moore Road, LLC, et al.**  
**Lorain County Court of Common Pleas Case No. 15-CV-187151**

Dear Mr. O'Toole:

Please find enclosed the Notices of Depositions for:

1. Alan Sawyer as the Plaintiff's affiant in the Summary Judgment proceedings;
2. A Representative of NRG Ohio Pipeline Company LLC; pursuant to Rule 30(B) (5); noting and understanding that Mr. Sawyer may not be knowledgeable with respect to all of the topics of examination set forth in the Notice;
3. The Records Custodian of NRG Ohio Pipeline Company LLC;
4. A Representative of NRG Power Midwest, LP as identified by the Sawyer Affidavit, and presuming that this is the entity which owns and/or operates the Avon Power Plant; and
5. The Records Custodian of NRG Power Midwest LP, pursuant to Rule 30(B) (5).

Since I first addressed these matters in my e-mail of March 16, 2016 (Attachment No. 1) and indeed you acknowledged the receipt of the foregoing, and your request/response in your e-mail of April 6, 2016, (Attachment No. 2) the notices cannot be a surprise to you or your client. Additionally, since your client has raised matters for which the examination and records are

sought, in its Motion; it is incumbent upon them to provide the necessary support for their contentions.

Turning next to the Notices for "Power", may have been misidentified by your client as "LP" instead of "LLC" we are proceeding as if they are one and the same; and in the absence of any known contact at "Power" we are simply serving them by way of their domestic agent, CT Corporation Services.


Next, acknowledging the scheduling issues with your practice, Mr. Sawyer's schedule and travel needs, the unknown of "Power"; and the possible need for more time for your client and likely "Power" to prepare for the Noticed Records Depositions; I will be reasonably flexible in regards to scheduling, provided that your client will stipulate to any appropriate extensions of the response deadlines for its pending Motion.

Lastly, it appears that your client is not receptive to Moore Road's settlement offer, thus we will press forward with responding to the Motion, and moving contra; thus it might be opportune to be prepared to discuss the discovery pending and the failure of settlement discussions at the CMC on the 28<sup>th</sup>.

Thanks for your anticipated cooperation, if you have any questions, don't hesitate to contact me or Jay Carson.

Very truly yours,

WEGMAN HESSLER & VANDERBURG

A handwritten signature in dark ink, appearing to read "Robert W. McIntyre", with a long horizontal flourish extending to the right.

Robert W. McIntyre

RWM/smm  
Encl.

# Attachment No. 1

(My E-mail dated March 16, 2016)



**Robert W. McIntyre**

---

**From:** Robert W. McIntyre  
**Sent:** Wednesday, March 16, 2016 2:55 PM  
**To:** Dennis O'Toole  
**Subject:** Re: NRG/Moore Rd.

also think about days in april for nrg deps probably 4-5 in total + records depos of pipeline power and parent co starting with your affiant

Sent from my iPhone

On Mar 16, 2016, at 2:49 PM, "Dennis O'Toole" <[dotoole@omdplaw.com](mailto:dotoole@omdplaw.com)> wrote:

Bob, thanks for the letter. I will send on to my client and advise of response upon receipt. Regards,  
Dennis

**Dennis M. O'Toole**  
5455 Detroit Road  
Sheffield Village, Ohio 44054  
Tel: 440.930.4001  
Fax: 440.934.7206  
Web: [www.omdplaw.com](http://www.omdplaw.com)

<image001.jpg>

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# Attachment No. 2

(Your E-mail of April 6, 2016)

**Robert W. McIntyre**

---

**From:** Robert W. McIntyre  
**Sent:** Wednesday, April 06, 2016 12:45 PM  
**To:** 'Dennis O'Toole'  
**Cc:** Robert W. McIntyre; Jay R. Carson; Shannon M. Mussehl  
**Subject:** Moore Road

Dennis...

I have written you twice regarding the Moore Road situation

First, [3.16.16] after NRF's summary judgment motion was filed, in regards to my request to you for dates when representatives of NRG would be available for deposition either in Lorain or here; and

Second, [3.16.16] with regard to Moore's most recent detailed settlement proposal

You have not replied to either of the above.

In view of the Court's setting this matter for a CMC on the 28<sup>th</sup> , and the May 6 response date for NRG's SJ motion, please expect notices of deposition and subpoenas for NRG Pipeline and NRG Energy representatives/named witnesses for which there will be extremely limited opportunity for schedule changes.

Bob

Robert W. McIntyre  
Wegman, Hessler & Vanderburg  
6055 Rockside Woods Boulevard, Suite 200  
Cleveland, OH 44131  
Telephone: 216.642.3342

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## Robert W. McIntyre

---

**From:** Dennis O'Toole <dotoole@omdplaw.com>  
**Sent:** Wednesday, April 06, 2016 1:43 PM  
**To:** Robert W. McIntyre  
**Subject:** RE: Moore Road

Hi Bob. Thanks for the reminder. I did send your email of 3/16 on to my client. I will reach out again today and see what's up.

As to dates, and again I do not know what A. Sawyer's availability is, here are mine: April 11, 19, 20, 26; May looks pretty bleak frankly as I have a trial starting 5/4 (Common Pleas) and another 5/9 in federal court before Judge Nugent. I am #1 on both cases so they are going forward. The 5/9 will last all week. I can be available the 16<sup>th</sup>-18<sup>th</sup>. Then I am gone for some time, back in late June, not sure exactly when.  
Let me know what works for you and I will get NRG's people you want/need.

Dennis M. O'Toole  
5455 Detroit Road  
Sheffield Village, Ohio 44054  
Tel: 440.930.4001  
Fax: 440.934.7206  
Web: [www.omdplaw.com](http://www.omdplaw.com)



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---

**From:** Robert W. McIntyre [mailto:[RWMcIntyre@wegmanlaw.com](mailto:RWMcIntyre@wegmanlaw.com)]  
**Sent:** Wednesday, April 6, 2016 12:45 PM  
**To:** Dennis O'Toole <dotoole@omdplaw.com>  
**Cc:** Robert W. McIntyre <[RWMcIntyre@wegmanlaw.com](mailto:RWMcIntyre@wegmanlaw.com)>; Jay R. Carson <[JRCarson@wegmanlaw.com](mailto:JRCarson@wegmanlaw.com)>; Shannon M. Mussehl <[SMMussehl@wegmanlaw.com](mailto:SMMussehl@wegmanlaw.com)>  
**Subject:** Moore Road

Dennis...

I have written you twice regarding the Moore Road situation

First, [3.16.16] after NRF's summary judgment motion was filed, in regards to my request to you for dates when representatives of NRG would be available for deposition either in Lorain or here; and

Second, [3.16.16] with regard to Moore's most recent detailed settlement proposal

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Bob

Robert W. McIntyre  
Wegman, Hessler & Vanderburg  
6055 Rockside Woods Boulevard, Suite 200  
Cleveland, OH 44131  
Telephone: 216.642.3342

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# Notices of Deposition

IN THE COURT OF COMMON PLEAS  
LORAIN COUNTY, OHIO

|                                |   |                               |
|--------------------------------|---|-------------------------------|
| NRG OHIO PIPEINE COMPANY, LLC, | ) | CASE NO. 15CV187151           |
|                                | ) |                               |
| Plaintiff,                     | ) | JUDGE Christopher R. Rothgery |
|                                | ) |                               |
| v.                             | ) | Magistrate James Blaszak      |
|                                | ) |                               |
| MOORE ROAD, LLC, <i>et al.</i> | ) |                               |
|                                | ) | NOTICE OF                     |
| Defendants.                    | ) | DEPOSITION OF ALAN SAWYER     |

Please take notice that on April 28, 2016 beginning at 1:00 p.m., counsel for Defendant, Moore Road, LLC, will take the deposition of Alan Sawyer. The deposition will take place at the offices of Wegman Hessler & Vanderburg, 6055 Rockside Woods Blvd., Ste. 200, Independence, Ohio 44131. The deposition shall proceed in accordance with the Ohio Rules of Civil Procedure in the presence of a notary public, and be recorded by a stenographer, and shall continue from day-to-day until complete.

Respectfully submitted,



---

Robert W. McIntyre (0006768)  
Jay R. Carson (0068526)  
WEGMAN, HESSLER & VANDERBURG  
6055 Rockside Woods Boulevard, Suite 200  
Cleveland, Ohio 44131  
Phone: (216) 642-3342 / Fax: (216) 642-8826  
E-Mail: rwmcintyre@wegmanlaw.com  
jrcarson@wegmanlaw.com  
*Attorneys for Defendant Moore Road, LLC*

**CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of the foregoing Notice of Deposition of Alan Sawyer was served this 19<sup>th</sup> day of April, 2016 upon the following via e-mail:

Dennis M. O'Toole, Esq.  
O'Toole, McLaughlin, Dooley & Pecora Co., L.P.A.  
5455 Detroit Road  
Sheffield Village, Ohio 44054  
(dotoole@omdplaw.com)

*Attorney for Plaintiff  
NRG Ohio Pipeline Company, LLC*

A handwritten signature in black ink, appearing to be 'R. McIntyre', written over a horizontal line.

Robert W McIntyre (0006768)

*An attorney for Defendant Moore Road, LLC*



IN THE COURT OF COMMON PLEAS  
LORAIN COUNTY, OHIO

|                                 |   |                                |
|---------------------------------|---|--------------------------------|
| NRG OHIO PIPELINE COMPANY, LLC, | ) | CASE NO. 15CV187151            |
|                                 | ) |                                |
| Plaintiff,                      | ) | JUDGE Christopher R. Rothgery  |
|                                 | ) |                                |
| v.                              | ) | Magistrate James Blaszak       |
|                                 | ) |                                |
| MOORE ROAD, LLC, <i>et al.</i>  | ) | NOTICE OF DEPOSITION OF A      |
|                                 | ) | REPRESENTATIVE DESIGNATED BY   |
| Defendants.                     | ) | PLAINTIFF NRG OHIO PIPELINE    |
|                                 | ) | COMPANY, LLC, PURSUANT TO OHIO |
|                                 | ) | RULE 30(B)(5)                  |

Please take notice that on **April 29, 2016** beginning at **2:00 p.m.**, counsel for Defendant, Moore Road, LLC, will take the deposition of a person or persons identified and designated by Plaintiff, pursuant to ORCP 30(B)(5), who is knowledgeable to testify with respect to the matters set forth on Exhibit A. The deposition will take place at the offices of Wegman Hessler & Vanderburg, 6055 Rockside Woods Blvd., Ste. 200, Independence, Ohio 44131. The deposition shall proceed in accordance with the Ohio Rules of Civil Procedure in the presence of a notary public, and be recorded by a stenographer, and shall continue from day-to-day until complete.

Respectfully submitted,



---

Robert W. McIntyre (0006768)

Jay R. Carson (0068526)

WEGMAN, HESSLER & VANDERBURG

6055 Rockside Woods Boulevard, Suite 200

Cleveland, Ohio 44131

Phone: (216) 642-3342 / Fax: (216) 642-8826

E-Mail: [rwmcintyre@wegmanlaw.com](mailto:rwmcintyre@wegmanlaw.com)

[jrcarson@wegmanlaw.com](mailto:jrcarson@wegmanlaw.com)

*Attorneys for Defendant Moore Road, LLC*

**CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of the foregoing Notice Of Deposition Of A Representative Designated By Plaintiff NRG Ohio Pipeline Company, LLC, Pursuant To Ohio Rule 30(B)(5) was served this 19th day of April, 2016 upon the following via e-mail:

Dennis M. O'Toole, Esq.  
O'Toole, McLaughlin, Dooley & Pecora Co., L.P.A.  
5455 Detroit Road  
Sheffield Village, Ohio 44054  
(dotoole@omdplaw.com)

*Attorney for Plaintiff  
NRG Ohio Pipeline Company, LLC*



---

Robert W McIntyre (0006768)

*An attorney for Defendant Moore Road, LLC*

## **EXHIBIT A**

(to Notice of Deposition Of A Representative Designated By Plaintiff  
NRG Ohio Pipeline Company, LLC, Pursuant To Ohio Rule 30(B)(5))

1. Matters and topics for examination of each designated witness:
  - a. The facts and circumstances relating to the NRG Ohio Pipeline Company LLC (Pipeline) and NRG Power Midwest LLC regarding the construction of that certain pipeline (the NRG Pipeline) described in the Affidavit of Alan Sawyer *attached hereto as Attachment 1* (Affidavit), or otherwise.
  - b. The facts and circumstances relating to Pipeline and NRG Energy Inc. regarding the construction of that certain pipeline (the NRG Pipeline) described in the Affidavit of Alan Sawyer attached hereto as Attachment 1 (Affidavit), or otherwise.
2. The facts and circumstances relating to or which establishes the “necessity” for the construction of the NRG pipeline as set forth at Paragraph 12 of the Affidavit or otherwise.
3. Each and every record and document provided to Pipeline setting forth the usage of natural gas as a fuel for the Avon Generating facility.
4. The facts and circumstances relating to any contract or agreement by and between Pipeline and NRG Power Midwest LP for the delivery of fuel gas for the generating facility described and identified at Paragraph 5 of the Affidavit or otherwise.
5. The facts and circumstances relating to any ‘plans to add natural gas as a fuel source’ as set forth and described at Paragraph 6 of the Affidavit or otherwise.
6. The facts and circumstances relating to or which demonstrates and/ or substantiates the statement in Paragraph 4 that “NRG Pipeline” is a wholly owned subsidiary of NRG Energy Inc. and any relationship between Pipeline, NRG Power Midwest LP and NRG Energy Inc.
7. The facts and circumstances relating to or which demonstrates that Pipeline was ‘organized to construct and operate approximately 20 miles of ...pipeline’, as set forth in Paragraph 8 of the Affidavit or otherwise.
8. The facts and circumstances relating to or which demonstrates that Pipeline has the technical, financial, and managerial capability needed to operate a natural gas transmission system as well as the requisite financial means to construct its proposed pipeline.
9. The facts and circumstances relating to any decision or decisions process by which NRG Midwest Power LP and/or NRG Energy Inc. have elected to continue fueling the generating facility with coal, and not natural gas and/or defer the conversion of the generating facility from coal to natural gas.

10. All contacts, applications, or other materials submitted to and or received from the Ohio EPA:
  - a. For the construction/installation of emissions control equipment on the generating facility for the purpose of continuing to use coal as fuel for the generating facility and/or not natural gas as a fuel.
  - b. For the designation of one or more boilers as a standby coal fueled unit that will not be converted to natural gas fuel.
  - c. The decision to not operate any of the several boilers at the generating facility in the future.
11. The facts and circumstances relating to or regarding the acquisition, construction/installation of machinery and equipment for converting any boiler at the generating facility to natural gas.
12. The facts and circumstances relating to or regarding the acquisition, construction/installation of machinery and equipment for controlling the emission of any boiler at the generating facility that would be fueled by coal.
13. The facts and circumstances relating to or which demonstrates or describes any projected or estimated cost of obtaining natural gas from Pipeline and or the revenue stream of Pipeline from the sale of natural gas to the generating facility described in Paragraph 5 of the Affidavit.
14. Any studies, consultant's reports, or other facts or circumstances regarding or related to any safety set-back or buffer zone associated with the construction and operation of a high pressure gas pipeline.
15. Any studies, consultant's reports, or other facts or circumstances regarding or related to any safety set-back or buffer zone associated with the construction and operation of a high pressure gas pipeline and the damages to or restriction of property adjacent to the proposed pipeline and or operation of a high pressure pipeline.

# Attachment No. 1

**AFFIDAVIT**

STATE OF OHIO            )  
                                  )  
COUNTY OF LORAIN        )     SS:

I, Alan Sawyer, being duly sworn under oath state the following is true.

1. I am over the age of eighteen (18) and competent to give the following declaration.

2. I am presently, and was at all relevant times, the Vice President of NRG Ohio Pipeline Company LLC ("NRG Pipeline" or "Company").

3. NRG Pipeline is a Delaware limited liability company that is registered to do business in the State of Ohio.

4. NRG Pipeline is a wholly-owned subsidiary of NRG Energy, Inc. ("NRG").

5. One of NRG's subsidiaries, NRG Power Midwest LP, owns a 735 MW coal-fired generating facility in Avon Lake, Ohio ("the Avon Lake facility").

6. NRG Power Midwest LP plans to add natural gas as a fuel source for the boilers at the Avon Lake facility.

7. NRG Pipeline was organized for transporting and transmitting natural gas through pipes to NRG Power Midwest LP's Avon Lake facility.

8. More specifically, NRG Pipeline was organized to construct and operate approximately 20 miles of 24-inch to 30-inch high pressure steel pipeline in Lorain County, Ohio to transport and transmit natural gas to NRG Power Midwest LP's Avon Lake facility.

9. On November 27, 2013, NRG Pipeline filed an application with the Public Utilities Commission of Ohio ("PUCO"), pursuant to R.C. 4905.02, R.C. 4905.03 and 4905.63,

---

for authority to operate as an intrastate pipeline company in the state of Ohio. The application was amended on February 12, 2014. See, Exhibit No. 1 attached hereto, *In the Matter of the Application of NRG Ohio Pipeline Company LLC for Authority to Operate as an Ohio Pipeline Company*, Case No. 13-2315-PL-ACE (P.U.C.O. Feb. 26, 2014) ("PUCO Finding and Order").

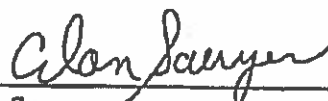
10. On February 26, 2014, the PUCO approved NRG Pipeline's application to operate as an intrastate pipeline company in the State of Ohio. PUCO Findings and Order at ¶4.

11. In approving NRG Pipeline's application, the PUCO found that "NRG Pipeline is a public utility and pipeline company, pursuant to R.C. 4905.02 and 4905.03, and, as such, is subject to the Commission's jurisdiction." PUCO Findings and Order at ¶4.

12. On November 6, 2014, NRG Pipeline determined that it was necessary to appropriate and acquire perpetual easement rights for the installation, construction, maintenance, operation and repair of a natural gas pipeline in, on, across, through and over the real property described in Paragraph 4 of NRG Pipeline's Verified Petition to Appropriate Property and to Fix Value Thereof ("Petition") to transport and transmit natural gas to NRG Power Midwest LP's Avon Lake facility.

13. On December 19, 2014, NRG Pipeline filed a letter of notification application, pursuant to Ohio Adm. Code 4906-11-01.

FURTHER AFFIANT SAYETH NAUGHT.

  
Alan Sawyer

SWORN TO BEFORE ME and subscribed in my presence this 25<sup>th</sup> day of March, 2015

  
NOTARY PUBLIC



KIM J. BEHM  
Notary Public - State of Ohio  
My Commission Expires  
September 18, 2016

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of NRG )  
Ohio Pipeline Company LLC for ) Case No. 13-2315-PL-ACB  
Authority to Operate as an Ohio Pipeline )  
Company. )

FINDING AND ORDER

The Commission finds:

- (1) On November 27, 2013, as amended on February 12, 2014, NRG Ohio Pipeline Company LLC (NRG Pipeline or Company) filed an application, pursuant to R.C. 4905.02, 4905.03(F), and 4905.63, for authority to operate as an intrastate pipeline company in the state of Ohio. In the application, NRG Pipeline states that it is a Delaware limited liability company that is registered to do business in Ohio. NRG Pipeline further states that it is a wholly-owned subsidiary of NRG Energy, Inc. (NRG), which is one of the largest power companies in the country, with nearly 100 generation assets producing more than 47,000 megawatts (MW), and retail energy providers serving more than 2 million customers in 16 states. NRG Pipeline notes that one of NRG's subsidiaries, NRG Power Midwest LP, owns a 753 MW coal-fired generating facility in Avon Lake, Ohio, and plans to add natural gas as a fuel source for the boilers at the facility. NRG Pipeline explains that it intends to provide the pipeline infrastructure to deliver natural gas to the facility, and plans to construct and operate approximately 20 miles of 24-inch to 30-inch high pressure steel pipeline in Lorain County, Ohio, which would be installed adjacent to road right-of-way to the extent practicable.
- (2) In support of the application, NRG Pipeline states that it has the technical, financial, and managerial capability needed to operate a natural gas transmission system of the type planned to serve the Avon Lake facility, as well as the requisite financial means to construct the proposed pipeline. NRG Pipeline notes that it has provided, along with the application, proof of the Company's registration with the Ohio Secretary of State, a map depicting the corridors of two



potential pipeline routes, a summary of the Company's technical and managerial background, and financial information pertaining to NRG.

- (3) Additionally, NRG Pipeline explains that, at the appropriate time, it plans to file an application with the Ohio Power Siting Board for a certificate to construct and operate the proposed pipeline. NRG Pipeline further explains that, after the pipeline is constructed, the Company or one of its affiliates will enter into a special contract with any customer served by the pipeline, pursuant to R.C. 4905.31, with any such contracts being filed with the Commission for approval prior to commencement of service. For that reason, NRG Pipeline notes that it has not proposed a tariff at this time, and that the appropriate filing will be made with the Commission, if the Company or an affiliate later decides to establish a tariff. NRG Pipeline emphasizes that, although a limited number of other commercial or manufacturing customers may seek transportation of natural gas through the proposed pipeline, its purpose is to serve the Avon Lake facility, such that natural gas may be used in place of coal for the generation of electricity at the facility.
- (4) Upon review of NRG Pipeline's application, the Commission finds that the application is reasonable and should be approved. Specifically, we find that NRG Pipeline's request for authority to operate as an intrastate pipeline company in the state of Ohio should be granted. NRG Pipeline has provided sufficient information in support of its application, including several exhibits intended to document that the Company and its affiliates have the necessary technical and managerial expertise and financial resources to construct and operate the proposed pipeline. Accordingly, we find that NRG Pipeline is a public utility and pipeline company, pursuant to R.C. 4905.02 and 4905.03, and, as such, is subject to the Commission's jurisdiction. We further find that, pursuant to R.C. 4905.63, NRG Pipeline is subject to R.C. Chapters 4901, 4903, 4905, 4909, and any other applicable chapter set forth therein. We also emphasize that NRG Pipeline is subject to the ongoing jurisdiction and supervision of the Commission with respect to the gas pipeline safety standards and requirements, as set forth in R.C. 4905.90 through 4905.96 and Ohio Adm.Code Chapter
-

4901:1-16. Finally, we note that our approval of NRG Pipeline's application in this case does not relieve the Company of the obligation to file a proper application with the Commission, at the appropriate time, for approval of a proposed tariff or reasonable arrangement entered into with any customer, or to file the necessary application with the Ohio Power Siting Board for a certificate to construct and operate the proposed pipeline.

It is, therefore,

ORDERED, That NRG Pipeline's application be approved. It is, further,

ORDERED, That NRG Ohio Pipeline Company LLC be added to the roll of public utilities regulated by this Commission. It is, further,

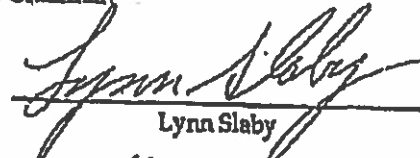
ORDERED, That a copy of this Finding and Order be served upon all interested persons and parties of record.


THE PUBLIC UTILITIES COMMISSION OF OHIO

  
Todd A. Snitchler, Chairman

  
Steven D. Lesser

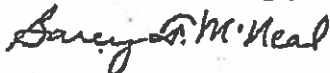
  
M. Beth Trombold

  
Lynn Slaby

  
Asim Z. Haque

SJP/sc

Entered in the Journal FEB 26 2014

  
Barry F. McNeal  
Secretary

IN THE COURT OF COMMON PLEAS  
LORAIN COUNTY, OHIO

|                                 |   |                                |
|---------------------------------|---|--------------------------------|
| NRG OHIO PIPELINE COMPANY, LLC, | ) | CASE NO. 15CV187151            |
|                                 | ) |                                |
| Plaintiff,                      | ) | JUDGE Christopher R. Rothgery  |
|                                 | ) |                                |
| v.                              | ) | Magistrate James Blaszak       |
|                                 | ) |                                |
| MOORE ROAD, LLC, <i>et al.</i>  | ) | NOTICE OF DEPOSITION OF A      |
|                                 | ) | RECORDS CUSTODIAN DESIGNATED   |
| Defendants.                     | ) | BY PLAINTIFF NRG OHIO PIPELINE |
|                                 | ) | COMPANY, LLC                   |

Please take notice that on April 29, 2016 beginning at 2:00 p.m., counsel for Defendant, Moore Road, LLC, will take the deposition of a person or persons identified and designated by Plaintiff as Records Custodian and who is knowledgeable to testify with respect to the matters set forth on Exhibit A. The deposition will take place at the offices of Wegman Hessler & Vanderburg, 6055 Rockside Woods Blvd., Ste. 200, Independence, Ohio 44131. The deposition shall proceed in accordance with the Ohio Rules of Civil Procedure in the presence of a notary public, and be recorded by a stenographer, and shall continue from day-to-day until complete.

Respectfully submitted,

---

Robert W. McIntyre (0006768)  
Jay R. Carson (0068526)  
WEGMAN, HESSLER & VANDERBURG  
6055 Rockside Woods Boulevard, Suite 200  
Cleveland, Ohio 44131  
Phone: (216) 642-3342 / Fax: (216) 642-8826  
E-Mail: rwmcintyre@wegmanlaw.com  
jrcarson@wegmanlaw.com  
*Attorneys for Defendant Moore Road, LLC*

**CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of the foregoing Notice Of Deposition Of A  
Records Custodian Designated By Plaintiff NRG Ohio Pipeline Company, LLC, was served this  
19th day of April, 2016 upon the following via e-mail:

Dennis M. O'Toole, Esq.  
O'Toole, McLaughlin, Dooley & Pecora Co., L.P.A.  
5455 Detroit Road  
Sheffield Village, Ohio 44054  
(dotoole@omdplaw.com)

*Attorney for Plaintiff  
NRG Ohio Pipeline Company, LLC*

A handwritten signature in black ink, appearing to be 'R' followed by a long horizontal stroke.

---

Robert W McIntyre (0006768)

*An attorney for Defendant Moore Road, LLC*

## **EXHIBIT A**

(to Notice of Deposition Of A Records Custodian  
Designated By Plaintiff NRG Ohio Pipeline Company, LLC)

### **-Records-**

1. All correspondence by and between:
  - a. NRG Ohio Pipeline, LLC and NRG Power Midwest LP regarding the construction of that certain pipeline (the NRG Pipeline) described in the Affidavit of Alan Sawyer *attached hereto as attachment 1*.
  - b. Pipeline and NRG Energy Inc. regarding the construction of that certain pipeline (the NRG Pipeline) described in the Affidavit of Alan Sawyer attached hereto as attachment 1 (Affidavit).
2. Each record or document which establishes the necessity for the construction of the NRG pipeline asset forth at Paragraph 12 of the Affidavit or otherwise.
3. Each and every record regarding the acquisition, construction/installation of machinery and equipment for converting any boiler at the generating facility to natural gas.
4. Each and every record regarding the acquisition of, construction/installation of machinery and equipment for controlling the emission of any boiler at the generating facility to natural gas.
5. Each record or document which describes or is related to the following:
  - a. Acquisition of real estate and /or easements for the construction of the NRG Pipeline;
  - b. Any construction contracts, bids, requests for bids or quotations for the construction of the NRG Pipeline; and
  - c. The interconnection of the NRG Pipeline with any gas transmission facility or pipeline owned by others than NRG Pipeline.
6. Each record or document which describes or is related to the following:
  - a. The acquisition of gas transmission pipe, pipeline materials, machinery and equipment or facilities for the construction and/or installation of the NRG Pipeline; and
  - b. The design, engineering, geotechnical investigation, or other scientific or technical investigations and/or work undertaken for the construction and installation of the NRG Pipeline.

7. Each record or document which describes or is related to any communication, administrative filing or application, or other submission to or with the following relating to the NRG Pipeline:
  - a. The Ohio Department of Natural Resources;
  - b. The Ohio Public Utilities Commission;
  - c. The Ohio Power Siting Board;
  - d. The Ohio Environmental Protection Agency;
  - e. City of Avon Ohio;
  - f. The City of Avon Lake Ohio;
  - g. Lorain County;
  - h. Any other agency of the State of Ohio; and
  - i. Any agency of the United States Government.
8. Each and every record or document that describes or refers to any contract or agreement by and between Plaintiff and NRG Power Midwest LP for the delivery of fuel gas for the generating facility described and identified at Paragraph 5 of the Affidavit or otherwise.
9. Each and every record or document that evidences any 'plans to add natural gas as a fuel source' as set forth and described at Paragraph 6 of the Affidavit.
10. Each and every record or document that establishes, demonstrates and/ or substantiates the statement in Paragraph 4 that "NRG Pipeline" is a wholly owned subsidiary of NRG Energy Inc.
11. Each and every record and document that demonstrates that Plaintiff was 'organized to construct and operate approximately 20 miles of ...pipeline'. As set forth in Paragraph 8 of the Affidavit or otherwise.
12. Each and every record and document that demonstrates that Plaintiff has the technical, financial, and managerial capability needed to operate a natural gas transmission system as well as the requisite financial means to construct its proposed pipeline.
13. Each and every record and document that describes or is related to any decision or decisions process by which NRG Midwest Power LLC and/or NRG Energy Inc. have elected to continue fueling the generating facility with coal and not natural gas and or defer the conversion of the generating facility from coal to natural gas.
14. Each and every record and document that describes any projected or estimated costs to acquire natural gas for the generating facility described in Paragraph 5 of the Affidavit or otherwise.

- 15. Each and every record and document that describes any studies, consultant's reports, or other facts or circumstances regarding or related to any safety set-back or buffer zone associated with the construction and operation of a high pressure gas pipeline.**
- 16. Each and every record and document that describes any studies, consultant's reports, or other facts or circumstances regarding or related to any safety set-back or buffer zone associated with the construction and operation of a high pressure gas pipeline and the damages to or restriction of property adjacent to the proposed pipeline and or operation of a high pressure pipeline.**

# Attachment No. 1



**AFFIDAVIT**

STATE OF OHIO            )  
                                  )  
COUNTY OF LORAIN        )     SS:

I, Alan Sawyer, being duly sworn under oath state the following is true.

1. I am over the age of eighteen (18) and competent to give the following declaration.

2. I am presently, and was at all relevant times, the Vice President of NRG Ohio Pipeline Company LLC ("NRG Pipeline" or "Company").

3. NRG Pipeline is a Delaware limited liability company that is registered to do business in the State of Ohio.

4. NRG Pipeline is a wholly-owned subsidiary of NRG Energy, Inc. ("NRG").

5. One of NRG's subsidiaries, NRG Power Midwest LP, owns a 735 MW coal-fired generating facility in Avon Lake, Ohio ("the Avon Lake facility").

6. NRG Power Midwest LP plans to add natural gas as a fuel source for the boilers at the Avon Lake facility.

7. NRG Pipeline was organized for transporting and transmitting natural gas through pipes to NRG Power Midwest LP's Avon Lake facility.

8. More specifically, NRG Pipeline was organized to construct and operate approximately 20 miles of 24-inch to 30-inch high pressure steel pipeline in Lorain County, Ohio to transport and transmit natural gas to NRG Power Midwest LP's Avon Lake facility.

9. On November 27, 2013, NRG Pipeline filed an application with the Public Utilities Commission of Ohio ("PUCO"), pursuant to R.C. 4905.02, R.C. 4905.03 and 4905.63,

---

for authority to operate as an intrastate pipeline company in the state of Ohio. The application was amended on February 12, 2014. See, Exhibit No. 1 attached hereto, *In the Matter of the Application of NRG Ohio Pipeline Company LLC for Authority to Operate as an Ohio Pipeline Company*, Case No. 13-2315-PL-ACE (P.U.C.O. Feb. 26, 2014) ("PUCO Finding and Order").

10. On February 26, 2014, the PUCO approved NRG Pipeline's application to operate as an intrastate pipeline company in the State of Ohio. PUCO Findings and Order at ¶4.

11. In approving NRG Pipeline's application, the PUCO found that "NRG Pipeline is a public utility and pipeline company, pursuant to R.C. 4905.02 and 4905.03, and, as such, is subject to the Commission's jurisdiction." PUCO Findings and Order at ¶4.

12. On November 6, 2014, NRG Pipeline determined that it was necessary to appropriate and acquire perpetual easement rights for the installation, construction, maintenance, operation and repair of a natural gas pipeline in, on, across, through and over the real property described in Paragraph 4 of NRG Pipeline's Verified Petition to Appropriate Property and to Fix Value Thereof ("Petition") to transport and transmit natural gas to NRG Power Midwest LP's Avon Lake facility.

13. On December 19, 2014, NRG Pipeline filed a letter of notification application, pursuant to Ohio Adm. Code 4906-11-01.

FURTHER AFFIANT SAYETH NAUGHT.

  
Alan Sawyer

SWORN TO BEFORE ME and subscribed in my presence this 25<sup>th</sup> day of March, 2015

  
NOTARY PUBLIC



KIM J. BEHM  
Notary Public - State of Ohio  
My Commission Expires  
September 18, 2018

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of NRG )  
Ohio Pipeline Company LLC for ) Case No. 13-2315-PL-ACB  
Authority to Operate as an Ohio Pipeline )  
Company. )

FINDING AND ORDER

The Commission finds:

- (1) On November 27, 2013, as amended on February 12, 2014, NRG Ohio Pipeline Company LLC (NRG Pipeline or Company) filed an application, pursuant to R.C. 4905.02, 4905.03(F), and 4905.63, for authority to operate as an intrastate pipeline company in the state of Ohio. In the application, NRG Pipeline states that it is a Delaware limited liability company that is registered to do business in Ohio. NRG Pipeline further states that it is a wholly-owned subsidiary of NRG Energy, Inc. (NRG), which is one of the largest power companies in the country, with nearly 100 generation assets producing more than 47,000 megawatts (MW), and retail energy providers serving more than 2 million customers in 16 states. NRG Pipeline notes that one of NRG's subsidiaries, NRG Power Midwest LP, owns a 753 MW coal-fired generating facility in Avon Lake, Ohio, and plans to add natural gas as a fuel source for the boilers at the facility. NRG Pipeline explains that it intends to provide the pipeline infrastructure to deliver natural gas to the facility, and plans to construct and operate approximately 20 miles of 24-inch to 30-inch high pressure steel pipeline in Lorain County, Ohio, which would be installed adjacent to road right-of-way to the extent practicable.
- (2) In support of the application, NRG Pipeline states that it has the technical, financial, and managerial capability needed to operate a natural gas transmission system of the type planned to serve the Avon Lake facility, as well as the requisite financial means to construct the proposed pipeline. NRG Pipeline notes that it has provided, along with the application, proof of the Company's registration with the Ohio Secretary of State, a map depicting the corridors of two

EXHIBIT 1

potential pipeline routes, a summary of the Company's technical and managerial background, and financial information pertaining to NRG.

- (3) Additionally, NRG Pipeline explains that, at the appropriate time, it plans to file an application with the Ohio Power Siting Board for a certificate to construct and operate the proposed pipeline. NRG Pipeline further explains that, after the pipeline is constructed, the Company or one of its affiliates will enter into a special contract with any customer served by the pipeline, pursuant to R.C. 4905.31, with any such contracts being filed with the Commission for approval prior to commencement of service. For that reason, NRG Pipeline notes that it has not proposed a tariff at this time, and that the appropriate filing will be made with the Commission, if the Company or an affiliate later decides to establish a tariff. NRG Pipeline emphasizes that, although a limited number of other commercial or manufacturing customers may seek transportation of natural gas through the proposed pipeline, its purpose is to serve the Avon Lake facility, such that natural gas may be used in place of coal for the generation of electricity at the facility.
- (4) Upon review of NRG Pipeline's application, the Commission finds that the application is reasonable and should be approved. Specifically, we find that NRG Pipeline's request for authority to operate as an intrastate pipeline company in the state of Ohio should be granted. NRG Pipeline has provided sufficient information in support of its application, including several exhibits intended to document that the Company and its affiliates have the necessary technical and managerial expertise and financial resources to construct and operate the proposed pipeline. Accordingly, we find that NRG Pipeline is a public utility and pipeline company, pursuant to R.C. 4905.02 and 4905.03, and, as such, is subject to the Commission's jurisdiction. We further find that, pursuant to R.C. 4905.63, NRG Pipeline is subject to R.C. Chapters 4901, 4903, 4905, 4909, and any other applicable chapter set forth therein. We also emphasize that NRG Pipeline is subject to the ongoing jurisdiction and supervision of the Commission with respect to the gas pipeline safety standards and requirements, as set forth in R.C. 4905.90 through 4905.96 and Ohio Adm.Code Chapter

4901:1-16. Finally, we note that our approval of NRG Pipeline's application in this case does not relieve the Company of the obligation to file a proper application with the Commission, at the appropriate time, for approval of a proposed tariff or reasonable arrangement entered into with any customer, or to file the necessary application with the Ohio Power Siting Board for a certificate to construct and operate the proposed pipeline.

It is, therefore,

ORDERED, That NRG Pipeline's application be approved. It is, further,


ORDERED, That NRG Ohio Pipeline Company LLC be added to the roll of public utilities regulated by this Commission. It is, further,

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

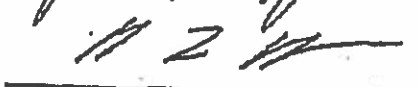
THE PUBLIC UTILITIES COMMISSION OF OHIO

  
Todd A. Snitchler, Chairman

  
Steven D. Lesser

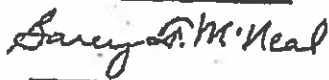
  
Lynn Slaby

  
M. Beth Trombold

  
Asim Z. Haque

SJP/sc

Entered in the Journal FEB 20 2014

  
Barry F. McNeal  
Secretary

# Subpoenas

IN THE COURT OF COMMON PLEAS  
LORAIN COUNTY, OHIO

NRG Ohio Pipeline Company, LLC

Plaintiff,

VS.

Moore Road, LLC, et al.

Defendant.

**General Division - CIVIL**

**Subpoena and Return**

Case No. 15CV187151

TO: (Print name and address below)

NRG Power Midwest, LP - Corp. Representative

c/o Statutory Agent - CT Corporation System

1300 East Ninth Street

Cleveland, Ohio 44114

Attorney: Robert W. McIntyre, Esq.

Attorney for: Defendant Moore Road, LLC

Telephone: 216-642-3342

E-mail (optional): rwmcintyre@wegmanlaw.com

If you have any questions concerning this subpoena, please contact the attorney whose name and contact information are listed above.

YOU ARE HEREBY COMMANDED TO, AT THE DATE, TIME, AND LOCATION LISTED BELOW:

☒ attend and give testimony at a trial, hearing, or deposition.

☐ produce the following documents, electronically stored information, or tangible things at a trial, hearing, or deposition:

☐ produce and permit inspection and copying of the following documents or electronically stored information that are in your custody, possession, or control:

☐ produce and permit inspection and copying, testing, or sampling of the following tangible things that are in your custody, possession, or control:

☐ permit entry upon designated land or other property that is in your possession or control described as (see Civ. R. 34):

DATE: 29th day of April, 20 16 TIME: 9:00 o'clock a.m./p.m.

LOCATION: Wegman Hessler & Vanderburg, 6055 Rockside Woods Blvd., Ste 200, Independence, Ohio 44131

WITNESS my signature and seal of said Court at Elyria, Ohio, this 19th day of April, 20 16.

~~XXXXXXXXXXXXXXXXXXXX~~

Attorney

~~XXXXXXXXXXXX~~

## OHIO RULES OF CIVIL PROCEDURE – PARTIAL TEXT OF RULE 45 (revised 07/17/2014)

**C) Protection of persons subject to subpoenas.**

- (1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena.
- (2)(a) A person commanded to produce under divisions (A)(1)(b), (iii), (iv), (v), or (vi) of this rule need not appear in person at the place of production or inspection unless commanded to attend and give testimony at a deposition, hearing, or trial.
- (b) Subject to division (D)(2) of this rule, a person commanded to produce under divisions (A)(1)(b), (iii), (iv), (v), or (vi) of this rule may, within fourteen days after service of the subpoena or before the time specified for compliance if such time is less than fourteen days after service, serve upon the party or attorney designated in the subpoena written objections to production. If objection is made, the party serving the subpoena shall not be entitled to production except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena, upon notice to the person commanded to produce, may move at any time for an order to compel the production. An order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the production commanded.
- (3) On timely motion, the court from which the subpoena was issued shall quash or modify the subpoena, or order appearance or production only under specified conditions, if the subpoena does any of the following:
- (a) Fails to allow reasonable time to comply;
- (b) Requires disclosure of privileged or otherwise protected matter and no exception or waiver applies;
- (c) Requires disclosure of a fact known or opinion held by an expert not retained or specially employed by any party in anticipation of litigation or preparation for trial as described by Civ. R. 26(B)(5), if the fact or opinion does not describe specific events or occurrences in dispute and results from study by that expert that was not made at the request of any party;
- (d) Subjects a person to undue burden.
- (4) Before filing a motion pursuant to division (C)(3)(d) of this rule, a person resisting discovery under this rule shall attempt to resolve any claim of undue burden through discussions with the issuing attorney. A motion filed pursuant to division (C)(3)(d) of this rule shall be supported by an affidavit of the subpoenaed person or a certificate of that person's attorney of the efforts made to resolve any claim of undue burden.
- (5) If a motion is made under division (C)(3)(c) or (C)(3)(d) of this rule, the court shall quash or modify the subpoena unless the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated.

**(D) Duties in responding to subpoena.**

- (1) A person responding to a subpoena to produce documents shall, at the person's option, produce them as they are kept in the usual course of business or organized and labeled to correspond with the categories in the subpoena. A person producing documents or electronically stored information pursuant to a subpoena for them shall permit their inspection and copying by all parties present at the time and place set in the subpoena for inspection and copying.
- (2) If a request does not specify the form or forms for producing electronically stored information, a person responding to a subpoena may produce the information in a form or forms in which the information is ordinarily maintained if that form is reasonably useable, or in any form that is reasonably useable. Unless ordered by the court or agreed to by the person subpoenaed, a person responding to a subpoena need not produce the same electronically stored information in more than one form.
- (3) A person need not provide discovery of electronically stored information when the production imposes undue burden or expense. On motion to compel discovery or for a protective order, the person from whom electronically stored information is sought must show that the information is not reasonably accessible because of undue burden or expense. If a showing of undue burden or expense is made, the court may nonetheless order production of electronically stored information if the requesting party shows good cause. The court shall consider the factors in Civ. R. 26(B)(4) when determining if good cause exists. In ordering production of electronically stored information, the court may specify the format, extent, timing allocation of expenses and other conditions for the discovery of the electronically stored information.
- (4) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials under Civ. R. 26(B)(3) or (4), the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.
- (5) If information is produced in response to a subpoena that is subject to a claim of privilege or of protection as trial preparation material, the person making the claim may notify any party that received the information of the claim and basis for it. After being notified, a receiving party must promptly return, sequester, or destroy the specified information and any copies within the party's possession, custody or control. A party may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim of privilege or of protection as trial-preparation material. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The person who produced the information must preserve the information until the claim is resolved.



COURT OF COMMON PLEAS  
GENERAL DIVISION  
LORAIN COUNTY, OHIO

NRG Ohio Pipeline Company, LLC

Plaintiff,

VS.

Moore Road, LLC, et al.

Defendant.

CASE NO. 15CV187151

JUDGE Christopher R. Rothgery

RETURN OF SERVICE  
OF SUBPOENA

NAME AND ADDRESS OF PERSON ON SUBPOENA: NRG Power Midwest LP - Corporate Representative  
c/o Statutory Agent, CT Corporation System, 1300 East Ninth Street, Cleveland, Ohio 44114

DATE, TIME AND LOCATION OF TRIAL OR HEARING: \_\_\_\_\_

Deposition: April 29, 2016 at 9:00am at Wegman Hessler & Vanderburg, 6055 Rockside Woods Blvd., Ste 200, Independence, Ohio 44131

(The following to be completed by Sheriff, process server, or attorney)

I received this Subpoena on \_\_\_\_\_, 20\_\_\_\_, and served the same on the person herein  
named on \_\_\_\_\_, 20\_\_\_\_.

Service was accomplished by \_\_\_\_\_  
\_\_\_\_\_.

I was unable to complete service for the following reason(s): \_\_\_\_\_  
\_\_\_\_\_.

SHERIFF'S FEE'S

Service and Return \_\_\_\_\_ \$ \_\_\_\_\_  
Mileage \_\_\_\_\_ # miles \_\_\_\_\_ \$ \_\_\_\_\_  
Copies \_\_\_\_\_ \$ \_\_\_\_\_  
Total: \$ \_\_\_\_\_

PHIL R. STAMMITT, Lorain Co. Sheriff

BY: \_\_\_\_\_  
Deputy

PROCESS SERVER/ATTORNEY CERTIFICATION

I certify that the foregoing information is correct to the  
best of my knowledge and belief.

\_\_\_\_\_  
(signature of individual performing service)

Print name: \_\_\_\_\_

# Exhibit “A”

IN THE COURT OF COMMON PLEAS  
LORAIN COUNTY, OHIO

|                                |   |                                |
|--------------------------------|---|--------------------------------|
| NRG OHIO PIPEINE COMPANY, LLC, | ) | CASE NO. 15CV187151            |
|                                | ) |                                |
| Plaintiff,                     | ) | JUDGE Christopher R. Rothgery  |
|                                | ) |                                |
| v.                             | ) | Magistrate James Blaszk        |
|                                | ) |                                |
| MOORE ROAD, LLC, <i>et al.</i> | ) | NOTICE OF DEPOSITION OF        |
|                                | ) | REPRESENTATIVE DESIGNATED BY   |
| Defendants.                    | ) | NRG POWER MIDWEST, LP PURSUANT |
|                                | ) | TO OHIO RULE 30(B)(5)          |

Please take notice that on April 29, 2016 beginning at 9:00 a.m., counsel for Defendant, Moore Road, LLC, will take the deposition of a person or persons identified and designated by NRG Power Midwest, LP, pursuant to ORCP 30(B)(5), who is knowledgeable to testify with respect to the matters set forth on Exhibit A. The deposition will take place at the offices of Wegman Hessler & Vanderburg, 6055 Rockside Woods Blvd., Ste. 200, Independence, Ohio 44131. The deposition shall proceed in accordance with the Ohio Rules of Civil Procedure in the presence of a notary public, and be recorded by a stenographer, and shall continue from day-to-day until complete.

Respectfully submitted,

---

Robert W. McIntyre (0006768)  
Jay R. Carson (0068526)  
WEGMAN, HESSLER & VANDERBURG  
6055 Rockside Woods Boulevard, Suite 200  
Cleveland, Ohio 44131  
Phone: (216) 642-3342 / Fax: (216) 642-8826  
E-Mail: [rwmcintyre@wegmanlaw.com](mailto:rwmcintyre@wegmanlaw.com)  
[jrcarson@wegmanlaw.com](mailto:jrcarson@wegmanlaw.com)  
*Attorneys for Defendant Moore Road, LLC*

**CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of the foregoing Notice Of Deposition Of Representative Designated By NRG Power Midwest, LP Pursuant To Ohio Rule 30(B)(5) was served this 19<sup>th</sup> day of April, 2016 upon the following via e-mail:

Dennis M. O'Toole, Esq.  
O'Toole, McLaughlin, Dooley & Pecora Co., L.P.A.  
5455 Detroit Road  
Sheffield Village, Ohio 44054  
(dotoole@omdplaw.com)

*Attorney for Plaintiff  
NRG Ohio Pipeline Company, LLC*



---

Robert W McIntyre (0006768)

*An attorney for Defendant Moore Road, LLC*

## **EXHIBIT A**

(to Notice of Deposition of Representative of NRG Power Midwest LP  
Pursuant to Ohio Rule 30(B)(5))

1. Matters and topics for examination of each designated witness:
  - a. The facts and circumstances relating to the NRG Ohio Pipeline LLC (Pipeline) and NRG Power Midwest LLC (Power) regarding the construction of that certain pipeline (the NRG Pipeline) described in the Affidavit of Alan Sawyer *attached hereto as attachment 1* (Affidavit) or otherwise.
  - b. The facts and circumstances relating to Pipeline and NRG Energy Inc. regarding the construction of that certain pipeline (the NRG Pipeline) described in the Affidavit of Alan Sawyer attached hereto as attachment 1 (Affidavit) or otherwise.
2. The facts and circumstances relating to or which establishes the necessity for the construction of the NRG Pipeline asset forth at Paragraph 12 of the Affidavit or otherwise.
3. Each and every record and document provided to Pipeline by Power setting forth the usage of natural gas as a fuel for the Avon Generating facility.
4. The facts and circumstances relating to any contract or agreement by and between Pipeline and Power for the delivery of fuel gas for the generating facility described and identified at Paragraph 5 of the Affidavit or otherwise.
5. The facts and circumstances relating to any 'plans to add natural gas as a fuel source' as set forth and described at Paragraph 6 of the Affidavit.
6. The facts and circumstances relating to or which demonstrates and/ or substantiates the assertion that "NRG Pipeline" is a wholly owned subsidiary of NRG Energy Inc. and/or any relationship between NRG Power Midwest LLC, Pipeline and NRG Energy Inc.
7. The facts and circumstances relating to or which demonstrates that Pipeline was 'organized to construct and operate approximately 20 miles of ...pipeline'. As set forth in Paragraph 8 of the Affidavit or otherwise.
8. The facts and circumstances relating to or which demonstrate that Pipeline has the technical, financial, and managerial capability needed to operate a natural gas transmission system as well as the requisite financial means to construct its proposed pipeline.
9. The facts and circumstances relating to any decision or decisions process by which Power and/or NRG Energy Inc. have elected to continue fueling the generating facility with coal and not natural gas and/or defer the conversion of the generating facility from coal to natural gas.

10. All contacts, applications, or other materials submitted to and or received from the Ohio EPA:
  - a. For the construction/installation of emissions control equipment on the generating facility for the purpose of continuing to use coal as fuel for the generating facility and/or not natural gas as a fuel;
  - b. The designation of one or more boilers as a standby coal fueled unit that will not be converted to natural gas fuel; and
  - c. The decision to not operate any boiler at the generating facility in the future.
11. The facts and circumstances relating to or regarding the acquisition, construction/installation of machinery and equipment for converting any boiler at the generating facility to natural gas.
12. The facts and circumstances relating to or regarding the acquisition, construction/installation of machinery and equipment for controlling the emission of any boiler at the generating facility that would be fueled by coal.
13. The facts and circumstances relating to or which demonstrates or describes any projected or estimated cost of obtaining natural gas from Pipeline and or the revenue stream of Pipeline from the sale of natural gas to the generating facility described in Paragraph 5 of the Affidavit or otherwise.
14. Any studies, consultant's reports, or other facts or circumstances regarding or related to any safety set-back or buffer zone associated with the construction and operation of a high pressure gas pipeline.
15. Any studies, consultant's reports, or other facts or circumstances regarding or related to any safety set-back or buffer zone associated with the construction and operation of a high pressure gas pipeline and the damages to or restriction of property adjacent to the proposed pipeline and or operation of a high pressure pipeline.

# Attachment No. 1

**AFFIDAVIT**

STATE OF OHIO            )  
                                  )    SS:  
COUNTY OF LORAIN        )

I, Alan Sawyer, being duly sworn under oath state the following is true.

1. I am over the age of eighteen (18) and competent to give the following declaration.
  2. I am presently, and was at all relevant times, the Vice President of NRG Ohio Pipeline Company LLC ("NRG Pipeline" or "Company").
  3. NRG Pipeline is a Delaware limited liability company that is registered to do business in the State of Ohio.
  4. NRG Pipeline is a wholly-owned subsidiary of NRG Energy, Inc. ("NRG").
  5. One of NRG's subsidiaries, NRG Power Midwest LP, owns a 735 MW coal-fired generating facility in Avon Lake, Ohio ("the Avon Lake facility").
  6. NRG Power Midwest LP plans to add natural gas as a fuel source for the boilers at the Avon Lake facility.
  7. NRG Pipeline was organized for transporting and transmitting natural gas through pipes to NRG Power Midwest LP's Avon Lake facility.
  8. More specifically, NRG Pipeline was organized to construct and operate approximately 20 miles of 24-inch to 30-inch high pressure steel pipeline in Lorain County, Ohio to transport and transmit natural gas to NRG Power Midwest LP's Avon Lake facility.
  9. On November 27, 2013, NRG Pipeline filed an application with the Public Utilities Commission of Ohio ("PUCO"), pursuant to R.C. 4905.02, R.C. 4905.03 and 4905.63,
-



for authority to operate as an intrastate pipeline company in the state of Ohio. The application was amended on February 12, 2014. See, Exhibit No. 1 attached hereto, *In the Matter of the Application of NRG Ohio Pipeline Company LLC for Authority to Operate as an Ohio Pipeline Company*, Case No. 13-2315-PL-ACE (P.U.C.O. Feb. 26, 2014) ("PUCO Finding and Order").


10. On February 26, 2014, the PUCO approved NRG Pipeline's application to operate as an intrastate pipeline company in the State of Ohio. PUCO Findings and Order at ¶4.

11. In approving NRG Pipeline's application, the PUCO found that "NRG Pipeline is a public utility and pipeline company, pursuant to R.C. 4905.02 and 4905.03, and, as such, is subject to the Commission's jurisdiction." PUCO Findings and Order at ¶4.

12. On November 6, 2014, NRG Pipeline determined that it was necessary to appropriate and acquire perpetual easement rights for the installation, construction, maintenance, operation and repair of a natural gas pipeline in, on, across, through and over the real property described in Paragraph 4 of NRG Pipeline's Verified Petition to Appropriate Property and to Fix Value Thereof ("Petition") to transport and transmit natural gas to NRG Power Midwest LP's Avon Lake facility.

13. On December 19, 2014, NRG Pipeline filed a letter of notification application, pursuant to Ohio Adm. Code 4906-11-01.

FURTHER AFFIANT SAYETH NAUGHT.

  
Alan Sawyer

SWORN TO BEFORE ME and subscribed in my presence this 25<sup>th</sup> day of March, 2015

  
NOTARY PUBLIC



KIM J. BEHM  
Notary Public - State of Ohio  
My Commission Expires  
September 18, 2018

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of NRG )  
Ohio Pipeline Company LLC for ) Case No. 13-2315-PL-ACB  
Authority to Operate as an Ohio Pipeline )  
Company. )

FINDING AND ORDER

The Commission finds:

- (1) On November 27, 2013, as amended on February 12, 2014, NRG Ohio Pipeline Company LLC (NRG Pipeline or Company) filed an application, pursuant to R.C. 4905.02, 4905.03(f), and 4905.63, for authority to operate as an intrastate pipeline company in the state of Ohio. In the application, NRG Pipeline states that it is a Delaware limited liability company that is registered to do business in Ohio. NRG Pipeline further states that it is a wholly-owned subsidiary of NRG Energy, Inc. (NRG), which is one of the largest power companies in the country, with nearly 100 generation assets producing more than 47,000 megawatts (MW), and retail energy providers serving more than 2 million customers in 16 states. NRG Pipeline notes that one of NRG's subsidiaries, NRG Power Midwest LP, owns a 753 MW coal-fired generating facility in Avon Lake, Ohio, and plans to add natural gas as a fuel source for the boilers at the facility. NRG Pipeline explains that it intends to provide the pipeline infrastructure to deliver natural gas to the facility, and plans to construct and operate approximately 20 miles of 24-inch to 30-inch high pressure steel pipeline in Lorain County, Ohio, which would be installed adjacent to road right-of-way to the extent practicable.
- (2) In support of the application, NRG Pipeline states that it has the technical, financial, and managerial capability needed to operate a natural gas transmission system of the type planned to serve the Avon Lake facility, as well as the requisite financial means to construct the proposed pipeline. NRG Pipeline notes that it has provided, along with the application, proof of the Company's registration with the Ohio Secretary of State, a map depicting the corridors of two

potential pipeline routes, a summary of the Company's technical and managerial background, and financial information pertaining to NRG.

- (3) Additionally, NRG Pipeline explains that, at the appropriate time, it plans to file an application with the Ohio Power Siting Board for a certificate to construct and operate the proposed pipeline. NRG Pipeline further explains that, after the pipeline is constructed, the Company or one of its affiliates will enter into a special contract with any customer served by the pipeline, pursuant to R.C. 4905.31, with any such contracts being filed with the Commission for approval prior to commencement of service. For that reason, NRG Pipeline notes that it has not proposed a tariff at this time, and that the appropriate filing will be made with the Commission, if the Company or an affiliate later decides to establish a tariff. NRG Pipeline emphasizes that, although a limited number of other commercial or manufacturing customers may seek transportation of natural gas through the proposed pipeline, its purpose is to serve the Avon Lake facility, such that natural gas may be used in place of coal for the generation of electricity at the facility.
- (4) Upon review of NRG Pipeline's application, the Commission finds that the application is reasonable and should be approved. Specifically, we find that NRG Pipeline's request for authority to operate as an intrastate pipeline company in the state of Ohio should be granted. NRG Pipeline has provided sufficient information in support of its application, including several exhibits intended to document that the Company and its affiliates have the necessary technical and managerial expertise and financial resources to construct and operate the proposed pipeline. Accordingly, we find that NRG Pipeline is a public utility and pipeline company, pursuant to R.C. 4905.02 and 4905.03, and, as such, is subject to the Commission's jurisdiction. We further find that, pursuant to R.C. 4905.63, NRG Pipeline is subject to R.C. Chapters 4901, 4903, 4905, 4909, and any other applicable chapter set forth therein. We also emphasize that NRG Pipeline is subject to the ongoing jurisdiction and supervision of the Commission with respect to the gas pipeline safety standards and requirements, as set forth in R.C. 4905.90 through 4905.96 and Ohio Adm.Code Chapter
-

4901:1-16. Finally, we note that our approval of NRG Pipeline's application in this case does not relieve the Company of the obligation to file a proper application with the Commission, at the appropriate time, for approval of a proposed tariff or reasonable arrangement entered into with any customer, or to file the necessary application with the Ohio Power Siting Board for a certificate to construct and operate the proposed pipeline.

It is, therefore,

ORDERED, That NRG Pipeline's application be approved. It is, further,

ORDERED, That NRG Ohio Pipeline Company LLC be added to the roll of public utilities regulated by this Commission. It is, further,


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

THE PUBLIC UTILITIES COMMISSION OF OHIO

  
Todd A. Snitchler, Chairman

  
Steven D. Lesser

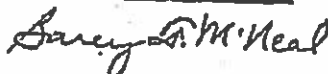
  
M. Beth Trombold

  
Lynn Slaby

  
Asim Z. Haque

SJP/sc

Entered in the Journal FEB 26 2014

  
Barry F. McNeal  
Secretary

IN THE COURT OF COMMON PLEAS  
LORAIN COUNTY, OHIO

NRG Ohio Pipeline Company, LLC

Plaintiff,

VS.

Moore Road, LLC, et al.

Defendant.

**General Division - CIVIL**

**Subpoena and Return**

Case No. 15CV187151

TO: (Print name and address below)

NRG Power Midwest, LP- Records Custodian

c/o Statutory Agent - CT Corporation System

1300 East Ninth Street

Cleveland, Ohio 44114

Attorney: Robert W. McIntyre, Esq.

Attorney for: Defendant Moore Road, LLC

Telephone: 216-642-3342

E-mail (optional): rwmcintyre@wegmanlaw.com

If you have any questions concerning this subpoena, please contact the attorney whose name and contact information are listed above.

YOU ARE HEREBY COMMANDED TO, AT THE DATE, TIME, AND LOCATION LISTED BELOW:

- ☐ attend and give testimony at a trial, hearing, or deposition.
- ☐ produce the following documents, electronically stored information, or tangible things at a trial, hearing, or deposition:

☒ produce and permit inspection and copying of the following documents or electronically stored information that are in your custody, possession, or control: Please see attached Exhibit A

☐ produce and permit inspection and copying, testing, or sampling of the following tangible things that are in your custody, possession, or control: \_\_\_\_\_

☐ permit entry upon designated land or other property that is in your possession or control described as (see Civ. R. 34): \_\_\_\_\_

DATE: 29th day of April, 20 16 TIME: 9:00 o'clock a.m./p.m.

LOCATION: Wegman Hessler & Vanderburg, 6055 Rockside Woods Blvd., Ste 200, Independence, Ohio 44131

WITNESS my signature and seal of said Court at Elyria, Ohio, this 19th day of April, 20 16.

~~XXXXXXXXXXXXXXXXXXXX~~

Attorney

~~XXXXXXXXXXXX~~

## OHIO RULES OF CIVIL PROCEDURE – PARTIAL TEXT OF RULE 45 (revised 07/17/2014)

**C) Protection of persons subject to subpoenas.**

- (1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena.
- (2)(a) A person commanded to produce under divisions (A)(1)(b), (iii), (iv), (v), or (vi) of this rule need not appear in person at the place of production or inspection unless commanded to attend and give testimony at a deposition, hearing, or trial.
- (b) Subject to division (D)(2) of this rule, a person commanded to produce under divisions (A)(1)(b), (iii), (iv), (v), or (vi) of this rule may, within fourteen days after service of the subpoena or before the time specified for compliance if such time is less than fourteen days after service, serve upon the party or attorney designated in the subpoena written objections to production. If objection is made, the party serving the subpoena shall not be entitled to production except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena, upon notice to the person commanded to produce, may move at any time for an order to compel the production. An order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the production commanded.
- (3) On timely motion, the court from which the subpoena was issued shall quash or modify the subpoena, or order appearance or production only under specified conditions, if the subpoena does any of the following:
- (a) Fails to allow reasonable time to comply;
- (b) Requires disclosure of privileged or otherwise protected matter and no exception or waiver applies;
- (c) Requires disclosure of a fact known or opinion held by an expert not retained or specially employed by any party in anticipation of litigation or preparation for trial as described by Civ. R. 26(B)(5), if the fact or opinion does not describe specific events or occurrences in dispute and results from study by that expert that was not made at the request of any party;
- (d) Subjects a person to undue burden.
- (4) Before filing a motion pursuant to division (C)(3)(d) of this rule, a person resisting discovery under this rule shall attempt to resolve any claim of undue burden through discussions with the issuing attorney. A motion filed pursuant to division (C)(3)(d) of this rule shall be supported by an affidavit of the subpoenaed person or a certificate of that person's attorney of the efforts made to resolve any claim of undue burden.
- (5) If a motion is made under division (C)(3)(c) or (C)(3)(d) of this rule, the court shall quash or modify the subpoena unless the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated.

**(D) Duties in responding to subpoena.**

- (1) A person responding to a subpoena to produce documents shall, at the person's option, produce them as they are kept in the usual course of business or organized and labeled to correspond with the categories in the subpoena. A person producing documents or electronically stored information pursuant to a subpoena for them shall permit their inspection and copying by all parties present at the time and place set in the subpoena for inspection and copying.
- (2) If a request does not specify the form or forms for producing electronically stored information, a person responding to a subpoena may produce the information in a form or forms in which the information is ordinarily maintained if that form is reasonably useable, or in any form that is reasonably useable. Unless ordered by the court or agreed to by the person subpoenaed, a person responding to a subpoena need not produce the same electronically stored information in more than one form.
- (3) A person need not provide discovery of electronically stored information when the production imposes undue burden or expense. On motion to compel discovery or for a protective order, the person from whom electronically stored information is sought must show that the information is not reasonably accessible because of undue burden or expense. If a showing of undue burden or expense is made, the court may nonetheless order production of electronically stored information if the requesting party shows good cause. The court shall consider the factors in Civ. R. 26(B)(4) when determining if good cause exists. In ordering production of electronically stored information, the court may specify the format, extent, timing allocation of expenses and other conditions for the discovery of the electronically stored information.
- (4) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials under Civ. R. 26(B)(3) or (4), the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.
- (5) If information is produced in response to a subpoena that is subject to a claim of privilege or of protection as trial preparation material, the person making the claim may notify any party that received the information of the claim and basis for it. After being notified, a receiving party must promptly return, sequester, or destroy the specified information and any copies within the party's possession, custody or control. A party may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim of privilege or of protection as trial-preparation material. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The person who produced the information must preserve the information until the claim is resolved.

COURT OF COMMON PLEAS  
GENERAL DIVISION  
LORAIN COUNTY, OHIO

NRG Ohio Pipeline Company, LLC

Plaintiff,

VS.

Moore Road, LLC, et al.

Defendant.

CASE NO. 15CV187151

JUDGE Christopher R. Rothgery

RETURN OF SERVICE  
OF SUBPOENA

**NAME AND ADDRESS OF PERSON ON SUBPOENA:** NRG Power Midwest, LP - Records Custodian  
c/o Statutory Agent, CT Corporation System, 1300 East Ninth Street, Cleveland, Ohio 44114

**DATE, TIME AND LOCATION OF TRIAL OR HEARING:**

Deposition: April 29, 2016 at 9:00am at Wegman Hessler & Vanderburg, 6055 Rockside Woods Blvd., Ste 200, Independence, Ohio 44131

(The following to be completed by Sheriff, process server, or attorney)

I received this Subpoena on \_\_\_\_\_, 20\_\_\_\_, and served the same on the person herein  
named on \_\_\_\_\_, 20\_\_\_\_.

Service was accomplished by \_\_\_\_\_  
\_\_\_\_\_.

I was unable to complete service for the following reason(s): \_\_\_\_\_  
\_\_\_\_\_.

**SHERIFF'S FEES**

Service and Return \_\_\_\_\_ \$ \_\_\_\_\_  
Mileage \_\_\_\_\_ # miles \_\_\_\_\_ \$ \_\_\_\_\_  
Copies \_\_\_\_\_ \$ \_\_\_\_\_  
Total: \$ \_\_\_\_\_

PHIL R. STAMMITT, Lorain Co. Sheriff

BY: \_\_\_\_\_  
Deputy

**PROCESS SERVER/ATTORNEY CERTIFICATION**

I certify that the foregoing information is correct to the  
best of my knowledge and belief.

\_\_\_\_\_  
(signature of individual performing service)

Print name: \_\_\_\_\_

# Exhibit “A”



IN THE COURT OF COMMON PLEAS  
LORAIN COUNTY, OHIO

|                                 |   |                                 |
|---------------------------------|---|---------------------------------|
| NRG OHIO PIPELINE COMPANY, LLC, | ) | CASE NO. 15CV187151             |
|                                 | ) |                                 |
| Plaintiff,                      | ) | JUDGE Christopher R. Rothgery   |
|                                 | ) |                                 |
| v.                              | ) | Magistrate James Blaszk         |
|                                 | ) |                                 |
| MOORE ROAD, LLC, <i>et al.</i>  | ) | NOTICE OF DEPOSITION OF RECORDS |
|                                 | ) | CUSTODIAN DESIGNATED BY NRG     |
| Defendants.                     | ) | POWER MIDWEST, LP               |

Please take notice that on **April 29, 2016** beginning at **9:00 a.m.**, counsel for Defendant, Moore Road, LLC, will take the deposition of a person or persons identified and designated by NRG Power Midwest, LP as Records Custodian who is knowledgeable to testify with respect to the matters set forth on Exhibit A. The deposition will take place at the offices of Wegman Hessler & Vanderburg, 6055 Rockside Woods Blvd., Ste. 200, Independence, Ohio 44131. The deposition shall proceed in accordance with the Ohio Rules of Civil Procedure in the presence of a notary public, and be recorded by a stenographer, and shall continue from day-to-day until complete.

Respectfully submitted,

---

Robert W. McIntyre (0006768)  
Jay R. Carson (0068526)  
WEGMAN, HESSLER & VANDERBURG  
6055 Rockside Woods Boulevard, Suite 200  
Cleveland, Ohio 44131  
Phone: (216) 642-3342 / Fax: (216) 642-8826  
E-Mail: [rwmcintyre@wegmanlaw.com](mailto:rwmcintyre@wegmanlaw.com)  
[jrcarson@wegmanlaw.com](mailto:jrcarson@wegmanlaw.com)  
*Attorneys for Defendant Moore Road, LLC*

**CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of the foregoing Notice Of Deposition Of Records Custodian Designated By NRG Power Midwest, LP was served this 19<sup>th</sup> day of April, 2016 upon the following via e-mail:

Dennis M. O'Toole, Esq.  
O'Toole, McLaughlin, Dooley & Pecora Co., L.P.A.  
5455 Detroit Road  
Sheffield Village, Ohio 44054  
(dotoole@omdplaw.com)

*Attorney for Plaintiff  
NRG Ohio Pipeline Company, LLC*



---

Robert W McIntyre (0006768)

*An attorney for Defendant Moore Road, LLC*

## **EXHIBIT A**

(to Notice of Deposition of  
Records Custodian of NRG Power Midwest LP)

### **-Records-**

1. All correspondence by and between:
  - a. Pipeline and Power regarding the construction of that certain pipeline (the NRG Pipeline) described in the Affidavit of Alan Sawyer attached hereto as *Attachment 1* or otherwise.
  - b. Power and NRG Energy Inc. regarding the construction of that certain pipeline (the NRG Pipeline) described in the Affidavit of Alan Sawyer attached hereto as Attachment 1 (Affidavit), or otherwise.
2. Each record or document which establishes the necessity for the construction of the NRG Pipeline asset forth at Paragraph 12 of the Affidavit, or otherwise.
3. Each and every record regarding the acquisition, construction/installation of machinery and equipment for converting any boiler at the generating facility to natural gas.
4. Each and every record regarding the acquisition, construction/installation of machinery and equipment for controlling the emission of any boiler at the generating facility to natural gas.
5. Each record or document which describes or is related to the following:
  - a. Acquisition of real estate and /or easements for the construction of the NRG Pipeline;
  - b. Any construction contracts, bids, requests for bids or quotations for the construction of the NRG Pipeline; and
  - c. The interconnection of the NRG Pipeline with any gas transmission facility or pipeline owned by others than NRG Pipeline.
6. Each record or document which describes or is related to the following:
  - a. The acquisition of gas transmission pipe, pipeline materials, machinery and equipment or facilities for the construction and/or installation of the NRG Pipeline; and
  - b. The design, engineering, geotechnical investigation, or other scientific or technical investigations and/or work undertaken for the construction and installation of the NRG Pipeline.

7. Each record or document which describes or is related to any communication, administrative filing or application, or other submission to or with the following relating to the NRG Pipeline:
  - a. The Ohio Department of Natural Resources;
  - b. The Ohio Public Utilities Commission;
  - c. The Ohio Power Siting Board;
  - d. The Ohio Environmental Protection Agency;
  - e. City of Avon Ohio;
  - f. The City of Avon Lake Ohio;
  - g. Lorain County;
  - h. Any other agency of the State of Ohio; and
  - i. Any agency of the United States Government.
8. Each record or document which describes or is related to the following:
  - a. Acquisition of machinery or equipment for the conversion of any boiler at the Avon Generating facility to natural gas as a fuel;
  - b. Any construction contracts, bids, requests for bids or quotations for the construction of the natural gas fuel boiler conversion; and
  - c. The interconnection of the NRG Pipeline with the generating facility.
9. Each record or document which describes or is related to the following:
  - a. The acquisition of machinery, equipment or the construction of facility for the construction and/or installation of any emission control systems to enable the generating facility to continue to burn coal as a fuel;
  - b. The design, engineering, geotechnical investigation, or other scientific or technical investigations and/or work undertaken for the construction and installation of any emission control systems to enable the generating facility to continue to burn coal as a fuel; and
  - c. The purchase of coal fuel for the operation of the generating facility including but not limited to supply contracts, options, or other commercial undertakings to obtain a supply of coal for fuel at the generating facility.

10. Each record or document which describes or is related to any communication, administrative filing or application, or other submission to or with the following relating to conversion of any boiler at the generating facility to the use of natural gas as a fuel
  - a. The Ohio Department of Natural Resources;
  - b. The Ohio Public Utilities Commission;
  - c. The Ohio Power Siting Board;
  - d. The Ohio Environmental Protection Agency;
  - e. City of Avon Ohio;
  - f. The City of Avon Lake Ohio;
  - g. Lorain County;
  - h. Any other agency of the State of Ohio; and
  - i. Any agency of the United States Government.
11. Each record or document which describes or is related to any communication, administrative filing or application, or other submission to or with the following relating to conversion of any boiler at the generating facility to the use of coal as a fuel:
  - a. The Ohio Department of Natural Resources;
  - b. The Ohio Public Utilities Commission;
  - c. The Ohio Power Siting Board;
  - d. The Ohio Environmental Protection Agency;
  - e. City of Avon Ohio;
  - f. The City of Avon Lake Ohio;
  - g. Lorain County;
  - h. Any other agency of the State of Ohio; and
  - i. Any agency of the United States Government.
12. Each and every record or document that describes or refers to any contract or agreement by and between Pipeline and Power for the delivery of fuel gas for the generating facility described and identified at Paragraph 5 of the Affidavit, or otherwise.

13. Each and every record or document that evidences any 'plans to add natural gas as a fuel source' as set forth and described at Paragraph 6 of the Affidavit, or otherwise.
14. Each and every record or document that establishes, demonstrates and/ or substantiates the statement in Para 4 that "NRG Pipeline" is a wholly owned subsidiary of NRG Energy Inc.
15. Each and every record and document that demonstrates that plaintiff was 'organized to construct and operate approximately 20 miles of ...pipeline'. As set forth in Paragraph 8 of the Affidavit.
16. Each and every record and document that demonstrates that Pipeline has the technical, financial, and managerial capability needed to operate a natural gas transmission system as well as the requisite financial means to construct its proposed pipeline.
17. Each and every record and document that describes or is related to any decision or decisions process by which Power and/or NRG Energy Inc. have elected to continue fueling the generating facility with coal and not natural gas and or defer the conversion of the generating facility from coal to natural gas.
18. Each and every record and document that describes any projected or estimated costs to acquire natural gas for the generating facility described in Paragraph 5 of the Affidavit.
19. Each and every record and document that describes any studies, consultant's reports, or other facts or circumstances regarding or related to any safety set-back or buffer zone associated with the construction and operation of a high pressure gas pipeline.
20. Each and every record and document that describes any studies, consultant's reports, or other facts or circumstances regarding or related to any safety set-back or buffer zone associated with the construction and operation of a high pressure gas pipeline and the damages to or restriction of property adjacent to the proposed pipeline and or operation of a high pressure pipeline.

# Attachment No. 1

**AFFIDAVIT**

STATE OF OHIO                    )  
                                      )  
COUNTY OF LORAIN            )    SS:

I, Alan Sawyer, being duly sworn under oath state the following is true.

1. I am over the age of eighteen (18) and competent to give the following declaration.
  2. I am presently, and was at all relevant times, the Vice President of NRG Ohio Pipeline Company LLC ("NRG Pipeline" or "Company").
  3. NRG Pipeline is a Delaware limited liability company that is registered to do business in the State of Ohio.
  4. NRG Pipeline is a wholly-owned subsidiary of NRG Energy, Inc. ("NRG").
  5. One of NRG's subsidiaries, NRG Power Midwest LP, owns a 735 MW coal-fired generating facility in Avon Lake, Ohio ("the Avon Lake facility").
  6. NRG Power Midwest LP plans to add natural gas as a fuel source for the boilers at the Avon Lake facility.
  7. NRG Pipeline was organized for transporting and transmitting natural gas through pipes to NRG Power Midwest LP's Avon Lake facility.
  8. More specifically, NRG Pipeline was organized to construct and operate approximately 20 miles of 24-inch to 30-inch high pressure steel pipeline in Lorain County, Ohio to transport and transmit natural gas to NRG Power Midwest LP's Avon Lake facility.
  9. On November 27, 2013, NRG Pipeline filed an application with the Public Utilities Commission of Ohio ("PUCO"), pursuant to R.C. 4905.02, R.C. 4905.03 and 4905.63,
-



for authority to operate as an intrastate pipeline company in the state of Ohio. The application was amended on February 12, 2014. See, Exhibit No. 1 attached hereto, *In the Matter of the Application of NRG Ohio Pipeline Company LLC for Authority to Operate as an Ohio Pipeline Company*, Case No. 13-2315-PL-ACE (P.U.C.O. Feb. 26, 2014) ("PUCO Finding and Order").

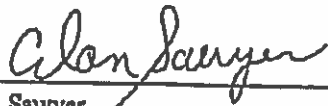
10. On February 26, 2014, the PUCO approved NRG Pipeline's application to operate as an intrastate pipeline company in the State of Ohio. PUCO Findings and Order at ¶4.

11. In approving NRG Pipeline's application, the PUCO found that "NRG Pipeline is a public utility and pipeline company, pursuant to R.C. 4905.02 and 4905.03, and, as such, is subject to the Commission's jurisdiction." PUCO Findings and Order at ¶4.

12. On November 6, 2014, NRG Pipeline determined that it was necessary to appropriate and acquire perpetual easement rights for the installation, construction, maintenance, operation and repair of a natural gas pipeline in, on, across, through and over the real property described in Paragraph 4 of NRG Pipeline's Verified Petition to Appropriate Property and to Fix Value Thereof ("Petition") to transport and transmit natural gas to NRG Power Midwest LP's Avon Lake facility.

13. On December 19, 2014, NRG Pipeline filed a letter of notification application, pursuant to Ohio Adm. Code 4906-11-01.

FURTHER AFFIANT SAYETH NAUGHT.

  
Alan Sawyer

SWORN TO BEFORE ME and subscribed in my presence this 25<sup>th</sup> day of March, 2015

  
NOTARY PUBLIC



KIM J. BEHM  
Notary Public • State of Ohio  
My Commission Expires  
September 18, 2018

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of NRG )  
Ohio Pipeline Company LLC for ) Case No. 13-2315-PL-ACB  
Authority to Operate as an Ohio Pipeline )  
Company. )

FINDING AND ORDER

The Commission finds:

- (1) On November 27, 2013, as amended on February 12, 2014, NRG Ohio Pipeline Company LLC (NRG Pipeline or Company) filed an application, pursuant to R.C. 4905.02, 4905.03(F), and 4905.63, for authority to operate as an intrastate pipeline company in the state of Ohio. In the application, NRG Pipeline states that it is a Delaware limited liability company that is registered to do business in Ohio. NRG Pipeline further states that it is a wholly-owned subsidiary of NRG Energy, Inc. (NRG), which is one of the largest power companies in the country, with nearly 100 generation assets producing more than 47,000 megawatts (MW), and retail energy providers serving more than 2 million customers in 16 states. NRG Pipeline notes that one of NRG's subsidiaries, NRG Power Midwest LP, owns a 753 MW coal-fired generating facility in Avon Lake, Ohio, and plans to add natural gas as a fuel source for the boilers at the facility. NRG Pipeline explains that it intends to provide the pipeline infrastructure to deliver natural gas to the facility, and plans to construct and operate approximately 20 miles of 24-inch to 90-inch high pressure steel pipeline in Lorain County, Ohio, which would be installed adjacent to road right-of-way to the extent practicable.
- (2) In support of the application, NRG Pipeline states that it has the technical, financial, and managerial capability needed to operate a natural gas transmission system of the type planned to serve the Avon Lake facility, as well as the requisite financial means to construct the proposed pipeline. NRG Pipeline notes that it has provided, along with the application, proof of the Company's registration with the Ohio Secretary of State, a map depicting the corridors of two

potential pipeline routes, a summary of the Company's technical and managerial background, and financial information pertaining to NRG.

- (3) Additionally, NRG Pipeline explains that, at the appropriate time, it plans to file an application with the Ohio Power Siting Board for a certificate to construct and operate the proposed pipeline. NRG Pipeline further explains that, after the pipeline is constructed, the Company or one of its affiliates will enter into a special contract with any customer served by the pipeline, pursuant to R.C. 4905.31, with any such contracts being filed with the Commission for approval prior to commencement of service. For that reason, NRG Pipeline notes that it has not proposed a tariff at this time, and that the appropriate filing will be made with the Commission, if the Company or an affiliate later decides to establish a tariff. NRG Pipeline emphasizes that, although a limited number of other commercial or manufacturing customers may seek transportation of natural gas through the proposed pipeline, its purpose is to serve the Avon Lake facility, such that natural gas may be used in place of coal for the generation of electricity at the facility.
- (4) Upon review of NRG Pipeline's application, the Commission finds that the application is reasonable and should be approved. Specifically, we find that NRG Pipeline's request for authority to operate as an intrastate pipeline company in the state of Ohio should be granted. NRG Pipeline has provided sufficient information in support of its application, including several exhibits intended to document that the Company and its affiliates have the necessary technical and managerial expertise and financial resources to construct and operate the proposed pipeline. Accordingly, we find that NRG Pipeline is a public utility and pipeline company, pursuant to R.C. 4905.02 and 4905.03, and, as such, is subject to the Commission's jurisdiction. We further find that, pursuant to R.C. 4905.63, NRG Pipeline is subject to R.C. Chapters 4901, 4903, 4905, 4909, and any other applicable chapter set forth therein. We also emphasize that NRG Pipeline is subject to the ongoing jurisdiction and supervision of the Commission with respect to the gas pipeline safety standards and requirements, as set forth in R.C. 4905.90 through 4905.96 and Ohio Adm.Code Chapter

4901:1-16. Finally, we note that our approval of NRG Pipeline's application in this case does not relieve the Company of the obligation to file a proper application with the Commission, at the appropriate time, for approval of a proposed tariff or reasonable arrangement entered into with any customer, or to file the necessary application with the Ohio Power Siting Board for a certificate to construct and operate the proposed pipeline.

It is, therefore,

ORDERED, That NRG Pipeline's application be approved. It is, further,

ORDERED, That NRG Ohio Pipeline Company LLC be added to the roll of public utilities regulated by this Commission. It is, further,


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

THE PUBLIC UTILITIES COMMISSION OF OHIO

  
Todd A. Snitchler, Chairman

  
Steven D. Lesser


  
M. Beth Trombold

  
Lynn Slaby

  
Asim Z. Haque

SJP/sc

Entered in the Journal FEB 28 2014

  
Barry F. McNeal  
Secretary



**WEGMAN  
HESSLER &  
VANDERBURG**

*Legal Professional Association*

6055 Rockside Woods Boulevard, Suite 200  
Cleveland, OH 44131  
Telephone: (216) 642-3342  
Facsimile: (216) 642-8826  
www.wegmanlaw.com

**Robert W. McIntyre**

**Of Counsel**

[rwmcintyre@wegmanlaw.com](mailto:rwmcintyre@wegmanlaw.com)

May 18, 2016

**VIA FedEx**

NRG Power Midwest, LP  
c/o CT Corporation System, Statutory Agent  
1300 East Ninth Street  
Cleveland, Ohio 44114

Re: NRG Ohio Pipeline Company, LLC v. Moore Road, LLC, *et al.*  
Lorain County Court of Common Pleas Case No. 15-CV-187151

Dear Sir or Madam:

Please find enclosed the following, which have been prepared with regard to the referenced matter:

1. Subpoena and Notice of Deposition for A Representative of NRG Power Midwest, LP; and
2. Subpoena and Notice of Deposition for A Records Custodian of NRG Power Midwest, LP.

Thanks for your anticipated cooperation, if you have any questions, don't hesitate to contact me or Jay Carson.

Very truly yours,

WEGMAN HESSLER & VANDERBURG

Robert W. McIntyre

RWM/smm  
Encl.

# Subpoenas

IN THE COURT OF COMMON PLEAS  
LORAIN COUNTY, OHIO

NRG Ohio Pipeline Company, LLC

Plaintiff,

VS.

Moore Road, LLC, et al.

Defendant.

**General Division - CIVIL**

Subpoena and Return

Case No. 15CV187151

TO: (Print name and address below)

NRG Power Midwest, LP - Corp. Representative

c/o Statutory Agent - CT Corporation System

1300 East Ninth Street

Cleveland, Ohio 44114

Attorney: Robert W. McIntyre, Esq.

Attorney for: Defendant Moore Road, LLC

Telephone: 216-642-3342

E-mail (optional): rwmcintyre@wegmanlaw.com

If you have any questions concerning this subpoena, please contact the attorney whose name and contact information are listed above.

YOU ARE HEREBY COMMANDED TO, AT THE DATE, TIME, AND LOCATION LISTED BELOW:

- ☒ attend and give testimony at a trial, hearing, or deposition.
- ☐ produce the following documents, electronically stored information, or tangible things at a trial, hearing, or deposition:

☐ produce and permit inspection and copying of the following documents or electronically stored information that are in your custody, possession, or control: \_\_\_\_\_

☐ produce and permit inspection and copying, testing, or sampling of the following tangible things that are in your custody, possession, or control: \_\_\_\_\_

☐ permit entry upon designated land or other property that is in your possession or control described as (see Civ. R. 34): \_\_\_\_\_

DATE: 25th day of May, 2016 TIME: 9:00 o'clock a.m./p.m.

LOCATION: Wegman Hessler & Vanderburg, 6055 Rockside Woods Blvd., Ste 200, Independence, Ohio 44131

WITNESS my signature and seal of said Court at Elyria, Ohio, this 18th day of May, 2016.

~~XXXXXXXXXXXXXXXXXXXX~~  
~~For Official Use of Court~~

Attorney

~~XXXXXXXXXXXXXXXXXXXX~~

**OHIO RULES OF CIVIL PROCEDURE – PARTIAL TEXT OF RULE 45 (revised 07/17/2014)**

**C) Protection of persons subject to subpoenas.**

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena.

(2)(a) A person commanded to produce under divisions (A)(1)(b), (iii), (iv), (v), or (vi) of this rule need not appear in person at the place of production or inspection unless commanded to attend and give testimony at a deposition, hearing, or trial.

(b) Subject to division (D)(2) of this rule, a person commanded to produce under divisions (A)(1)(b), (iii), (iv), (v), or (vi) of this rule may, within fourteen days after service of the subpoena or before the time specified for compliance if such time is less than fourteen days after service, serve upon the party or attorney designated in the subpoena written objections to production. If objection is made, the party serving the subpoena shall not be entitled to production except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena, upon notice to the person commanded to produce, may move at any time for an order to compel the production. An order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the production commanded.

(3) On timely motion, the court from which the subpoena was issued shall quash or modify the subpoena, or order appearance or production only under specified conditions, if the subpoena does any of the following:

(a) Fails to allow reasonable time to comply;

(b) Requires disclosure of privileged or otherwise protected matter and no exception or waiver applies;

(c) Requires disclosure of a fact known or opinion held by an expert not retained or specially employed by any party in anticipation of litigation or preparation for trial as described by Civ. R. 26(B)(5), if the fact or opinion does not describe specific events or occurrences in dispute and results from study by that expert that was not made at the request of any party;

(d) Subjects a person to undue burden.

(4) Before filing a motion pursuant to division (C)(3)(d) of this rule, a person resisting discovery under this rule shall attempt to resolve any claim of undue burden through discussions with the issuing attorney. A motion filed pursuant to division (C)(3)(d) of this rule shall be supported by an affidavit of the subpoenaed person or a certificate of that person's attorney of the efforts made to resolve any claim of undue burden.

(5) If a motion is made under division (C)(3)(c) or (C)(3)(d) of this rule, the court shall quash or modify the subpoena unless the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated.

**(D) Duties in responding to subpoena.**

(1) A person responding to a subpoena to produce documents shall, at the person's option, produce them as they are kept in the usual course of business or organized and labeled to correspond with the categories in the subpoena. A person producing documents or electronically stored information pursuant to a subpoena for them shall permit their inspection and copying by all parties present at the time and place set in the subpoena for inspection and copying.

(2) If a request does not specify the form or forms for producing electronically stored information, a person responding to a subpoena may produce the information in a form or forms in which the information is ordinarily maintained if that form is reasonably useable, or in any form that is reasonably useable. Unless ordered by the court or agreed to by the person subpoenaed, a person responding to a subpoena need not produce the same electronically stored information in more than one form.

(3) A person need not provide discovery of electronically stored information when the production imposes undue burden or expense. On motion to compel discovery or for a protective order, the person from whom electronically stored information is sought must show that the information is not reasonably accessible because of undue burden or expense. If a showing of undue burden or expense is made, the court may nonetheless order production of electronically stored information if the requesting party shows good cause. The court shall consider the factors in Civ. R. 26(B)(4) when determining if good cause exists. In ordering production of electronically stored information, the court may specify the format, extent, timing allocation of expenses and other conditions for the discovery of the electronically stored information.

(4) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials under Civ. R. 26(B)(3) or (4), the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(5) If information is produced in response to a subpoena that is subject to a claim of privilege or of protection as trial preparation material, the person making the claim may notify any party that received the information of the claim and basis for it. After being notified, a receiving party must promptly return, sequester, or destroy the specified information and any copies within the party's possession, custody or control. A party may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim of privilege or of protection as trial-preparation material. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The person who produced the information must preserve the information until the claim is resolved.



COURT OF COMMON PLEAS  
GENERAL DIVISION  
LORAIN COUNTY, OHIO

NRG Ohio Pipeline Company, LLC

Plaintiff,

VS.

Moore Road, LLC, et al.

Defendant.

CASE NO. 15CV187151JUDGE Christopher R. RothgeryRETURN OF SERVICE  
OF SUBPOENA

**NAME AND ADDRESS OF PERSON ON SUBPOENA:** NRG Power Midwest LP - Corporate Representative  
c/o Statutory Agent, CT Corporation System, 1300 East Ninth Street, Cleveland, Ohio 44114

**DATE, TIME AND LOCATION OF TRIAL OR HEARING:**

Deposition: May 25, 2016 at 9:00am at Wegman Hessler & Vanderburg, 6055 Rockside Woods Blvd., Ste 200, Independence, Ohio 44131

(The following to be completed by Sheriff, process server, or attorney)

I received this Subpoena on \_\_\_\_\_, 20\_\_\_\_, and served the same on the person herein  
 named on \_\_\_\_\_, 20\_\_\_\_.

Service was accomplished by \_\_\_\_\_  
 \_\_\_\_\_.

I was unable to complete service for the following reason(s): \_\_\_\_\_  
 \_\_\_\_\_.

**SHERIFF'S FEES**

Service and Return \_\_\_\_\_ \$ \_\_\_\_\_  
 Mileage \_\_\_\_\_ # miles \_\_\_\_\_ \$ \_\_\_\_\_  
 Copies \_\_\_\_\_ \$ \_\_\_\_\_  
 Total: \$ \_\_\_\_\_

PHIL R. STAMMITTI, Lorain Co. Sheriff

BY: \_\_\_\_\_  
 Deputy

**PROCESS SERVER/ATTORNEY CERTIFICATION**

I certify that the foregoing information is correct to the  
 best of my knowledge and belief.

\_\_\_\_\_  
 (signature of individual performing service)

Print name: \_\_\_\_\_

# Exhibit "A"

IN THE COURT OF COMMON PLEAS  
LORAIN COUNTY, OHIO

|                                 |   |                                |
|---------------------------------|---|--------------------------------|
| NRG OHIO PIPELINE COMPANY, LLC, | ) | CASE NO. 15CV187151            |
|                                 | ) |                                |
| Plaintiff,                      | ) | JUDGE Christopher R. Rothgery  |
|                                 | ) |                                |
| v.                              | ) | Magistrate James Blaszk        |
|                                 | ) |                                |
| MOORE ROAD, LLC, <i>et al.</i>  | ) | NOTICE OF DEPOSITION OF        |
|                                 | ) | REPRESENTATIVE DESIGNATED BY   |
| Defendants.                     | ) | NRG POWER MIDWEST, LP PURSUANT |
|                                 | ) | TO OHIO RULE 30(B)(5)          |

Please take notice that on **May 25, 2016** beginning at **9:00 a.m.**, counsel for Defendant, Moore Road, LLC, will take the **deposition of a person or persons identified and designated by NRG Power Midwest, LP, pursuant to ORCP 30(B)(5), who is knowledgeable to testify with respect to the matters set forth on Exhibit A.** The deposition will take place at the offices of **Wegman Hessler & Vanderburg, 6055 Rockside Woods Blvd., Ste. 200, Independence, Ohio 44131.** The deposition shall proceed in accordance with the Ohio Rules of Civil Procedure in the presence of a notary public, and be recorded by a stenographer, and shall continue from day-to-day until complete.

Respectfully submitted,



---

Robert W. McIntyre (0006768)  
Jay R. Carson (0068526)  
WEGMAN, HESSLER & VANDERBURG  
6055 Rockside Woods Boulevard, Suite 200  
Cleveland, Ohio 44131  
Phone: (216) 642-3342 / Fax: (216) 642-8826  
E-Mail: [rwmcintyre@wegmanlaw.com](mailto:rwmcintyre@wegmanlaw.com)  
[jrcarson@wegmanlaw.com](mailto:jrcarson@wegmanlaw.com)  
***Attorneys for Defendant Moore Road, LLC***

**CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of the foregoing Notice Of Deposition Of Representative Designated By NRG Power Midwest, LP Pursuant To Ohio Rule 30(B)(5) was served this 18th day of May, 2016 upon the following via e-mail:

Dennis M. O'Toole, Esq. (dotoole@omdplaw.com)  
John D. Latchney, Esq. (jlatchney@omdplaw.com)  
O'Toole, McLaughlin, Dooley  
& Pecora Co., L.P.A.  
5455 Detroit Road  
Sheffield Village, Ohio 44054

*Attorneys for Plaintiff  
NRG Ohio Pipeline Company, LLC*



---

Robert W McIntyre (0006768)

*An attorney for Defendant Moore Road, LLC*

## EXHIBIT A

(to Notice of Deposition of Representative of NRG Power Midwest LP  
Pursuant to Ohio Rule 30(B)(5))

1. Matters and topics for examination of each designated witness:
  - a. The facts and circumstances relating to the NRG Ohio Pipeline LLC (Pipeline) and NRG Power Midwest LLC (Power) regarding the construction of that certain pipeline (the NRG Pipeline) described in the Affidavit of Alan Sawyer *attached hereto as attachment 1* (Affidavit) or otherwise.
  - b. The facts and circumstances relating to Pipeline and NRG Energy Inc. regarding the construction of that certain pipeline (the NRG Pipeline) described in the Affidavit of Alan Sawyer attached hereto as attachment 1 (Affidavit) or otherwise.
2. The facts and circumstances relating to or which establishes the necessity for the construction of the NRG Pipeline asset forth at Paragraph 12 of the Affidavit or otherwise.
3. Each and every record and document provided to Pipeline by Power setting forth the usage of natural gas as a fuel for the Avon Generating facility.
4. The facts and circumstances relating to any contract or agreement by and between Pipeline and Power for the delivery of fuel gas for the generating facility described and identified at Paragraph 5 of the Affidavit or otherwise.
5. The facts and circumstances relating to any 'plans to add natural gas as a fuel source' as set forth and described at Paragraph 6 of the Affidavit.
6. The facts and circumstances relating to or which demonstrates and/ or substantiates the assertion that "NRG Pipeline" is a wholly owned subsidiary of NRG Energy Inc. and/or any relationship between NRG Power Midwest LLC, Pipeline and NRG Energy Inc.
7. The facts and circumstances relating to or which demonstrates that Pipeline was 'organized to construct and operate approximately 20 miles of ...pipeline'. As set forth in Paragraph 8 of the Affidavit or otherwise.
8. The facts and circumstances relating to or which demonstrate that Pipeline has the technical, financial, and managerial capability needed to operate a natural gas transmission system as well as the requisite financial means to construct its proposed pipeline.
9. The facts and circumstances relating to any decision or decisions process by which Power and/or NRG Energy Inc. have elected to continue fueling the generating facility with coal and not natural gas and/or defer the conversion of the generating facility from coal to natural gas.

10. All contacts, applications, or other materials submitted to and or received from the Ohio EPA:
  - a. For the construction/installation of emissions control equipment on the generating facility for the purpose of continuing to use coal as fuel for the generating facility and/or not natural gas as a fuel;
  - b. The designation of one or more boilers as a standby coal fueled unit that will not be converted to natural gas fuel; and
  - c. The decision to not operate any boiler at the generating facility in the future.
11. The facts and circumstances relating to or regarding the acquisition, construction/installation of machinery and equipment for converting any boiler at the generating facility to natural gas.
12. The facts and circumstances relating to or regarding the acquisition, construction/installation of machinery and equipment for controlling the emission of any boiler at the generating facility that would be fueled by coal.
13. The facts and circumstances relating to or which demonstrates or describes any projected or estimated cost of obtaining natural gas from Pipeline and or the revenue stream of Pipeline from the sale of natural gas to the generating facility described in Paragraph 5 of the Affidavit or otherwise.
14. Any studies, consultant's reports, or other facts or circumstances regarding or related to any safety set-back or buffer zone associated with the construction and operation of a high pressure gas pipeline.
15. Any studies, consultant's reports, or other facts or circumstances regarding or related to any safety set-back or buffer zone associated with the construction and operation of a high pressure gas pipeline and the damages to or restriction of property adjacent to the proposed pipeline and or operation of a high pressure pipeline.

# Attachment No. 1

**AFFIDAVIT**

STATE OF OHIO            )  
                              )  
COUNTY OF LORAIN       )     SS:

I, Alan Sawyer, being duly sworn under oath state the following is true.

1. I am over the age of eighteen (18) and competent to give the following declaration.
  2. I am presently, and was at all relevant times, the Vice President of NRG Ohio Pipeline Company LLC ("NRG Pipeline" or "Company").
  3. NRG Pipeline is a Delaware limited liability company that is registered to do business in the State of Ohio.
  4. NRG Pipeline is a wholly-owned subsidiary of NRG Energy, Inc. ("NRG").
  5. One of NRG's subsidiaries, NRG Power Midwest LP, owns a 735 MW coal-fired generating facility in Avon Lake, Ohio ("the Avon Lake facility").
  6. NRG Power Midwest LP plans to add natural gas as a fuel source for the boilers at the Avon Lake facility.
  7. NRG Pipeline was organized for transporting and transmitting natural gas through pipes to NRG Power Midwest LP's Avon Lake facility.
  8. More specifically, NRG Pipeline was organized to construct and operate approximately 20 miles of 24-inch to 30-inch high pressure steel pipeline in Lorain County, Ohio to transport and transmit natural gas to NRG Power Midwest LP's Avon Lake facility.
  9. On November 27, 2013, NRG Pipeline filed an application with the Public Utilities Commission of Ohio ("PUCO"), pursuant to R.C. 4905.02, R.C. 4905.03 and 4905.63,
-



for authority to operate as an intrastate pipeline company in the state of Ohio. The application was amended on February 12, 2014. See, Exhibit No. 1 attached hereto, *In the Matter of the Application of NRG Ohio Pipeline Company LLC for Authority to Operate as an Ohio Pipeline Company*, Case No. 13-2315-PL-ACE (P.U.C.O. Feb. 26, 2014) ("PUCO Finding and Order").

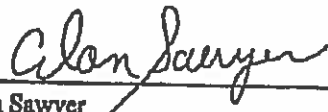
10. On February 26, 2014, the PUCO approved NRG Pipeline's application to operate as an intrastate pipeline company in the State of Ohio. PUCO Findings and Order at ¶4.

11. In approving NRG Pipeline's application, the PUCO found that "NRG Pipeline is a public utility and pipeline company, pursuant to R.C. 4905.02 and 4905.03, and, as such, is subject to the Commission's jurisdiction." PUCO Findings and Order at ¶4.

12. On November 6, 2014, NRG Pipeline determined that it was necessary to appropriate and acquire perpetual easement rights for the installation, construction, maintenance, operation and repair of a natural gas pipeline in, on, across, through and over the real property described in Paragraph 4 of NRG Pipeline's Verified Petition to Appropriate Property and to Fix Value Thereof ("Petition") to transport and transmit natural gas to NRG Power Midwest LP's Avon Lake facility.

13. On December 19, 2014, NRG Pipeline filed a letter of notification application, pursuant to Ohio Adm. Code 4906-11-01.

FURTHER AFFIANT SAYETH NAUGHT.

  
Alan Sawyer

SWORN TO BEFORE ME and subscribed in my presence this 25<sup>th</sup> day of March, 2015

  
NOTARY PUBLIC



KIM J. BEHM  
Notary Public - State of Ohio  
My Commission Expires  
September 19, 2018

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of NRG )  
Ohio Pipeline Company LLC for ) Case No. 13-2315-PL-ACB  
Authority to Operate as an Ohio Pipeline )  
Company. )

FINDING AND ORDER

The Commission finds:

- (1) On November 27, 2013, as amended on February 12, 2014, NRG Ohio Pipeline Company LLC (NRG Pipeline or Company) filed an application, pursuant to R.C. 4905.02, 4905.03(F), and 4905.63, for authority to operate as an intrastate pipeline company in the state of Ohio. In the application, NRG Pipeline states that it is a Delaware Limited Liability company that is registered to do business in Ohio. NRG Pipeline further states that it is a wholly-owned subsidiary of NRG Energy, Inc. (NRG), which is one of the largest power companies in the country, with nearly 100 generation assets producing more than 47,000 megawatts (MW), and retail energy providers serving more than 2 million customers in 16 states. NRG Pipeline notes that one of NRG's subsidiaries, NRG Power Midwest LP, owns a 753 MW coal-fired generating facility in Avon Lake, Ohio, and plans to add natural gas as a fuel source for the boilers at the facility. NRG Pipeline explains that it intends to provide the pipeline infrastructure to deliver natural gas to the facility, and plans to construct and operate approximately 20 miles of 24-inch to 30-inch high pressure steel pipeline in Lorain County, Ohio, which would be installed adjacent to road right-of-way to the extent practicable.
- (2) In support of the application, NRG Pipeline states that it has the technical, financial, and managerial capability needed to operate a natural gas transmission system of the type planned to serve the Avon Lake facility, as well as the requisite financial means to construct the proposed pipeline. NRG Pipeline notes that it has provided, along with the application, proof of the Company's registration with the Ohio Secretary of State, a map depicting the corridors of two

potential pipeline routes, a summary of the Company's technical and managerial background, and financial information pertaining to NRG.

- (3) Additionally, NRG Pipeline explains that, at the appropriate time, it plans to file an application with the Ohio Power Sitting Board for a certificate to construct and operate the proposed pipeline. NRG Pipeline further explains that, after the pipeline is constructed, the Company or one of its affiliates will enter into a special contract with any customer served by the pipeline, pursuant to R.C. 4905.31, with any such contracts being filed with the Commission for approval prior to commencement of service. For that reason, NRG Pipeline notes that it has not proposed a tariff at this time, and that the appropriate filing will be made with the Commission, if the Company or an affiliate later decides to establish a tariff. NRG Pipeline emphasizes that, although a limited number of other commercial or manufacturing customers may seek transportation of natural gas through the proposed pipeline, its purpose is to serve the Avon Lake facility, such that natural gas may be used in place of coal for the generation of electricity at the facility.
- (4) Upon review of NRG Pipeline's application, the Commission finds that the application is reasonable and should be approved. Specifically, we find that NRG Pipeline's request for authority to operate as an intrastate pipeline company in the state of Ohio should be granted. NRG Pipeline has provided sufficient information in support of its application, including several exhibits intended to document that the Company and its affiliates have the necessary technical and managerial expertise and financial resources to construct and operate the proposed pipeline. Accordingly, we find that NRG Pipeline is a public utility and pipeline company, pursuant to R.C. 4905.02 and 4905.03, and, as such, is subject to the Commission's jurisdiction. We further find that, pursuant to R.C. 4905.63, NRG Pipeline is subject to R.C. Chapters 4901, 4903, 4905, 4909, and any other applicable chapter set forth therein. We also emphasize that NRG Pipeline is subject to the ongoing jurisdiction and supervision of the Commission with respect to the gas pipeline safety standards and requirements, as set forth in R.C. 4905.90 through 4905.96 and Ohio Adm.Code Chapter

4901:1-16. Finally, we note that our approval of NRG Pipeline's application in this case does not relieve the Company of the obligation to file a proper application with the Commission, at the appropriate time, for approval of a proposed tariff or reasonable arrangement entered into with any customer, or to file the necessary application with the Ohio Power Siting Board for a certificate to construct and operate the proposed pipeline.

It is, therefore,

ORDERED, That NRG Pipeline's application be approved. It is, further,

ORDERED, That NRG Ohio Pipeline Company LLC be added to the roll of public utilities regulated by this Commission. It is, further,

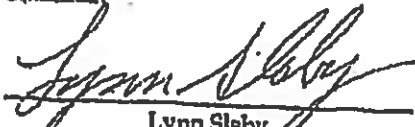
ORDERED, That a copy of this Finding and Order be served upon all interested persons and parties of record.


THE PUBLIC UTILITIES COMMISSION OF OHIO

  
Todd A. Schilder, Chairman

  
Steven D. Lesser


  
M. Beth Trombold

  
Lynn Slaby

  
Asim Z. Haque

SJP/sc

Entered in the Journal FEB 28 2014



Barry F. McNeal  
Secretary



IN THE COURT OF COMMON PLEAS  
LORAIN COUNTY, OHIO

NRG Ohio Pipeline Company, LLC

Plaintiff,

VS.

Moore Road, LLC, et al.

Defendant.

**General Division - CIVIL**

**Subpoena and Return**

Case No. 15CV187151

TO: (Print name and address below)

NRG Power Midwest, LP- Records Custodian

c/o Statutory Agent - CT Corporation System

1300 East Ninth Street

Cleveland, Ohio 44114

Attorney: Robert W. McIntyre, Esq.  
Attorney for: Defendant Moore Road, LLC  
Telephone: 216-642-3342  
E-mail (optional): rwmcintyre@wegmanlaw.com

If you have any questions concerning this subpoena, please contact the attorney whose name and contact information are listed above.

YOU ARE HEREBY COMMANDED TO, AT THE DATE, TIME, AND LOCATION LISTED BELOW:

- ☐ attend and give testimony at a trial, hearing, or deposition.
- ☐ produce the following documents, electronically stored information, or tangible things at a trial, hearing, or deposition:

☒ produce and permit inspection and copying of the following documents or electronically stored information that are in your custody, possession, or control: Please see attached Exhibit A

☐ produce and permit inspection and copying, testing, or sampling of the following tangible things that are in your custody, possession, or control: \_\_\_\_\_

☐ permit entry upon designated land or other property that is in your possession or control described as (see Civ. R. 34): \_\_\_\_\_

DATE: 25th day of May, 20 16 TIME: 9:00 o'clock a.m./p.m.

LOCATION: Wegman Hessler & Vanderburg, 6055 Rockside Woods Blvd., Ste 200, Independence, Ohio 44131

WITNESS my signature and seal of said Court at Elyria, Ohio, this 18th day of May, 2016.

~~XXXXXX~~ ~~XXXXXX~~ ~~XXXXXX~~ ~~XXXXXX~~ ~~XXXXXX~~ ~~XXXXXX~~ ~~XXXXXX~~ ~~XXXXXX~~ ~~XXXXXX~~ ~~XXXXXX~~

Attorney

~~XXXXXX~~ ~~XXXXXX~~ ~~XXXXXX~~ ~~XXXXXX~~ ~~XXXXXX~~ ~~XXXXXX~~ ~~XXXXXX~~ ~~XXXXXX~~ ~~XXXXXX~~ ~~XXXXXX~~

## OHIO RULES OF CIVIL PROCEDURE – PARTIAL TEXT OF RULE 45 (revised 07/17/2014)

**C) Protection of persons subject to subpoenas.**

- (1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena.
- (2)(a) A person commanded to produce under divisions (A)(1)(b), (iii), (iv), (v), or (vi) of this rule need not appear in person at the place of production or inspection unless commanded to attend and give testimony at a deposition, hearing, or trial.
- (b) Subject to division (D)(2) of this rule, a person commanded to produce under divisions (A)(1)(b), (iii), (iv), (v), or (vi) of this rule may, within fourteen days after service of the subpoena or before the time specified for compliance if such time is less than fourteen days after service, serve upon the party or attorney designated in the subpoena written objections to production. If objection is made, the party serving the subpoena shall not be entitled to production except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena, upon notice to the person commanded to produce, may move at any time for an order to compel the production. An order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the production commanded.
- (3) On timely motion, the court from which the subpoena was issued shall quash or modify the subpoena, or order appearance or production only under specified conditions, if the subpoena does any of the following:
- (a) Fails to allow reasonable time to comply;
  - (b) Requires disclosure of privileged or otherwise protected matter and no exception or waiver applies;
  - (c) Requires disclosure of a fact known or opinion held by an expert not retained or specially employed by any party in anticipation of litigation or preparation for trial as described by Civ. R. 26(B)(5), if the fact or opinion does not describe specific events or occurrences in dispute and results from study by that expert that was not made at the request of any party;
  - (d) Subjects a person to undue burden.
- (4) Before filing a motion pursuant to division (C)(3)(d) of this rule, a person resisting discovery under this rule shall attempt to resolve any claim of undue burden through discussions with the issuing attorney. A motion filed pursuant to division (C)(3)(d) of this rule shall be supported by an affidavit of the subpoenaed person or a certificate of that person's attorney of the efforts made to resolve any claim of undue burden.
- (5) If a motion is made under division (C)(3)(c) or (C)(3)(d) of this rule, the court shall quash or modify the subpoena unless the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated.

**(D) Duties in responding to subpoena.**

- (1) A person responding to a subpoena to produce documents shall, at the person's option, produce them as they are kept in the usual course of business or organized and labeled to correspond with the categories in the subpoena. A person producing documents or electronically stored information pursuant to a subpoena for them shall permit their inspection and copying by all parties present at the time and place set in the subpoena for inspection and copying.
- (2) If a request does not specify the form or forms for producing electronically stored information, a person responding to a subpoena may produce the information in a form or forms in which the information is ordinarily maintained if that form is reasonably useable, or in any form that is reasonably useable. Unless ordered by the court or agreed to by the person subpoenaed, a person responding to a subpoena need not produce the same electronically stored information in more than one form.
- (3) A person need not provide discovery of electronically stored information when the production imposes undue burden or expense. On motion to compel discovery or for a protective order, the person from whom electronically stored information is sought must show that the information is not reasonably accessible because of undue burden or expense. If a showing of undue burden or expense is made, the court may nonetheless order production of electronically stored information if the requesting party shows good cause. The court shall consider the factors in Civ. R. 26(B)(4) when determining if good cause exists. In ordering production of electronically stored information, the court may specify the format, extent, timing allocation of expenses and other conditions for the discovery of the electronically stored information.
- (4) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials under Civ. R. 26(B)(3) or (4), the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.
- (5) If information is produced in response to a subpoena that is subject to a claim of privilege or of protection as trial preparation material, the person making the claim may notify any party that received the information of the claim and basis for it. After being notified, a receiving party must promptly return, sequester, or destroy the specified information and any copies within the party's possession, custody or control. A party may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim of privilege or of protection as trial-preparation material. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The person who produced the information must preserve the information until the claim is resolved.

COURT OF COMMON PLEAS  
GENERAL DIVISION  
LORAIN COUNTY, OHIO

NRG Ohio Pipeline Company, LLC

Plaintiff,

VS.

Moore Road, LLC, et al.

Defendant.

CASE NO. 15CV187151

JUDGE Christopher R. Rothgery

RETURN OF SERVICE  
OF SUBPOENA

**NAME AND ADDRESS OF PERSON ON SUBPOENA:** NRG Power Midwest, LP - Records Custodian  
c/o Statutory Agent, CT Corporation System, 1300 East Ninth Street, Cleveland, Ohio 44114

**DATE, TIME AND LOCATION OF TRIAL OR HEARING:**

Deposition: May 25, 2016 at 9:00am at Wegman Hessler &amp; Vanderburg, 6055 Rockside Woods Blvd., Ste 200, Independence, Ohio 44131

(The following to be completed by Sheriff, process server, or attorney)

I received this Subpoena on \_\_\_\_\_, 20\_\_\_\_, and served the same on the person herein  
named on \_\_\_\_\_, 20\_\_\_\_.

Service was accomplished by \_\_\_\_\_

I was unable to complete service for the following reason(s): \_\_\_\_\_

**SHERIFF'S FEES**

Service and Return \_\_\_\_\_ \$ \_\_\_\_\_  
Mileage \_\_\_\_\_ # miles \_\_\_\_\_ \$ \_\_\_\_\_  
Copies \_\_\_\_\_ \$ \_\_\_\_\_  
Total: \$ \_\_\_\_\_

PHIL R. STAMMITI, Lorain Co. Sheriff

BY: \_\_\_\_\_  
Deputy**PROCESS SERVER/ATTORNEY CERTIFICATION**I certify that the foregoing information is correct to the  
best of my knowledge and belief.

(signature of individual performing service)

Print name: \_\_\_\_\_




# Exhibit "A"

IN THE COURT OF COMMON PLEAS  
LORAIN COUNTY, OHIO

|                                 |   |                                 |
|---------------------------------|---|---------------------------------|
| NRG OHIO PIPELINE COMPANY, LLC, | ) | CASE NO. 15CV187151             |
|                                 | ) |                                 |
| Plaintiff,                      | ) | JUDGE Christopher R. Rothgery   |
|                                 | ) |                                 |
| v.                              | ) | Magistrate James Blaszak        |
|                                 | ) |                                 |
| MOORE ROAD, LLC, <i>et al.</i>  | ) | NOTICE OF DEPOSITION OF RECORDS |
|                                 | ) | CUSTODIAN DESIGNATED BY NRG     |
| Defendants.                     | ) | POWER MIDWEST, LP               |

Please take notice that on **May 25, 2016** beginning at **9:00 a.m.**, counsel for Defendant, Moore Road, LLC, will take the **deposition of a person or persons identified and designated by NRG Power Midwest, LP as Records Custodian who is knowledgeable to testify with respect to the matters set forth on Exhibit A.** The deposition will take place at the offices of **Wegman Hessler & Vanderburg, 6055 Rockside Woods Blvd., Ste. 200, Independence, Ohio 44131.** The deposition shall proceed in accordance with the Ohio Rules of Civil Procedure in the presence of a notary public, and be recorded by a stenographer, and shall continue from day-to-day until complete.

Respectfully submitted,

  
\_\_\_\_\_  
Robert W. McIntyre (0006768)  
Jay R. Carson (0068526)  
WEGMAN, HESSLER & VANDERBURG  
6055 Rockside Woods Boulevard, Suite 200  
Cleveland, Ohio 44131  
Phone: (216) 642-3342 / Fax: (216) 642-8826  
E-Mail: [rwmcintyre@wegmanlaw.com](mailto:rwmcintyre@wegmanlaw.com)  
[jrcarson@wegmanlaw.com](mailto:jrcarson@wegmanlaw.com)  
***Attorneys for Defendant Moore Road, LLC***

**CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of the foregoing Notice Of Deposition Of  
Records Custodian Designated By NRG Power Midwest, LP was served this 18th day of May,  
2016 upon the following via e-mail:

Dennis M. O'Toole, Esq. (dotoole@omdplaw.com)  
John D. Latchney, Esq. (jlatchney@omdplaw.com)  
O'Toole, McLaughlin, Dooley  
& Pecora Co., L.P.A.  
5455 Detroit Road  
Sheffield Village, Ohio 44054

*Attorneys for Plaintiff  
NRG Ohio Pipeline Company, LLC*

A handwritten signature in black ink, appearing to read 'Robert W McIntyre', is written over a horizontal line.

Robert W McIntyre (0006768)

*An attorney for Defendant Moore Road, LLC*

## **EXHIBIT A**

(to Notice of Deposition of  
Records Custodian of NRG Power Midwest LP)

### **-Records-**

1. All correspondence by and between:
  - a. Pipeline and Power regarding the construction of that certain pipeline (the NRG Pipeline) described in the Affidavit of Alan Sawyer attached hereto as *Attachment 1* or otherwise.
  - b. Power and NRG Energy Inc. regarding the construction of that certain pipeline (the NRG Pipeline) described in the Affidavit of Alan Sawyer attached hereto as Attachment 1 (Affidavit), or otherwise.
2. Each record or document which establishes the necessity for the construction of the NRG Pipeline asset forth at Paragraph 12 of the Affidavit, or otherwise.
3. Each and every record regarding the acquisition, construction/installation of machinery and equipment for converting any boiler at the generating facility to natural gas.
4. Each and every record regarding the acquisition, construction/installation of machinery and equipment for controlling the emission of any boiler at the generating facility to natural gas.
5. Each record or document which describes or is related to the following:
  - a. Acquisition of real estate and /or easements for the construction of the NRG Pipeline;
  - b. Any construction contracts, bids, requests for bids or quotations for the construction of the NRG Pipeline; and
  - c. The interconnection of the NRG Pipeline with any gas transmission facility or pipeline owned by others than NRG Pipeline.
6. Each record or document which describes or is related to the following:
  - a. The acquisition of gas transmission pipe, pipeline materials, machinery and equipment or facilities for the construction and/or installation of the NRG Pipeline; and
  - b. The design, engineering, geotechnical investigation, or other scientific or technical investigations and/or work undertaken for the construction and installation of the NRG Pipeline.

7. Each record or document which describes or is related to any communication, administrative filing or application, or other submission to or with the following relating to the NRG Pipeline:
  - a. The Ohio Department of Natural Resources;
  - b. The Ohio Public Utilities Commission;
  - c. The Ohio Power Siting Board;
  - d. The Ohio Environmental Protection Agency;
  - e. City of Avon Ohio;
  - f. The City of Avon Lake Ohio;
  - g. Lorain County;
  - h. Any other agency of the State of Ohio; and
  - i. Any agency of the United States Government.
8. Each record or document which describes or is related to the following:
  - a. Acquisition of machinery or equipment for the conversion of any boiler at the Avon Generating facility to natural gas as a fuel;
  - b. Any construction contracts, bids, requests for bids or quotations for the construction of the natural gas fuel boiler conversion; and
  - c. The interconnection of the NRG Pipeline with the generating facility.
9. Each record or document which describes or is related to the following:
  - a. The acquisition of machinery, equipment or the construction of facility for the construction and/or installation of any emission control systems to enable the generating facility to continue to burn coal as a fuel;
  - b. The design, engineering, geotechnical investigation, or other scientific or technical investigations and/or work undertaken for the construction and installation of any emission control systems to enable the generating facility to continue to burn coal as a fuel; and
  - c. The purchase of coal fuel for the operation of the generating facility including but not limited to supply contracts, options, or other commercial undertakings to obtain a supply of coal for fuel at the generating facility.

10. Each record or document which describes or is related to any communication, administrative filing or application, or other submission to or with the following relating to conversion of any boiler at the generating facility to the use of natural gas as a fuel
  - a. The Ohio Department of Natural Resources;
  - b. The Ohio Public Utilities Commission;
  - c. The Ohio Power Siting Board;
  - d. The Ohio Environmental Protection Agency;
  - e. City of Avon Ohio;
  - f. The City of Avon Lake Ohio;
  - g. Lorain County;
  - h. Any other agency of the State of Ohio; and
  - i. Any agency of the United States Government.
11. Each record or document which describes or is related to any communication, administrative filing or application, or other submission to or with the following relating to conversion of any boiler at the generating facility to the use of coal as a fuel:
  - a. The Ohio Department of Natural Resources;
  - b. The Ohio Public Utilities Commission;
  - c. The Ohio Power Siting Board;
  - d. The Ohio Environmental Protection Agency;
  - e. City of Avon Ohio;
  - f. The City of Avon Lake Ohio;
  - g. Lorain County;
  - h. Any other agency of the State of Ohio; and
  - i. Any agency of the United States Government.
12. Each and every record or document that describes or refers to any contract or agreement by and between Pipeline and Power for the delivery of fuel gas for the generating facility described and identified at Paragraph 5 of the Affidavit, or otherwise.

13. Each and every record or document that evidences any 'plans to add natural gas as a fuel source' as set forth and described at Paragraph 6 of the Affidavit, or otherwise.
14. Each and every record or document that establishes, demonstrates and/ or substantiates the statement in Para 4 that "NRG Pipeline" is a wholly owned subsidiary of NRG Energy Inc.
15. Each and every record and document that demonstrates that plaintiff was 'organized to construct and operate approximately 20 miles of ...pipeline'. As set forth in Paragraph 8 of the Affidavit.
16. Each and every record and document that demonstrates that Pipeline has the technical, financial, and managerial capability needed to operate a natural gas transmission system as well as the requisite financial means to construct its proposed pipeline.
17. Each and every record and document that describes or is related to any decision or decisions process by which Power and/or NRG Energy Inc. have elected to continue fueling the generating facility with coal and not natural gas and or defer the conversion of the generating facility from coal to natural gas.
18. Each and every record and document that describes any projected or estimated costs to acquire natural gas for the generating facility described in Paragraph 5 of the Affidavit.
19. Each and every record and document that describes any studies, consultant's reports, or other facts or circumstances regarding or related to any safety set-back or buffer zone associated with the construction and operation of a high pressure gas pipeline.
20. Each and every record and document that describes any studies, consultant's reports, or other facts or circumstances regarding or related to any safety set-back or buffer zone associated with the construction and operation of a high pressure gas pipeline and the damages to or restriction of property adjacent to the proposed pipeline and or operation of a high pressure pipeline.

# Attachment No. 1



**AFFIDAVIT**

STATE OF OHIO                     )  
  )     SS:  
COUNTY OF LORAIN            )

I, Alan Sawyer, being duly sworn under oath state the following is true.

1. I am over the age of eighteen (18) and competent to give the following declaration.
  2. I am presently, and was at all relevant times, the Vice President of NRG Ohio Pipeline Company LLC ("NRG Pipeline" or "Company").
  3. NRG Pipeline is a Delaware limited liability company that is registered to do business in the State of Ohio.
  4. NRG Pipeline is a wholly-owned subsidiary of NRG Energy, Inc. ("NRG").
  5. One of NRG's subsidiaries, NRG Power Midwest LP, owns a 735 MW coal-fired generating facility in Avon Lake, Ohio ("the Avon Lake facility").
  6. NRG Power Midwest LP plans to add natural gas as a fuel source for the boilers at the Avon Lake facility.
  7. NRG Pipeline was organized for transporting and transmitting natural gas through pipes to NRG Power Midwest LP's Avon Lake facility.
  8. More specifically, NRG Pipeline was organized to construct and operate approximately 20 miles of 24-inch to 30-inch high pressure steel pipeline in Lorain County, Ohio to transport and transmit natural gas to NRG Power Midwest LP's Avon Lake facility.
  9. On November 27, 2013, NRG Pipeline filed an application with the Public Utilities Commission of Ohio ("PUCO"), pursuant to R.C. 4905.02, R.C. 4905.03 and 4905.63,
-

for authority to operate as an intrastate pipeline company in the state of Ohio. The application was amended on February 12, 2014. See, Exhibit No. 1 attached hereto, *In the Matter of the Application of NRG Ohio Pipeline Company LLC for Authority to Operate as an Ohio Pipeline Company*, Case No. 13-2315-PL-ACE (P.U.C.O. Feb. 26, 2014) ("PUCO Finding and Order").

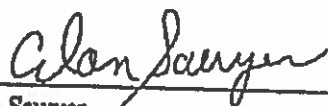
10. On February 26, 2014, the PUCO approved NRG Pipeline's application to operate as an intrastate pipeline company in the State of Ohio. PUCO Findings and Order at ¶4.

11. In approving NRG Pipeline's application, the PUCO found that "NRG Pipeline is a public utility and pipeline company, pursuant to R.C. 4905.02 and 4905.03, and, as such, is subject to the Commission's jurisdiction." PUCO Findings and Order at ¶4.

12. On November 6, 2014, NRG Pipeline determined that it was necessary to appropriate and acquire perpetual easement rights for the installation, construction, maintenance, operation and repair of a natural gas pipeline in, on, across, through and over the real property described in Paragraph 4 of NRG Pipeline's Verified Petition to Appropriate Property and to Fix Value Thereof ("Petition") to transport and transmit natural gas to NRG Power Midwest LP's Avon Lake facility.

13. On December 19, 2014, NRG Pipeline filed a letter of notification application, pursuant to Ohio Adm. Code 4906-11-01.

FURTHER AFFIANT SAYETH NAUGHT.

  
Alan Sawyer

SWORN TO BEFORE ME and subscribed in my presence this 25<sup>th</sup> day of March, 2015

  
NOTARY PUBLIC



KIM J. BEHM  
Notary Public - State of Ohio  
My Commission Expires  
September 18, 2018

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of NRG )  
Ohio Pipeline Company LLC for ) Case No. 19-2315-PL-ACB  
Authority to Operate as an Ohio Pipeline )  
Company. )

FINDING AND ORDER

The Commission finds:

- (1) On November 27, 2013, as amended on February 12, 2014, NRG Ohio Pipeline Company LLC (NRG Pipeline or Company) filed an application, pursuant to R.C. 4905.02, 4905.03(F), and 4905.63, for authority to operate as an intrastate pipeline company in the state of Ohio. In the application, NRG Pipeline states that it is a Delaware limited liability company that is registered to do business in Ohio. NRG Pipeline further states that it is a wholly-owned subsidiary of NRG Energy, Inc. (NRG), which is one of the largest power companies in the country, with nearly 100 generation assets producing more than 47,000 megawatts (MW), and retail energy providers serving more than 2 million customers in 16 states. NRG Pipeline notes that one of NRG's subsidiaries, NRG Power Midwest LP, owns a 753 MW coal-fired generating facility in Avon Lake, Ohio, and plans to add natural gas as a fuel source for the boilers at the facility. NRG Pipeline explains that it intends to provide the pipeline infrastructure to deliver natural gas to the facility, and plans to construct and operate approximately 20 miles of 24-inch to 30-inch high pressure steel pipeline in Lorain County, Ohio, which would be installed adjacent to road right-of-way to the extent practicable.
- (2) In support of the application, NRG Pipeline states that it has the technical, financial, and managerial capability needed to operate a natural gas transmission system of the type planned to serve the Avon Lake facility, as well as the requisite financial means to construct the proposed pipeline. NRG Pipeline notes that it has provided, along with the application, proof of the Company's registration with the Ohio Secretary of State, a map depicting the corridors of two

potential pipeline routes, a summary of the Company's technical and managerial background, and financial information pertaining to NRG.

- (3) Additionally, NRG Pipeline explains that, at the appropriate time, it plans to file an application with the Ohio Power Siting Board for a certificate to construct and operate the proposed pipeline. NRG Pipeline further explains that, after the pipeline is constructed, the Company or one of its affiliates will enter into a special contract with any customer served by the pipeline, pursuant to R.C. 4905.31, with any such contracts being filed with the Commission for approval prior to commencement of service. For that reason, NRG Pipeline notes that it has not proposed a tariff at this time, and that the appropriate filing will be made with the Commission, if the Company or an affiliate later decides to establish a tariff. NRG Pipeline emphasizes that, although a limited number of other commercial or manufacturing customers may seek transportation of natural gas through the proposed pipeline, its purpose is to serve the Avon Lake facility, such that natural gas may be used in place of coal for the generation of electricity at the facility.
- (4) Upon review of NRG Pipeline's application, the Commission finds that the application is reasonable and should be approved. Specifically, we find that NRG Pipeline's request for authority to operate as an intrastate pipeline company in the state of Ohio should be granted. NRG Pipeline has provided sufficient information in support of its application, including several exhibits intended to document that the Company and its affiliates have the necessary technical and managerial expertise and financial resources to construct and operate the proposed pipeline. Accordingly, we find that NRG Pipeline is a public utility and pipeline company, pursuant to R.C. 4905.02 and 4905.03, and, as such, is subject to the Commission's jurisdiction. We further find that, pursuant to R.C. 4905.63, NRG Pipeline is subject to R.C. Chapters 4901, 4903, 4905, 4909, and any other applicable chapter set forth therein. We also emphasize that NRG Pipeline is subject to the ongoing jurisdiction and supervision of the Commission with respect to the gas pipeline safety standards and requirements, as set forth in R.C. 4905.90 through 4905.96 and Ohio Adm. Code Chapter

4901:1-16. Finally, we note that our approval of NRG Pipeline's application in this case does not relieve the Company of the obligation to file a proper application with the Commission, at the appropriate time, for approval of a proposed tariff or reasonable arrangement entered into with any customer, or to file the necessary application with the Ohio Power Siting Board for a certificate to construct and operate the proposed pipeline.

It is, therefore,

ORDERED, That NRG Pipeline's application be approved. It is, further,

ORDERED, That NRG Ohio Pipeline Company LLC be added to the roll of public utilities regulated by this Commission. It is, further,

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

THE PUBLIC UTILITIES COMMISSION OF OHIO

  
Todd A. Snitchler, Chairman

  
Steven D. Lesser

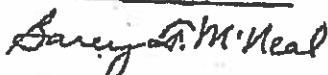
  
Lynn Slaby

  
M. Beth Trombold

  
Asim Z. Haque

SJP/sc

Entered in the Journal FEB 28 2014



Barcy F. McNeal  
Secretary

# FedEx<sup>®</sup>

## Express

*Signature Required*

ORIGIN ID: CLEA (216) 642-3342  
SHANNON MUSSEHL  
WEGMAN, HESSLER & VANDERBURG  
6055 ROCKSIDE WOODS BLVD  
SUITE 200  
INDEPENDENCE, OH 44131  
UNITED STATES US

SHIP DATE: 17MAY16  
ACTWGT: 1.00 LB  
CAD: 107538935/INET3730

BILL SENDER

TO **C/O CT CORPORATION SYSTEM, STATUTOR**  
**NRG POWER MIDWEST, LP**  
**1300 EAST NINTH STREET**  
**SUITE 1010**  
**CLEVELAND OH 44114**

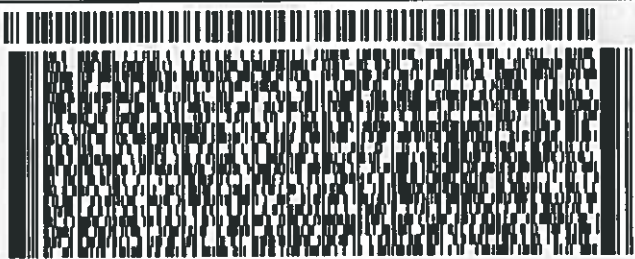
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(216) 821-4270

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DEPT



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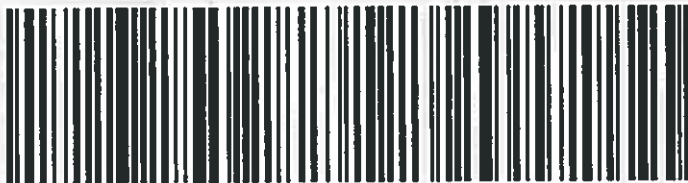
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PRIORITY OVERNIGHT

TRK#  
0201 **7830 9820 0526**

DSR

**64 BKLA**

44114  
OH-US CLE



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◀ Insert shipping  
document here.



WEGMAN  
HESSLER &  
VANDERBURG

*Legal Professional Association*

6055 Rockside Woods Boulevard, Suite 200  
Cleveland, OH 44131  
Telephone: (216) 642-3342  
Facsimile: (216) 642-8826  
www.wegmanlaw.com

Robert W. McIntyre

Of Counsel

[rwmcintyre@wegmanlaw.com](mailto:rwmcintyre@wegmanlaw.com)

May 9, 2016

**VIA FEDEX**

David R. Hill, Esq.  
Executive Vice President  
& General Counsel  
NRG Energy, Inc.  
211 Carnegie Center  
Princeton, NJ 08540-6213

Re: NRG Ohio Pipeline Company, LLC v. Moore Road, LLC, et al.  
Lorain County Court of Common Pleas Case No. 15-CV-187151

Dear Mr. Hill:

I am writing directly to you in regards to a certain private condemnation lawsuit as noted above in which my client, Moore Road LLC is the Defendant and your company's direct subsidiary, NRG Ohio Pipeline Company LLC (Pipeline) is the Plaintiff.

This letter is sent to you because another of your company's direct subsidiaries, NRG Power Midwest LP (Power) will not accept service of discovery process via its statutory agent in Ohio; CT Corporation. Further, counsel representing Pipeline has indicated that it cannot accept discovery process service on behalf of 'Power', stating it is a separate entity which they do not represent; and that Pipeline has NO knowledge of the location, business or management of Power.

The discovery process referred to above is attached to this letter (Attachment No. 1) (noting that the dates have passed without service upon Power); and is necessitated by the numerous assertions of the Plaintiff, Pipeline in the above action. However, as represented by Pipeline, it has no knowledge of the information sought in the attached discovery to Power; and that the knowledge of several matters highly relevant to the lawsuit requested therein are apparently vested only in the Power subsidiary.

In closing, I am requesting that you be kind enough to address the service of process situation noted above and notify me of the appropriate address and responsible person at Energy, so that we can at least serve our discovery processes upon this entity, and, thereby commence the

David R. Hill, Esq.  
May 9, 2016  
Page 2

process of obtaining the requested records from Power; as well as organize the depositions of the designees identified in the discovery.

I thank you in advance for your attention to this matter, and if you have any questions, please contact me at your convenience.

Very truly yours,

WEGMAN HESSLER & VANDERBURG

A handwritten signature in black ink, appearing to be 'Robert W. McIntyre', with a large, stylized 'R' and 'M'.

Robert W. McIntyre

RWM/smm  
Encl.



# Attachment No. 1

(April 19, 2016 Letter (and enclosures) to  
Statutory Agent of NRG Power Midwest LP, CT Corporation)



**WEGMAN  
HESSLER &  
VANDERBURG**

*Legal Professional Association*  
6055 Rockside Woods Boulevard, Suite 200  
Cleveland, OH 44131  
Telephone: (216) 642-3342  
Facsimile: (216) 642-8826  
www.wegmanlaw.com

**Robert W. McIntyre**  
Of Counsel  
rwm McIntyre@wegmanlaw.com

April 19, 2016

**VIA CERTIFIED MAIL**

NRG Power Midwest, LP  
c/o CT Corporation System, Statutory Agent  
1300 East Ninth Street  
Cleveland, Ohio 44114

Re: NRG Ohio Pipeline Company, LLC v. Moore Road, LLC, et al.  
Lorain County Court of Common Pleas Case No. 15-CV-187151

Dear Sir or Madam:

Please find enclosed the following, which have been prepared with regard to the referenced matter:

1. Subpoena and Notice of Deposition for A Representative of NRG Power Midwest, LP; and
2. Subpoena and Notice of Deposition for A Records Custodian of NRG Power Midwest, LP.

Thanks for your anticipated cooperation, if you have any questions, don't hesitate to contact me or Jay Carson.

Very truly yours,

WEGMAN HESSLER & VANDERBURG

Robert W. McIntyre

RWM/smm  
Encl.

# Subpoenas

IN THE COURT OF COMMON PLEAS  
LORAIN COUNTY, OHIO

NRG Ohio Pipeline Company, LLC

Plaintiff,

VS.

Moore Road, LLC, et al.

Defendant.

General Division - CIVIL

Subpoena and Return

Case No. 15CV187151

TO: (Print name and address below)

NRG Power Midwest, LP - Corp. Representative

c/o Statutory Agent - CT Corporation System

1300 East Ninth Street

Cleveland, Ohio 44114

Attorney: Robert W. McIntyre, Esq.

Attorney for: Defendant Moore Road, LLC

Telephone: 216-642-3342

E-mail (optional): rwmcintyre@wegmanlaw.com

If you have any questions concerning this subpoena, please contact the attorney whose name and contact information are listed above.

YOU ARE HEREBY COMMANDED TO, AT THE DATE, TIME, AND LOCATION LISTED BELOW:

- ☒ attend and give testimony at a trial, hearing, or deposition.  
☐ produce the following documents, electronically stored information, or tangible things at a trial, hearing, or deposition:

☐ produce and permit inspection and copying of the following documents or electronically stored information that are in your custody, possession, or control: \_\_\_\_\_

☐ produce and permit inspection and copying, testing, or sampling of the following tangible things that are in your custody, possession, or control: \_\_\_\_\_

☐ permit entry upon designated land or other property that is in your possession or control described as (see Civ. R. 34): \_\_\_\_\_

DATE: 29th day of April, 20 16 TIME: 9:00 o'clock a.m./p.m.

LOCATION: Wegman Hessler & Vanderburg, 6055 Rockside Woods Blvd., Ste 200, Independence, Ohio 44131

WITNESS my signature and seal of said Court at Elyria, Ohio, this 19th day of April, 20 16.

~~XXXXXXXXXXXXXXXXXXXX~~

Attorney

~~XXXXXXXXXXXX~~

OHIO RULES OF CIVIL PROCEDURE – PARTIAL TEXT OF RULE 45 (revised 07/17/2014)

**C) Protection of persons subject to subpoenas.**

- (1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena.
- (2)(a) A person commanded to produce under divisions (A)(1)(b), (iii), (iv), (v), or (vi) of this rule need not appear in person at the place of production or inspection unless commanded to attend and give testimony at a deposition, hearing, or trial.
- (b) Subject to division (D)(2) of this rule, a person commanded to produce under divisions (A)(1)(b), (iii), (iv), (v), or (vi) of this rule may, within fourteen days after service of the subpoena or before the time specified for compliance if such time is less than fourteen days after service, serve upon the party or attorney designated in the subpoena written objections to production. If objection is made, the party serving the subpoena shall not be entitled to production except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena, upon notice to the person commanded to produce, may move at any time for an order to compel the production. An order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the production commanded.
- (3) On timely motion, the court from which the subpoena was issued shall quash or modify the subpoena, or order appearance or production only under specified conditions, if the subpoena does any of the following:
  - (a) Fails to allow reasonable time to comply;
  - (b) Requires disclosure of privileged or otherwise protected matter and no exception or waiver applies;
  - (c) Requires disclosure of a fact known or opinion held by an expert not retained or specially employed by any party in anticipation of litigation or preparation for trial as described by Civ. R. 26(B)(5), if the fact or opinion does not describe specific events or occurrences in dispute and results from study by that expert that was not made at the request of any party;
  - (d) Subjects a person to undue burden.
- (4) Before filing a motion pursuant to division (C)(3)(d) of this rule, a person resisting discovery under this rule shall attempt to resolve any claim of undue burden through discussions with the issuing attorney. A motion filed pursuant to division (C)(3)(d) of this rule shall be supported by an affidavit of the subpoenaed person or a certificate of that person's attorney of the efforts made to resolve any claim of undue burden.
- (5) If a motion is made under division (C)(3)(c) or (C)(3)(d) of this rule, the court shall quash or modify the subpoena unless the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated.

**(D) Duties in responding to subpoena.**

- (1) A person responding to a subpoena to produce documents shall, at the person's option, produce them as they are kept in the usual course of business or organized and labeled to correspond with the categories in the subpoena. A person producing documents or electronically stored information pursuant to a subpoena for them shall permit their inspection and copying by all parties present at the time and place set in the subpoena for inspection and copying.
- (2) If a request does not specify the form or forms for producing electronically stored information, a person responding to a subpoena may produce the information in a form or forms in which the information is ordinarily maintained if that form is reasonably useable, or in any form that is reasonably useable. Unless ordered by the court or agreed to by the person subpoenaed, a person responding to a subpoena need not produce the same electronically stored information in more than one form.
- (3) A person need not provide discovery of electronically stored information when the production imposes undue burden or expense. On motion to compel discovery or for a protective order, the person from whom electronically stored information is sought must show that the information is not reasonably accessible because of undue burden or expense. If a showing of undue burden or expense is made, the court may nonetheless order production of electronically stored information if the requesting party shows good cause. The court shall consider the factors in Civ. R. 26(B)(4) when determining if good cause exists. In ordering production of electronically stored information, the court may specify the format, extent, timing allocation of expenses and other conditions for the discovery of the electronically stored information.
- (4) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials under Civ. R. 26(B)(3) or (4), the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.
- (5) If information is produced in response to a subpoena that is subject to a claim of privilege or of protection as trial preparation material, the person making the claim may notify any party that received the information of the claim and basis for it. After being notified, a receiving party must promptly return, sequester, or destroy the specified information and any copies within the party's possession, custody or control. A party may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim of privilege or of protection as trial-preparation material. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The person who produced the information must preserve the information until the claim is resolved.

COURT OF COMMON PLEAS  
GENERAL DIVISION  
LORAIN COUNTY, OHIO

NRG Ohio Pipeline Company, LLC

Plaintiff,

VS.

Moore Road, LLC, et al.

Defendant.

CASE NO. 15CV187151

JUDGE Christopher R. Rothgery

RETURN OF SERVICE  
OF SUBPOENA

**NAME AND ADDRESS OF PERSON ON SUBPOENA:** NRG Power Midwest LP - Corporate Representative  
c/o Statutory Agent, CT Corporation System, 1300 East Ninth Street, Cleveland, Ohio 44114

**DATE, TIME AND LOCATION OF TRIAL OR HEARING:** \_\_\_\_\_

Deposition: April 29, 2016 at 9:00am at Wegman Hessler & Vanderburg, 6055 Rockside Woods Blvd., Ste 200, Independence, Ohio 44131

(The following to be completed by Sheriff, process server, or attorney)

I received this Subpoena on \_\_\_\_\_, 20\_\_\_\_, and served the same on the person herein  
named on \_\_\_\_\_, 20\_\_\_\_.

Service was accomplished by \_\_\_\_\_  
\_\_\_\_\_.

I was unable to complete service for the following reason(s): \_\_\_\_\_  
\_\_\_\_\_.

**SHERIFF'S FEES**

Service and Return \_\_\_\_\_ \$ \_\_\_\_\_  
Mileage \_\_\_\_\_ # miles \_\_\_\_\_ \$ \_\_\_\_\_  
Copies \_\_\_\_\_ \$ \_\_\_\_\_  
Total: \$ \_\_\_\_\_

PHIL R. STAMMITI, Lorain Co. Sheriff

BY: \_\_\_\_\_  
Deputy

**PROCESS SERVER/ATTORNEY CERTIFICATION**

I certify that the foregoing information is correct to the  
best of my knowledge and belief.

\_\_\_\_\_  
(signature of individual performing service)

Print name: \_\_\_\_\_

# Exhibit “A”

IN THE COURT OF COMMON PLEAS  
LORAIN COUNTY, OHIO

|                                 |   |                                |
|---------------------------------|---|--------------------------------|
| NRG OHIO PIPELINE COMPANY, LLC, | ) | CASE NO. 15CV187151            |
|                                 | ) |                                |
| Plaintiff,                      | ) | JUDGE Christopher R. Rothgery  |
|                                 | ) |                                |
| v.                              | ) | Magistrate James Blaszak       |
|                                 | ) |                                |
| MOORE ROAD, LLC, <i>et al.</i>  | ) | NOTICE OF DEPOSITION OF        |
|                                 | ) | REPRESENTATIVE DESIGNATED BY   |
| Defendants.                     | ) | NRG POWER MIDWEST, LP PURSUANT |
|                                 | ) | TO OHIO RULE 30(B)(5)          |

Please take notice that on April 29, 2016 beginning at 9:00 a.m., counsel for Defendant, Moore Road, LLC, will take the deposition of a person or persons identified and designated by NRG Power Midwest, LP, pursuant to ORCP 30(B)(5), who is knowledgeable to testify with respect to the matters set forth on Exhibit A. The deposition will take place at the offices of Wegman Hessler & Vanderburg, 6055 Rockside Woods Blvd., Ste. 200, Independence, Ohio 44131. The deposition shall proceed in accordance with the Ohio Rules of Civil Procedure in the presence of a notary public, and be recorded by a stenographer, and shall continue from day-to-day until complete.

Respectfully submitted,

---

Robert W. McIntyre (0006768)  
Jay R. Carson (0068526)  
WEGMAN, HESSLER & VANDERBURG  
6055 Rockside Woods Boulevard, Suite 200  
Cleveland, Ohio 44131  
Phone: (216) 642-3342 / Fax: (216) 642-8826  
E-Mail: [rwmcintyre@wegmanlaw.com](mailto:rwmcintyre@wegmanlaw.com)  
[jrcarson@wegmanlaw.com](mailto:jrcarson@wegmanlaw.com)  
*Attorneys for Defendant Moore Road, LLC*



**CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of the foregoing Notice Of Deposition Of Representative Designated By NRG Power Midwest, LP Pursuant To Ohio Rule 30(B)(5) was served this 19<sup>th</sup> day of April, 2016 upon the following via e-mail:

Dennis M. O'Toole, Esq.  
O'Toole, McLaughlin, Dooley & Pecora Co., L.P.A.  
5455 Detroit Road  
Sheffield Village, Ohio 44054  
(dotoole@omdplaw.com)

*Attorney for Plaintiff  
NRG Ohio Pipeline Company, LLC*



---

Robert W McIntyre (0006768)

*An attorney for Defendant Moore Road, LLC*

## **EXHIBIT A**

(to Notice of Deposition of Representative of NRG Power Midwest LP  
Pursuant to Ohio Rule 30(B)(5))

1. Matters and topics for examination of each designated witness:
  - a. The facts and circumstances relating to the NRG Ohio Pipeline LLC (Pipeline) and NRG Power Midwest LLC (Power) regarding the construction of that certain pipeline (the NRG Pipeline) described in the Affidavit of Alan Sawyer *attached hereto as attachment 1* (Affidavit) or otherwise.
  - b. The facts and circumstances relating to Pipeline and NRG Energy Inc. regarding the construction of that certain pipeline (the NRG Pipeline) described in the Affidavit of Alan Sawyer attached hereto as attachment 1 (Affidavit) or otherwise.
2. The facts and circumstances relating to or which establishes the necessity for the construction of the NRG Pipeline asset forth at Paragraph 12 of the Affidavit or otherwise.
3. Each and every record and document provided to Pipeline by Power setting forth the usage of natural gas as a fuel for the Avon Generating facility.
4. The facts and circumstances relating to any contract or agreement by and between Pipeline and Power for the delivery of fuel gas for the generating facility described and identified at Paragraph 5 of the Affidavit or otherwise.
5. The facts and circumstances relating to any 'plans to add natural gas as a fuel source' as set forth and described at Paragraph 6 of the Affidavit.
6. The facts and circumstances relating to or which demonstrates and/ or substantiates the assertion that "NRG Pipeline" is a wholly owned subsidiary of NRG Energy Inc. and/or any relationship between NRG Power Midwest LLC, Pipeline and NRG Energy Inc.
7. The facts and circumstances relating to or which demonstrates that Pipeline was 'organized to construct and operate approximately 20 miles of ...pipeline'. As set forth in Paragraph 8 of the Affidavit or otherwise.
8. The facts and circumstances relating to or which demonstrate that Pipeline has the technical, financial, and managerial capability needed to operate a natural gas transmission system as well as the requisite financial means to construct its proposed pipeline.
9. The facts and circumstances relating to any decision or decisions process by which Power and/or NRG Energy Inc. have elected to continue fueling the generating facility with coal and not natural gas and/or defer the conversion of the generating facility from coal to natural gas.

10. All contacts, applications, or other materials submitted to and or received from the Ohio EPA:
  - a. For the construction/installation of emissions control equipment on the generating facility for the purpose of continuing to use coal as fuel for the generating facility and/or not natural gas as a fuel;
  - b. The designation of one or more boilers as a standby coal fueled unit that will not be converted to natural gas fuel; and
  - c. The decision to not operate any boiler at the generating facility in the future.
11. The facts and circumstances relating to or regarding the acquisition, construction/installation of machinery and equipment for converting any boiler at the generating facility to natural gas.
12. The facts and circumstances relating to or regarding the acquisition, construction/installation of machinery and equipment for controlling the emission of any boiler at the generating facility that would be fueled by coal.
13. The facts and circumstances relating to or which demonstrates or describes any projected or estimated cost of obtaining natural gas from Pipeline and or the revenue stream of Pipeline from the sale of natural gas to the generating facility described in Paragraph 5 of the Affidavit or otherwise.
14. Any studies, consultant's reports, or other facts or circumstances regarding or related to any safety set-back or buffer zone associated with the construction and operation of a high pressure gas pipeline.
15. Any studies, consultant's reports, or other facts or circumstances regarding or related to any safety set-back or buffer zone associated with the construction and operation of a high pressure gas pipeline and the damages to or restriction of property adjacent to the proposed pipeline and or operation of a high pressure pipeline.

# Attachment No. 1

**AFFIDAVIT**

STATE OF OHIO            )  
                                  )  
COUNTY OF LORAIN        )     SS:

I, Alan Sawyer, being duly sworn under oath state the following is true.

1. I am over the age of eighteen (18) and competent to give the following declaration.
  2. I am presently, and was at all relevant times, the Vice President of NRG Ohio Pipeline Company LLC ("NRG Pipeline" or "Company").
  3. NRG Pipeline is a Delaware limited liability company that is registered to do business in the State of Ohio.
  4. NRG Pipeline is a wholly-owned subsidiary of NRG Energy, Inc. ("NRG").
  5. One of NRG's subsidiaries, NRG Power Midwest LP, owns a 735 MW coal-fired generating facility in Avon Lake, Ohio ("the Avon Lake facility").
  6. NRG Power Midwest LP plans to add natural gas as a fuel source for the boilers at the Avon Lake facility.
  7. NRG Pipeline was organized for transporting and transmitting natural gas through pipes to NRG Power Midwest LP's Avon Lake facility.
  8. More specifically, NRG Pipeline was organized to construct and operate approximately 20 miles of 24-inch to 30-inch high pressure steel pipeline in Lorain County, Ohio to transport and transmit natural gas to NRG Power Midwest LP's Avon Lake facility.
  9. On November 27, 2013, NRG Pipeline filed an application with the Public Utilities Commission of Ohio ("PUCO"), pursuant to R.C. 4905.02, R.C. 4905.03 and 4905.63,
-

for authority to operate as an intrastate pipeline company in the state of Ohio. The application was amended on February 12, 2014. See, Exhibit No. 1 attached hereto, *In the Matter of the Application of NRG Ohio Pipeline Company LLC for Authority to Operate as an Ohio Pipeline Company*, Case No. 13-2315-PL-ACE (P.U.C.O. Feb. 26, 2014) ("PUCO Finding and Order").


10. On February 26, 2014, the PUCO approved NRG Pipeline's application to operate as an intrastate pipeline company in the State of Ohio. PUCO Findings and Order at ¶4.

11. In approving NRG Pipeline's application, the PUCO found that "NRG Pipeline is a public utility and pipeline company, pursuant to R.C. 4905.02 and 4905.03, and, as such, is subject to the Commission's jurisdiction." PUCO Findings and Order at ¶4.

12. On November 6, 2014, NRG Pipeline determined that it was necessary to appropriate and acquire perpetual easement rights for the installation, construction, maintenance, operation and repair of a natural gas pipeline in, on, across, through and over the real property described in Paragraph 4 of NRG Pipeline's Verified Petition to Appropriate Property and to Fix Value Thereof ("Petition") to transport and transmit natural gas to NRG Power Midwest LP's Avon Lake facility.

13. On December 19, 2014, NRG Pipeline filed a letter of notification application, pursuant to Ohio Adm. Code 4906-11-01.

FURTHER AFFIANT SAYETH NAUGHT.

  
Alan Sawyer

SWORN TO BEFORE ME and subscribed in my presence this 25<sup>th</sup> day of March, 2015

  
NOTARY PUBLIC



KIM J. BEHM  
Notary Public - State of Ohio  
My Commission Expires  
September 18, 2018

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of NRG )  
Ohio Pipeline Company LLC for ) Case No. 13-2315-PL-ACB  
Authority to Operate as an Ohio Pipeline )  
Company. )

FINDING AND ORDER

The Commission finds:

- (1) On November 27, 2013, as amended on February 12, 2014, NRG Ohio Pipeline Company LLC (NRG Pipeline or Company) filed an application, pursuant to R.C. 4905.02, 4905.03(F), and 4905.63, for authority to operate as an intrastate pipeline company in the state of Ohio. In the application, NRG Pipeline states that it is a Delaware limited liability company that is registered to do business in Ohio. NRG Pipeline further states that it is a wholly-owned subsidiary of NRG Energy, Inc. (NRG), which is one of the largest power companies in the country, with nearly 100 generation assets producing more than 47,000 megawatts (MW), and retail energy providers serving more than 2 million customers in 16 states. NRG Pipeline notes that one of NRG's subsidiaries, NRG Power Midwest LP, owns a 753 MW coal-fired generating facility in Avon Lake, Ohio, and plans to add natural gas as a fuel source for the boilers at the facility. NRG Pipeline explains that it intends to provide the pipeline infrastructure to deliver natural gas to the facility, and plans to construct and operate approximately 20 miles of 24-inch to 30-inch high pressure steel pipeline in Lorain County, Ohio, which would be installed adjacent to road right-of-way to the extent practicable.
- (2) In support of the application, NRG Pipeline states that it has the technical, financial, and managerial capability needed to operate a natural gas transmission system of the type planned to serve the Avon Lake facility, as well as the requisite financial means to construct the proposed pipeline. NRG Pipeline notes that it has provided, along with the application, proof of the Company's registration with the Ohio Secretary of State, a map depicting the corridors of two

potential pipeline routes, a summary of the Company's technical and managerial background, and financial information pertaining to NRG.

- (3) Additionally, NRG Pipeline explains that, at the appropriate time, it plans to file an application with the Ohio Power Siting Board for a certificate to construct and operate the proposed pipeline. NRG Pipeline further explains that, after the pipeline is constructed, the Company or one of its affiliates will enter into a special contract with any customer served by the pipeline, pursuant to R.C. 4905.31, with any such contracts being filed with the Commission for approval prior to commencement of service. For that reason, NRG Pipeline notes that it has not proposed a tariff at this time, and that the appropriate filing will be made with the Commission, if the Company or an affiliate later decides to establish a tariff. NRG Pipeline emphasizes that, although a limited number of other commercial or manufacturing customers may seek transportation of natural gas through the proposed pipeline, its purpose is to serve the Avon Lake facility, such that natural gas may be used in place of coal for the generation of electricity at the facility.
- (4) Upon review of NRG Pipeline's application, the Commission finds that the application is reasonable and should be approved. Specifically, we find that NRG Pipeline's request for authority to operate as an intrastate pipeline company in the state of Ohio should be granted. NRG Pipeline has provided sufficient information in support of its application, including several exhibits intended to document that the Company and its affiliates have the necessary technical and managerial expertise and financial resources to construct and operate the proposed pipeline. Accordingly, we find that NRG Pipeline is a public utility and pipeline company, pursuant to R.C. 4905.02 and 4905.03, and, as such, is subject to the Commission's jurisdiction. We further find that, pursuant to R.C. 4905.63, NRG Pipeline is subject to R.C. Chapters 4901, 4903, 4905, 4909, and any other applicable chapter set forth therein. We also emphasize that NRG Pipeline is subject to the ongoing jurisdiction and supervision of the Commission with respect to the gas pipeline safety standards and requirements, as set forth in R.C. 4905.90 through 4905.96 and Ohio Adm.Code Chapter
-



4901:1-16. Finally, we note that our approval of NRG Pipeline's application in this case does not relieve the Company of the obligation to file a proper application with the Commission, at the appropriate time, for approval of a proposed tariff or reasonable arrangement entered into with any customer, or to file the necessary application with the Ohio Power Sitting Board for a certificate to construct and operate the proposed pipeline.

It is, therefore,

ORDERED, That NRG Pipeline's application be approved. It is, further,


ORDERED, That NRG Ohio Pipeline Company LLC be added to the roll of public utilities regulated by this Commission. It is, further,

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

THE PUBLIC UTILITIES COMMISSION OF OHIO

  
Todd A. Snitchler, Chairman

  
Steven D. Lesser


  
Lynn Slaby

  
M. Beth Trombold

  
Asim Z. Haque

SJP/sc

Entered in the Journal FEB 26 2014

  
Barry F. McNeal  
Secretary



IN THE COURT OF COMMON PLEAS  
LORAIN COUNTY, OHIO

NRG Ohio Pipeline Company, LLC

Plaintiff,

VS.

Moore Road, LLC, et al.

Defendant.

**General Division - CIVIL**

Subpoena and Return

Case No. 15CV187151

TO: (Print name and address below)

NRG Power Midwest, LP- Records Custodian

c/o Statutory Agent - CT Corporation System

1300 East Ninth Street

Cleveland, Ohio 44114

Attorney: Robert W. McIntyre, Esq.

Attorney for: Defendant Moore Road, LLC

Telephone: 216-642-3342

E-mail (optional): rwmcintyre@wegmanlaw.com

If you have any questions concerning this subpoena, please contact the attorney whose name and contact information are listed above.

YOU ARE HEREBY COMMANDED TO, AT THE DATE, TIME, AND LOCATION LISTED BELOW:

☐ attend and give testimony at a trial, hearing, or deposition.

☐ produce the following documents, electronically stored information, or tangible things at a trial, hearing, or deposition:

☒ produce and permit inspection and copying of the following documents or electronically stored information that are in your custody, possession, or control: Please see attached Exhibit A

☐ produce and permit inspection and copying, testing, or sampling of the following tangible things that are in your custody, possession, or control: \_\_\_\_\_

☐ permit entry upon designated land or other property that is in your possession or control described as (see Civ. R. 34): \_\_\_\_\_

DATE: 29th day of April, 20 16 TIME: 9:00 o'clock a.m./p.m.

LOCATION: Wegman Hessler & Vanderburg, 6055 Rockside Woods Blvd., Ste 200, Independence, Ohio 44131

WITNESS my signature and seal of said Court at Elyria, Ohio, this 19th day of April, 20 16.

~~XXXXXXXXXXXXXXXXXXXX~~

Attorney

~~XXXXXXXXXXXXXXXXXXXX~~

OHIO RULES OF CIVIL PROCEDURE – PARTIAL TEXT OF RULE 45 (revised 07/17/2014)

**C) Protection of persons subject to subpoenas.**

- (1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena.
- (2)(a) A person commanded to produce under divisions (A)(1)(b), (iii), (iv), (v), or (vi) of this rule need not appear in person at the place of production or inspection unless commanded to attend and give testimony at a deposition, hearing, or trial.
- (b) Subject to division (D)(2) of this rule, a person commanded to produce under divisions (A)(1)(b), (iii), (iv), (v), or (vi) of this rule may, within fourteen days after service of the subpoena or before the time specified for compliance if such time is less than fourteen days after service, serve upon the party or attorney designated in the subpoena written objections to production. If objection is made, the party serving the subpoena shall not be entitled to production except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena, upon notice to the person commanded to produce, may move at any time for an order to compel the production. An order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the production commanded.
- (3) On timely motion, the court from which the subpoena was issued shall quash or modify the subpoena, or order appearance or production only under specified conditions, if the subpoena does any of the following:
  - (a) Fails to allow reasonable time to comply;
  - (b) Requires disclosure of privileged or otherwise protected matter and no exception or waiver applies;
  - (c) Requires disclosure of a fact known or opinion held by an expert not retained or specially employed by any party in anticipation of litigation or preparation for trial as described by Civ. R. 26(B)(5), if the fact or opinion does not describe specific events or occurrences in dispute and results from study by that expert that was not made at the request of any party;
  - (d) Subjects a person to undue burden.
- (4) Before filing a motion pursuant to division (C)(3)(d) of this rule, a person resisting discovery under this rule shall attempt to resolve any claim of undue burden through discussions with the issuing attorney. A motion filed pursuant to division (C)(3)(d) of this rule shall be supported by an affidavit of the subpoenaed person or a certificate of that person's attorney of the efforts made to resolve any claim of undue burden.
- (5) If a motion is made under division (C)(3)(c) or (C)(3)(d) of this rule, the court shall quash or modify the subpoena unless the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated.

**(D) Duties in responding to subpoena.**

- (1) A person responding to a subpoena to produce documents shall, at the person's option, produce them as they are kept in the usual course of business or organized and labeled to correspond with the categories in the subpoena. A person producing documents or electronically stored information pursuant to a subpoena for them shall permit their inspection and copying by all parties present at the time and place set in the subpoena for inspection and copying.
- (2) If a request does not specify the form or forms for producing electronically stored information, a person responding to a subpoena may produce the information in a form or forms in which the information is ordinarily maintained if that form is reasonably useable, or in any form that is reasonably useable. Unless ordered by the court or agreed to by the person subpoenaed, a person responding to a subpoena need not produce the same electronically stored information in more than one form.
- (3) A person need not provide discovery of electronically stored information when the production imposes undue burden or expense. On motion to compel discovery or for a protective order, the person from whom electronically stored information is sought must show that the information is not reasonably accessible because of undue burden or expense. If a showing of undue burden or expense is made, the court may nonetheless order production of electronically stored information if the requesting party shows good cause. The court shall consider the factors in Civ. R. 26(B)(4) when determining if good cause exists. In ordering production of electronically stored information, the court may specify the format, extent, timing allocation of expenses and other conditions for the discovery of the electronically stored information.
- (4) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials under Civ. R. 26(B)(3) or (4), the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.
- (5) If information is produced in response to a subpoena that is subject to a claim of privilege or of protection as trial preparation material, the person making the claim may notify any party that received the information of the claim and basis for it. After being notified, a receiving party must promptly return, sequester, or destroy the specified information and any copies within the party's possession, custody or control. A party may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim of privilege or of protection as trial-preparation material. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The person who produced the information must preserve the information until the claim is resolved.

COURT OF COMMON PLEAS  
GENERAL DIVISION  
LORAIN COUNTY, OHIO

NRG Ohio Pipeline Company, LLC

Plaintiff,

VS.

Moore Road, LLC, et al.

Defendant.

CASE NO. 15CV187151

JUDGE Christopher R. Rothgery

RETURN OF SERVICE  
OF SUBPOENA

**NAME AND ADDRESS OF PERSON ON SUBPOENA:** NRG Power Midwest, LP - Records Custodian  
c/o Statutory Agent, CT Corporation System, 1300 East Ninth Street, Cleveland, Ohio 44114

**DATE, TIME AND LOCATION OF TRIAL OR HEARING:** \_\_\_\_\_

Deposition: April 29, 2016 at 9:00am at Wegman Hessler & Vanderburg, 6055 Rockside Woods Blvd., Ste 200, Independence, Ohio 44131

(The following to be completed by Sheriff, process server, or attorney)

I received this Subpoena on \_\_\_\_\_, 20\_\_\_\_, and served the same on the person herein  
named on \_\_\_\_\_, 20\_\_\_\_.

Service was accomplished by \_\_\_\_\_  
\_\_\_\_\_.

I was unable to complete service for the following reason(s): \_\_\_\_\_  
\_\_\_\_\_.

**SHERIFF'S FEES**

Service and Return \_\_\_\_\_ \$ \_\_\_\_\_  
Mileage \_\_\_\_\_ # miles \_\_\_\_\_ \$ \_\_\_\_\_  
Copies \_\_\_\_\_ \$ \_\_\_\_\_  
Total: \$ \_\_\_\_\_

PHIL R. STAMMITT, Lorain Co. Sheriff

BY: \_\_\_\_\_  
Deputy

**PROCESS SERVER/ATTORNEY CERTIFICATION**

I certify that the foregoing information is correct to the  
best of my knowledge and belief.

\_\_\_\_\_  
(signature of individual performing service)

Print name: \_\_\_\_\_

# Exhibit “A”

IN THE COURT OF COMMON PLEAS  
LORAIN COUNTY, OHIO

|                                 |   |                                 |
|---------------------------------|---|---------------------------------|
| NRG OHIO PIPELINE COMPANY, LLC, | ) | CASE NO. 15CV187151             |
|                                 | ) |                                 |
| Plaintiff,                      | ) | JUDGE Christopher R. Rothgery   |
|                                 | ) |                                 |
| v.                              | ) | Magistrate James Blaszak        |
|                                 | ) |                                 |
| MOORE ROAD, LLC, <i>et al.</i>  | ) | NOTICE OF DEPOSITION OF RECORDS |
|                                 | ) | CUSTODIAN DESIGNATED BY NRG     |
| Defendants.                     | ) | POWER MIDWEST, LP               |

Please take notice that on **April 29, 2016** beginning at **9:00 a.m.**, counsel for Defendant, Moore Road, LLC, will take the deposition of a person or persons identified and designated by NRG Power Midwest, LP as Records Custodian who is knowledgeable to testify with respect to the matters set forth on Exhibit A. The deposition will take place at the offices of Wegman Hessler & Vanderburg, 6055 Rockside Woods Blvd., Ste. 200, Independence, Ohio 44131. The deposition shall proceed in accordance with the Ohio Rules of Civil Procedure in the presence of a notary public, and be recorded by a stenographer, and shall continue from day-to-day until complete.

Respectfully submitted,

---

Robert W. McIntyre (0006768)  
Jay R. Carson (0068526)  
WEGMAN, HESSLER & VANDERBURG  
6055 Rockside Woods Boulevard, Suite 200  
Cleveland, Ohio 44131  
Phone: (216) 642-3342 / Fax: (216) 642-8826  
E-Mail: [rwmcintyre@wegmanlaw.com](mailto:rwmcintyre@wegmanlaw.com)  
[jrcarson@wegmanlaw.com](mailto:jrcarson@wegmanlaw.com)  
*Attorneys for Defendant Moore Road, LLC*

**CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of the foregoing Notice Of Deposition Of Records Custodian Designated By NRG Power Midwest, LP was served this 19th day of April, 2016 upon the following via e-mail:

Dennis M. O'Toole, Esq.  
O'Toole, McLaughlin, Dooley & Pecora Co., L.P.A.  
5455 Detroit Road  
Sheffield Village, Ohio 44054  
(dotoole@omdplaw.com)

*Attorney for Plaintiff  
NRG Ohio Pipeline Company, LLC*



---

Robert W McIntyre (0006768)

*An attorney for Defendant Moore Road, LLC*



## **EXHIBIT A**

(to Notice of Deposition of  
Records Custodian of NRG Power Midwest LP)

### **-Records-**

1. All correspondence by and between:
  - a. Pipeline and Power regarding the construction of that certain pipeline (the NRG Pipeline) described in the Affidavit of Alan Sawyer attached hereto as *Attachment 1* or otherwise.
  - b. Power and NRG Energy Inc. regarding the construction of that certain pipeline (the NRG Pipeline) described in the Affidavit of Alan Sawyer attached hereto as Attachment 1 (Affidavit), or otherwise.
2. Each record or document which establishes the necessity for the construction of the NRG Pipeline asset forth at Paragraph 12 of the Affidavit, or otherwise.
3. Each and every record regarding the acquisition, construction/installation of machinery and equipment for converting any boiler at the generating facility to natural gas.
4. Each and every record regarding the acquisition, construction/installation of machinery and equipment for controlling the emission of any boiler at the generating facility to natural gas.
5. Each record or document which describes or is related to the following:
  - a. Acquisition of real estate and /or easements for the construction of the NRG Pipeline;
  - b. Any construction contracts, bids, requests for bids or quotations for the construction of the NRG Pipeline; and
  - c. The interconnection of the NRG Pipeline with any gas transmission facility or pipeline owned by others than NRG Pipeline.
6. Each record or document which describes or is related to the following:
  - a. The acquisition of gas transmission pipe, pipeline materials, machinery and equipment or facilities for the construction and/or installation of the NRG Pipeline; and
  - b. The design, engineering, geotechnical investigation, or other scientific or technical investigations and/or work undertaken for the construction and installation of the NRG Pipeline.

7. Each record or document which describes or is related to any communication, administrative filing or application, or other submission to or with the following relating to the NRG Pipeline:
  - a. The Ohio Department of Natural Resources;
  - b. The Ohio Public Utilities Commission;
  - c. The Ohio Power Siting Board;
  - d. The Ohio Environmental Protection Agency;
  - e. City of Avon Ohio;
  - f. The City of Avon Lake Ohio;
  - g. Lorain County;
  - h. Any other agency of the State of Ohio; and
  - i. Any agency of the United States Government.
8. Each record or document which describes or is related to the following:
  - a. Acquisition of machinery or equipment for the conversion of any boiler at the Avon Generating facility to natural gas as a fuel;
  - b. Any construction contracts, bids, requests for bids or quotations for the construction of the natural gas fuel boiler conversion; and
  - c. The interconnection of the NRG Pipeline with the generating facility.
9. Each record or document which describes or is related to the following:
  - a. The acquisition of machinery, equipment or the construction of facility for the construction and/or installation of any emission control systems to enable the generating facility to continue to burn coal as a fuel;
  - b. The design, engineering, geotechnical investigation, or other scientific or technical investigations and/or work undertaken for the construction and installation of any emission control systems to enable the generating facility to continue to burn coal as a fuel; and
  - c. The purchase of coal fuel for the operation of the generating facility including but not limited to supply contracts, options, or other commercial undertakings to obtain a supply of coal for fuel at the generating facility.

10. Each record or document which describes or is related to any communication, administrative filing or application, or other submission to or with the following relating to conversion of any boiler at the generating facility to the use of natural gas as a fuel
  - a. The Ohio Department of Natural Resources;
  - b. The Ohio Public Utilities Commission;
  - c. The Ohio Power Siting Board;
  - d. The Ohio Environmental Protection Agency;
  - e. City of Avon Ohio;
  - f. The City of Avon Lake Ohio;
  - g. Lorain County;
  - h. Any other agency of the State of Ohio; and
  - i. Any agency of the United States Government.
11. Each record or document which describes or is related to any communication, administrative filing or application, or other submission to or with the following relating to conversion of any boiler at the generating facility to the use of coal as a fuel:
  - a. The Ohio Department of Natural Resources;
  - b. The Ohio Public Utilities Commission;
  - c. The Ohio Power Siting Board;
  - d. The Ohio Environmental Protection Agency;
  - e. City of Avon Ohio;
  - f. The City of Avon Lake Ohio;
  - g. Lorain County;
  - h. Any other agency of the State of Ohio; and
  - i. Any agency of the United States Government.
12. Each and every record or document that describes or refers to any contract or agreement by and between Pipeline and Power for the delivery of fuel gas for the generating facility described and identified at Paragraph 5 of the Affidavit, or otherwise.

13. Each and every record or document that evidences any 'plans to add natural gas as a fuel source' as set forth and described at Paragraph 6 of the Affidavit, or otherwise.
14. Each and every record or document that establishes, demonstrates and/ or substantiates the statement in Para 4 that "NRG Pipeline" is a wholly owned subsidiary of NRG Energy Inc.
15. Each and every record and document that demonstrates that plaintiff was 'organized to construct and operate approximately 20 miles of ...pipeline'. As set forth in Paragraph 8 of the Affidavit.
16. Each and every record and document that demonstrates that Pipeline has the technical, financial, and managerial capability needed to operate a natural gas transmission system as well as the requisite financial means to construct its proposed pipeline.
17. Each and every record and document that describes or is related to any decision or decisions process by which Power and/or NRG Energy Inc. have elected to continue fueling the generating facility with coal and not natural gas and or defer the conversion of the generating facility from coal to natural gas.
18. Each and every record and document that describes any projected or estimated costs to acquire natural gas for the generating facility described in Paragraph 5 of the Affidavit.
19. Each and every record and document that describes any studies, consultant's reports, or other facts or circumstances regarding or related to any safety set-back or buffer zone associated with the construction and operation of a high pressure gas pipeline.
20. Each and every record and document that describes any studies, consultant's reports, or other facts or circumstances regarding or related to any safety set-back or buffer zone associated with the construction and operation of a high pressure gas pipeline and the damages to or restriction of property adjacent to the proposed pipeline and or operation of a high pressure pipeline.

# Attachment No. 1

**AFFIDAVIT**

STATE OF OHIO                     )  
  )     SS:  
COUNTY OF LORAIN            )

I, Alan Sawyer, being duly sworn under oath state the following is true.

1. I am over the age of eighteen (18) and competent to give the following declaration.
  2. I am presently, and was at all relevant times, the Vice President of NRG Ohio Pipeline Company LLC ("NRG Pipeline" or "Company").
  3. NRG Pipeline is a Delaware limited liability company that is registered to do business in the State of Ohio.
  4. NRG Pipeline is a wholly-owned subsidiary of NRG Energy, Inc. ("NRG").
  5. One of NRG's subsidiaries, NRG Power Midwest LP, owns a 735 MW coal-fired generating facility in Avon Lake, Ohio ("the Avon Lake facility").
  6. NRG Power Midwest LP plans to add natural gas as a fuel source for the boilers at the Avon Lake facility.
  7. NRG Pipeline was organized for transporting and transmitting natural gas through pipes to NRG Power Midwest LP's Avon Lake facility.
  8. More specifically, NRG Pipeline was organized to construct and operate approximately 20 miles of 24-inch to 30-inch high pressure steel pipeline in Lorain County, Ohio to transport and transmit natural gas to NRG Power Midwest LP's Avon Lake facility.
  9. On November 27, 2013, NRG Pipeline filed an application with the Public Utilities Commission of Ohio ("PUCO"), pursuant to R.C. 4905.02, R.C. 4905.03 and 4905.63,
-

for authority to operate as an intrastate pipeline company in the state of Ohio. The application was amended on February 12, 2014. See, Exhibit No. 1 attached hereto, *In the Matter of the Application of NRG Ohio Pipeline Company LLC for Authority to Operate as an Ohio Pipeline Company*, Case No. 13-2315-PL-ACE (P.U.C.O. Feb. 26, 2014) ("PUCO Finding and Order").

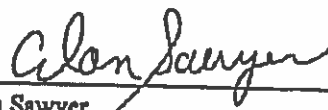
10. On February 26, 2014, the PUCO approved NRG Pipeline's application to operate as an intrastate pipeline company in the State of Ohio. PUCO Findings and Order at ¶4.

11. In approving NRG Pipeline's application, the PUCO found that "NRG Pipeline is a public utility and pipeline company, pursuant to R.C. 4905.02 and 4905.03, and, as such, is subject to the Commission's jurisdiction." PUCO Findings and Order at ¶4.

12. On November 6, 2014, NRG Pipeline determined that it was necessary to appropriate and acquire perpetual easement rights for the installation, construction, maintenance, operation and repair of a natural gas pipeline in, on, across, through and over the real property described in Paragraph 4 of NRG Pipeline's Verified Petition to Appropriate Property and to Fix Value Thereof ("Petition") to transport and transmit natural gas to NRG Power Midwest LP's Avon Lake facility.

13. On December 19, 2014, NRG Pipeline filed a letter of notification application, pursuant to Ohio Adm. Code 4906-11-01.

FURTHER AFFIANT SAYETH NAUGHT.

  
Alan Sawyer

SWORN TO BEFORE ME and subscribed in my presence this 25<sup>th</sup> day of March, 2015

  
NOTARY PUBLIC



KIM J. BEHM  
Notary Public - State of Ohio  
My Commission Expires  
September 18, 2018

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of NRG )  
Ohio Pipeline Company LLC for ) Case No. 13-2315-PL-ACH  
Authority to Operate as an Ohio Pipeline )  
Company. )

FINDING AND ORDER

The Commission finds:

- (1) On November 27, 2013, as amended on February 12, 2014, NRG Ohio Pipeline Company LLC (NRG Pipeline or Company) filed an application, pursuant to R.C. 4905.02, 4905.03(F), and 4905.63, for authority to operate as an intrastate pipeline company in the state of Ohio. In the application, NRG Pipeline states that it is a Delaware limited liability company that is registered to do business in Ohio. NRG Pipeline further states that it is a wholly-owned subsidiary of NRG Energy, Inc. (NRG), which is one of the largest power companies in the country, with nearly 100 generation assets producing more than 47,000 megawatts (MW), and retail energy providers serving more than 2 million customers in 16 states. NRG Pipeline notes that one of NRG's subsidiaries, NRG Power Midwest LP, owns a 753 MW coal-fired generating facility in Avon Lake, Ohio, and plans to add natural gas as a fuel source for the boilers at the facility. NRG Pipeline explains that it intends to provide the pipeline infrastructure to deliver natural gas to the facility, and plans to construct and operate approximately 20 miles of 24-inch to 30-inch high pressure steel pipeline in Lorain County, Ohio, which would be installed adjacent to road right-of-way to the extent practicable.
- (2) In support of the application, NRG Pipeline states that it has the technical, financial, and managerial capability needed to operate a natural gas transmission system of the type planned to serve the Avon Lake facility, as well as the requisite financial means to construct the proposed pipeline. NRG Pipeline notes that it has provided, along with the application, proof of the Company's registration with the Ohio Secretary of State, a map depicting the corridors of two



potential pipeline routes, a summary of the Company's technical and managerial background, and financial information pertaining to NRG.

- (3) Additionally, NRG Pipeline explains that, at the appropriate time, it plans to file an application with the Ohio Power Siting Board for a certificate to construct and operate the proposed pipeline. NRG Pipeline further explains that, after the pipeline is constructed, the Company or one of its affiliates will enter into a special contract with any customer served by the pipeline, pursuant to R.C. 4905.31, with any such contracts being filed with the Commission for approval prior to commencement of service. For that reason, NRG Pipeline notes that it has not proposed a tariff at this time, and that the appropriate filing will be made with the Commission, if the Company or an affiliate later decides to establish a tariff. NRG Pipeline emphasizes that, although a limited number of other commercial or manufacturing customers may seek transportation of natural gas through the proposed pipeline, its purpose is to serve the Avon Lake facility, such that natural gas may be used in place of coal for the generation of electricity at the facility.
- (4) Upon review of NRG Pipeline's application, the Commission finds that the application is reasonable and should be approved. Specifically, we find that NRG Pipeline's request for authority to operate as an intrastate pipeline company in the state of Ohio should be granted. NRG Pipeline has provided sufficient information in support of its application, including several exhibits intended to document that the Company and its affiliates have the necessary technical and managerial expertise and financial resources to construct and operate the proposed pipeline. Accordingly, we find that NRG Pipeline is a public utility and pipeline company, pursuant to R.C. 4905.02 and 4905.03, and, as such, is subject to the Commission's jurisdiction. We further find that, pursuant to R.C. 4905.63, NRG Pipeline is subject to R.C. Chapters 4901, 4903, 4905, 4909, and any other applicable chapter set forth therein. We also emphasize that NRG Pipeline is subject to the ongoing jurisdiction and supervision of the Commission with respect to the gas pipeline safety standards and requirements, as set forth in R.C. 4905.90 through 4905.96 and Ohio Adm.Code Chapter

4901:1-16. Finally, we note that our approval of NRG Pipeline's application in this case does not relieve the Company of the obligation to file a proper application with the Commission, at the appropriate time, for approval of a proposed tariff or reasonable arrangement entered into with any customer, or to file the necessary application with the Ohio Power Siting Board for a certificate to construct and operate the proposed pipeline.

It is, therefore,

ORDERED, That NRG Pipeline's application be approved. It is, further,

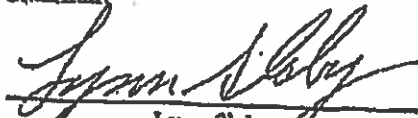
ORDERED, That NRG Ohio Pipeline Company LLC be added to the roll of public utilities regulated by this Commission. It is, further,

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

THE PUBLIC UTILITIES COMMISSION OF OHIO

  
Todd A. Snitchler, Chairman

  
Steven D. Lesser

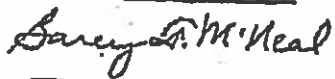
  
Lynn Slaby

  
M. Beth Trombold

  
Asim Z. Haque

SJP/sc

Entered in the Journal FEB 26 2014

  
Barry F. McNeal  
Secretary

Signature Required

ORIGIN ID: CLEA (216) 642-3342  
SHANNON MUSSEHL  
WEGMAN, HESSLER & VANDERBURG  
6055 ROCKSIDE WOODS BLVD  
SUITE 200  
INDEPENDENCE, OH 44131  
UNITED STATES US

SHIP DATE: 09MAY16  
ACTWGT: 1.00 LB  
CAD: 107538935/NET3730

BILL SENDER

TO DAVID R. HILL, ESQ.  
NRG ENERGY, INC.  
211 CARNEGIE CENTER

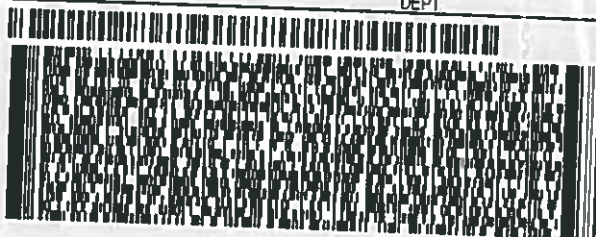
PRINCETON NJ 08540

(609) 524-4500

REF 120157-00013

INV-  
PO

DEPT



FedEx  
Express



211116230727F

TRK# 7762 9205 2280  
0201

TUE - 10 MAY 10:30A  
PRIORITY OVERNIGHT

DSR

E2 PRIA

08540

NJ-US EWR



ress

Extremely Urgent

## Shannon M. Mussehl

---

**From:** Robert W. McIntyre  
**Sent:** Monday, May 16, 2016 1:51 PM  
**To:** 'Holt, Christopher'  
**Cc:** Shannon M. Mussehl; Jay R. Carson  
**Subject:** RE: NRG Ohio Pipeline Company, LLC v. Moore

Thanks , will serve "Power ' at this address..and CT does have a Columbus office...

---

**From:** Holt, Christopher [mailto:Christopher.Holt@nrg.com]  
**Sent:** Monday, May 16, 2016 1:46 PM  
**To:** Robert W. McIntyre  
**Cc:** Dennis O'Toole (dotoole@omdplaw.com); Delsante, Lisa  
**Subject:** NRG Ohio Pipeline Company, LLC v. Moore

Bob,

In response to your letter and following up on our conversation, I am told that CT Corporation System does not have a Columbus address to which you indicated you mailed a subpoena. As such, this may explain your difficulty with service of the subpoena. You may serve the subpoena to the following:

|                        |  |    |
|------------------------|--|----|
| C T Corporation System | 1300 East 9th Street, Cleveland, OH, 44114 | OH |
|------------------------|--|----|

Also, I have included CT's link below for your convenience.

<https://ct.wolterskluwer.com/sop-locations>

Thanks,

Christopher B. Holt  
Assistant General Counsel – Litigation  
NRG Energy, Inc.  
211 Carnegie Center  
Princeton, NJ 08540

(P) 609-524-5278  
(F) 609-524-4589  
[Christopher.Holt@nrg.com](mailto:Christopher.Holt@nrg.com)



**WEGMAN  
HESSLER &  
VANDERBURG**

*Legal Professional Association*  
6055 Rockside Woods Boulevard, Suite 200  
Cleveland, OH 44131  
Telephone: (216) 642-3342  
Facsimile: (216) 642-8826  
www.wegmanlaw.com

**Robert W. McIntyre**  
Of Counsel  
rwm McIntyre@wegmanlaw.com

May 18, 2016

**VIA FedEx**

NRG Power Midwest, LP  
c/o CT Corporation System, Statutory Agent  
1300 East Ninth Street  
Cleveland, Ohio 44114

Re: **NRG Ohio Pipeline Company, LLC v. Moore Road, LLC, et al.**  
**Lorain County Court of Common Pleas Case No. 15-CV-187151**

Dear Sir or Madam:

Please find enclosed the following, which have been prepared with regard to the referenced matter:

1. Subpoena and Notice of Deposition for A Representative of NRG Power Midwest, LP; and
2. Subpoena and Notice of Deposition for A Records Custodian of NRG Power Midwest, LP.

Thanks for your anticipated cooperation, if you have any questions, don't hesitate to contact me or Jay Carson.

Very truly yours,

WEGMAN HESSLER & VANDERBURG

Robert W. McIntyre

RWM/smm  
Encl.

# Subpoenas

IN THE COURT OF COMMON PLEAS  
LORAIN COUNTY, OHIO

NRG Ohio Pipeline Company, LLC

Plaintiff,

VS.

Moore Road, LLC, et al.

Defendant.

General Division - CIVIL

Subpoena and Return

Case No. 15CV187151

TO: (Print name and address below)

NRG Power Midwest, LP - Corp. Representative

c/o Statutory Agent - CT Corporation System

1300 East Ninth Street

Cleveland, Ohio 44114

Attorney: Robert W. McIntyre, Esq.Attorney for: Defendant Moore Road, LLCTelephone: 216-642-3342E-mail (optional): rwmcintyre@wegmanlaw.com

If you have any questions concerning this subpoena,  
please contact the attorney whose name and contact  
information are listed above.

YOU ARE HEREBY COMMANDED TO, AT THE DATE, TIME, AND LOCATION LISTED BELOW:

☒ attend and give testimony at a trial, hearing, or deposition.☐ produce the following documents, electronically stored information, or tangible things at a trial, hearing, or deposition:☐ produce and permit inspection and copying of the following documents or electronically stored information that are in your custody, possession, or control: \_\_\_\_\_☐ produce and permit inspection and copying, testing, or sampling of the following tangible things that are in your custody, possession, or control: \_\_\_\_\_☐ permit entry upon designated land or other property that is in your possession or control described as (see Civ. R. 34): \_\_\_\_\_DATE: 25th day of May, 2016 TIME: 9:00 o'clock a.m./p.m.LOCATION: Wegman Hessler & Vanderburg, 6055 Rockside Woods Blvd., Ste 200, Independence, Ohio 44131WITNESS my signature and seal of said Court at Elyria, Ohio, this 18th day of May, 2016.XXXXXXXXXXXXXXXXXXXX  
Deputy Clerk, Lorain County Court

Attorney

XXXXXXXXXXXX

OHIO RULES OF CIVIL PROCEDURE – PARTIAL TEXT OF RULE 45 (revised 07/17/2014)

**C) Protection of persons subject to subpoenas.**

- (1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena.
- (2)(a) A person commanded to produce under divisions (A)(1)(b), (iii), (iv), (v), or (vi) of this rule need not appear in person at the place of production or inspection unless commanded to attend and give testimony at a deposition, hearing, or trial.
- (b) Subject to division (D)(2) of this rule, a person commanded to produce under divisions (A)(1)(b), (iii), (iv), (v), or (vi) of this rule may, within fourteen days after service of the subpoena or before the time specified for compliance if such time is less than fourteen days after service, serve upon the party or attorney designated in the subpoena written objections to production. If objection is made, the party serving the subpoena shall not be entitled to production except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena, upon notice to the person commanded to produce, may move at any time for an order to compel the production. An order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the production commanded.
- (3) On timely motion, the court from which the subpoena was issued shall quash or modify the subpoena, or order appearance or production only under specified conditions, if the subpoena does any of the following:
  - (a) Fails to allow reasonable time to comply;
  - (b) Requires disclosure of privileged or otherwise protected matter and no exception or waiver applies;
  - (c) Requires disclosure of a fact known or opinion held by an expert not retained or specially employed by any party in anticipation of litigation or preparation for trial as described by Civ. R. 26(B)(5), if the fact or opinion does not describe specific events or occurrences in dispute and results from study by that expert that was not made at the request of any party;
  - (d) Subjects a person to undue burden.
- (4) Before filing a motion pursuant to division (C)(3)(d) of this rule, a person resisting discovery under this rule shall attempt to resolve any claim of undue burden through discussions with the issuing attorney. A motion filed pursuant to division (C)(3)(d) of this rule shall be supported by an affidavit of the subpoenaed person or a certificate of that person's attorney of the efforts made to resolve any claim of undue burden.
- (5) If a motion is made under division (C)(3)(c) or (C)(3)(d) of this rule, the court shall quash or modify the subpoena unless the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated.

**(D) Duties in responding to subpoena.**

- (1) A person responding to a subpoena to produce documents shall, at the person's option, produce them as they are kept in the usual course of business or organized and labeled to correspond with the categories in the subpoena. A person producing documents or electronically stored information pursuant to a subpoena for them shall permit their inspection and copying by all parties present at the time and place set in the subpoena for inspection and copying.
- (2) If a request does not specify the form or forms for producing electronically stored information, a person responding to a subpoena may produce the information in a form or forms in which the information is ordinarily maintained if that form is reasonably useable, or in any form that is reasonably useable. Unless ordered by the court or agreed to by the person subpoenaed, a person responding to a subpoena need not produce the same electronically stored information in more than one form.
- (3) A person need not provide discovery of electronically stored information when the production imposes undue burden or expense. On motion to compel discovery or for a protective order, the person from whom electronically stored information is sought must show that the information is not reasonably accessible because of undue burden or expense. If a showing of undue burden or expense is made, the court may nonetheless order production of electronically stored information if the requesting party shows good cause. The court shall consider the factors in Civ. R. 26(B)(4) when determining if good cause exists. In ordering production of electronically stored information, the court may specify the format, extent, timing allocation of expenses and other conditions for the discovery of the electronically stored information.
- (4) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials under Civ. R. 26(B)(3) or (4), the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.
- (5) If information is produced in response to a subpoena that is subject to a claim of privilege or of protection as trial preparation material, the person making the claim may notify any party that received the information of the claim and basis for it. After being notified, a receiving party must promptly return, sequester, or destroy the specified information and any copies within the party's possession, custody or control. A party may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim of privilege or of protection as trial-preparation material. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The person who produced the information must preserve the information until the claim is resolved.



FOR FILING WITH CLERK

COURT OF COMMON PLEAS  
GENERAL DIVISION  
LORAIN COUNTY, OHIO

NRG Ohio Pipeline Company, LLC

Plaintiff,

VS.

Moore Road, LLC, et al.

Defendant.

CASE NO. 15CV187151

JUDGE Christopher R. Rothgery

RETURN OF SERVICE  
OF SUBPOENA

**NAME AND ADDRESS OF PERSON ON SUBPOENA:** NRG Power Midwest LP - Corporate Representative  
c/o Statutory Agent, CT Corporation System, 1300 East Ninth Street, Cleveland, Ohio 44114

**DATE, TIME AND LOCATION OF TRIAL OR HEARING:** \_\_\_\_\_  
Deposition: May 25, 2016 at 9:00am at Wegman Hessler & Vanderburg, 6055 Rockside Woods Blvd., Ste 200, Independence, Ohio 44131

(The following to be completed by Sheriff, process server, or attorney)

I received this Subpoena on \_\_\_\_\_, 20\_\_\_\_, and served the same on the person herein  
named on \_\_\_\_\_, 20\_\_\_\_\_.

Service was accomplished by \_\_\_\_\_  
\_\_\_\_\_.

I was unable to complete service for the following reason(s): \_\_\_\_\_  
\_\_\_\_\_.

**SHERIFF'S FEES**

Service and Return \_\_\_\_\_ \$ \_\_\_\_\_  
Mileage \_\_\_\_\_ # miles \_\_\_\_\_ \$ \_\_\_\_\_  
Copies \_\_\_\_\_ \$ \_\_\_\_\_  
Total: \$ \_\_\_\_\_

PHIL R. STAMMITT, Lorain Co. Sheriff

BY: \_\_\_\_\_  
Deputy

**PROCESS SERVER/ATTORNEY CERTIFICATION**

I certify that the foregoing information is correct to the  
best of my knowledge and belief.

\_\_\_\_\_  
(signature of individual performing service)

Print name: \_\_\_\_\_

# Exhibit "A"

IN THE COURT OF COMMON PLEAS  
LORAIN COUNTY, OHIO

|                                 |   |                                |
|---------------------------------|---|--------------------------------|
| NRG OHIO PIPELINE COMPANY, LLC, | ) | CASE NO. 15CV187151            |
|                                 | ) |                                |
| Plaintiff,                      | ) | JUDGE Christopher R. Rothgery  |
|                                 | ) |                                |
| v.                              | ) | Magistrate James Blaszak       |
|                                 | ) |                                |
| MOORE ROAD, LLC, <i>et al.</i>  | ) | NOTICE OF DEPOSITION OF        |
|                                 | ) | REPRESENTATIVE DESIGNATED BY   |
| Defendants.                     | ) | NRG POWER MIDWEST, LP PURSUANT |
|                                 | ) | TO OHIO RULE 30(B)(5)          |

Please take notice that on May 25, 2016 beginning at 9:00 a.m., counsel for Defendant, Moore Road, LLC, will take the deposition of a person or persons identified and designated by NRG Power Midwest, LP, pursuant to ORCP 30(B)(5), who is knowledgeable to testify with respect to the matters set forth on Exhibit A. The deposition will take place at the offices of Wegman Hessler & Vanderburg, 6055 Rockside Woods Blvd., Ste. 200, Independence, Ohio 44131. The deposition shall proceed in accordance with the Ohio Rules of Civil Procedure in the presence of a notary public, and be recorded by a stenographer, and shall continue from day-to-day until complete.

Respectfully submitted,



---

Robert W. McIntyre (0006768)  
Jay R. Carson (0068526)  
WEGMAN, HESSLER & VANDERBURG  
6055 Rockside Woods Boulevard, Suite 200  
Cleveland, Ohio 44131  
Phone: (216) 642-3342 / Fax: (216) 642-8826  
E-Mail: [rwmcintyre@wegmanlaw.com](mailto:rwmcintyre@wegmanlaw.com)  
[jrcarson@wegmanlaw.com](mailto:jrcarson@wegmanlaw.com)  
*Attorneys for Defendant Moore Road, LLC*

**CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of the foregoing Notice Of Deposition Of Representative Designated By NRG Power Midwest, LP Pursuant To Ohio Rule 30(B)(5) was served this 18th day of May, 2016 upon the following via e-mail:

Dennis M. O'Toole, Esq. (dotoole@omdplaw.com)  
John D. Latchney, Esq. (jlatchney@omdplaw.com)  
O'Toole, McLaughlin, Dooley  
& Pecora Co., L.P.A.  
5455 Detroit Road  
Sheffield Village, Ohio 44054

*Attorneys for Plaintiff  
NRG Ohio Pipeline Company, LLC*



---

Robert W McIntyre (0006768)

*An attorney for Defendant Moore Road, LLC*

## **EXHIBIT A**

(to Notice of Deposition of Representative of NRG Power Midwest LP  
Pursuant to Ohio Rule 30(B)(5))

1. Matters and topics for examination of each designated witness:
  - a. The facts and circumstances relating to the NRG Ohio Pipeline LLC (Pipeline) and NRG Power Midwest LLC (Power) regarding the construction of that certain pipeline (the NRG Pipeline) described in the Affidavit of Alan Sawyer *attached hereto as attachment 1* (Affidavit) or otherwise.
  - b. The facts and circumstances relating to Pipeline and NRG Energy Inc. regarding the construction of that certain pipeline (the NRG Pipeline) described in the Affidavit of Alan Sawyer attached hereto as attachment 1 (Affidavit) or otherwise.
2. The facts and circumstances relating to or which establishes the necessity for the construction of the NRG Pipeline asset forth at Paragraph 12 of the Affidavit or otherwise.
3. Each and every record and document provided to Pipeline by Power setting forth the usage of natural gas as a fuel for the Avon Generating facility.
4. The facts and circumstances relating to any contract or agreement by and between Pipeline and Power for the delivery of fuel gas for the generating facility described and identified at Paragraph 5 of the Affidavit or otherwise.
5. The facts and circumstances relating to any 'plans to add natural gas as a fuel source' as set forth and described at Paragraph 6 of the Affidavit.
6. The facts and circumstances relating to or which demonstrates and/ or substantiates the assertion that "NRG Pipeline" is a wholly owned subsidiary of NRG Energy Inc. and/or any relationship between NRG Power Midwest LLC, Pipeline and NRG Energy Inc.
7. The facts and circumstances relating to or which demonstrates that Pipeline was 'organized to construct and operate approximately 20 miles of ...pipeline'. As set forth in Paragraph 8 of the Affidavit or otherwise.
8. The facts and circumstances relating to or which demonstrate that Pipeline has the technical, financial, and managerial capability needed to operate a natural gas transmission system as well as the requisite financial means to construct its proposed pipeline.
9. The facts and circumstances relating to any decision or decisions process by which Power and/or NRG Energy Inc. have elected to continue fueling the generating facility with coal and not natural gas and/or defer the conversion of the generating facility from coal to natural gas.

10. All contacts, applications, or other materials submitted to and or received from the Ohio EPA:
  - a. For the construction/installation of emissions control equipment on the generating facility for the purpose of continuing to use coal as fuel for the generating facility and/or not natural gas as a fuel;
  - b. The designation of one or more boilers as a standby coal fueled unit that will not be converted to natural gas fuel; and
  - c. The decision to not operate any boiler at the generating facility in the future.
11. The facts and circumstances relating to or regarding the acquisition, construction/installation of machinery and equipment for converting any boiler at the generating facility to natural gas.
12. The facts and circumstances relating to or regarding the acquisition, construction/installation of machinery and equipment for controlling the emission of any boiler at the generating facility that would be fueled by coal.
13. The facts and circumstances relating to or which demonstrates or describes any projected or estimated cost of obtaining natural gas from Pipeline and or the revenue stream of Pipeline from the sale of natural gas to the generating facility described in Paragraph 5 of the Affidavit or otherwise.
14. Any studies, consultant's reports, or other facts or circumstances regarding or related to any safety set-back or buffer zone associated with the construction and operation of a high pressure gas pipeline.
15. Any studies, consultant's reports, or other facts or circumstances regarding or related to any safety set-back or buffer zone associated with the construction and operation of a high pressure gas pipeline and the damages to or restriction of property adjacent to the proposed pipeline and or operation of a high pressure pipeline.

# Attachment No. 1

**AFFIDAVIT**

STATE OF OHIO            )  
                              )  
COUNTY OF LORAIN       )     SS:

I, Alan Sawyer, being duly sworn under oath state the following is true.

1. I am over the age of eighteen (18) and competent to give the following declaration.
  2. I am presently, and was at all relevant times, the Vice President of NRG Ohio Pipeline Company LLC ("NRG Pipeline" or "Company").
  3. NRG Pipeline is a Delaware limited liability company that is registered to do business in the State of Ohio.
  4. NRG Pipeline is a wholly-owned subsidiary of NRG Energy, Inc. ("NRG").
  5. One of NRG's subsidiaries, NRG Power Midwest LP, owns a 735 MW coal-fired generating facility in Avon Lake, Ohio ("the Avon Lake facility").
  6. NRG Power Midwest LP plans to add natural gas as a fuel source for the boilers at the Avon Lake facility.
  7. NRG Pipeline was organized for transporting and transmitting natural gas through pipes to NRG Power Midwest LP's Avon Lake facility.
  8. More specifically, NRG Pipeline was organized to construct and operate approximately 20 miles of 24-inch to 30-inch high pressure steel pipeline in Lorain County, Ohio to transport and transmit natural gas to NRG Power Midwest LP's Avon Lake facility.
  9. On November 27, 2013, NRG Pipeline filed an application with the Public Utilities Commission of Ohio ("PUCO"), pursuant to R.C. 4905.02, R.C. 4905.03 and 4905.63,
-



for authority to operate as an intrastate pipeline company in the state of Ohio. The application was amended on February 12, 2014. See, Exhibit No. 1 attached hereto, *In the Matter of the Application of NRG Ohio Pipeline Company LLC for Authority to Operate as an Ohio Pipeline Company*, Case No. 13-2315-PL-ACE (P.U.C.O. Feb. 26, 2014) ("PUCO Finding and Order").

10. On February 26, 2014, the PUCO approved NRG Pipeline's application to operate as an intrastate pipeline company in the State of Ohio. PUCO Findings and Order at ¶4.

11. In approving NRG Pipeline's application, the PUCO found that "NRG Pipeline is a public utility and pipeline company, pursuant to R.C. 4905.02 and 4905.03, and, as such, is subject to the Commission's jurisdiction." PUCO Findings and Order at ¶4.

12. On November 6, 2014, NRG Pipeline determined that it was necessary to appropriate and acquire perpetual easement rights for the installation, construction, maintenance, operation and repair of a natural gas pipeline in, on, across, through and over the real property described in Paragraph 4 of NRG Pipeline's Verified Petition to Appropriate Property and to Fix Value Thereof ("Petition") to transport and transmit natural gas to NRG Power Midwest LP's Avon Lake facility.

13. On December 19, 2014, NRG Pipeline filed a letter of notification application, pursuant to Ohio Adm. Code 4906-11-01.

FURTHER AFFIANT SAYETH NAUGHT.

  
Alan Sawyer

SWORN TO BEFORE ME and subscribed in my presence this 25<sup>th</sup> day of March, 2015

  
NOTARY PUBLIC



KIM J. BEHM  
Notary Public - State of Ohio  
My Commission Expires  
September 18, 2018

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of NRG )  
Ohio Pipeline Company LLC for ) Case No. 13-2915-PL-ACB  
Authority to Operate as an Ohio Pipeline )  
Company. )

FINDING AND ORDER

The Commission finds:

- (1) On November 27, 2013, as amended on February 12, 2014, NRG Ohio Pipeline Company LLC (NRG Pipeline or Company) filed an application, pursuant to R.C. 4905.02, 4905.03(F), and 4905.63, for authority to operate as an intrastate pipeline company in the state of Ohio. In the application, NRG Pipeline states that it is a Delaware limited liability company that is registered to do business in Ohio. NRG Pipeline further states that it is a wholly-owned subsidiary of NRG Energy, Inc. (NRG), which is one of the largest power companies in the country, with nearly 100 generation assets producing more than 47,000 megawatts (MW), and retail energy providers serving more than 2 million customers in 16 states. NRG Pipeline notes that one of NRG's subsidiaries, NRG Power Midwest LP, owns a 753 MW coal-fired generating facility in Avon Lake, Ohio, and plans to add natural gas as a fuel source for the boilers at the facility. NRG Pipeline explains that it intends to provide the pipeline infrastructure to deliver natural gas to the facility, and plans to construct and operate approximately 20 miles of 24-inch to 30-inch high pressure steel pipeline in Lorain County, Ohio, which would be installed adjacent to road right-of-way to the extent practicable.
- (2) In support of the application, NRG Pipeline states that it has the technical, financial, and managerial capability needed to operate a natural gas transmission system of the type planned to serve the Avon Lake facility, as well as the requisite financial means to construct the proposed pipeline. NRG Pipeline notes that it has provided, along with the application, proof of the Company's registration with the Ohio Secretary of State, a map depicting the corridors of two

potential pipeline routes, a summary of the Company's technical and managerial background, and financial information pertaining to NRG.

- (3) Additionally, NRG Pipeline explains that, at the appropriate time, it plans to file an application with the Ohio Power Siting Board for a certificate to construct and operate the proposed pipeline. NRG Pipeline further explains that, after the pipeline is constructed, the Company or one of its affiliates will enter into a special contract with any customer served by the pipeline, pursuant to R.C. 4905.31, with any such contracts being filed with the Commission for approval prior to commencement of service. For that reason, NRG Pipeline notes that it has not proposed a tariff at this time, and that the appropriate filing will be made with the Commission, if the Company or an affiliate later decides to establish a tariff. NRG Pipeline emphasizes that, although a limited number of other commercial or manufacturing customers may seek transportation of natural gas through the proposed pipeline, its purpose is to serve the Avon Lake facility, such that natural gas may be used in place of coal for the generation of electricity at the facility.
- (4) Upon review of NRG Pipeline's application, the Commission finds that the application is reasonable and should be approved. Specifically, we find that NRG Pipeline's request for authority to operate as an intrastate pipeline company in the state of Ohio should be granted. NRG Pipeline has provided sufficient information in support of its application, including several exhibits intended to document that the Company and its affiliates have the necessary technical and managerial expertise and financial resources to construct and operate the proposed pipeline. Accordingly, we find that NRG Pipeline is a public utility and pipeline company, pursuant to R.C. 4905.02 and 4905.03, and, as such, is subject to the Commission's jurisdiction. We further find that, pursuant to R.C. 4905.63, NRG Pipeline is subject to R.C. Chapters 4901, 4903, 4905, 4909, and any other applicable chapter set forth therein. We also emphasize that NRG Pipeline is subject to the ongoing jurisdiction and supervision of the Commission with respect to the gas pipeline safety standards and requirements, as set forth in R.C. 4905.90 through 4905.96 and Ohio Adm.Code Chapter

4901:1-16. Finally, we note that our approval of NRG Pipeline's application in this case does not relieve the Company of the obligation to file a proper application with the Commission, at the appropriate time, for approval of a proposed tariff or reasonable arrangement entered into with any customer, or to file the necessary application with the Ohio Power Siting Board for a certificate to construct and operate the proposed pipeline.

It is, therefore,

ORDERED, That NRG Pipeline's application be approved. It is, further,

ORDERED, That NRG Ohio Pipeline Company LLC be added to the roll of public utilities regulated by this Commission. It is, further,


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

THE PUBLIC UTILITIES COMMISSION OF OHIO

  
Todd A. Bruchler, Chairman

  
Steven D. Lesser

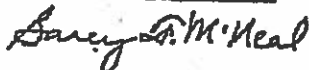
  
M. Beth Trombold

  
Lynn Slaby

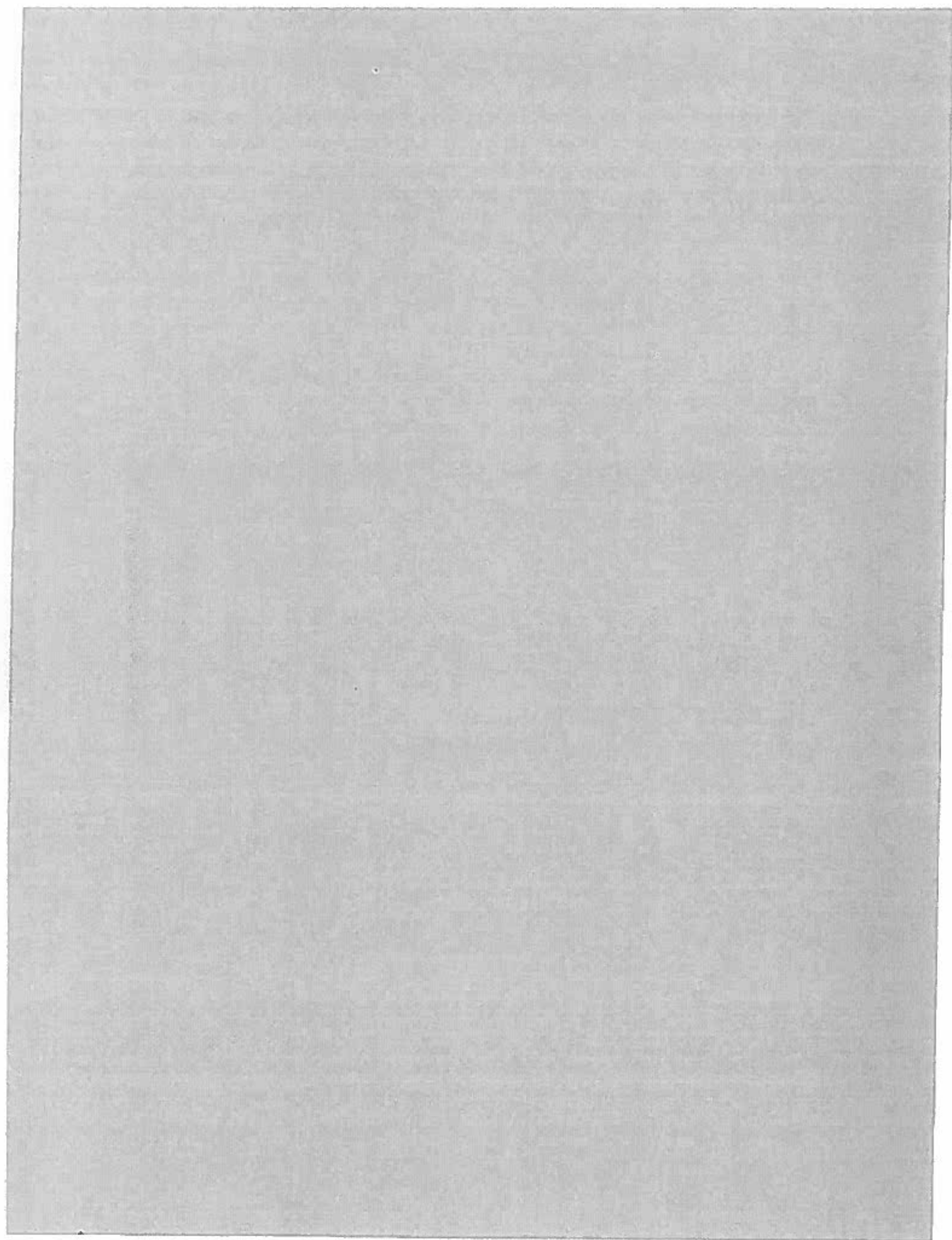
  
Asim Z. Haque

SJP/sc

Entered in the Journal FEB 26 2014



Barry F. McNeal  
Secretary



IN THE COURT OF COMMON PLEAS  
LORAIN COUNTY, OHIO

NRG Ohio Pipeline Company, LLC

Plaintiff,

VS.

Moore Road, LLC, et al.

Defendant.

General Division - CIVIL

Subpoena and Return

Case No. 15CV187151Attorney: Robert W. McIntyre, Esq.Attorney for: Defendant Moore Road, LLCTelephone: 216-642-3342E-mail (optional): rwmcintyre@wegmanlaw.com

TO: (Print name and address below)

NRG Power Midwest, LP- Records Custodian

c/o Statutory Agent - CT Corporation System

1300 East Ninth Street

Cleveland, Ohio 44114

If you have any questions concerning this subpoena,  
please contact the attorney whose name and contact  
information are listed above.

YOU ARE HEREBY COMMANDED TO, AT THE DATE, TIME, AND LOCATION LISTED BELOW:

- ☐ attend and give testimony at a trial, hearing, or deposition.
- ☐ produce the following documents, electronically stored information, or tangible things at a trial, hearing, or deposition:

☒ produce and permit inspection and copying of the following documents or electronically stored information that are in your custody, possession, or control: Please see attached Exhibit A

☐ produce and permit inspection and copying, testing, or sampling of the following tangible things that are in your custody, possession, or control: \_\_\_\_\_

☐ permit entry upon designated land or other property that is in your possession or control described as (see Civ. R. 34): \_\_\_\_\_

DATE: 25th day of May, 2016 TIME: 9:00 o'clock a.m./p.m.LOCATION: Wegman Hessler & Vanderburg, 6055 Rockside Woods Blvd., Ste 200, Independence, Ohio 44131WITNESS my signature and seal of said Court at Elyria, Ohio, this 18th day of May, 2016.~~XXXXXX~~

Attorney

~~XXXXXX~~

OHIO RULES OF CIVIL PROCEDURE – PARTIAL TEXT OF RULE 45 (revised 07/17/2014)

**C) Protection of persons subject to subpoenas.**

- (1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena.
- (2)(a) A person commanded to produce under divisions (A)(1)(b), (iii), (iv), (v), or (vi) of this rule need not appear in person at the place of production or inspection unless commanded to attend and give testimony at a deposition, hearing, or trial.
- (b) Subject to division (D)(2) of this rule, a person commanded to produce under divisions (A)(1)(b), (iii), (iv), (v), or (vi) of this rule may, within fourteen days after service of the subpoena or before the time specified for compliance if such time is less than fourteen days after service, serve upon the party or attorney designated in the subpoena written objections to production. If objection is made, the party serving the subpoena shall not be entitled to production except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena, upon notice to the person commanded to produce, may move at any time for an order to compel the production. An order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the production commanded.
- (3) On timely motion, the court from which the subpoena was issued shall quash or modify the subpoena, or order appearance or production only under specified conditions, if the subpoena does any of the following:
  - (a) Fails to allow reasonable time to comply;
  - (b) Requires disclosure of privileged or otherwise protected matter and no exception or waiver applies;
  - (c) Requires disclosure of a fact known or opinion held by an expert not retained or specially employed by any party in anticipation of litigation or preparation for trial as described by Civ. R. 26(B)(5), if the fact or opinion does not describe specific events or occurrences in dispute and results from study by that expert that was not made at the request of any party;
  - (d) Subjects a person to undue burden.
- (4) Before filing a motion pursuant to division (C)(3)(d) of this rule, a person resisting discovery under this rule shall attempt to resolve any claim of undue burden through discussions with the issuing attorney. A motion filed pursuant to division (C)(3)(d) of this rule shall be supported by an affidavit of the subpoenaed person or a certificate of that person's attorney of the efforts made to resolve any claim of undue burden.
- (5) If a motion is made under division (C)(3)(c) or (C)(3)(d) of this rule, the court shall quash or modify the subpoena unless the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated.

**(D) Duties in responding to subpoena.**

- (1) A person responding to a subpoena to produce documents shall, at the person's option, produce them as they are kept in the usual course of business or organized and labeled to correspond with the categories in the subpoena. A person producing documents or electronically stored information pursuant to a subpoena for them shall permit their inspection and copying by all parties present at the time and place set in the subpoena for inspection and copying.
- (2) If a request does not specify the form or forms for producing electronically stored information, a person responding to a subpoena may produce the information in a form or forms in which the information is ordinarily maintained if that form is reasonably useable, or in any form that is reasonably useable. Unless ordered by the court or agreed to by the person subpoenaed, a person responding to a subpoena need not produce the same electronically stored information in more than one form.
- (3) A person need not provide discovery of electronically stored information when the production imposes undue burden or expense. On motion to compel discovery or for a protective order, the person from whom electronically stored information is sought must show that the information is not reasonably accessible because of undue burden or expense. If a showing of undue burden or expense is made, the court may nonetheless order production of electronically stored information if the requesting party shows good cause. The court shall consider the factors in Civ. R. 26(B)(4) when determining if good cause exists. In ordering production of electronically stored information, the court may specify the format, extent, timing allocation of expenses and other conditions for the discovery of the electronically stored information.
- (4) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials under Civ. R. 26(B)(3) or (4), the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.
- (5) If information is produced in response to a subpoena that is subject to a claim of privilege or of protection as trial preparation material, the person making the claim may notify any party that received the information of the claim and basis for it. After being notified, a receiving party must promptly return, sequester, or destroy the specified information and any copies within the party's possession, custody or control. A party may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim of privilege or of protection as trial-preparation material. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The person who produced the information must preserve the information until the claim is resolved.

COURT OF COMMON PLEAS  
GENERAL DIVISION  
LORAIN COUNTY, OHIO

NRG Ohio Pipeline Company, LLC

Plaintiff,

VS.

Moore Road, LLC, et al.

Defendant.

CASE NO. 15CV187151

JUDGE Christopher R. Rothgery

RETURN OF SERVICE  
OF SUBPOENA

**NAME AND ADDRESS OF PERSON ON SUBPOENA:** NRG Power Midwest, LP - Records Custodian  
c/o Statutory Agent, CT Corporation System, 1300 East Ninth Street, Cleveland, Ohio 44114

**DATE, TIME AND LOCATION OF TRIAL OR HEARING:** \_\_\_\_\_  
Deposition: May 25, 2016 at 9:00am at Wegman Hessler & Vanderburg, 6055 Rockside Woods Blvd., Ste 200, Independence, Ohio 44131

(The following to be completed by Sheriff, process server, or attorney)

I received this Subpoena on \_\_\_\_\_, 20\_\_\_\_, and served the same on the person herein  
named on \_\_\_\_\_, 20\_\_\_\_.

Service was accomplished by \_\_\_\_\_  
\_\_\_\_\_.

I was unable to complete service for the following reason(s): \_\_\_\_\_  
\_\_\_\_\_.

**SHERIFF'S FEES**

Service and Return \_\_\_\_\_ \$ \_\_\_\_\_  
Mileage \_\_\_\_\_ # miles \_\_\_\_\_ \$ \_\_\_\_\_  
Copies \_\_\_\_\_ \$ \_\_\_\_\_  
Total: \$ \_\_\_\_\_

PHIL R. STAMMITT, Lorain Co. Sheriff

BY: \_\_\_\_\_ Deputy

**PROCESS SERVER/ATTORNEY CERTIFICATION**

I certify that the foregoing information is correct to the  
best of my knowledge and belief.

\_\_\_\_\_  
(signature of individual performing service)

Print name: \_\_\_\_\_



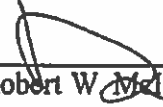
# Exhibit "A"

IN THE COURT OF COMMON PLEAS  
LORAIN COUNTY, OHIO

|                                 |   |                                 |
|---------------------------------|---|---------------------------------|
| NRG OHIO PIPELINE COMPANY, LLC, | ) | CASE NO. 15CV187151             |
|                                 | ) |                                 |
| Plaintiff,                      | ) | JUDGE Christopher R. Rothgery   |
|                                 | ) |                                 |
| v.                              | ) | Magistrate James Blaszak        |
|                                 | ) |                                 |
| MOORE ROAD, LLC, <i>et al.</i>  | ) | NOTICE OF DEPOSITION OF RECORDS |
|                                 | ) | CUSTODIAN DESIGNATED BY NRG     |
| Defendants.                     | ) | POWER MIDWEST, LP               |

Please take notice that on May 25, 2016 beginning at 9:00 a.m., counsel for Defendant, Moore Road, LLC, will take the deposition of a person or persons identified and designated by NRG Power Midwest, LP as Records Custodian who is knowledgeable to testify with respect to the matters set forth on Exhibit A. The deposition will take place at the offices of Wegman Hessler & Vanderburg, 6055 Rockside Woods Blvd., Ste. 200, Independence, Ohio 44131. The deposition shall proceed in accordance with the Ohio Rules of Civil Procedure in the presence of a notary public, and be recorded by a stenographer, and shall continue from day-to-day until complete.

Respectfully submitted,

  
Robert W. McIntyre (0006768)  
Jay R. Carson (0068526)  
WEGMAN, HESSLER & VANDERBURG  
6055 Rockside Woods Boulevard, Suite 200  
Cleveland, Ohio 44131  
Phone: (216) 642-3342 / Fax: (216) 642-8826  
E-Mail: rwmcintyre@wegmanlaw.com  
jrcarson@wegmanlaw.com  
*Attorneys for Defendant Moore Road, LLC*

**CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of the foregoing Notice Of Deposition Of  
Records Custodian Designated By NRG Power Midwest, LP was served this 18th day of May,  
2016 upon the following via e-mail:

Dennis M. O'Toole, Esq. (dotoole@omdplaw.com)  
John D. Latchney, Esq. (jlatchney@omdplaw.com)  
O'Toole, McLaughlin, Dooley  
& Pecora Co., L.P.A.  
5455 Detroit Road  
Sheffield Village, Ohio 44054

*Attorneys for Plaintiff*  
*NRG Ohio Pipeline Company, LLC*

A handwritten signature in black ink, appearing to read 'Robert W McIntyre', is written over a horizontal line.

Robert W McIntyre (0006768)

*An attorney for Defendant Moore Road, LLC*

## **EXHIBIT A**

(to Notice of Deposition of  
Records Custodian of NRG Power Midwest LP)

### **-Records-**

1. All correspondence by and between:
  - a. Pipeline and Power regarding the construction of that certain pipeline (the NRG Pipeline) described in the Affidavit of Alan Sawyer attached hereto as *Attachment 1* or otherwise.
  - b. Power and NRG Energy Inc. regarding the construction of that certain pipeline (the NRG Pipeline) described in the Affidavit of Alan Sawyer attached hereto as Attachment 1 (Affidavit), or otherwise.
2. Each record or document which establishes the necessity for the construction of the NRG Pipeline asset forth at Paragraph 12 of the Affidavit, or otherwise.
3. Each and every record regarding the acquisition, construction/installation of machinery and equipment for converting any boiler at the generating facility to natural gas.
4. Each and every record regarding the acquisition, construction/installation of machinery and equipment for controlling the emission of any boiler at the generating facility to natural gas.
5. Each record or document which describes or is related to the following:
  - a. Acquisition of real estate and /or easements for the construction of the NRG Pipeline;
  - b. Any construction contracts, bids, requests for bids or quotations for the construction of the NRG Pipeline; and
  - c. The interconnection of the NRG Pipeline with any gas transmission facility or pipeline owned by others than NRG Pipeline.
6. Each record or document which describes or is related to the following:
  - a. The acquisition of gas transmission pipe, pipeline materials, machinery and equipment or facilities for the construction and/or installation of the NRG Pipeline; and
  - b. The design, engineering, geotechnical investigation, or other scientific or technical investigations and/or work undertaken for the construction and installation of the NRG Pipeline.

7. Each record or document which describes or is related to any communication, administrative filing or application, or other submission to or with the following relating to the NRG Pipeline:
  - a. The Ohio Department of Natural Resources;
  - b. The Ohio Public Utilities Commission;
  - c. The Ohio Power Siting Board;
  - d. The Ohio Environmental Protection Agency;
  - e. City of Avon Ohio;
  - f. The City of Avon Lake Ohio;
  - g. Lorain County;
  - h. Any other agency of the State of Ohio; and
  - i. Any agency of the United States Government.
8. Each record or document which describes or is related to the following:
  - a. Acquisition of machinery or equipment for the conversion of any boiler at the Avon Generating facility to natural gas as a fuel;
  - b. Any construction contracts, bids, requests for bids or quotations for the construction of the natural gas fuel boiler conversion; and
  - c. The interconnection of the NRG Pipeline with the generating facility.
9. Each record or document which describes or is related to the following:
  - a. The acquisition of machinery, equipment or the construction of facility for the construction and/or installation of any emission control systems to enable the generating facility to continue to burn coal as a fuel;
  - b. The design, engineering, geotechnical investigation, or other scientific or technical investigations and/or work undertaken for the construction and installation of any emission control systems to enable the generating facility to continue to burn coal as a fuel; and
  - c. The purchase of coal fuel for the operation of the generating facility including but not limited to supply contracts, options, or other commercial undertakings to obtain a supply of coal for fuel at the generating facility.

10. Each record or document which describes or is related to any communication, administrative filing or application, or other submission to or with the following relating to conversion of any boiler at the generating facility to the use of natural gas as a fuel
  - a. The Ohio Department of Natural Resources;
  - b. The Ohio Public Utilities Commission;
  - c. The Ohio Power Siting Board;
  - d. The Ohio Environmental Protection Agency;
  - e. City of Avon Ohio;
  - f. The City of Avon Lake Ohio;
  - g. Lorain County;
  - h. Any other agency of the State of Ohio; and
  - i. Any agency of the United States Government.
11. Each record or document which describes or is related to any communication, administrative filing or application, or other submission to or with the following relating to conversion of any boiler at the generating facility to the use of coal as a fuel:
  - a. The Ohio Department of Natural Resources;
  - b. The Ohio Public Utilities Commission;
  - c. The Ohio Power Siting Board;
  - d. The Ohio Environmental Protection Agency;
  - e. City of Avon Ohio;
  - f. The City of Avon Lake Ohio;
  - g. Lorain County;
  - h. Any other agency of the State of Ohio; and
  - i. Any agency of the United States Government.
12. Each and every record or document that describes or refers to any contract or agreement by and between Pipeline and Power for the delivery of fuel gas for the generating facility described and identified at Paragraph 5 of the Affidavit, or otherwise.

13. Each and every record or document that evidences any 'plans to add natural gas as a fuel source' as set forth and described at Paragraph 6 of the Affidavit, or otherwise.
14. Each and every record or document that establishes, demonstrates and/ or substantiates the statement in Para 4 that "NRG Pipeline" is a wholly owned subsidiary of NRG Energy Inc.
15. Each and every record and document that demonstrates that plaintiff was 'organized to construct and operate approximately 20 miles of ...pipeline'. As set forth in Paragraph 8 of the Affidavit.
16. Each and every record and document that demonstrates that Pipeline has the technical, financial, and managerial capability needed to operate a natural gas transmission system as well as the requisite financial means to construct its proposed pipeline.
17. Each and every record and document that describes or is related to any decision or decisions process by which Power and/or NRG Energy Inc. have elected to continue fueling the generating facility with coal and not natural gas and or defer the conversion of the generating facility from coal to natural gas.
18. Each and every record and document that describes any projected or estimated costs to acquire natural gas for the generating facility described in Paragraph 5 of the Affidavit.
19. Each and every record and document that describes any studies, consultant's reports, or other facts or circumstances regarding or related to any safety set-back or buffer zone associated with the construction and operation of a high pressure gas pipeline.
20. Each and every record and document that describes any studies, consultant's reports, or other facts or circumstances regarding or related to any safety set-back or buffer zone associated with the construction and operation of a high pressure gas pipeline and the damages to or restriction of property adjacent to the proposed pipeline and or operation of a high pressure pipeline.

# Attachment No. 1



**AFFIDAVIT**

STATE OF OHIO

COUNTY OF LORAIN

SS:

I, Alan Sawyer, being duly sworn under oath state the following is true.

1. I am over the age of eighteen (18) and competent to give the following declaration.
  2. I am presently, and was at all relevant times, the Vice President of NRG Ohio Pipeline Company LLC ("NRG Pipeline" or "Company").
  3. NRG Pipeline is a Delaware limited liability company that is registered to do business in the State of Ohio.
  4. NRG Pipeline is a wholly-owned subsidiary of NRG Energy, Inc. ("NRG").
  5. One of NRG's subsidiaries, NRG Power Midwest LP, owns a 735 MW coal-fired generating facility in Avon Lake, Ohio ("the Avon Lake facility").
  6. NRG Power Midwest LP plans to add natural gas as a fuel source for the boilers at the Avon Lake facility.
  7. NRG Pipeline was organized for transporting and transmitting natural gas through pipes to NRG Power Midwest LP's Avon Lake facility.
  8. More specifically, NRG Pipeline was organized to construct and operate approximately 20 miles of 24-inch to 30-inch high pressure steel pipeline in Lorain County, Ohio to transport and transmit natural gas to NRG Power Midwest LP's Avon Lake facility.
  9. On November 27, 2013, NRG Pipeline filed an application with the Public Utilities Commission of Ohio ("PUCO"), pursuant to R.C. 4905.02, R.C. 4905.03 and 4905.63,
-

for authority to operate as an intrastate pipeline company in the state of Ohio. The application was amended on February 12, 2014. See, Exhibit No. 1 attached hereto, *In the Matter of the Application of NRG Ohio Pipeline Company LLC for Authority to Operate as an Ohio Pipeline Company*, Case No. 13-2315-PL-ACE (P.U.C.O. Feb. 26, 2014) ("PUCO Finding and Order").

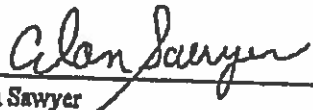
10. On February 26, 2014, the PUCO approved NRG Pipeline's application to operate as an intrastate pipeline company in the State of Ohio. PUCO Findings and Order at ¶4.

11. In approving NRG Pipeline's application, the PUCO found that "NRG Pipeline is a public utility and pipeline company, pursuant to R.C. 4905.02 and 4905.03, and, as such, is subject to the Commission's jurisdiction." PUCO Findings and Order at ¶4.

12. On November 6, 2014, NRG Pipeline determined that it was necessary to appropriate and acquire perpetual easement rights for the installation, construction, maintenance, operation and repair of a natural gas pipeline in, on, across, through and over the real property described in Paragraph 4 of NRG Pipeline's Verified Petition to Appropriate Property and to Fix Value Thereof ("Petition") to transport and transmit natural gas to NRG Power Midwest LP's Avon Lake facility.

13. On December 19, 2014, NRG Pipeline filed a letter of notification application, pursuant to Ohio Adm. Code 4906-11-01.

FURTHER AFFIANT SAYETH NAUGHT.

  
Alan Sawyer

SWORN TO BEFORE ME and subscribed in my presence this 25<sup>th</sup> day of March, 2015

  
NOTARY PUBLIC



KIM J. BEHM  
Notary Public - State of Ohio  
My Commission Expires  
September 19, 2018

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of NRG )  
Ohio Pipeline Company LLC for ) Case No. 13-2315-PL-ACB  
Authority to Operate as an Ohio Pipeline )  
Company. )

FINDING AND ORDER

The Commission finds:

- (1) On November 27, 2013, as amended on February 12, 2014, NRG Ohio Pipeline Company LLC (NRG Pipeline or Company) filed an application, pursuant to R.C. 4905.02, 4905.03(F), and 4905.69, for authority to operate as an intrastate pipeline company in the state of Ohio. In the application, NRG Pipeline states that it is a Delaware limited liability company that is registered to do business in Ohio. NRG Pipeline further states that it is a wholly-owned subsidiary of NRG Energy, Inc. (NRG), which is one of the largest power companies in the country, with nearly 100 generation assets producing more than 47,000 megawatts (MW), and retail energy providers serving more than 2 million customers in 16 states. NRG Pipeline notes that one of NRG's subsidiaries, NRG Power Midwest LP, owns a 753 MW coal-fired generating facility in Avon Lake, Ohio, and plans to add natural gas as a fuel source for the boilers at the facility. NRG Pipeline explains that it intends to provide the pipeline infrastructure to deliver natural gas to the facility, and plans to construct and operate approximately 20 miles of 24-inch to 30-inch high pressure steel pipeline in Lorain County, Ohio, which would be installed adjacent to road right-of-way to the extent practicable.
- (2) In support of the application, NRG Pipeline states that it has the technical, financial, and managerial capability needed to operate a natural gas transmission system of the type planned to serve the Avon Lake facility, as well as the requisite financial means to construct the proposed pipeline. NRG Pipeline notes that it has provided, along with the application, proof of the Company's registration with the Ohio Secretary of State, a map depicting the corridors of two

potential pipeline routes, a summary of the Company's technical and managerial background, and financial information pertaining to NRG.

- (3) Additionally, NRG Pipeline explains that, at the appropriate time, it plans to file an application with the Ohio Power Siting Board for a certificate to construct and operate the proposed pipeline. NRG Pipeline further explains that, after the pipeline is constructed, the Company or one of its affiliates will enter into a special contract with any customer served by the pipeline, pursuant to R.C. 4909.31, with any such contracts being filed with the Commission for approval prior to commencement of service. For that reason, NRG Pipeline notes that it has not proposed a tariff at this time, and that the appropriate filing will be made with the Commission, if the Company or an affiliate later decides to establish a tariff. NRG Pipeline emphasizes that, although a limited number of other commercial or manufacturing customers may seek transportation of natural gas through the proposed pipeline, its purpose is to serve the Avon Lake facility, such that natural gas may be used in place of coal for the generation of electricity at the facility.
- (4) Upon review of NRG Pipeline's application, the Commission finds that the application is reasonable and should be approved. Specifically, we find that NRG Pipeline's request for authority to operate as an intrastate pipeline company in the state of Ohio should be granted. NRG Pipeline has provided sufficient information in support of its application, including several exhibits intended to document that the Company and its affiliates have the necessary technical and managerial expertise and financial resources to construct and operate the proposed pipeline. Accordingly, we find that NRG Pipeline is a public utility and pipeline company, pursuant to R.C. 4905.02 and 4905.03, and, as such, is subject to the Commission's jurisdiction. We further find that, pursuant to R.C. 4905.63, NRG Pipeline is subject to R.C. Chapters 4901, 4903, 4905, 4909, and any other applicable chapter set forth therein. We also emphasize that NRG Pipeline is subject to the ongoing jurisdiction and supervision of the Commission with respect to the gas pipeline safety standards and requirements, as set forth in R.C. 4905.90 through 4905.96 and Ohio Adm.Code Chapter

4901:1-16. Finally, we note that our approval of NRG Pipeline's application in this case does not relieve the Company of the obligation to file a proper application with the Commission, at the appropriate time, for approval of a proposed tariff or reasonable arrangement entered into with any customer, or to file the necessary application with the Ohio Power Siting Board for a certificate to construct and operate the proposed pipeline.

It is, therefore,

ORDERED, That NRG Pipeline's application be approved. It is, further,

ORDERED, That NRG Ohio Pipeline Company LLC be added to the roll of public utilities regulated by this Commission. It is, further,


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


THE PUBLIC UTILITIES COMMISSION OF OHIO

  
Todd A. Snitchler, Chairman

  
Steven D. Lesser

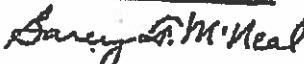
  
M. Beth Trombold

  
Lynn Slaby

  
Asim Z. Haque

SJP/sc

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Barry F. McNeal  
Secretary

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*Signature Required*

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SHANNON MUSSEHL  
WEGMAN, HESSLER & VANDERBURG  
6055 ROCKSIDE WOODS BLVD  
SUITE 200  
INDEPENDENCE, OH 44131  
UNITED STATES US

SHIP DATE: 17MAY18  
ACTWGT: 1.00 LB  
CAD: 107538035/NET3730

BILL SENDER

TO C/O CT CORPORATION SYSTEM, STATUTOR  
NRG POWER MIDWEST, LP  
1300 EAST NINTH STREET  
SUITE 1010  
CLEVELAND OH 44114

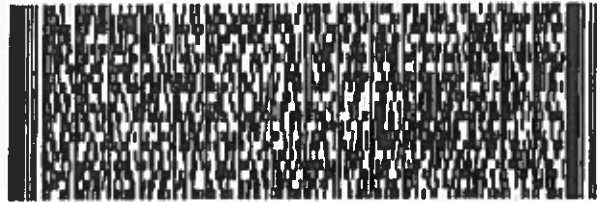
(216) 621-4270

REF 120157-00013

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540116323721F



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Wed 5/18/2016

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Shannon Mussehl

Suite 200

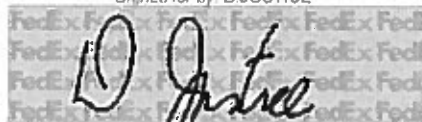
6055 Rockside Woods Blvd

Independence, OH US 44131

216 642-3342

**Delivered**

Signed for by: D.JUSTICE



Actual delivery:

Thu 5/19/2016 9:11 am

**NRG Power Midwest, LP**

c/o CT Corporation System, Statutor

Suite 1010

1300 East Ninth Street

CLEVELAND, OH US 44114

216 621-4270

## Travel History

| Date/Time             | Activity                           | Location               |
|-----------------------|------------------------------------|------------------------|
| 5/19/2016 - Thursday  |                                    |                        |
| 9:11 am               | Delivered                          | CLEVELAND OH           |
| 7:19 am               | On FedEx vehicle for delivery      | CLEVELAND OH           |
| 6:54 am               | At local FedEx facility            | CLEVELAND OH           |
| 12:05 am              | At local FedEx facility            | CLEVELAND OH           |
| 5/18/2016 - Wednesday |                                    |                        |
| 2:18 pm               | Picked up                          | MIDDLEBURG HEIGHTS, OH |
| 5/17/2016 - Tuesday   |                                    |                        |
| 10:22 am              | Shipment information sent to FedEx |                        |

## Shipment Facts

|                   |                    |                          |  |
|-------------------|--------------------|--------------------------|--|
| Tracking number   | 783098200526       | Service                  | FedEx Priority Overnight                   |
| Weight            | 0.5 lbs / 0.23 kgs | Signature services       | Direct signature required                  |
| Delivery attempts | 1                  | Delivered To             | Receptionist/Front Desk                    |
| Total pieces      | 1                  | Total shipment weight    | 0.5 lbs / 0.23 kgs                         |
| Terms             | Not Available      | Shipper reference        | 120157-00013                               |
| Packaging         | FedEx Envelope     | Special handling section | Deliver Weekday, Direct Signature Required |



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**783098200526**

Ship date:

Wed 5/18/2016



## Delivered

Signed for by: D.JUSTICE

Actual delivery:

Thu 5/19/2016 9:11 am

CLEVELAND, OH US

INDEPENDENCE, OH US

## Travel History

| Date/Time              | Activity  | Location      |
|------------------------|-----------|---------------|
| - 5/19/2016 - Thursday |           |               |
| 9:11 am                | Delivered | CLEVELAND, OH |

## Shipment Facts

|                          |  |                   |                          |
|--------------------------|--|-------------------|--------------------------|
| Tracking number          | 783098200526                               | Service           | FedEx Priority Overnight |
| Signature services       | Direct signature required                  | Shipper reference | 120157-00013             |
| Special handling section | Deliver Weekday, Direct Signature Required |                   |                          |



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IN THE COURT OF COMMON PLEAS  
LORAIN COUNTY, OHIO

NRG Ohio Pipeline Company, LLC

Plaintiff,

VS.

Moore Road, LLC, et al.

Defendant.

**General Division - CIVIL**

**Subpoena and Return**

Case No. 15CV187151

TO: (Print name and address below)

NRG Power Midwest, LP - Corp. Representative

c/o Statutory Agent - CT Corporation System

1300 East Ninth Street

Cleveland, Ohio 44114

Attorney: Robert W. McIntyre, Esq.

Attorney for: Defendant Moore Road, LLC

Telephone: 216-642-3342

E-mail (optional): rwmcintyre@wegmanlaw.com

If you have any questions concerning this subpoena, please contact the attorney whose name and contact information are listed above.

YOU ARE HEREBY COMMANDED TO, AT THE DATE, TIME, AND LOCATION LISTED BELOW:

- ☒ attend and give testimony at a trial, hearing, or deposition.  
☐ produce the following documents, electronically stored information, or tangible things at a trial, hearing, or deposition:

☐ produce and permit inspection and copying of the following documents or electronically stored information that are in your custody, possession, or control: \_\_\_\_\_

☐ produce and permit inspection and copying, testing, or sampling of the following tangible things that are in your custody, possession, or control: \_\_\_\_\_

☐ permit entry upon designated land or other property that is in your possession or control described as (see Civ. R. 34): \_\_\_\_\_

DATE: 17th day of August, 20 16 TIME: 9:00 o'clock a.m./p.m.

LOCATION: Wegman Hessler & Vanderburg, 6055 Rockside Woods Blvd., Ste 200, Independence, Ohio 44131

WITNESS my signature and seal of said Court at Elyria, Ohio, this 5th day of August, 20 16.

by Robert W. McIntyre, Esq. (0006768), Attorney.

OHIO RULES OF CIVIL PROCEDURE – PARTIAL TEXT OF RULE 45 (revised 07/17/2014)

**C) Protection of persons subject to subpoenas.**

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena.

(2)(a) A person commanded to produce under divisions (A)(1)(b), (iii), (iv), (v), or (vi) of this rule need not appear in person at the place of production or inspection unless commanded to attend and give testimony at a deposition, hearing, or trial.

(b) Subject to division (D)(2) of this rule, a person commanded to produce under divisions (A)(1)(b), (iii), (iv), (v), or (vi) of this rule may, within fourteen days after service of the subpoena or before the time specified for compliance if such time is less than fourteen days after service, serve upon the party or attorney designated in the subpoena written objections to production. If objection is made, the party serving the subpoena shall not be entitled to production except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena, upon notice to the person commanded to produce, may move at any time for an order to compel the production. An order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the production commanded.

(3) On timely motion, the court from which the subpoena was issued shall quash or modify the subpoena, or order appearance or production only under specified conditions, if the subpoena does any of the following:

(a) Fails to allow reasonable time to comply;

(b) Requires disclosure of privileged or otherwise protected matter and no exception or waiver applies;

(c) Requires disclosure of a fact known or opinion held by an expert not retained or specially employed by any party in anticipation of litigation or preparation for trial as described by Civ. R. 26(B)(5), if the fact or opinion does not describe specific events or occurrences in dispute and results from study by that expert that was not made at the request of any party;

(d) Subjects a person to undue burden.

(4) Before filing a motion pursuant to division (C)(3)(d) of this rule, a person resisting discovery under this rule shall attempt to resolve any claim of undue burden through discussions with the issuing attorney. A motion filed pursuant to division (C)(3)(d) of this rule shall be supported by an affidavit of the subpoenaed person or a certificate of that person's attorney of the efforts made to resolve any claim of undue burden.

(5) If a motion is made under division (C)(3)(c) or (C)(3)(d) of this rule, the court shall quash or modify the subpoena unless the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated.

**(D) Duties in responding to subpoena.**

(1) A person responding to a subpoena to produce documents shall, at the person's option, produce them as they are kept in the usual course of business or organized and labeled to correspond with the categories in the subpoena. A person producing documents or electronically stored information pursuant to a subpoena for them shall permit their inspection and copying by all parties present at the time and place set in the subpoena for inspection and copying.

(2) If a request does not specify the form or forms for producing electronically stored information, a person responding to a subpoena may produce the information in a form or forms in which the information is ordinarily maintained if that form is reasonably useable, or in any form that is reasonably useable. Unless ordered by the court or agreed to by the person subpoenaed, a person responding to a subpoena need not produce the same electronically stored information in more than one form.

(3) A person need not provide discovery of electronically stored information when the production imposes undue burden or expense. On motion to compel discovery or for a protective order, the person from whom electronically stored information is sought must show that the information is not reasonably accessible because of undue burden or expense. If a showing of undue burden or expense is made, the court may nonetheless order production of electronically stored information if the requesting party shows good cause. The court shall consider the factors in Civ. R. 26(B)(4) when determining if good cause exists. In ordering production of electronically stored information, the court may specify the format, extent, timing allocation of expenses and other conditions for the discovery of the electronically stored information.

(4) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials under Civ. R. 26(B)(3) or (4), the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(5) If information is produced in response to a subpoena that is subject to a claim of privilege or of protection as trial preparation material, the person making the claim may notify any party that received the information of the claim and basis for it. After being notified, a receiving party must promptly return, sequester, or destroy the specified information and any copies within the party's possession, custody or control. A party may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim of privilege or of protection as trial-preparation material. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The person who produced the information must preserve the information until the claim is resolved.

COURT OF COMMON PLEAS  
GENERAL DIVISION  
LORAIN COUNTY, OHIO

NRG Ohio Pipeline Company, LLC

Plaintiff,

VS.

Moore Road, LLC, et al.

Defendant.

CASE NO. 15CV187151

JUDGE Christopher R. Rothgery

RETURN OF SERVICE  
OF SUBPOENA

**NAME AND ADDRESS OF PERSON ON SUBPOENA:** NRG Power Midwest LP - Corporate Representative  
c/o Statutory Agent, CT Corporation System, 1300 East Ninth Street, Cleveland, Ohio 44114

**DATE, TIME AND LOCATION OF TRIAL OR HEARING:** \_\_\_\_\_

Deposition: August 17, 2016 at 9:00am at Wegman Hessler & Vanderburg, 6055 Rockside Woods Blvd., Ste 200, Independence, Ohio 44131

(The following to be completed by Sheriff, process server, or attorney)

I received this Subpoena on August 5, 2016, and served the same on the person herein  
named on August 8, 2016.

Service was accomplished by Corporate Service, upon Debbie Justice, Corporate Operations Specialist  
at CT Corporation System, 1300 E. Ninth Street, Suite 1010, Cleveland, OH 44114 at 12:42 p.m..

I was unable to complete service for the following reason(s): \_\_\_\_\_

**SHERIFF'S FEES**

Service and Return \_\_\_\_\_ \$ \_\_\_\_\_  
Mileage \_\_\_\_\_ # miles \_\_\_\_\_ \$ \_\_\_\_\_  
Copies \_\_\_\_\_ \$ \_\_\_\_\_  
Total: \$ \_\_\_\_\_

PHIL R. STAMMITI, Lorain Co. Sheriff

BY: \_\_\_\_\_  
Deputy

**PROCESS SERVER/ATTORNEY CERTIFICATION**

I certify that the foregoing information is correct to the  
best of my knowledge and belief.

Brian D. Schall  
(signature of individual performing service)

Print name: Brian D. Schall (0087359)

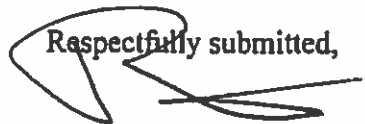
# Exhibit "A"

IN THE COURT OF COMMON PLEAS  
LORAIN COUNTY, OHIO

|                                 |   |                                |
|---------------------------------|---|--------------------------------|
| NRG OHIO PIPELINE COMPANY, LLC, | ) | CASE NO. 15CV187151            |
|                                 | ) |                                |
| Plaintiff,                      | ) | JUDGE Christopher R. Rothgery  |
|                                 | ) |                                |
| v.                              | ) | Magistrate James Blaszk        |
|                                 | ) |                                |
| MOORE ROAD, LLC, <i>et al.</i>  | ) | NOTICE OF DEPOSITION OF        |
|                                 | ) | REPRESENTATIVE DESIGNATED BY   |
| Defendants.                     | ) | NRG POWER MIDWEST, LP PURSUANT |
|                                 | ) | TO OHIO RULE 30(B)(5)          |

Please take notice that on **August 17, 2016** beginning at **9:00 a.m.**, counsel for Defendant, Moore Road, LLC, will take the deposition of a person or persons identified and designated by NRG Power Midwest, LP, pursuant to ORCP 30(B)(5), who is knowledgeable to testify with respect to the matters set forth on Exhibit A. The deposition will take place at the offices of Wegman Hessler & Vanderburg, 6055 Rockside Woods Blvd., Ste. 200, Independence, Ohio 44131. The deposition shall proceed in accordance with the Ohio Rules of Civil Procedure in the presence of a notary public, and be recorded by a stenographer, and shall continue from day-to-day until complete.

Respectfully submitted,



---

Robert W. McIntyre (0006768)  
Jay R. Carson (0068526)  
WEGMAN, HESSLER & VANDERBURG  
6055 Rockside Woods Boulevard, Suite 200  
Cleveland, Ohio 44131  
Phone: (216) 642-3342 / Fax: (216) 642-8826  
E-Mail: [rwmcintyre@wegmanlaw.com](mailto:rwmcintyre@wegmanlaw.com)  
[jrcarson@wegmanlaw.com](mailto:jrcarson@wegmanlaw.com)  
*Attorneys for Defendant Moore Road, LLC*

**CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of the foregoing Notice Of Deposition Of Representative Designated By NRG Power Midwest, LP Pursuant To Ohio Rule 30(B)(5) was served this 5th day of August, 2016 upon the following via e-mail:

Dennis M. O'Toole, Esq. (dotoole@omdplaw.com)  
John D. Latchney, Esq. (jlatchney@omdplaw.com)  
O'Toole, McLaughlin, Dooley  
& Pecora Co., L.P.A.  
5455 Detroit Road  
Sheffield Village, Ohio 44054

*Attorneys for Plaintiff  
NRG Ohio Pipeline Company, LLC*



---

Robert W McIntyre (0006768)

*An attorney for Defendant Moore Road, LLC*

## **EXHIBIT A**

(to Notice of Deposition of Representative of NRG Power Midwest LP  
Pursuant to Ohio Rule 30(B)(5))

1. Matters and topics for examination of each designated witness:
  - a. The facts and circumstances relating to the NRG Ohio Pipeline LLC (Pipeline) and NRG Power Midwest LLC (Power) regarding the construction of that certain pipeline (the NRG Pipeline) described in the Affidavit of Alan Sawyer *attached hereto as attachment 1* (Affidavit) or otherwise.
  - b. The facts and circumstances relating to Pipeline and NRG Energy Inc. regarding the construction of that certain pipeline (the NRG Pipeline) described in the Affidavit of Alan Sawyer attached hereto as attachment 1 (Affidavit) or otherwise.
2. The facts and circumstances relating to or which establishes the necessity for the construction of the NRG Pipeline asset forth at Paragraph 12 of the Affidavit or otherwise.
3. Each and every record and document provided to Pipeline by Power setting forth the usage of natural gas as a fuel for the Avon Generating facility.
4. The facts and circumstances relating to any contract or agreement by and between Pipeline and Power for the delivery of fuel gas for the generating facility described and identified at Paragraph 5 of the Affidavit or otherwise.
5. The facts and circumstances relating to any 'plans to add natural gas as a fuel source' as set forth and described at Paragraph 6 of the Affidavit.
6. The facts and circumstances relating to or which demonstrates and/ or substantiates the assertion that "NRG Pipeline" is a wholly owned subsidiary of NRG Energy Inc. and/or any relationship between NRG Power Midwest LLC, Pipeline and NRG Energy Inc.
7. The facts and circumstances relating to or which demonstrates that Pipeline was 'organized to construct and operate approximately 20 miles of ...pipeline'. As set forth in Paragraph 8 of the Affidavit or otherwise.
8. The facts and circumstances relating to or which demonstrate that Pipeline has the technical, financial, and managerial capability needed to operate a natural gas transmission system as well as the requisite financial means to construct its proposed pipeline.
9. The facts and circumstances relating to any decision or decisions process by which Power and/or NRG Energy Inc. have elected to continue fueling the generating facility with coal and not natural gas and/or defer the conversion of the generating facility from coal to natural gas.

10. All contacts, applications, or other materials submitted to and or received from the Ohio EPA:
  - a. For the construction/installation of emissions control equipment on the generating facility for the purpose of continuing to use coal as fuel for the generating facility and/or not natural gas as a fuel;
  - b. The designation of one or more boilers as a standby coal fueled unit that will not be converted to natural gas fuel; and
  - c. The decision to not operate any boiler at the generating facility in the future.
11. The facts and circumstances relating to or regarding the acquisition, construction/installation of machinery and equipment for converting any boiler at the generating facility to natural gas.
12. The facts and circumstances relating to or regarding the acquisition, construction/installation of machinery and equipment for controlling the emission of any boiler at the generating facility that would be fueled by coal.
13. The facts and circumstances relating to or which demonstrates or describes any projected or estimated cost of obtaining natural gas from Pipeline and or the revenue stream of Pipeline from the sale of natural gas to the generating facility described in Paragraph 5 of the Affidavit or otherwise.
14. Any studies, consultant's reports, or other facts or circumstances regarding or related to any safety set-back or buffer zone associated with the construction and operation of a high pressure gas pipeline.
15. Any studies, consultant's reports, or other facts or circumstances regarding or related to any safety set-back or buffer zone associated with the construction and operation of a high pressure gas pipeline and the damages to or restriction of property adjacent to the proposed pipeline and or operation of a high pressure pipeline.



# Attachment No. 1

**AFFIDAVIT**

STATE OF OHIO            )  
                              )  
COUNTY OF LORAIN       )    SS:

I, Alan Sawyer, being duly sworn under oath state the following is true.

1. I am over the age of eighteen (18) and competent to give the following declaration.
  2. I am presently, and was at all relevant times, the Vice President of NRG Ohio Pipeline Company LLC ("NRG Pipeline" or "Company").
  3. NRG Pipeline is a Delaware limited liability company that is registered to do business in the State of Ohio.
  4. NRG Pipeline is a wholly-owned subsidiary of NRG Energy, Inc. ("NRG").
  5. One of NRG's subsidiaries, NRG Power Midwest LP, owns a 735 MW coal-fired generating facility in Avon Lake, Ohio ("the Avon Lake facility").
  6. NRG Power Midwest LP plans to add natural gas as a fuel source for the boilers at the Avon Lake facility.
  7. NRG Pipeline was organized for transporting and transmitting natural gas through pipes to NRG Power Midwest LP's Avon Lake facility.
  8. More specifically, NRG Pipeline was organized to construct and operate approximately 20 miles of 24-inch to 30-inch high pressure steel pipeline in Lorain County, Ohio to transport and transmit natural gas to NRG Power Midwest LP's Avon Lake facility.
  9. On November 27, 2013, NRG Pipeline filed an application with the Public Utilities Commission of Ohio ("PUCO"), pursuant to R.C. 4905.02, R.C. 4905.03 and 4905.63,
-

for authority to operate as an intrastate pipeline company in the state of Ohio. The application was amended on February 12, 2014. See, Exhibit No. 1 attached hereto, *In the Matter of the Application of NRG Ohio Pipeline Company LLC for Authority to Operate as an Ohio Pipeline Company*, Case No. 13-2315-PL-ACE (P.U.C.O. Feb. 26, 2014) ("PUCO Finding and Order").

10. On February 26, 2014, the PUCO approved NRG Pipeline's application to operate as an intrastate pipeline company in the State of Ohio. PUCO Findings and Order at ¶4.

11. In approving NRG Pipeline's application, the PUCO found that "NRG Pipeline is a public utility and pipeline company, pursuant to R.C. 4905.02 and 4905.03, and, as such, is subject to the Commission's jurisdiction." PUCO Findings and Order at ¶4.

12. On November 6, 2014, NRG Pipeline determined that it was necessary to appropriate and acquire perpetual easement rights for the installation, construction, maintenance, operation and repair of a natural gas pipeline in, on, across, through and over the real property described in Paragraph 4 of NRG Pipeline's Verified Petition to Appropriate Property and to Fix Value Thereof ("Petition") to transport and transmit natural gas to NRG Power Midwest LP's Avon Lake facility.

13. On December 19, 2014, NRG Pipeline filed a letter of notification application, pursuant to Ohio Adm. Code 4906-11-01.

FURTHER AFFIANT SAYETH NAUGHT.

  
Alan Sawyer

SWORN TO BEFORE ME and subscribed in my presence this 25<sup>th</sup> day of March, 2015

  
NOTARY PUBLIC



KIM J. BIFFIN  
Notary Public - State of Ohio  
My Commission Expires  
September 18, 2018

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of NRG )  
Ohio Pipeline Company LLC for ) Case No. 13-2315-PL-ACB  
Authority to Operate as an Ohio Pipeline )  
Company. )

FINDING AND ORDER

The Commission finds:

- (1) On November 27, 2013, as amended on February 12, 2014, NRG Ohio Pipeline Company LLC (NRG Pipeline or Company) filed an application, pursuant to R.C. 4905.02, 4905.03(F), and 4905.63, for authority to operate as an intrastate pipeline company in the state of Ohio. In the application, NRG Pipeline states that it is a Delaware limited liability company that is registered to do business in Ohio. NRG Pipeline further states that it is a wholly-owned subsidiary of NRG Energy, Inc. (NRG), which is one of the largest power companies in the country, with nearly 100 generation assets producing more than 47,000 megawatts (MW), and retail energy providers serving more than 2 million customers in 16 states. NRG Pipeline notes that one of NRG's subsidiaries, NRG Power Midwest LP, owns a 753 MW coal-fired generating facility in Avon Lake, Ohio, and plans to add natural gas as a fuel source for the boilers at the facility. NRG Pipeline explains that it intends to provide the pipeline infrastructure to deliver natural gas to the facility, and plans to construct and operate approximately 20 miles of 24-inch to 30-inch high pressure steel pipelines in Lorain County, Ohio, which would be installed adjacent to road right-of-way to the extent practicable.
- (2) In support of the application, NRG Pipeline states that it has the technical, financial, and managerial capability needed to operate a natural gas transmission system of the type planned to serve the Avon Lake facility, as well as the requisite financial means to construct the proposed pipeline. NRG Pipeline notes that it has provided, along with the application, proof of the Company's registration with the Ohio Secretary of State, a map depicting the corridors of two

potential pipeline routes, a summary of the Company's technical and managerial background, and financial information pertaining to NRG.

- (3) Additionally, NRG Pipeline explains that, at the appropriate time, it plans to file an application with the Ohio Power Siting Board for a certificate to construct and operate the proposed pipeline. NRG Pipeline further explains that, after the pipeline is constructed, the Company or one of its affiliates will enter into a special contract with any customer served by the pipeline, pursuant to R.C. 4905.31, with any such contracts being filed with the Commission for approval prior to commencement of service. For that reason, NRG Pipeline notes that it has not proposed a tariff at this time, and that the appropriate filing will be made with the Commission, if the Company or an affiliate later decides to establish a tariff. NRG Pipeline emphasizes that, although a limited number of other commercial or manufacturing customers may seek transportation of natural gas through the proposed pipeline, its purpose is to serve the Avon Lake facility, such that natural gas may be used in place of coal for the generation of electricity at the facility.
- (4) Upon review of NRG Pipeline's application, the Commission finds that the application is reasonable and should be approved. Specifically, we find that NRG Pipeline's request for authority to operate as an intrastate pipeline company in the state of Ohio should be granted. NRG Pipeline has provided sufficient information in support of its application, including several exhibits intended to document that the Company and its affiliates have the necessary technical and managerial expertise and financial resources to construct and operate the proposed pipeline. Accordingly, we find that NRG Pipeline is a public utility and pipeline company, pursuant to R.C. 4905.02 and 4905.03, and, as such, is subject to the Commission's jurisdiction. We further find that, pursuant to R.C. 4905.63, NRG Pipeline is subject to R.C. Chapters 4901, 4903, 4905, 4909, and any other applicable chapter set forth therein. We also emphasize that NRG Pipeline is subject to the ongoing jurisdiction and supervision of the Commission with respect to the gas pipeline safety standards and requirements, as set forth in R.C. 4905.90 through 4905.96 and Ohio Adm.Code Chapter

1901:1-14. Finally, we note that our approval of NRG Pipeline's application in this case does not relieve the Company of the obligation to file a proper application with the Commission, at the appropriate time, for approval of a proposed tariff or reasonable arrangement entered into with any customer, or to file the necessary application with the Ohio Power Siting Board for a certificate to construct and operate the proposed pipelines.

It is, therefore,

ORDERED, That NRG Pipeline's application be approved. It is, further,

ORDERED, That NRG Ohio Pipeline Company LLC be added to the roll of public utilities regulated by this Commission. It is, further,

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

THE PUBLIC UTILITIES COMMISSION OF OHIO

  
Todd A. Bruchler, Chairman

  
Steven D. Lesser

  
Lynn Slaby

  
M. Beth Trombold

  
Asim Z. Haque

BJP/ec

Entered in the Journal FEB 28 2014



Barry F. McNeal  
Secretary

IN THE COURT OF COMMON PLEAS  
LORAIN COUNTY, OHIO

NRG Ohio Pipeline Company, LLC

Plaintiff,

VS.

Moore Road, LLC, et al.

Defendant.

**General Division - CIVIL**

Subpoena and Return

Case No. 15CV187151

Attorney: Robert W. McIntyre, Esq.

Attorney for: Defendant Moore Road, LLC

Telephone: 216-642-3342

E-mail (optional): rwmcintyre@wegmanlaw.com

TO: (Print name and address below)

NRG Power Midwest, LP- Records Custodian

c/o Statutory Agent - CT Corporation System

1300 East Ninth Street

Cleveland, Ohio 44114

If you have any questions concerning this subpoena, please contact the attorney whose name and contact information are listed above.

YOU ARE HEREBY COMMANDED TO, AT THE DATE, TIME, AND LOCATION LISTED BELOW:

☒ attend and give testimony at a trial, hearing, or deposition.

☐ produce the following documents, electronically stored information, or tangible things at a trial, hearing, or deposition:

☒ produce and permit inspection and copying of the following documents or electronically stored information that are in your custody, possession, or control: Please see attached Exhibit A

☐ produce and permit inspection and copying, testing, or sampling of the following tangible things that are in your custody, possession, or control: \_\_\_\_\_

☐ permit entry upon designated land or other property that is in your possession or control described as (see Civ. R. 34): \_\_\_\_\_

DATE: 8th day of September, 20 16 TIME: 9:00 o'clock a.m./p.m.

LOCATION: Wegman Hessler & Vanderburg, 6055 Rockside Woods Blvd., Ste 200, Independence, Ohio 44131

WITNESS my signature and seal of said Court at Elyria, Ohio, this 5th day of August, 20 16.

by Robert W. McIntyre, Esq. (0006768), Attorney.

OHIO RULES OF CIVIL PROCEDURE – PARTIAL TEXT OF RULE 45 (revised 07/17/2014)

**C) Protection of persons subject to subpoenas.**

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena.

(2)(a) A person commanded to produce under divisions (A)(1)(b), (iii), (iv), (v), or (vi) of this rule need not appear in person at the place of production or inspection unless commanded to attend and give testimony at a deposition, hearing, or trial.

(b) Subject to division (D)(2) of this rule, a person commanded to produce under divisions (A)(1)(b), (iii), (iv), (v), or (vi) of this rule may, within fourteen days after service of the subpoena or before the time specified for compliance if such time is less than fourteen days after service, serve upon the party or attorney designated in the subpoena written objections to production. If objection is made, the party serving the subpoena shall not be entitled to production except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena, upon notice to the person commanded to produce, may move at any time for an order to compel the production. An order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the production commanded.

(3) On timely motion, the court from which the subpoena was issued shall quash or modify the subpoena, or order appearance or production only under specified conditions, if the subpoena does any of the following:

(a) Fails to allow reasonable time to comply;

(b) Requires disclosure of privileged or otherwise protected matter and no exception or waiver applies;

(c) Requires disclosure of a fact known or opinion held by an expert not retained or specially employed by any party in anticipation of litigation or preparation for trial as described by Civ. R. 26(B)(5), if the fact or opinion does not describe specific events or occurrences in dispute and results from study by that expert that was not made at the request of any party;

(d) Subjects a person to undue burden.

(4) Before filing a motion pursuant to division (C)(3)(d) of this rule, a person resisting discovery under this rule shall attempt to resolve any claim of undue burden through discussions with the issuing attorney. A motion filed pursuant to division (C)(3)(d) of this rule shall be supported by an affidavit of the subpoenaed person or a certificate of that person's attorney of the efforts made to resolve any claim of undue burden.

(5) If a motion is made under division (C)(3)(c) or (C)(3)(d) of this rule, the court shall quash or modify the subpoena unless the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated.

**(D) Duties in responding to subpoena.**

(1) A person responding to a subpoena to produce documents shall, at the person's option, produce them as they are kept in the usual course of business or organized and labeled to correspond with the categories in the subpoena. A person producing documents or electronically stored information pursuant to a subpoena for them shall permit their inspection and copying by all parties present at the time and place set in the subpoena for inspection and copying.

(2) If a request does not specify the form or forms for producing electronically stored information, a person responding to a subpoena may produce the information in a form or forms in which the information is ordinarily maintained if that form is reasonably useable, or in any form that is reasonably useable. Unless ordered by the court or agreed to by the person subpoenaed, a person responding to a subpoena need not produce the same electronically stored information in more than one form.

(3) A person need not provide discovery of electronically stored information when the production imposes undue burden or expense. On motion to compel discovery or for a protective order, the person from whom electronically stored information is sought must show that the information is not reasonably accessible because of undue burden or expense. If a showing of undue burden or expense is made, the court may nonetheless order production of electronically stored information if the requesting party shows good cause. The court shall consider the factors in Civ. R. 26(B)(4) when determining if good cause exists. In ordering production of electronically stored information, the court may specify the format, extent, timing allocation of expenses and other conditions for the discovery of the electronically stored information.

(4) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials under Civ. R. 26(B)(3) or (4), the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(5) If information is produced in response to a subpoena that is subject to a claim of privilege or of protection as trial preparation material, the person making the claim may notify any party that received the information of the claim and basis for it. After being notified, a receiving party must promptly return, sequester, or destroy the specified information and any copies within the party's possession, custody or control. A party may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim of privilege or of protection as trial-preparation material. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The person who produced the information must preserve the information until the claim is resolved.



FOR FILING WITH CLERK

COURT OF COMMON PLEAS  
GENERAL DIVISION  
LORAIN COUNTY, OHIO

NRG Ohio Pipeline Company, LLC

Plaintiff,

VS.

Moore Road, LLC, et al.

Defendant.

CASE NO. 15CV187151

JUDGE Christopher R. Rothgery

RETURN OF SERVICE  
OF SUBPOENA

NAME AND ADDRESS OF PERSON ON SUBPOENA: NRG Power Midwest, LP - Records Custodian  
c/o Statutory Agent, CT Corporation System, 1300 East Ninth Street, Cleveland, Ohio 44114

DATE, TIME AND LOCATION OF TRIAL OR HEARING: \_\_\_\_\_

Deposition: September 8, 2016 at 9:00am at Wegman Hessler & Vanderburg, 6055 Rockside Woods Blvd., Ste 200, Independence, Ohio 44131

(The following to be completed by Sheriff, process server, or attorney)

I received this Subpoena on August 5, 2016, and served the same on the person herein  
named on August 8, 2016.

Service was accomplished by Corporate Service, upon Debbie Justice, Corporate Operations Specialist  
at CT Corporation System, 1300 E. Ninth Street, Suite 1010, Cleveland, OH 44114 at 12:42 p.m..

I was unable to complete service for the following reason(s): \_\_\_\_\_

SHERIFF'S FEES

Service and Return \_\_\_\_\_ \$ \_\_\_\_\_  
Mileage \_\_\_\_\_ # miles \_\_\_\_\_ \$ \_\_\_\_\_  
Copies \_\_\_\_\_ \$ \_\_\_\_\_  
Total: \$ \_\_\_\_\_

PHIL R. STAMMITT, Lorain Co. Sheriff

BY: \_\_\_\_\_  
Deputy

PROCESS SERVER/ATTORNEY CERTIFICATION

I certify that the foregoing information is correct to the  
best of my knowledge and belief.

  
(signature of individual performing service)

Print name: Brian D. Schall (0087359)


# Exhibit "A"

IN THE COURT OF COMMON PLEAS  
LORAIN COUNTY, OHIO

|                                 |   |                                 |
|---------------------------------|---|---------------------------------|
| NRG OHIO PIPELINE COMPANY, LLC, | ) | CASE NO. 15CV187151             |
|                                 | ) |                                 |
| Plaintiff,                      | ) | JUDGE Christopher R. Rothgery   |
|                                 | ) |                                 |
| v.                              | ) | Magistrate James Blaszak        |
|                                 | ) |                                 |
| MOORE ROAD, LLC, <i>et al.</i>  | ) | NOTICE OF DEPOSITION OF RECORDS |
|                                 | ) | CUSTODIAN DESIGNATED BY NRG     |
| Defendants.                     | ) | POWER MIDWEST, LP               |

Please take notice that on **September 8, 2016** beginning at **9:00 a.m.**, counsel for Defendant, Moore Road, LLC, will take the deposition of a person or persons identified and designated by NRG Power Midwest, LP as Records Custodian who is knowledgeable to testify with respect to the matters set forth on Exhibit A. The deposition will take place at the offices of Wegman Hessler & Vanderburg, 6055 Rockside Woods Blvd., Ste. 200, Independence, Ohio 44131. The deposition shall proceed in accordance with the Ohio Rules of Civil Procedure in the presence of a notary public, and be recorded by a stenographer, and shall continue from day-to-day until complete.

Respectfully submitted,



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Robert W. McIntyre (0006768)  
Jay R. Carson (0068526)  
WEGMAN, HESSLER & VANDERBURG  
6055 Rockside Woods Boulevard, Suite 200  
Cleveland, Ohio 44131  
Phone: (216) 642-3342 / Fax: (216) 642-8826  
E-Mail: [rwmcintyre@wegmanlaw.com](mailto:rwmcintyre@wegmanlaw.com)  
[jrcarson@wegmanlaw.com](mailto:jrcarson@wegmanlaw.com)  
***Attorneys for Defendant Moore Road, LLC***

**CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of the foregoing Notice Of Deposition Of Records Custodian Designated By NRG Power Midwest, LP was served this 5th day of August, 2016 upon the following via e-mail:

Dennis M. O'Toole, Esq. (dotoole@omdplaw.com)  
John D. Latchney, Esq. (jlatchney@omdplaw.com)  
O'Toole, McLaughlin, Dooley  
& Pecora Co., L.P.A.  
5455 Detroit Road  
Sheffield Village, Ohio 44054

*Attorneys for Plaintiff  
NRG Ohio Pipeline Company, LLC*

A handwritten signature in dark ink, appearing to be 'Robert W McIntyre', written over a horizontal line.

Robert W McIntyre (0006768)

*An attorney for Defendant Moore Road, LLC*

## **EXHIBIT A**

(to Notice of Deposition of  
Records Custodian of NRG Power Midwest LP)

### **-Records-**

1. All correspondence by and between:
  - a. Pipeline and Power regarding the construction of that certain pipeline (the NRG Pipeline) described in the Affidavit of Alan Sawyer attached hereto as *Attachment 1* or otherwise.
  - b. Power and NRG Energy Inc. regarding the construction of that certain pipeline (the NRG Pipeline) described in the Affidavit of Alan Sawyer attached hereto as Attachment 1 (Affidavit), or otherwise.
2. Each record or document which establishes the necessity for the construction of the NRG Pipeline asset forth at Paragraph 12 of the Affidavit, or otherwise.
3. Each and every record regarding the acquisition, construction/installation of machinery and equipment for converting any boiler at the generating facility to natural gas.
4. Each and every record regarding the acquisition, construction/installation of machinery and equipment for controlling the emission of any boiler at the generating facility to natural gas.
5. Each record or document which describes or is related to the following:
  - a. Acquisition of real estate and /or easements for the construction of the NRG Pipeline;
  - b. Any construction contracts, bids, requests for bids or quotations for the construction of the NRG Pipeline; and
  - c. The interconnection of the NRG Pipeline with any gas transmission facility or pipeline owned by others than NRG Pipeline.
6. Each record or document which describes or is related to the following:
  - a. The acquisition of gas transmission pipe, pipeline materials, machinery and equipment or facilities for the construction and/or installation of the NRG Pipeline; and
  - b. The design, engineering, geotechnical investigation, or other scientific or technical investigations and/or work undertaken for the construction and installation of the NRG Pipeline.

7. Each record or document which describes or is related to any communication, administrative filing or application, or other submission to or with the following relating to the NRG Pipeline:
  - a. The Ohio Department of Natural Resources;
  - b. The Ohio Public Utilities Commission;
  - c. The Ohio Power Siting Board;
  - d. The Ohio Environmental Protection Agency;
  - e. City of Avon Ohio;
  - f. The City of Avon Lake Ohio;
  - g. Lorain County;
  - h. Any other agency of the State of Ohio; and
  - i. Any agency of the United States Government.
8. Each record or document which describes or is related to the following:
  - a. Acquisition of machinery or equipment for the conversion of any boiler at the Avon Generating facility to natural gas as a fuel;
  - b. Any construction contracts, bids, requests for bids or quotations for the construction of the natural gas fuel boiler conversion; and
  - c. The interconnection of the NRG Pipeline with the generating facility.
9. Each record or document which describes or is related to the following:
  - a. The acquisition of machinery, equipment or the construction of facility for the construction and/or installation of any emission control systems to enable the generating facility to continue to burn coal as a fuel;
  - b. The design, engineering, geotechnical investigation, or other scientific or technical investigations and/or work undertaken for the construction and installation of any emission control systems to enable the generating facility to continue to burn coal as a fuel; and
  - c. The purchase of coal fuel for the operation of the generating facility including but not limited to supply contracts, options, or other commercial undertakings to obtain a supply of coal for fuel at the generating facility.

10. Each record or document which describes or is related to any communication, administrative filing or application, or other submission to or with the following relating to conversion of any boiler at the generating facility to the use of natural gas as a fuel
  - a. The Ohio Department of Natural Resources;
  - b. The Ohio Public Utilities Commission;
  - c. The Ohio Power Siting Board;
  - d. The Ohio Environmental Protection Agency;
  - e. City of Avon Ohio;
  - f. The City of Avon Lake Ohio;
  - g. Lorain County;
  - h. Any other agency of the State of Ohio; and
  - i. Any agency of the United States Government.
11. Each record or document which describes or is related to any communication, administrative filing or application, or other submission to or with the following relating to conversion of any boiler at the generating facility to the use of coal as a fuel:
  - a. The Ohio Department of Natural Resources;
  - b. The Ohio Public Utilities Commission;
  - c. The Ohio Power Siting Board;
  - d. The Ohio Environmental Protection Agency;
  - e. City of Avon Ohio;
  - f. The City of Avon Lake Ohio;
  - g. Lorain County;
  - h. Any other agency of the State of Ohio; and
  - i. Any agency of the United States Government.
12. Each and every record or document that describes or refers to any contract or agreement by and between Pipeline and Power for the delivery of fuel gas for the generating facility described and identified at Paragraph 5 of the Affidavit, or otherwise.

13. Each and every record or document that evidences any 'plans to add natural gas as a fuel source' as set forth and described at Paragraph 6 of the Affidavit, or otherwise.
14. Each and every record or document that establishes, demonstrates and/ or substantiates the statement in Para 4 that "NRG Pipeline" is a wholly owned subsidiary of NRG Energy Inc.
15. Each and every record and document that demonstrates that plaintiff was 'organized to construct and operate approximately 20 miles of ...pipeline'. As set forth in Paragraph 8 of the Affidavit.
16. Each and every record and document that demonstrates that Pipeline has the technical, financial, and managerial capability needed to operate a natural gas transmission system as well as the requisite financial means to construct its proposed pipeline.
17. Each and every record and document that describes or is related to any decision or decisions process by which Power and/or NRG Energy Inc. have elected to continue fueling the generating facility with coal and not natural gas and or defer the conversion of the generating facility from coal to natural gas.
18. Each and every record and document that describes any projected or estimated costs to acquire natural gas for the generating facility described in Paragraph 5 of the Affidavit.
19. Each and every record and document that describes any studies, consultant's reports, or other facts or circumstances regarding or related to any safety set-back or buffer zone associated with the construction and operation of a high pressure gas pipeline.
20. Each and every record and document that describes any studies, consultant's reports, or other facts or circumstances regarding or related to any safety set-back or buffer zone associated with the construction and operation of a high pressure gas pipeline and the damages to or restriction of property adjacent to the proposed pipeline and or operation of a high pressure pipeline.



# Attachment No. 1

**AFFIDAVIT**

STATE OF OHIO            )  
                              )    SS:  
COUNTY OF LORAIN        )

I, Alan Sawyer, being duly sworn under oath state the following is true.

1. I am over the age of eighteen (18) and competent to give the following declaration.
  2. I am presently, and was at all relevant times, the Vice President of NRG Ohio Pipeline Company LLC ("NRG Pipeline" or "Company").
  3. NRG Pipeline is a Delaware limited liability company that is registered to do business in the State of Ohio.
  4. NRG Pipeline is a wholly-owned subsidiary of NRG Energy, Inc. ("NRG").
  5. One of NRG's subsidiaries, NRG Power Midwest LP, owns a 735 MW coal-fired generating facility in Avon Lake, Ohio ("the Avon Lake facility").
  6. NRG Power Midwest LP plans to add natural gas as a fuel source for the boilers at the Avon Lake facility.
  7. NRG Pipeline was organized for transporting and transmitting natural gas through pipes to NRG Power Midwest LP's Avon Lake facility.
  8. More specifically, NRG Pipeline was organized to construct and operate approximately 20 miles of 24-inch to 30-inch high pressure steel pipeline in Lorain County, Ohio to transport and transmit natural gas to NRG Power Midwest LP's Avon Lake facility.
  9. On November 27, 2013, NRG Pipeline filed an application with the Public Utilities Commission of Ohio ("PUCO"), pursuant to R.C. 4905.02, R.C. 4905.03 and 4905.63,
-

for authority to operate as an intrastate pipeline company in the state of Ohio. The application was amended on February 12, 2014. See, Exhibit No. 1 attached hereto, *In the Matter of the Application of NRG Ohio Pipeline Company LLC for Authority to Operate as an Ohio Pipeline Company*, Case No. 13-2315-PL-ACB (P.U.C.O. Feb. 26, 2014) ("PUCO Finding and Order").

10. On February 26, 2014, the PUCO approved NRG Pipeline's application to operate as an intrastate pipeline company in the State of Ohio, PUCO Findings and Order at ¶4.

11. In approving NRG Pipeline's application, the PUCO found that "NRG Pipeline is a public utility and pipeline company, pursuant to R.C. 4905.02 and 4905.03, and, as such, is subject to the Commission's jurisdiction." PUCO Findings and Order at ¶4.

12. On November 6, 2014, NRG Pipeline determined that it was necessary to appropriate and acquire perpetual easement rights for the installation, construction, maintenance, operation and repair of a natural gas pipeline to, on, across, through and over the real property described in Paragraph 4 of NRG Pipeline's Verified Petition to Appropriate Property and to Fix Value Thereof ("Petition") to transport and transmit natural gas to NRG Power Midwest LP's Avon Lake facility.

13. On December 19, 2014, NRG Pipeline filed a letter of notification application, pursuant to Ohio Adm. Code 4906-11-01.

FURTHER AFFIANT SAYETH NAUGHT.

  
Alan Sawyer

SWORN TO BEFORE ME and subscribed in my presence this 25<sup>th</sup> day of March, 2015

  
NOTARY PUBLIC



KIM J. BEHM  
Notary Public - State of Ohio  
My Commission Expires  
September 19, 2018

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of NRG )  
Ohio Pipeline Company LLC for ) Case No. 19-2915-FL-ACB  
Authority to Operate as an Ohio Pipeline )  
Company. )

FINDING AND ORDER

The Commission finds:

- (1) On November 27, 2013, as amended on February 12, 2014, NRG Ohio Pipeline Company LLC (NRG Pipeline or Company) filed an application, pursuant to R.C. 4905.02, 4905.03(f), and 4905.69, for authority to operate as an intrastate pipeline company in the state of Ohio. In the application, NRG Pipeline states that it is a Delaware limited liability company that is registered to do business in Ohio. NRG Pipeline further states that it is a wholly-owned subsidiary of NRG Energy, Inc. (NRG), which is one of the largest power companies in the country, with nearly 100 generation assets producing more than 47,000 megawatts (MW), and retail energy providers serving more than 2 million customers in 16 states. NRG Pipeline notes that one of NRG's subsidiaries, NRG Power Midwest LP, owns a 753 MW coal-fired generating facility in Avon Lake, Ohio, and plans to add natural gas as a fuel source for the boilers at the facility. NRG Pipeline explains that it intends to provide the pipeline infrastructure to deliver natural gas to the facility, and plans to construct and operate approximately 20 miles of 24-inch to 30-inch high pressure steel pipelines in Lorain County, Ohio, which would be installed adjacent to road right-of-way to the extent practicable.
- (2) In support of the application, NRG Pipeline states that it has the technical, financial, and managerial capability needed to operate a natural gas transmission system of the type planned to serve the Avon Lake facility, as well as the requisite financial means to construct the proposed pipeline. NRG Pipeline notes that it has provided, along with the application, proof of the Company's registration with the Ohio Secretary of State, a map depicting the corridor of two

potential pipeline routes, a summary of the Company's technical and managerial background, and financial information pertaining to NRG.

- (3) Additionally, NRG Pipeline explains that, at the appropriate time, it plans to file an application with the Ohio Power Siting Board for a certificate to construct and operate the proposed pipeline. NRG Pipeline further explains that, after the pipeline is constructed, the Company or one of its affiliates will enter into a special contract with any customer served by the pipeline, pursuant to R.C. 4903.31, with any such contracts being filed with the Commission for approval prior to commencement of service. For that reason, NRG Pipeline notes that it has not proposed a tariff at this time, and that the appropriate filing will be made with the Commission, if the Company or an affiliate later decides to establish a tariff. NRG Pipeline emphasizes that, although a limited number of other commercial or manufacturing customers may seek transportation of natural gas through the proposed pipeline, its purpose is to serve the Avon Lake facility, such that natural gas may be used in place of coal for the generation of electricity at the facility.
- (4) Upon review of NRG Pipeline's application, the Commission finds that the application is reasonable and should be approved. Specifically, we find that NRG Pipeline's request for authority to operate as an intrastate pipeline company in the state of Ohio should be granted. NRG Pipeline has provided sufficient information in support of its application, including several exhibits intended to document that the Company and its affiliates have the necessary technical and managerial expertise and financial resources to construct and operate the proposed pipeline. Accordingly, we find that NRG Pipeline is a public utility and pipeline company, pursuant to R.C. 4903.02 and 4905.03, and, as such, is subject to the Commission's jurisdiction. We further find that, pursuant to R.C. 4905.63, NRG Pipeline is subject to R.C. Chapters 4901, 4903, 4905, 4909, and any other applicable chapter set forth therein. We also emphasize that NRG Pipeline is subject to the ongoing jurisdiction and supervision of the Commission with respect to the gas pipeline safety standards and requirements, as set forth in R.C. 4903.90 through 4905.96 and Ohio Admin. Code Chapter

4901:1-16. Finally, we note that our approval of NRG Pipeline's application in this case does not relieve the Company of the obligation to file a proper application with the Commission, at the appropriate time, for approval of a proposed tariff or reasonable arrangement entered into with any customer, or to file the necessary application with the Ohio Power Siting Board for a certificate to construct and operate the proposed pipeline.

It is, therefore,

ORDERED, That NRG Pipeline's application be approved. It is, further,

ORDERED, That NRG Ohio Pipeline Company LLC be added to the roll of public utilities regulated by this Commission. It is, further,

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

THE PUBLIC UTILITIES COMMISSION OF OHIO

  
Todd A. Sutchler, Chairman

  
Steven D. Lesser


  
Lynn Slaby

  
M. Beth Trombold

  
Asim Z. Haque

SJP/sc

Entered in the Journal FEB 26 2014



Barry F. McNeal  
Secretary



**Bricker & Eckler**  
ATTORNEYS AT LAW

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Appellate Law  
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August 22, 2016

**VIA REGULAR U.S. MAIL AND ELECTRONIC MAIL**

Robert W. McIntyre, Esq.  
Wegman, Hessler & Vandenburg  
6055 Rockside Woods Blvd., Suite 200  
Independence, Ohio 44131  
[rwmcintyre@wegmanlaw.com](mailto:rwmcintyre@wegmanlaw.com)

**Re:    *NRG Ohio Pipeline Company, LLC v. Moore Road, LLC, et al.***  
**Lorain C.P. No. 15CV187151**  
**Objections to Subpoena from Moore Road, LLC to “NRG Power**  
**Midwest, LP – Records Custodian,” served August 8, 2016**

Dear Mr. McIntyre:

As you know, this firm represents NRG Power Midwest, LP (“NRG Power Midwest”). This letter constitutes NRG Power Midwest’s written objections to each and every request in the subpoena referenced above, pursuant to Civ.R. 45(C)(2)(b).

Before addressing NRG Power Midwest’s objections, per email and telephone communications on August 11, 2016, it is my understanding that you have “continued” the August 17, 2016 deposition notice/subpoena issued to “NRG Power Midwest, LP – Corp. Representative” and that you do not intend to depose the records custodian for NRG Power Midwest, LP, on September 8, 2016, per the deposition notice/subpoena issued to “NRG Power Midwest, LP – Records Custodian” on August 8, 2016. Instead, it is my understanding that once NRG Power Midwest’s objections are worked through and when and if any documents are produced, that you will simply notice a new date, if any, for any deposition(s) of NRG Power Midwest witness(es). If my understandings with regard to either or both of the deposition notice(s)/subpoena(s) are incorrect, please let me know.

**A. Procedural Objections**

1. NRG Power Midwest objects to each and every request in the subpoena, on the grounds it does not allow sufficient time to comply. The subpoena was served on August 8, 2016 and seeks the production of a vast amount of documents by September 8, 2016. The timing of this request is even more objectionable because of the extremely wide variety of topics and the fact that the topics are irrelevant to the underlying appropriation matter.

## **B. Substantive Objections**

1. Relevance. NRG Power Midwest objects to each and every request in the subpoena on grounds it seeks information irrelevant to this easement appropriation proceeding. The only issue in the appropriation action is the value of the real property interest at issue. See *Masheter v. Brewer*, 40 Ohio St.2d 31, 33 (1974) (“Section 19, Article I of the Ohio Constitution, and the Fifth Amendment to the United States Constitution guarantee just compensation to one whose property is appropriated for public use. The test of just compensation, as stated by the court in *Masheter v. Hoffman*, *supra*, is the “fair market value” of the property); *Masheter v. Hoffman*, 34 Ohio St.2d 213, syllabus (1973) (issue in appropriation proceedings is “the fair market value of the property to be appropriated”). None of the requests in the subpoena relates to the fair market value of property. The records sought relate to the construction and/or necessity of the pipeline; and/or the Avon Lake facility. But issues relating to the construction and/or necessity of the pipeline, and the Avon Lake facility conversion project are *res judicata*. Indeed, public necessity, pipeline construction, pipeline safety, environmental, economic feasibility and all other issues relating to the pipeline itself and the Avon Lake facility have all been considered and ruled upon by the Public Utilities Commission of Ohio and the Ohio Power Siting Board. See, *In the Matter of the Application of NRG Ohio Pipeline Company LLC for Authority to Operate as an Ohio Pipeline Company*, Case No. 13-2315-PL-ACE, Finding and Order (Feb. 26, 2014); *In the Matter of the Application of NRG Ohio Pipeline Company LLC for Approval of a Letter Notification for the Avon Lake Gas Addition Project in Lorain County, Ohio*, Case No. 14-1717-GA-BLN, Opinion Order, and Certificate (June 4, 2015). Indeed, and although irrelevant to the appropriation action, much of the information and/or documents sought in the subpoena may be found within the public/administrative record in these two proceedings. In summary, none of the requests in the subpoena seek information or documents relevant to the appropriation action.

2. Undue Burden. For several reasons, the subpoena subjects NRG Power Midwest to undue burden and expense. First, as set forth above, the subpoena seeks irrelevant information and thereby subjects NRG Power Midwest to undue burden. Second, the categories of records sought in the subpoena are not only irrelevant but overly broad in scope. By way of example only, the subpoena seeks each record/document related to the acquisition of real estate and/or easements for the construction of the pipeline. See, e.g., *Winkle v. Southdown, Inc.*, 2<sup>nd</sup> Dist. Greene No. 92-CA-107, 1993 Ohio App. LEXIS 4295 (“[I]t is not within the general purpose and scope of the Civil Rules that discovery should be used by either party as a ‘fishing expedition’ for causes of action.”). Lastly, the subpoena seeks information, records, and/or documents that are available from a party in the lawsuit, thereby subjecting NRG Power Midwest to further undue burden.



August 22, 2016

Page 3

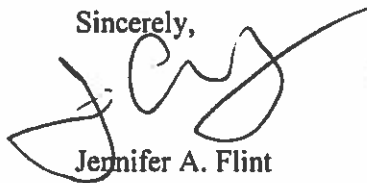
3. Vague and Ambiguous. NRG Power Midwest objects to the subpoena to the extent it contains requests that are so vague and ambiguous that it is unreasonable or impossible for NRG Power Midwest to comply.

4. Confidential, Trade Secret, and Other Protected Information. NRG Power Midwest objects to the subpoena to the extent it seeks information, documents, and/or records that are confidential, privileged trade secret, and/or other protected information and/or documents. Such protected information is not discoverable.

For all the above reasons, NRG Power Midwest objects to the subpoena in its entirety. Although it is NRG Power Midwest's position that none of the documents sought are relevant, it is nonetheless amendable to having a discussion with counsel for Moore Road, LLC to determine if Moore Road's request may be significantly narrowed in scope in order to address any relevant documents NRG Power Midwest may have that relate to the issue of valuation of the easement interest being sought by Plaintiff. Further, it is my understanding that the same or similar information/records are currently being sought in the context of discovery with Plaintiff, NRG Ohio Pipeline LLC. To the extent such records have been or will be produced to Moore Road, LLC by NRG Ohio Pipeline LLC, there would be no need for Moore Road, LLC to seek the same documents/records from NRG Power Midwest.

Please do not hesitate to contact me if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Jennifer A. Flint", is written over the word "Sincerely,".

Jennifer A. Flint

cc: Matthew W. Warnock, Esq.

September 2, 2016

**Via E-Mail: iflint@bricker.com**

Jennifer A. Flint, Esq.  
Bricker & Eckler, LLP  
100 South Third Street  
Columbus, OH 43215

Re: NRG Ohio Pipeline Company, LLC v. Moore Road, LLC, et al.  
Lorain County Court of Common Pleas Case No. 15-CV-187151

Dear Ms. Flint:

I was somewhat surprised by your letter as it offered no progress whatsoever regarding the outstanding subpoenas to your client; and in fact, was a step backwards from even the barest minimums in the rules.

Notwithstanding what is clearly an 'omnibus' objection, I will address your comments in order:

1. "A", 'Procedural Objections'

These objections are clearly inconsistent with your second paragraph, as I have been very clear that Defendant Moore Road ("Moore") would and has already indefinitely continued both the records and representative depositions pending addressing your objections. This is set forth in the e-mail of August 11, 2016 (Attachment No. 1), and the Notice of Continuance filed with the Court (Attachment No. 2); therefore your comments are simply inapplicable.

Additionally, you have also sought to create an objection as to 'relevance' which is clearly not a 'procedural' matter for objection, and in fact, apparently is the prelude to "B" ...Substantive Objections, which is addressed below, but otherwise not remotely applicable as a "procedural objection".

2. "B", 'Substantive Objections'

I have addressed your objection in the order presented as:

(i) Relevance

I trust you appreciate that Power is a non-party witness and has no standing to object to a subpoena from a party on grounds of relevance. Additionally, the citations to cases involving

private appropriation are simply inapplicable as a justification for a relevance objection, for the foregoing reason:

Further, although the materials sought in the records subpoena could be argued as ‘broad’, but such requests are ordinary methods of requesting records because every person or entity identifies its internal records differently, and it is therefore the obligation of the respondent to at the least, identify whether they have any records that are responsive or not; which you have not done.

Additionally, I am sure you are aware of the opening of the factual issue of ‘necessity’ for the construction of the gas pipeline by your client’s co-subsiary, NRG Ohio Pipeline in its Summary Judgment Motion, thus any information that might demonstrate either ‘necessity’ the absence of ‘necessity’ bears directly upon those claims and Pipeline’s rights to proceed with a private taking.

Lastly, whether Power believes Moore’s discovery is relevant is of no consequence unless of course Power and Pipeline are somehow coordinating their discovery conduct, despite the fact that Pipeline claims they are not. And, in that context, if Power continues to refuse to provide discovery; both Power and Pipeline will have to explain their virtually identical objections as well as Pipeline’s written representation of its ignorance of any information about Power.

(ii) Undue Burden

Again, the ‘relevance’ objection is raised in another guise by a non-party and is still inapplicable. In addition, with respect to burden, just as in “relevance” above, it is the responding non-party entity that is obligated to actually identify what records it *has* that are responsive and then demonstrate why producing the records constitutes the asserted burden; a mere omnibus ‘burden’ objection is not simply *available* and/or proper.

3. Vague and Ambiguous

This objection again is unsupported. It is the responding party’s obligation to state with some regard to detail which requests cannot be understood so that the requesting party can mitigate the situation, which has not been done by Power; thus lending the appearance of lack of cooperation to the unsupported response.

4. Confidential-Trade Secret

Again, your assertion is in fact incorrect, such information is almost invariably discoverable under the ambit of an appropriate protective order, which I have attached (Attachment No. 3), and also sent to Pipeline’s counsel, having raised a similar concern. Your prompt response to this sub-part is urged.

In summarizing the situation, it is Power’s obligation to set forth its objections in sufficient detail to permit a good faith discussion as a prelude to motion practice, not simply object to all of the discovery in a narrative form, which is simply not supported by the law.

Additionally, there appears to be an absence of direct or specific objection to the '30(b) Representative' subpoena, thus unless you inform me to the contrary, I will presume that any such objections are contained within the omnibus 'objection' posture of Power and proceed accordingly.

In the foregoing context, there appears to be two options for Power in this situation, the first being to substantively object as required under the rules and the case law. This means that for each request for documents it is Power's obligation to first simply identify for each request whether or not it has responsive documents, second to assert on a request by request basis each substantive reason for objection to that request.

Additionally, as set forth above, for each request that is believed 'vague or ambiguous' Power is obligated to identify what part or parts of the request cannot be understood to provide Moore the opportunity to promptly re-state the request and cure the vagueness or ambiguity.

Similarly, detailed substantive objections to the 30(b) subpoena are required as to whether or not such knowledgeable person exists, any burden to their appearance and other such objections.

Therefore, as I am certain that you and your client have indeed carefully reviewed the requests to determine the positions made in the omnibus objection, further iteration of these known reasons will confirm to the rules and permit Power and Moore to undertake any next steps in this discovery process.

Power's second option is to simply reiterate its existing objections in one form or another. If such will be Power's final position, I will not waste time with further correspondence and motion practice will promptly ensue. Be advised however that such will bring the entire conduct of Power and Pipeline to the scrutiny of the Court; including the three service events, the recent statements by Pipeline identifying Power as the source of certain information, and the public records of various agencies that demonstrate a strong appearance of obstruction by both Power and Pipeline. I might also suggest that you be aware that if Power desires to have the Court make the decisions in this situation, that there will be a prompt hearing requiring the in person appearance of your firm and a representative of Power.

Please let me know which way Power wants to go at your earliest convenience.

Very truly yours,

WEGMAN HESSLER & VANDERBURG



Robert W. McIntyre

RWM/smm  
Encl.

**Attachment No. 1**  
**(E-mail)**

## Robert W. McIntyre

---

**From:** Robert W. McIntyre  
**Sent:** Thursday, August 11, 2016 4:11 PM  
**To:** 'Flint, Jennifer'  
**Cc:** Robert W. McIntyre; Shannon M. Mussehl  
**Subject:** RE: Subpoenas and Depo Notice(s) to NRG Power Midwest [BRICKER-WS.FID1187929]

I am not withdrawing it , I am continuing it to a future date that is mutually convenient or if needed, set by the court

---

**From:** Flint, Jennifer [mailto:JFlint@bricker.com]  
**Sent:** Thursday, August 11, 2016 4:07 PM  
**To:** Robert W. McIntyre  
**Subject:** RE: Subpoenas and Depo Notice(s) to NRG Power Midwest [BRICKER-WS.FID1187929]

Bob,

Thank you for the follow-up email. It is my understanding, then, that you have withdrawn the Notice of Deposition of Civ.R. 30(B)(5) Representative Designated by NRG Power Midwest, LP, set for August 17, 2016. Please let me know if my understanding is not correct.

I will be submitting to you written objections to the subpoenas—well in advance of August 22<sup>nd</sup>. I would suggest that once the objections are worked through and when and if any documents are produced, that you simply notice a new date, if any, for the 30(B)(5) deposition.

Thank you,

-Jennifer

---

**From:** Robert W. McIntyre [mailto:RWMcIntyre@wegmanlaw.com]  
**Sent:** Thursday, August 11, 2016 3:16 PM  
**To:** Flint, Jennifer  
**Cc:** Robert W. McIntyre; Jay R. Carson; Shannon M. Mussehl  
**Subject:** RE: Subpoenas and Depo Notice(s) to NRG Power Midwest [BRICKER-WS.FID1187929]

Jennifer..

1. I indicated that we would not insist on a live records custodian deposition based on the general understanding that the records sought might not be kept at the power plant in Avon, and in any event unless there is some problem with authentication , it would be acceptable to simply receive the documents with a sworn attestation by an officer of Power as to authenticity and business records
2. As for the in person depositions per the subpoena; first I simply picked an arbitrary date and, second I indeed expect a live person or persons who are knowledgeable as to the matters set forth on Exhibit A of the notice
3. I anticipate some level of objection or comment with regard to both subpoenas and suggest we get that out of the way before picking firm dates.
  - (i) we can pass on the 17<sup>th</sup> for the live deponents and

(ii) focus on a date as close to 30 days from the subpoena date (8.08) for the records production

(iii) organize available dates for the live witnesses for after the records delivery

4. I will not anticipate any objections as to deposing representatives of Power here if they are resident elsewhere, but my position is that

(i) Power maintains a \$60m installation here which is the subject of the underlying action

(ii) Power is registered to do business here via its agent and, Power refused to otherwise discuss the discovery at its NJ offices and insisted on Ohio service

(iii) Power 's representatives/employees use the power plant address to interact with state and local government agencies

In summary I believe that Power is therefore obligated to produce witnesses here in state court matters with reasonable notice

5. As a matter of convenience, I would suggest that conducting the depositions at our offices as noticed is both convenient for Power's representatives traveling either from the power plant or elsewhere, and your travel from Columbus (If you are not familiar with the area, our offices are located at I-480 and I-77 , with many hotels and restaurants nearby, and about a half hour from the airport)

Lastly, if you need a few extra days to provide your objections, please let me know

Bob

---

**From:** Flint, Jennifer [<mailto:JFlint@bricker.com>]

**Sent:** Thursday, August 11, 2016 2:39 PM

**To:** Robert W. McIntyre

**Subject:** Subpoenas and Depo Notice(s) to NRG Power Midwest [BRICKER-WS.FID1187929]

Mr. McIntyre,

As a follow-up to our phone conversation earlier today, I would like to clarify your previous requests/depo notices. It is my understanding that you have noticed two depositions—one for the NRG Power Midwest records custodian (for September 8<sup>th</sup>) and one for NRG Power Midwest's 30(B)(5)—for next week on August 17<sup>th</sup>. In our conversation, you indicated something to the effect of you would not actually need to depose anyone from NRG Power Midwest. Can you clarify if you mean as to both noticed depositions or just as to the records custodian. In other words, are you still planning on a deposition taking place as early as next week? Thank you—

-Jennifer



Jennifer A. Flint  
OSBA-Certified Specialist in Appellate Law

Bricker & Eckler LLP | 100 South Third Street | Columbus, OH 43215  
Direct Dial 614.227.2316 | [jflint@bricker.com](mailto:jflint@bricker.com) | v-card | [www.bricker.com](http://www.bricker.com)

Think green — please print only if necessary.



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**Attachment No. 2**  
**(Notice of Continuation of Depositions)**

FILED  
LORAIN COUNTY  
2016 AUG 22 A 10:11  
COURT OF COMMON PLEAS  
TOM ORLANDO

IN THE COURT OF COMMON PLEAS  
LORAIN COUNTY, OHIO

|                                 |   |                               |
|---------------------------------|---|-------------------------------|
| NRG OHIO PIPELINE COMPANY, LLC, | ) | CASE NO. 15CV187151           |
|                                 | ) |                               |
| Plaintiff,                      | ) | JUDGE Christopher R. Rothgery |
|                                 | ) |                               |
| v.                              | ) | Magistrate James Blaszak      |
|                                 | ) |                               |
| MOORE ROAD, LLC, <i>et al.</i>  | ) | NOTICE OF CONTINUATION OF     |
|                                 | ) | DEPOSITIONS OF NRG POWER      |
| Defendants.                     | ) | MIDWEST LP                    |

Now comes Defendant, Moore Road LLC ("Defendant") by and through the undersigned counsel and notices the parties hereto of the continuation of the depositions for NRG Power Midwest, LP representatives as set forth in the Subpoena to NRG Power Midwest, LP - Corporate Representative (with attached Notice of Deposition of Representative Designated by NRG Power Midwest, LP Pursuant to Ohio Rule 30(B)(5)) and the Subpoena to The Records Custodian of NRG Power Midwest, LP (with attached Notice of Deposition of Records Custodian Designated by NRG Power Midwest, LP).

Respectfully submitted,



---

Robert W. McIntyre (0006768)  
Jay R. Carson (0068526)  
WEGMAN, HESSLER & VANDERBURG  
6055 Rockside Woods Boulevard, Ste 200  
Cleveland, Ohio 44131  
Phone: (216) 642-3342 / Fax: (216) 642-8826  
E-Mail: [rwmcintyre@wegmanlaw.com](mailto:rwmcintyre@wegmanlaw.com)  
[jrcarson@wegmanlaw.com](mailto:jrcarson@wegmanlaw.com)  
*Attorneys for Defendant Moore Road, LLC*

**CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate of the foregoing Notice Of Continuation Of Depositions Of NRG Power Midwest LP was served this 18<sup>th</sup> day of August, 2016 upon the following via e-mail:

Dennis M. O'Toole, Esq.  
John D. Latchney, Esq.  
O'Toole, McLaughlin, Dooley  
& Pecora Co., L.P.A.  
5455 Detroit Road  
Sheffield Village, Ohio 44054  
dotoole@omdplaw.com  
jlatchney@omdplaw.com

*Attorneys for Plaintiff*

Chris A. Pyanowski, Esq.  
225 Court Street  
Elyria, Ohio 44035  
chris.pyanowski@lcprosecutor.org

*Attorney for Defendants  
Lorain County Auditor  
and Lorain County Treasurer*



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Robert W. McIntyre (0006768)

*An Attorney for Plaintiff*

**Attachment No. 3  
(Protective Order)**

**FORM PROTECTIVE ORDER**

**IN THE COURT OF COMMON PLEAS  
LORAIN COUNTY, OHIO**

|                                 |   |                               |
|---------------------------------|---|-------------------------------|
| NRG OHIO PIPELINE COMPANY, LLC, | ) | CASE NO. 15CV187151           |
|                                 | ) |                               |
| Plaintiff,                      | ) | JUDGE Christopher R. Rothgery |
|                                 | ) |                               |
| v.                              | ) | Magistrate James Blaszak      |
|                                 | ) |                               |
| MOORE ROAD, LLC, <i>et al.</i>  | ) | PROTECTIVE ORDER              |
|                                 | ) |                               |
| Defendants.                     | ) |                               |

**[if by stipulation]**<sup>1</sup> The parties to this Stipulated Protective Order have agreed to the terms of this Order; accordingly, it is ORDERED:

**[if not fully by stipulation]** A party to this action has moved that the Court enter a protective order. The Court has determined that the terms set forth herein are appropriate to protect the respective interests of the parties, the public, and the Court. Accordingly, it is ORDERED:

1. **Scope.** All documents produced in the course of discovery, including initial disclosures, all responses to discovery requests, all deposition testimony and exhibits, other materials which may be subject to restrictions on disclosure for good cause and information derived directly therefrom (hereinafter collectively "documents"), shall be subject to this Order concerning confidential information as set forth below. As there is a presumption in favor of open and public judicial proceedings in the federal courts, this Order shall be strictly construed in favor of public

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<sup>1</sup> Counsel should include or delete language in brackets as necessary to the specific case.

disclosure and open proceedings wherever possible. The Order is also subject to the Local Rules of this District and the Federal Rules of Civil Procedure on matters of procedure and calculation of time periods.

**2. Form and Timing of Designation.** A party may designate documents as confidential and restricted in disclosure under this Order by placing or affixing the words "CONFIDENTIAL-SUBJECT TO PROTECTIVE ORDER" on the document in a manner that will not interfere with the legibility of the document and that will permit complete removal of the CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER designation. Documents shall be designated CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER prior to or at the time of the production or disclosure of the documents. The designation "CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER" does not mean that the document has any status or protection by statute or otherwise except to the extent and for the purposes of this Order.

**3. Documents.** Which May be Designated CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER. Any party may designate documents as CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER upon making a good faith determination that the documents contain information protected from disclosure by statute or that should be protected from disclosure as confidential personal information, medical or psychiatric information, trade secrets, personnel records, or such other sensitive commercial information that is not publicly available. Public records and other information or documents that are publicly available may not be designated as CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER.

**4. Depositions.** Deposition testimony shall be deemed CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER only if designated as such. Such designation shall be specific as to the portions of the transcript or any exhibit to be designated as CONFIDENTIAL - SUBJECT TO

PROTECTIVE ORDER. Thereafter, the deposition transcripts and any those portions so designated shall be protected as CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER, pending objection, under the terms of this Order.

**5. Protection of Confidential Material.**

(a). **General Protections.** Documents designated CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER under this Order shall not be used or disclosed by the parties, counsel for the parties or any other persons identified in ¶ 5(b) for any purpose whatsoever other than to prepare for and to conduct discovery and trial in this action [adversary proceeding], including any appeal thereof.

(b). **Limited Third-Party Disclosures.** The parties and counsel for the parties shall not disclose or permit the disclosure of any CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER documents to any third person or entity except as set forth in subparagraphs (1)-(5). Subject to these requirements, the following categories of persons may be allowed to review documents that have been designated CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER:

(1). **Counsel.** Counsel for the parties and employees and agents of counsel who have responsibility for the preparation and trial of the action;

(2). **Parties.** Parties and employees of a party to this Order.<sup>2</sup>

(3). **Court Reporters and Recorders.** Court reporters and recorders

---

<sup>2</sup> **NOTE:** If the CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER documents contain highly sensitive trade secrets or other highly sensitive competitive or confidential information and disclosure to another party would result in demonstrable harm to the disclosing party, then the parties may stipulate or move for the establishment of an additional category of protection that prohibits disclosure of such documents or information to category (2) or that limits disclosure only to specifically designated in-house counsel or party representative(s) whose assistance is reasonably necessary to the conduct of the litigation and who agree to be bound by the terms of the order.

engaged for depositions;

(4). **Consultants, Investigators and Experts.** Consultants, investigators, or experts (hereinafter referred to collectively as “experts”) employed by the parties or counsel for the parties to assist in the preparation and trial of this action or proceeding, but only after such persons have completed the certification contained in Attachment A, Acknowledgment of Understanding and Agreement to Be Bound; and

(5). **Others by Consent.** Other persons only by written consent of the producing party or upon order of the Court and on such conditions as may be agreed or ordered. All such persons shall execute the certification contained in Attachment A, Acknowledgment of Understanding and Agreement to Be Bound.

(c). **Control of Documents.** Counsel for the parties shall take reasonable and appropriate measures to prevent unauthorized disclosure of documents designated as CONFIDENTIAL pursuant to the terms of this Order. Counsel shall maintain the originals of the forms signed by persons acknowledging their obligations under this Order for a period of 1 year after dismissal of the action, the entry of final judgment and/or the conclusion of any appeals arising therefrom.

(d). **Copies.** Prior to production to another party, all copies, electronic images, duplicates, extracts, summaries or descriptions (hereinafter referred to collectively as “copies”) of documents designated as CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER under this Order, or any individual portion of such a document, shall be affixed with the designation “CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER” if the word does not already appear on the copy. All such copies shall thereafter be entitled to the protection of this Order. The term “copies” shall not include indices, electronic databases or lists of documents provided



these indices, electronic databases or lists do not contain substantial portions or images of the text of confidential documents or otherwise disclose the substance of the confidential information contained in those documents.

(e) **Inadvertent Production.** Inadvertent production of any document or information without a designation of “CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER” shall be governed by Fed. R. Evid. 502.

**6. Filing of CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER Documents Under Seal.** The Court highly discourages the manual filing of any pleadings or documents under seal. To the extent that a brief, memorandum or pleading references any document marked as CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER, then the brief, memorandum or pleading shall refer the Court to the particular exhibit filed under seal without disclosing the contents of any confidential information.

(a). Before any document marked as CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER is filed under seal with the Clerk, the filing party shall first consult with the party that originally designated the document as CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER to determine whether, with the consent of that party, the document or a redacted version of the document may be filed with the Court not under seal.

(b). Where agreement is not possible or adequate, before a CONFIDENTIAL–SUBJECT TO PROTECTIVE ORDER document is filed with the Clerk, it shall be placed in a sealed envelope marked “CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER DOCUMENTS”, displaying the case name, docket number, a designation of what the document is, the name of the party in whose behalf it is submitted, and name of the attorney who has filed the documents on the front of the envelope. A copy of any document filed under seal shall also

be delivered to the judicial officer's chambers.

(c). To the extent that it is necessary for a party to discuss the contents of any confidential information in a written pleading, then such portion of the pleading may be filed under seal with leave of Court. In such circumstances, counsel shall prepare two versions of the pleadings, a public and a confidential version. The public version shall contain a redaction of references to CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER documents. The confidential version shall be a full and complete version of the pleading and shall be filed with the Clerk under seal as above. A copy of the unredacted pleading also shall be delivered to the judicial officer's chambers.

(d). If the Court or a particular judicial officer has developed an alternative method for the electronic filing of documents under seal, then the parties shall follow this alternative method and shall not file any documents or pleadings manually with the Clerk of Court.

**7. Challenges by a Party to Designation as Confidential.** Any CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER designation is subject to challenge by any party or non-party with standing to object (hereafter "party"). Before filing any motions or objections to a confidentiality designation with the Court, the objecting party shall have an obligation to meet and confer in a good faith effort to resolve the objection by agreement. If agreement is reached confirming or waiving the CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER designation as to any documents subject to the objection, the designating party shall serve on all parties a notice specifying the documents and the nature of the agreement.

**8. Action by the Court.** Applications to the Court for an order relating to any documents designated CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER shall be by motion under Local Rule 7.1 and any other procedures set forth in the presiding judge's standing orders or

other relevant orders. Nothing in this Order or any action or agreement of a party under this Order limits the Court's power to make any orders that may be appropriate with respect to the use and disclosure of any documents produced or use in discovery or at trial.

**9. Use of Confidential Documents or Information at Trial.** All trials are open to the public. Absent order of the Court, there will be no restrictions on the use of any document that may be introduced by any party during the trial. If a party intends to present at trial CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER documents or information derived therefrom, such party shall provide advance notice to the other party at least five (5) days before the commencement of trial by identifying the documents or information at issue as specifically as possible (i.e., by Bates number, page range, deposition transcript lines, etc.) without divulging the actual CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER documents or information. The Court may thereafter make such orders as are necessary to govern the use of such documents or information at trial.

**10. Obligations on Conclusion of Litigation.**

(a). **Order Remains in Effect.** Unless otherwise agreed or ordered, this Order shall remain in force after dismissal or entry of final judgment not subject to further appeal.

(b). **Return of CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER Documents.** Within thirty days after dismissal or entry of final judgment not subject to further appeal, all documents treated as CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER under this Order, including copies as defined in ¶ 5(d), shall be returned to the producing party unless: (1) the document has been offered into evidence or filed without restriction as to disclosure; (2) the parties agree to destruction in lieu of return; or (3) as to documents bearing the notations, summations, or other mental impressions of the receiving party, that party elects

to destroy the documents and certifies to the producing party that it has done so. Notwithstanding the above requirements to return or destroy documents, counsel may retain attorney work product, including an index which refers or relates to information designated CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER, so long as that work product does not duplicate verbatim substantial portions of the text or images of confidential documents. This work product shall continue to be CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER under this Order. An attorney may use his or her work product in a subsequent litigation provided that its use does not disclose or use CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER documents.

(c) **Return of Documents Filed under Seal.** After dismissal or entry of final judgment not subject to further appeal, the Clerk may elect to return to counsel for the parties or, after notice, destroy documents filed or offered at trial under seal or otherwise restricted by the Court as to disclosure.

**11. Order Subject to Modification.** This Order shall be subject to modification by the Court on its own motion or on motion of a party or any other person with standing concerning the subject matter. Motions to modify this Order shall be served and filed under Local Rule 7.1 and the presiding judge's standing orders or other relevant orders.

**12. No Prior Judicial Determination.** This Order is entered based on the representations and agreements of the parties and for the purpose of facilitating discovery. Nothing herein shall be construed or presented as a judicial determination that any documents or information designated CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER by counsel or the parties is subject to protection under Rule 26(c) of the Federal Rules of Civil Procedure or otherwise until such time as the Court may rule on a specific document or issue.

**13. Persons Bound.** This Order shall take effect when entered and shall be binding

upon all counsel and their law firms, the parties, and persons made subject to this Order by its terms.

*So Ordered.*

Dated: \_\_\_\_\_

\_\_\_\_\_  
U.S. District Judge  
U.S. Magistrate Judge  
U.S. Bankruptcy Judge

[Delete signature blocks if not wholly by consent]

**WE SO MOVE/STIPULATE  
and agree to abide by the  
terms of this Order**

**WE SO MOVE/STIPULATE  
and agree to abide by the  
terms of this Order**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

Counsel for: \_\_\_\_\_

Counsel for: \_\_\_\_\_

Dated:

Dated:

**FORM PROTECTIVE ORDER  
ATTACHMENT A**

**IN THE COURT OF COMMON PLEAS  
LORAIN COUNTY, OHIO**

|  |   |                                      |
|--|---|--------------------------------------|
| <b>NRG OHIO PIPELINE COMPANY, LLC,</b> | ) | <b>CASE NO. 15CV187151</b>           |
|  | ) |                                      |
| <b>Plaintiff,</b>                      | ) | <b>JUDGE Christopher R. Rothgery</b> |
|  | ) |                                      |
| <b>v.</b>                              | ) | <b>Magistrate James Blaszak</b>      |
|  | ) |                                      |
| <b>MOORE ROAD, LLC, et al.</b>         | ) |                                      |
|  | ) |                                      |
| <b>Defendants.</b>                     | ) |                                      |

**ACKNOWLEDGMENT  
AND  
AGREEMENT TO BE BOUND**

The undersigned hereby acknowledges that he/she has read the Protective Order dated \_\_\_\_\_ in the above-captioned action and attached hereto, understands the terms thereof, and agrees to be bound by its terms. The undersigned submits to the jurisdiction of the United States District Court for the Northern District of Ohio in matters relating to the Protective Order and understands that the terms of the Protective Order obligate him/her to use documents designated CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER in accordance with the Order solely for the purposes of the above-captioned action, and not to disclose any such documents or information derived directly therefrom to any other person, firm or concern.

The undersigned acknowledges that violation of the Protective Order may result in penalties for contempt of court.

Name: \_\_\_\_\_

Job Title: \_\_\_\_\_

Employer: \_\_\_\_\_

Business Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Date: \_\_\_\_\_

Signature

# Exhibit C





Permit Strategy Write-Up  
Avon Lake Power Plant  
Permit Number: P0120245  
Facility ID: 0247030013

## Permit Strategy Write-Up

1. Check all that apply:

Synthetic Minor Determination

Netting Determination

☒ PTI Admin Mod (Capacity factor restriction to qualify as a coal-fired "limited use boiler" per 40 CFR Part 63, subpart DDDDD)

2. Source Description:

NRG Energy owns and operates the Avon Lake Power Plant which was previously owned and operated by CEI (First Energy) from the 1930's until the year 2000. Orion Power Midwest purchased the facility in 2000 and in 2004 Orion merged with Reliant Energy of Texas. In 2011, Gen-On purchased Reliant Energy and in 2013 NRG merged with Gen-On.

The facility utilizes the following permitted units:

| EU ID | EU Description   |
|-------|--|
| B010  | 1131 MMBtu/hr Pulverized coal-fired boiler for electric generation (110 MW)            |
| B012  | 6040 MMBtu/hr Pulverized coal-fired boiler for electric generation (640 MW)            |
| B013  | 468.9 MMBtu/hr Oil-fired combustion gas turbine for electric generation (25 MW)        |
| B015  | 219.5 MMBtu/hr Natural gas/fuel oil-fired package boiler (for start-up and plant heat) |
| B016  | 219.5 MMBtu/hr Natural gas/fuel oil-fired package boiler (for start-up and plant heat) |
| F001  | Paved and unpaved roads and parking areas on plant property.                           |
| F002  | Coal storage pile  |
| P901  | Coal material handling equipment   |

3. Facility Emissions and Attainment Status:

The Avon Lake Plant is located in Lorain County which is designated nonattainment for Ozone and PM<sub>2.5</sub> and is a major source for NO<sub>x</sub>, PM<sub>10</sub>, PM<sub>2.5</sub>, SO<sub>2</sub>, CO, VOC, and HAPs and therefore subject to 40 CFR Part 63, Subpart DDDDD. B010 and B012 are subject to 40 CFR Part 63, Subpart DDDDD (Boiler MACT) and 40 CFR Part 63, Subpart UUUUU (the Utility MATS/MACT Rule). On September 5, 2013, the Ohio EPA issued a one-year MATS compliance extension which expires on April 16, 2016.

Per 40 CFR Part 63, Subpart DDDDD, the facility has requested a PTI Administrative Modification to identify emissions unit B010 as a coal-fired "limited use" boiler. Per 40 CFR Part 63, Subpart UUUUU, any electric utility steam generating unit that has the capability of combusting more than 25 MW of coal or oil but did not fire coal or oil for more than 10.0 percent of the average annual heat input during any 3



Permit Strategy Write-Up  
Avon Lake Power Plant  
Permit Number: P0120245  
Facility ID: 0247030013

calendar years or for more than 15.0 percent of the annual heat input during any calendar year is not subject to 40 CFR Part 63, Subpart UUUUU.

4. Source Emissions:

As a limited-use boiler, B010 will have the following emissions:

| Pollutant           | Tons per rolling, 12-month period |
|---------------------|-----------------------------------|
| PM/PM <sub>10</sub> | 49.5                              |
| PM <sub>2.5</sub>   | 14.4                              |
| NO <sub>x</sub>     | 297.2                             |
| CO                  | 9.9                               |
| VOC                 | 1.2                               |
| SO <sub>2</sub>     | 2,303.5                           |

Per OAC rule 3745-31-05(D), the permit imposes a maximum annual heat input for this emissions unit shall not exceed 990,756 MMBtu, based upon a rolling, 12-month summation of the monthly heat input values. The permittee must maintain sufficient records to demonstrate compliance with the annual heat input limitation upon permit issuance in order to qualify as a "limited use boiler" per 40 CFR Part 63, Subpart DDDDD and the following requirements also apply as a limited use boiler:

- i. This emissions unit is identified as a limited use boiler and is not subject to the emission limits in Table 2 of the subpart, the operating limits in Table 4 of the subpart, or the energy assessment requirements in Table 3 of the subpart.
- ii. The limited-use boiler is subject to 5-year tune-up requirements, conducted in accordance with 40 CFR 63.7540(a)(10)(i) through (vi) and Table 3 to the subpart: Each limited-use boiler identified above shall have a federally enforceable average annual capacity factor of no more than 10%.

5. Conclusion:

The permit terms and conditions contained in this federally enforceable permit are adequate to ensure that the "limited use boiler" thresholds per 40 CFR Part 63, Subpart DDDDD will be met.

## PUBLIC NOTICE

The following matters are the subject of this public notice by the Ohio Environmental Protection Agency. The complete public notice, including any additional instructions for submitting comments, requesting information, a public hearing, or filing an appeal may be obtained at: <http://epa.ohio.gov/actions.aspx> or Hearing Clerk, Ohio EPA, 50 W. Town St., Columbus, Ohio 43215. Ph: 614-644-2129 email: [HClerk@epa.ohio.gov](mailto:HClerk@epa.ohio.gov)

**Draft Air Pollution Permit-to-Install Administrative Modification  
Avon Lake Power Plant**

33570 Lake Road., Avon Lake, OH 44012-0000  
ID#:P0120245

Date of Action: 3/16/2016

Permit Desc:PTI Administrative Modification to designate B010 as a coal-fired "limited-use" boiler..

The permit and complete instructions for requesting information or submitting comments may be obtained at: <http://epa.ohio.gov/dapc/permitonline.aspx> by entering the ID # or: Corey Kurjian, Ohio EPA DAPC, Northeast District Office, 2110 East Aurora Road, Twinsburg, OH 44087. Ph: (330)963-1200





**DRAFT**

**Division of Air Pollution Control  
Permit-to-Install  
for  
Avon Lake Power Plant**

|                |                                   |
|----------------|-----------------------------------|
| Facility ID:   | 0247030013                        |
| Permit Number: | P0120245                          |
| Permit Type:   | Administrative Modification       |
| Issued:        | 3/16/2016                         |
| Effective:     | To be entered upon final issuance |





**Division of Air Pollution Control  
Permit-to-Install  
for  
Avon Lake Power Plant**

**Table of Contents**

|  |    |
|--|----|
| Authorization .....  | 1  |
| A. Standard Terms and Conditions .....   | 3  |
| 1. Federally Enforceable Standard Terms and Conditions .....   | 4  |
| 2. Severability Clause .....   | 4  |
| 3. General Requirements .....  | 4  |
| 4. Monitoring and Related Record Keeping and Reporting Requirements .....  | 5  |
| 5. Scheduled Maintenance/Malfunction Reporting .....   | 6  |
| 6. Compliance Requirements .....   | 6  |
| 7. Best Available Technology .....   | 7  |
| 8. Air Pollution Nuisance .....  | 8  |
| 9. Reporting Requirements .....  | 8  |
| 10. Applicability .....  | 8  |
| 11. Construction of New Sources(s) and Authorization to Install .....  | 8  |
| 12. Permit-To-Operate Application .....  | 10 |
| 13. Construction Compliance Certification .....  | 10 |
| 14. Public Disclosure .....  | 10 |
| 15. Additional Reporting Requirements When There Are No Deviations of Federally Enforceable Emission<br>Limitations, Operational Restrictions, or Control Device Operating Parameter Limitations ..... | 10 |
| 16. Fees .....   | 10 |
| 17. Permit Transfers .....   | 10 |
| 18. Risk Management Plans .....  | 11 |
| 19. Title IV Provisions .....  | 11 |
| B. Facility-Wide Terms and Conditions .....  | 12 |
| C. Emissions Unit Terms and Conditions .....   | 14 |
| 1. B010, Boiler #10 .....  | 15 |







Draft Permit-to-Install  
Avon Lake Power Plant  
Permit Number: P0120245  
Facility ID: 0247030013

Effective Date: To be entered upon final issuance

## Authorization

Facility ID: 0247030013  
Facility Description: Electric Utility Generating Station  
Application Number(s): A0054966  
Permit Number: P0120245  
Permit Description: PTI Administrative Modification to designate B010 as a coal-fired "limited-use" boiler.  
Permit Type: Administrative Modification  
Permit Fee: \$1,875.00 *DO NOT send payment at this time, subject to change before final issuance*  
Issue Date: 3/16/2016  
Effective Date: To be entered upon final issuance

This document constitutes issuance to:

Avon Lake Power Plant  
33570 Lake Road  
Avon Lake, OH 44012-0000

of a Permit-to-Install for the emissions unit(s) identified on the following page.

Ohio Environmental Protection Agency (EPA) District Office or local air agency responsible for processing and administering your permit:

Ohio EPA DAPC, Northeast District Office  
2110 East Aurora Road  
Twinsburg, OH 44087  
(330)963-1200

The above named entity is hereby granted a Permit-to-Install for the emissions unit(s) listed in this section pursuant to Chapter 3745-31 of the Ohio Administrative Code. Issuance of this permit does not constitute expressed or implied approval or agreement that, if constructed or modified in accordance with the plans included in the application, the emissions unit(s) of environmental pollutants will operate in compliance with applicable State and Federal laws and regulations, and does not constitute expressed or implied assurance that if constructed or modified in accordance with those plans and specifications, the above described emissions unit(s) of pollutants will be granted the necessary permits to operate (air) or NPDES permits as applicable.

This permit is granted subject to the conditions attached hereto.

Ohio Environmental Protection Agency

Craig W. Butler  
Director



**Draft Permit-to-Install**  
**Avon Lake Power Plant**  
**Permit Number: P0120245**  
**Facility ID: 0247030013**

**Effective Date:** To be entered upon final issuance

## **Authorization (continued)**

**Permit Number:** P0120245

**Permit Description:** PTI Administrative Modification to designate B010 as a coal-fired "limited-use" boiler.

**Permits for the following Emissions Unit(s) or groups of Emissions Units are in this document as indicated below:**

|  |                       |
|--|-----------------------|
| <b>Emissions Unit ID:</b>                | <b>B010</b>           |
| <b>Company Equipment ID:</b>             | <b>Boiler #10</b>     |
| <b>Superseded Permit Number:</b>         |                       |
| <b>General Permit Category and Type:</b> | <b>Not Applicable</b> |



**Draft Permit-to-Install**  
**Avon Lake Power Plant**  
**Permit Number: P0120245**  
**Facility ID: 0247030013**  
**Effective Date: To be entered upon final issuance**

## **A. Standard Terms and Conditions**



Draft Permit-to-Install  
Avon Lake Power Plant  
Permit Number: P0120245  
Facility ID: 0247030013

Effective Date: To be entered upon final issuance

**1. Federally Enforceable Standard Terms and Conditions**

- a) All Standard Terms and Conditions are federally enforceable, with the exception of those listed below which are enforceable under State law only:
  - (1) Standard Term and Condition A.2.a), Severability Clause
  - (2) Standard Term and Condition A.3.c) through A. 3.e) General Requirements
  - (3) Standard Term and Condition A.6.c) and A. 6.d), Compliance Requirements
  - (4) Standard Term and Condition A.9., Reporting Requirements
  - (5) Standard Term and Condition A.10., Applicability
  - (6) Standard Term and Condition A.11.b) through A.11.e), Construction of New Source(s) and Authorization to Install
  - (7) Standard Term and Condition A.14., Public Disclosure
  - (8) Standard Term and Condition A.15., Additional Reporting Requirements When There Are No Deviations of Federally Enforceable Emission Limitations, Operational Restrictions, or Control Device Operating Parameter Limitations
  - (9) Standard Term and Condition A.16., Fees
  - (10) Standard Term and Condition A.17., Permit Transfers

**2. Severability Clause**

- a) A determination that any term or condition of this permit is invalid shall not invalidate the force or effect of any other term or condition thereof, except to the extent that any other term or condition depends in whole or in part for its operation or implementation upon the term or condition declared invalid.
- b) All terms and conditions designated in parts B and C of this permit are federally enforceable as a practical matter, if they are required under the Act, or any of its applicable requirements, including relevant provisions designed to limit the potential to emit of a source, are enforceable by the Administrator of the U.S. EPA and the State and by citizens (to the extent allowed by section 304 of the Act) under the Act. Terms and conditions in parts B and C of this permit shall not be federally enforceable and shall be enforceable under State law only, only if specifically identified in this permit as such.

**3. General Requirements**

- a) Any noncompliance with the federally enforceable terms and conditions of this permit constitutes a violation of the Act, and is grounds for enforcement action or for permit revocation, revocation and re-issuance, or modification.



Draft Permit-to-Install  
Avon Lake Power Plant  
Permit Number: P0120245  
Facility ID: 0247030013

Effective Date: To be entered upon final issuance

- b) It shall not be a defense for the permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the federally enforceable terms and conditions of this permit.
- c) This permit may be modified, revoked, or revoked and reissued, for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or revocation, or of a notification of planned changes or anticipated noncompliance does not stay any term and condition of this permit.
- d) This permit does not convey any property rights of any sort, or any exclusive privilege.
- e) The permittee shall furnish to the Director of the Ohio EPA, or an authorized representative of the Director, upon receipt of a written request and within a reasonable time, any information that may be requested to determine whether cause exists for modifying or revoking this permit or to determine compliance with this permit. Upon request, the permittee shall also furnish to the Director or an authorized representative of the Director, copies of records required to be kept by this permit. For information claimed to be confidential in the submittal to the Director, if the Administrator of the U.S. EPA requests such information, the permittee may furnish such records directly to the Administrator along with a claim of confidentiality.

**4. Monitoring and Related Record Keeping and Reporting Requirements**

- a) Except as may otherwise be provided in the terms and conditions for a specific emissions unit, the permittee shall maintain records that include the following, where applicable, for any required monitoring under this permit:
  - (1) The date, place (as defined in the permit), and time of sampling or measurements.
  - (2) The date(s) analyses were performed.
  - (3) The company or entity that performed the analyses.
  - (4) The analytical techniques or methods used.
  - (5) The results of such analyses.
  - (6) The operating conditions existing at the time of sampling or measurement.
- b) Each record of any monitoring data, testing data, and support information required pursuant to this permit shall be retained for a period of five years from the date the record was created. Support information shall include, but not be limited to all calibration and maintenance records and all original strip-chart recordings for continuous monitoring instrumentation, and copies of all reports required by this permit. Such records may be maintained in computerized form.
- c) Except as may otherwise be provided in the terms and conditions for a specific emissions unit, the permittee shall submit required reports in the following manner:
  - (1) Reports of any required monitoring and/or recordkeeping of federally enforceable information shall be submitted to the Ohio EPA DAPC, Northeast District Office.



Draft Permit-to-Install  
Avon Lake Power Plant  
Permit Number: P0120245  
Facility ID: 0247030013

Effective Date: To be entered upon final issuance

- (2) Quarterly written reports of (i) any deviations from federally enforceable emission limitations, operational restrictions, and control device operating parameter limitations, excluding deviations resulting from malfunctions reported in accordance with OAC rule 3745-15-06, that have been detected by the testing, monitoring and recordkeeping requirements specified in this permit, (ii) the probable cause of such deviations, and (iii) any corrective actions or preventive measures taken, shall be made to the Ohio EPA DAPC, Northeast District Office. The written reports shall be submitted quarterly, by January 31, April 30, July 31, and October 31 of each year and shall cover the previous calendar quarters. See A.15. below if no deviations occurred during the quarter.
  - (3) Written reports, which identify any deviations from the federally enforceable monitoring, recordkeeping, and reporting requirements contained in this permit shall be submitted to the Ohio EPA DAPC, Northeast District Office every six months, by January 31 and July 31 of each year for the previous six calendar months. If no deviations occurred during a six-month period, the permittee shall submit a semi-annual report, which states that no deviations occurred during that period.
  - (4) This permit is for an emissions unit located at a Title V facility. Each written report shall be signed by a responsible official certifying that, based on information and belief formed after reasonable inquiry, the statements and information in the report are true, accurate, and complete.
- d) The permittee shall report actual emissions pursuant to OAC Chapter 3745-78 for the purpose of collecting Air Pollution Control Fees.

#### 5. Scheduled Maintenance/Malfunction Reporting

Any scheduled maintenance of air pollution control equipment shall be performed in accordance with paragraph (A) of OAC rule 3745-15-06. The malfunction, i.e., upset, of any emissions units or any associated air pollution control system(s) shall be reported to the Ohio EPA DAPC, Northeast District Office in accordance with paragraph (B) of OAC rule 3745-15-06. (The definition of an upset condition shall be the same as that used in OAC rule 3745-15-06(B)(1) for a malfunction.) The verbal and written reports shall be submitted pursuant to OAC rule 3745-15-06.

Except as provided in that rule, any scheduled maintenance or malfunction necessitating the shutdown or bypassing of any air pollution control system(s) shall be accompanied by the shutdown of the emission unit(s) that is (are) served by such control system(s).

#### 6. Compliance Requirements

- a) All applications, notifications or reports required by terms and conditions in this permit to be submitted or "reported in writing" are to be submitted to Ohio EPA through the Ohio EPA's eBusiness Center: Air Services web service ("Air Services"). Ohio EPA will accept hard copy submittals on an as-needed basis if the permittee cannot submit the required documents through the Ohio EPA eBusiness Center. In the event of an alternative hard copy submission in lieu of the eBusiness Center, the post-marked date or the date the document is delivered in person will be recognized as the date submitted. Electronic submission of applications, notifications or reports required to be submitted to Ohio EPA fulfills the requirement to submit the required information to the Director, the appropriate Ohio EPA District Office or contracted



Draft Permit-to-Install  
Avon Lake Power Plant  
Permit Number: P0120245  
Facility ID: 0247030013

Effective Date: To be entered upon final issuance

local air agency, and/or any other individual or organization specifically identified as an additional recipient identified in this permit unless otherwise specified. Consistent with OAC rule 3745-15-03, the electronic signature date shall constitute the date that the required application, notification or report is considered to be "submitted". Any document requiring signature may be represented by entry of the personal identification number (PIN) by responsible official as part of the electronic submission process or by the scanned attestation document signed by the Authorized Representative that is attached to the electronically submitted written report.

Any document (including reports) required to be submitted and required by a federally applicable requirement in this permit shall include a certification by a Responsible Official that, based on information and belief formed after reasonable inquiry, the statements in the document are true, accurate, and complete

- b) Upon presentation of credentials and other documents as may be required by law, the permittee shall allow the Director of the Ohio EPA or an authorized representative of the Director to:
  - (1) At reasonable times, enter upon the permittee's premises where a source is located or the emissions-related activity is conducted, or where records must be kept under the conditions of this permit.
  - (2) Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit, subject to the protection from disclosure to the public of confidential information consistent with ORC section 3704.08.
  - (3) Inspect at reasonable times any facilities, equipment (including monitoring and air pollution control equipment), practices, or operations regulated or required under this permit.
  - (4) As authorized by the Act, sample or monitor at reasonable times substances or parameters for the purpose of assuring compliance with the permit and applicable requirements.
- c) The permittee shall submit progress reports to the Ohio EPA DAPC, Northeast District Office concerning any schedule of compliance for meeting an applicable requirement. Progress reports shall be submitted semiannually or more frequently if specified in the applicable requirement or by the Director of the Ohio EPA. Progress reports shall contain the following:
  - (1) Dates for achieving the activities, milestones, or compliance required in any schedule of compliance, and dates when such activities, milestones, or compliance were achieved.
  - (2) An explanation of why any dates in any schedule of compliance were not or will not be met, and any preventive or corrective measures adopted.

## **7. Best Available Technology**

As specified in OAC Rule 3745-31-05, new sources that must employ Best Available Technology (BAT) shall comply with the Applicable Emission Limitations/Control Measures identified as BAT for each subject emissions unit.



Draft Permit-to-Install  
Avon Lake Power Plant  
Permit Number: P0120245  
Facility ID: 0247030013

Effective Date: To be entered upon final issuance

**8. Air Pollution Nuisance**

The air contaminants emitted by the emissions units covered by this permit shall not cause a public nuisance, in violation of OAC rule 3745-15-07.

**9. Reporting Requirements**

The permittee shall submit required reports in the following manner:

- a) Reports of any required monitoring and/or recordkeeping of state-only enforceable information shall be submitted to the Ohio EPA DAPC, Northeast District Office.
- b) Except as otherwise may be provided in the terms and conditions for a specific emissions unit, quarterly written reports of (a) any deviations (excursions) from state-only required emission limitations, operational restrictions, and control device operating parameter limitations that have been detected by the testing, monitoring, and recordkeeping requirements specified in this permit, (b) the probable cause of such deviations, and (c) any corrective actions or preventive measures which have been or will be taken, shall be submitted to the Ohio EPA DAPC, Northeast District Office. If no deviations occurred during a calendar quarter, the permittee shall submit a quarterly report, which states that no deviations occurred during that quarter. The reports shall be submitted quarterly, by January 31, April 30, July 31, and October 31 of each year and shall cover the previous calendar quarters. (These quarterly reports shall exclude deviations resulting from malfunctions reported in accordance with OAC rule 3745-15-06.)

**10. Applicability**

This Permit-to-Install is applicable only to the emissions unit(s) identified in the Permit-to-Install. Separate application must be made to the Director for the installation or modification of any other emissions unit(s) not exempt from the requirement to obtain a Permit-to-Install.

**11. Construction of New Sources(s) and Authorization to Install**

- a) This permit does not constitute an assurance that the proposed source will operate in compliance with all Ohio laws and regulations. This permit does not constitute expressed or implied assurance that the proposed facility has been constructed in accordance with the application and terms and conditions of this permit. The action of beginning and/or completing construction prior to obtaining the Director's approval constitutes a violation of OAC rule 3745-31-02. Furthermore, issuance of this permit does not constitute an assurance that the proposed source will operate in compliance with all Ohio laws and regulations. Issuance of this permit is not to be construed as a waiver of any rights that the Ohio Environmental Protection Agency (or other persons) may have against the applicant for starting construction prior to the effective date of the permit. Additional facilities shall be installed upon orders of the Ohio Environmental Protection Agency if the proposed facilities cannot meet the requirements of this permit or cannot meet applicable standards.





Draft Permit-to-Install  
Avon Lake Power Plant  
Permit Number: P0120245  
Facility ID: 0247030013

Effective Date: To be entered upon final issuance

- b) If applicable, authorization to install any new emissions unit included in this permit shall terminate within eighteen months of the effective date of the permit if the owner or operator has not undertaken a continuing program of installation or has not entered into a binding contractual obligation to undertake and complete within a reasonable time a continuing program of installation. This deadline may be extended by up to 12 months if application is made to the Director within a reasonable time before the termination date and the permittee shows good cause for any such extension.
- c) The permittee may notify Ohio EPA of any emissions unit that is permanently shut down (i.e., the emissions unit has been physically removed from service or has been altered in such a way that it can no longer operate without a subsequent "modification" or "installation" as defined in OAC Chapter 3745-31) by submitting a certification from the authorized official that identifies the date on which the emissions unit was permanently shut down. Authorization to operate the affected emissions unit shall cease upon the date certified by the authorized official that the emissions unit was permanently shut down. At a minimum, notification of permanent shut down shall be made or confirmed by marking the affected emissions unit(s) as "permanently shut down" in "Air Services" along with the date the emissions unit(s) was permanently removed and/or disabled. Submitting the facility profile update electronically will constitute notifying the Director of the permanent shutdown of the affected emissions unit(s).
- d) The provisions of this permit shall cease to be enforceable for each affected emissions unit after the date on which an emissions unit is permanently shut down (i.e., emissions unit has been physically removed from service or has been altered in such a way that it can no longer operate without a subsequent "modification" or "installation" as defined in OAC Chapter 3745-31). All records relating to any permanently shutdown emissions unit, generated while the emissions unit was in operation, must be maintained in accordance with law. All reports required by this permit must be submitted for any period an affected emissions unit operated prior to permanent shut down. At a minimum, the permit requirements must be evaluated as part of the reporting requirements identified in this permit covering the last period the emissions unit operated.

Unless otherwise exempted, no emissions unit certified by the responsible official as being permanently shut down may resume operation without first applying for and obtaining a permit pursuant to OAC Chapter 3745-31 and OAC Chapter 3745-77 if the restarted operation is subject to one or more applicable requirements.

- e) The permittee shall comply with any residual requirements related to this permit, such as the requirement to submit a deviation report, air fee emission report, or other any reporting required by this permit for the period the operating provisions of this permit were enforceable, or as required by regulation or law. All reports shall be submitted in a form and manner prescribed by the Director. All records relating to this permit must be maintained in accordance with law.



Draft Permit-to-Install  
Avon Lake Power Plant  
Permit Number: P0120245  
Facility ID: 0247030013

Effective Date: To be entered upon final issuance

**12. Permit-To-Operate Application**

The permittee is required to apply for a Title V permit pursuant to OAC Chapter 3745-77. The permittee shall submit a complete Title V permit application or a complete Title V permit modification application within twelve (12) months after commencing operation of the emissions units covered by this permit. However, if operation of the proposed new or modified source(s) as authorized by this permit would be prohibited by the terms and conditions of an existing Title V permit, a Title V permit modification of such new or modified source(s) pursuant to OAC rule 3745-77-04(D) and OAC rule 3745-77-08(C)(3)(d) must be obtained before operating the source in a manner that would violate the existing Title V permit requirements.

**13. Construction Compliance Certification**

The applicant shall identify the following dates in the "Air Services" facility profile for each new emissions unit identified in this permit.

- a) Completion of initial installation date shall be entered upon completion of construction and prior to start-up.
- b) Commence operation after installation or latest modification date shall be entered within 90 days after commencing operation of the applicable emissions unit.

**14. Public Disclosure**

The facility is hereby notified that this permit, and all agency records concerning the operation of this permitted source, are subject to public disclosure in accordance with OAC rule 3745-49-03.

**15. Additional Reporting Requirements When There Are No Deviations of Federally Enforceable Emission Limitations, Operational Restrictions, or Control Device Operating Parameter Limitations**

If no deviations occurred during a calendar quarter, the permittee shall submit a quarterly report, which states that no deviations occurred during that quarter. The reports shall be submitted quarterly by January 31, April 30, July 31, and October 31 of each year and shall cover the previous calendar quarters.

**16. Fees**

The permittee shall pay fees to the Director of the Ohio EPA in accordance with ORC section 3745.11 and OAC Chapter 3745-78. The permittee shall pay all applicable permit-to-install fees within 30 days after the issuance of any permit-to-install. The permittee shall pay all applicable permit-to-operate fees within thirty days of the issuance of the invoice.

**17. Permit Transfers**

Any transferee of this permit shall assume the responsibilities of the prior permit holder. The new owner must update and submit the ownership information via the "Owner/Contact Change" functionality in "Air Services" once the transfer is legally completed. The change must be submitted through "Air Services" within thirty days of the ownership transfer date.



Draft Permit-to-Install  
Avon Lake Power Plant  
Permit Number: P0120245  
Facility ID: 0247030013

Effective Date: To be entered upon final issuance

**18. Risk Management Plans**

If the permittee is required to develop and register a risk management plan pursuant to section 112(r) of the Clean Air Act, as amended, 42 U.S.C. 7401 et seq. ("Act"), the permittee shall comply with the requirement to register such a plan.

**19. Title IV Provisions**

If the permittee is subject to the requirements of 40 CFR Part 72 concerning acid rain, the permittee shall ensure that any affected emissions unit complies with those requirements. Emissions exceeding any allowances that are lawfully held under Title IV of the Act, or any regulations adopted thereunder, are prohibited.



**Draft Permit-to-Install**  
**Avon Lake Power Plant**  
**Permit Number: P0120245**  
**Facility ID: 0247030013**  
**Effective Date: To be entered upon final issuance**

## **B. Facility-Wide Terms and Conditions**



Draft Permit-to-Install  
Avon Lake Power Plant  
Permit Number: P0120245  
Facility ID: 0247030013

Effective Date: To be entered upon final issuance

1. All the following facility-wide terms and conditions are federally enforceable with the exception of those listed below which are enforceable under state law only:
  - a) None.
2. The permittee shall ensure that any emissions unit(s) subject to the Cross State Air Pollution Rule (CSAPR) complies/comply with the requirements of the Ohio Administrative Code (OAC) Chapter 3745-109, which includes submitting timely permit applications.
3. Acid Rain Permits and Compliance – OAC chapter 3745-103

The permittee shall ensure that any affected unit complies with the requirements of OAC Chapter 3745-103, which includes submitting timely permit applications. Emissions exceeding any allowances that are lawfully held pursuant to this rule are prohibited. The requirements of this rule will be specified in the Title V permit issued to this facility.
4. All asbestos renovation and demolition activities conducted at this facility shall be performed in accordance with the applicable requirements specified in 40 CFR Part 61, Subpart M.
5. The facility is subject to the applicable requirements specified in OAC Chapter 3745-25. In accordance with Ohio EPA Engineering Guide #64, the emission control action programs, as specified in OAC rule 3745-25-03, shall be developed and submitted within 60 days after receiving notification from the Ohio EPA.
6. When operating emissions unit B010 (boiler #10) as an auxiliary boiler, the permittee shall comply with the applicable provisions of the National Emissions Standards for Hazardous Air Pollutants (NESHAP) for Industrial, Commercial, and Institutional Boilers and Process Heaters, as promulgated by the United States Environmental Protection Agency under 40 CFR Part 63, Subpart DDDDD. The final rules found in 40 CFR Part 63, Subpart DDDDD establish national emission standards for hazardous air pollutants (NESHAP), operational limits, work practice standards, and compliance requirements for industrial, commercial, and institutional boilers located at a major source of hazardous air pollutants (HAP).



**Draft Permit-to-Install**  
**Avon Lake Power Plant**  
**Permit Number: P0120245**  
**Facility ID: 0247030013**  
**Effective Date: To be entered upon final issuance**

## **C. Emissions Unit Terms and Conditions**



Draft Permit-to-Install  
Avon Lake Power Plant  
Permit Number: P0120245  
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Effective Date: To be entered upon final issuance

1. B010, Boiler #10

Operations, Property and/or Equipment Description:

Coal-fired boiler - 1131 MMBtu/hr

- a) The following emissions unit terms and conditions are federally enforceable with the exception of those listed below which are enforceable under state law only.

(1) None.

- b) Applicable Emissions Limitations and/or Control Requirements

- (1) The specific operation(s), property, and/or equipment that constitute each emissions unit along with the applicable rules and/or requirements and with the applicable emissions limitations and/or control measures are identified below. Emissions from each unit shall not exceed the listed limitations, and the listed control measures shall be specified in narrative form following the table.

|    | Applicable Rules/Requirements   | Applicable Emissions Limitations/Control Measures  |
|----|---|--|
| a. | OAC rule 3745-31-05(D)<br>(Capacity factor restriction to qualify as a coal-fired "limited use boiler" per 40 CFR Part 63, Subpart DDDDD)   | See c)(1) and c)(2).   |
| b. | OAC rule 3745-17-10(C)  | Particulate emissions (PE) shall not exceed 0.1 lb/mmBtu of actual heat input.                                 |
| c. | OAC rule 3745-17-07(A)(1)   | Visible PE from any stack shall not exceed 20% opacity, as a 6-minute average, except as provided by the rule. |
| d. | OAC rule 3745-18-53(B)(2)   | Sulfur dioxide (SO <sub>2</sub> ) emissions shall not exceed 4.65 lbs/mmBtu actual heat input.                 |
| e. | 40 CFR Part 63, Subpart UUUUU - National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units   | See b)(2)f. & h.   |
| f. | 40 CFR Part 63, Subpart DDDDD (40 CFR 63.7480 – 63.7575)<br><br>[In accordance with 40 CFR 63.7500(c) this emissions unit is a limited use boiler subject to the tune-up requirements specified in this section.] | Tune-up requirements specified in Table 3 (40 CFR 63.7540).<br><br>See b)(2)f. & g.                            |



Draft Permit-to-Install  
Avon Lake Power Plant  
Permit Number: P0120245  
Facility ID: 0247030013

Effective Date: To be entered upon final issuance

|    | Applicable Rules/Requirements               | Applicable Emissions Limitations/Control Measures  |
|----|---|--|
| g. | 40 CFR 63.1 – 63.16<br><br>(40 CFR 63.7565) | Table 10 to Subpart DDDDD of 40 CFR Part 63 – Applicability of General Provisions to Subpart DDDDD shows which parts of the General Provisions in 40 CFR 63.1 – 63.16 apply. |

(2) Additional Terms and Conditions

- a. This emissions unit is not subject to the requirements of 40 CFR Part 60, Subpart D (Standards of Performance for Fossil Fuel Fired Generators) or 40 CFR Part 60, Subpart Da (Standards of Performance for Electric Utility Steam Generating Units).
- b. The permittee shall maintain a written quality assurance/quality control plan for the continuous opacity monitoring system, designed to ensure continuous valid and representative readings of opacity and compliance with 40 CFR Part 60, Appendix B, Performance Specification 1. The plan shall include, at a minimum, procedures for conducting and recording daily automatic zero/span checks, provisions for conducting a quarterly audit of the continuous opacity monitoring system, and a description of preventive maintenance activities. The plan shall describe step by step procedures for ensuring accurate operation of the continuous opacity monitoring system on a continuous basis. The quality assurance/quality control plan and a logbook dedicated to the continuous opacity monitoring system must be kept on site and available for inspection during regular office hours.
- c. The continuous opacity monitoring system consists of all the equipment used to acquire data and record opacity.
- d. The permittee shall maintain a written quality assurance/quality control plan for the continuous SO<sub>2</sub> monitoring system, designed to ensure continuous valid and representative readings of SO<sub>2</sub> emissions in units of the applicable standard(s). Except as allowed below, the plan shall follow the requirements of 40 CFR Part 60, Appendix F and 40 CFR Part 75, Appendix B. The quality assurance/quality control plan and a logbook dedicated to the continuous SO<sub>2</sub> monitoring system must be kept on site and available for inspection during regular office hours.

The plan shall include the requirement to conduct relative accuracy test audits for the continuous SO<sub>2</sub> monitoring system in accordance with the frequencies required pursuant to 40 CFR Part 60 and 40 CFR Part 75; or may follow relative accuracy test audit frequency requirements for monitoring systems subject to 40 CFR 75, Appendix B, in lieu of frequencies required in 40 CFR Part 60. In either case, results shall be recorded and reported in units of the applicable standard(s) in accordance with 40 CFR Part 60.

The plan shall include the requirement to conduct quarterly cylinder gas audits or relative accuracy audits pursuant to 40 CFR Part 60, and linearity checks





Draft Permit-to-Install  
Avon Lake Power Plant  
Permit Number: P0120245  
Facility ID: 0247030013

Effective Date: To be entered upon final issuance

pursuant to 40 CFR Part 75; however, linearity checks completed pursuant to 40 CFR Part 75, Appendix B, may be substituted for the quarterly cylinder gas or relative accuracy audits required per 40 CFR Part 60.

- e. The continuous emission monitoring system consists of all the equipment used to acquire data to provide a record of emissions and includes the sample extraction and transport hardware, sample conditioning hardware, analyzers, and data recording/processing hardware and software.
- f. The following conditions apply to emissions unit B010 only when the emissions unit is operating as an industrial boiler subject to 40 CFR Part 63, subpart DDDDD. In addition, those conditions do not apply to the emissions unit during periods of operation as an Electric Generating Unit (EGU). Any electric utility steam generating unit that has the capability of combusting more than 25 MW of coal or oil but did not fire coal or oil for more than 10.0 percent of the average annual heat input during any 3 calendar years or for more than 15.0 percent of the annual heat input during any calendar year is not subject to 40 CFR Part 63, Subpart UUUUU.
  - i. This emissions unit is identified as a limited-use boiler and is not subject to the emission limits in Table 2 of the subpart, the operating limits in Table 4 of the subpart, or the energy assessment requirements in Table 3 of the subpart.
  - ii. The limited-use boiler is subject to 5-year tune-up requirements, conducted in accordance with 40 CFR 63.7540(a)(10)(i) through (vi) and Table 3 to the subpart. Each limited-use boiler identified above shall have a federally enforceable average annual capacity factor of no more than 10%.
  - iii. The permittee shall comply with the tune-up requirements specified in 40 CFR Part 63.7540(a)(10)(i) through (vi).
- g. An initial tune-up must be completed for existing units no later than the compliance date specified in 40 CFR 63.7495, except as specified in paragraph (j) of 40 CFR 63.7510 section. You must complete the one-time energy assessment specified in Table 3 to this subpart no later than the compliance date specified in 40 CFR 63.7495., unless the boiler is not in operation at that time, where a tune-up must be completed within 30 days after the re-start of the boiler. Following the initial compliance date, tune-ups must be conducted for each boiler within the applicable 5-year schedule as specified in 40 CFR 63.7500(a)-(c), 40 CFR 63.7540(a)(10) through (13), and Table 3 to the subpart, unless alternative work practice standards are approved pursuant to 40 CFR 63.6(g). Each subsequent tune-up must occur no more than 61 months after the previous tune-up. If the boiler is not in operation at the time of its scheduled tune-up, the permittee is not required to perform the tune-up at that time but must complete the tune-up within 30 days after the re-start of the boiler. Units that produce electricity for sale may delay the inspection until the first outage, but may not exceed 36 months from the previous inspection. The frequency of tune-ups shall be based on the frequency identified in Table 3 to the subpart.



Draft Permit-to-Install  
Avon Lake Power Plant  
Permit Number: P0120245  
Facility ID: 0247030013

Effective Date: To be entered upon final issuance

Each tune-up conducted to demonstrate compliance with the requirements of Part 63 Subpart DDDDD shall include the following elements as applicable:

- i. inspection of the burner(s) (and requirement to clean or replace any necessary components);
  - ii. inspection of the flame pattern and requirement to adjust the burner as necessary to optimize the flame pattern, consistent with the manufacturer's specifications if applicable;
  - iii. inspect the air-to-fuel ratio control system to ensure it is correctly calibrated and functioning properly;
  - iv. optimize total emissions of CO, in correlation with any applicable NO<sub>x</sub> standards, consistent with the manufacturer's specification if applicable;
  - v. measure the concentration of CO (in ppm, by volume) and oxygen (in volume percent) in the effluent gas stream, at the high-fire or typical operating load, and both before and after any adjustments (measurements can be made using a portable CO analyzer);
  - vi. maintain records of the tune-up, inspection, and any corrective actions taken; and
  - vii. where more than one type of fuel is used, records of the type and amount of each fuel type burned over the 12 months prior to the tune-up.
- h. On September 5, 2013, the permittee received a Mercury and Air Toxics Standards (MATS) Extension which extends the compliance date of 40 CFR Part 63, Subpart UUUUU to April 16, 2016. Since being subject to 40 CFR Part 63, Subpart UUUUU excludes one from being subject to 40 CFR Part 63, Subpart DDDDD, the permittee shall comply with the requirements and limits of 40 CFR Part 63, Subpart DDDDD for the facility's existing boilers and shall be in compliance with this NESHAP no later than April 16, 2016, at the conclusion of the compliance extension for 40 CFR Part 63, Subpart UUUUU.
- c) Operational Restrictions
- (1) The maximum annual heat input for this emissions unit shall not exceed 990,756 MMBtu, based upon a rolling, 12-month summation of the monthly heat input values. The permittee has sufficient records to demonstrate compliance with the annual heat input limitation upon permit issuance in order to qualify as a "limited-use boiler" per 40 CFR Part 63, Subpart DDDDD.
  - (2) The permittee shall perform all maintenance activities as specified per the manufacturer's recommendations. To the extent practicable, the permittee shall maintain and operate the boiler, including associated air pollution control equipment, in a manner consistent with good air pollution control practice for minimizing emissions.



Draft Permit-to-Install  
Avon Lake Power Plant  
Permit Number: P0120245  
Facility ID: 0247030013

Effective Date: To be entered upon final issuance

**d) Monitoring and/or Recordkeeping Requirements**

- (1) The permittee shall maintain monthly records of the following information for this emissions unit:

- a. the fuel usage of coal for emissions unit B010, in pounds;
- b. the heat input rate for emissions unit B010, in mmBtu (calculated by multiplying d)(1)a by the coal heating value); and
- c. the rolling, 12-month summation of the monthly heat input rate, in mmBtu.

- (2) The permittee shall maintain on-site, the document of certification received from the U.S. EPA or the Ohio EPA's Central Office verifying that the continuous opacity monitoring system has been certified to meet the requirements of 40 CFR Part 60, Appendix B, Performance Specification 1. The letter/document of certification shall be made available to the Director (the appropriate Ohio EPA District Office or local air agency) upon request.

Each continuous monitoring system consists of all the equipment used to acquire and record data in units of all applicable standard(s), and includes the sample extraction and transport hardware, sample conditioning hardware, analyzers, and data processing hardware and software.

[Authority for term: 40 CFR 60.13 and 40 CFR Part 60, Appendix B]

- (3) The permittee shall operate and maintain the continuous opacity monitoring system to continuously monitor and record the opacity of the particulate emissions from this emissions unit. The continuous monitoring and recording equipment shall comply with the requirements specified in 40 CFR Part 60.

The permittee shall maintain records of data obtained by the continuous opacity monitoring system including, but not limited to:

- a. percent opacity on an instantaneous (one-minute) and 6-minute block average basis;
- b. results of daily zero/span calibration checks and the magnitude of manual calibration adjustments;
- c. hours of operation of the emissions unit, continuous opacity monitoring system, and control equipment;
- d. the date, time, and hours of operation of the emissions unit without the control equipment and/or the continuous opacity monitoring system;
- e. the date, time, and hours of operation of the emissions unit during any malfunction of the control equipment and/or the continuous opacity monitoring system; as well as,

- f. the reason (if known) and the corrective actions taken (if any) for each such event in (d) and (e).

[Authority for term: 40 CFR 60.13 and 40 CFR Part 60, Appendix B]

- (4) The permittee shall maintain on-site, the document(s) of certification received from the U.S. EPA or the Ohio EPA's Central Office documenting that the continuous SO<sub>2</sub> monitoring system has been certified to meet the requirements of 40 CFR Part 60, Appendix B, Performance Specifications 2 and 6; and has been certified by U.S. EPA or recommended for certification by Ohio EPA to U.S. EPA under 40 CFR Part 75. The letter(s)/document(s) of certification under Part 60 and certification or recommendation for certification under Part 75 shall be made available to the Director (the appropriate Ohio EPA District Office or local air agency) upon request.

[Authority for term: 40 CFR 60.13; 40 CFR Part 60, Appendix B; and 40 CFR Part 75]

- (5) The permittee shall operate and maintain equipment to continuously monitor and record SO<sub>2</sub> emissions from this emissions unit in units of the applicable standard(s). The continuous monitoring and recording equipment shall comply with the requirements specified in 40 CFR Part 60 and 40 CFR Part 75.

The permittee shall maintain records of all data obtained by the continuous SO<sub>2</sub> monitoring system including, but not limited to:

- a. emissions of SO<sub>2</sub> in parts per million for each cycle time of the analyzer, with no resolution less than one data point per minute required;
- b. emissions of SO<sub>2</sub> in pounds per hour and in units of the applicable standard(s) in the appropriate averaging period;
- c. results of quarterly cylinder gas audits or linearity checks;
- d. results of daily zero/span calibration checks and the magnitude of manual calibration adjustments;
- e. results of required relative accuracy test audit(s), including results in units of the applicable standard(s);
- f. hours of operation of the emissions unit, continuous SO<sub>2</sub> monitoring system, and control equipment;
- g. the date, time, and hours of operation of the emissions unit without the control equipment and/or the continuous SO<sub>2</sub> monitoring system;
- h. the date, time, and hours of operation of the emissions unit during any malfunction of the control equipment and/or the continuous SO<sub>2</sub> monitoring system; as well as,
- i. the reason (if known) and the corrective actions taken (if any) for each such event in (g) and (h).



Draft Permit-to-Install  
Avon Lake Power Plant  
Permit Number: P0120245  
Facility ID: 0247030013

Effective Date: To be entered upon final issuance

All valid data points generated and recorded by the continuous emission monitoring and data acquisition and handling system shall be used in the calculation of the pollutant concentration and/or emission rate over the appropriate averaging period.

[Authority for term: 40 CFR 60.13; 40 CFR Part 60, Appendices B & F; and 40 CFR Part 75]

**e) Reporting Requirements**

(1) The permittee shall submit quarterly deviation (excursion) reports that identify the following:

- a. all exceedances of the rolling, 12-month heat input limitation for emissions unit B010.

The quarterly deviation (excursion) reports shall be submitted in accordance with the reporting requirements of the Standard Terms and Conditions of this permit.

(2) The permittee shall comply with the following quarterly reporting requirements for the emissions unit and its continuous opacity monitoring system:

- a. Pursuant to the monitoring, record keeping, and reporting requirements for continuous monitoring systems contained in 40 CFR Parts 60.7 and 60.13(h) and the requirements established in this permit, the permittee shall submit reports within 30 days following the end of each calendar quarter to the appropriate Ohio EPA District Office or local air agency, documenting all instances of opacity values in excess of any limitation specified in this permit, 40 CFR Part 60, OAC rule 3745-17-07, and any other applicable rules or regulations. The report shall document the date, commencement and completion times, duration, and magnitude (percent opacity) of each 6-minute block average exceeding the applicable opacity limitation(s), as well as, the reason (if known) and the corrective actions taken (if any) for each exceedance.

- b. These quarterly reports shall be submitted by January 30, April 30, July 30, and October 30 of each year and shall include the following:

- i. the facility name and address;
- ii. the manufacturer and model number of the continuous opacity monitor;
- iii. a description of any change in the equipment that comprises the continuous opacity monitoring system (COMS), including any change to the hardware, changes to the software that may affect COMS readings, and/or changes in the location of the COMS sample probe;
- iv. the excess emissions report (EER)\*, i.e., a summary of any exceedances during the calendar quarter, as specified above;
- v. the total operating time (hours) of the emissions unit;



Draft Permit-to-Install  
Avon Lake Power Plant  
Permit Number: P0120245  
Facility ID: 0247030013

Effective Date: To be entered upon final issuance

- vi. the total operating time of the continuous opacity monitoring system while the emissions unit was in operation;
- vii. the date, time, and duration of any/each malfunction\*\* of the continuous opacity monitoring system, emissions unit, and/or control equipment;
- viii. the date, time, and duration of any downtime\*\* of the continuous opacity monitoring system and/or control equipment while the emissions unit was in operation; and
- ix. the reason (if known) and the corrective actions taken (if any) for each event in (b)(vii) and (viii).

Each report shall address the operations conducted and data obtained during the previous calendar quarter.

\* where no exceedance of the opacity limit has occurred or the continuous monitoring system(s) has/have not been inoperative, repaired, or adjusted during the calendar quarter, such information shall be documented in the quarterly EER report

\*\* each downtime and malfunction event shall be reported regardless of whether there is an exceedance of the opacity limit

[Authority for term: 40 CFR 60.7]

- (3) The permittee shall comply with the following quarterly reporting requirements for the emissions unit and its continuous SO<sub>2</sub> monitoring system:
  - a. Pursuant to the monitoring, record keeping, and reporting requirements for continuous monitoring systems contained in 40 CFR Parts 60.7 and 60.13(h) and the requirements established in this permit, the permittee shall submit reports within 30 days following the end of each calendar quarter to the appropriate Ohio EPA District Office or local air agency, documenting all instances of SO<sub>2</sub> emissions in excess of any applicable limit specified in this permit, 40 CFR Part 60, 40 CFR Part 75, OAC Chapter 3745-18, and any other applicable rules or regulations. The report shall document the date, commencement and completion times, duration, and magnitude of each exceedance, as well as the reason (if known) and the corrective actions taken (if any) for each exceedance. Excess emissions shall be reported in units of the applicable standard(s).
  - b. These quarterly reports shall be submitted by January 30, April 30, July 30, and October 30 of each year and shall include the following:
    - i. the facility name and address;
    - ii. the manufacturer and model number of the continuous SO<sub>2</sub> and other associated monitors;
    - iii. a description of any change in the equipment that comprises the continuous emission monitoring system (CEMS), including any change to



Draft Permit-to-Install  
Avon Lake Power Plant  
Permit Number: P0120245  
Facility ID: 0247030013

Effective Date: To be entered upon final issuance

the hardware, changes to the software that may affect CEMS readings, and/or changes in the location of the CEMS sample probe;

- iv. the excess emissions report (EER)\*, i.e., a summary of any exceedances during the calendar quarter, as specified above;
- v. the total SO<sub>2</sub> emissions for the calendar quarter (tons);
- vi. the total operating time (hours) of the emissions unit;
- vii. the total operating time of the continuous SO<sub>2</sub> monitoring system while the emissions unit was in operation;
- viii. results and dates of quarterly cylinder gas audits or linearity checks;
- ix. unless previously submitted, results and dates of the relative accuracy test audit(s), including results in units of the applicable standard(s), (during appropriate quarter(s));
- x. unless previously submitted, the results of any relative accuracy test audit showing the continuous SO<sub>2</sub> monitor out-of-control and the compliant results following any corrective actions;
- xi. the date, time, and duration of any/each malfunction\*\* of the continuous SO<sub>2</sub> monitoring system, emissions unit, and/or control equipment;
- xii. the date, time, and duration of any downtime\*\* of the continuous SO<sub>2</sub> monitoring system and/or control equipment while the emissions unit was in operation; and
- xiii. the reason (if known) and the corrective actions taken (if any) for each event in (b)(xi) and (xii).

Each report shall address the operations conducted and data obtained during the previous calendar quarter. Data substitution procedures from 40 CFR 75 are not to be used for showing compliance with the short term OAC 3745-31-05(A)(3) rule-based or NSPS-based limitation(s) in this permit.

\* where no excess emissions have occurred or the continuous monitoring system(s) has/have not been inoperative, repaired, or adjusted during the calendar quarter, such information shall be documented in the EER quarterly report

\*\* each downtime and malfunction event shall be reported regardless of whether there is an exceedance of any applicable limit

[Authority for term: 40 CFR 60.7 and 40 CFR Part 75]

- (4) The permittee shall collect, record, and maintain measurements, data, records, and reports required per 40 CFR Part 75; and shall submit certification, recertification, notifications, applications, monitoring plans, petitions for alternative monitoring systems,



Draft Permit-to-Install  
Avon Lake Power Plant  
Permit Number: P0120245  
Facility ID: 0247030013

Effective Date: To be entered upon final issuance

electronic quarterly reports, and any other pertinent record and/or report to the Administrator (U.S. EPA), as required by this Part.

[Authority for term: 40 CFR Part 75]

f) **Testing Requirements**

(1) Compliance with the Emissions Limitations and/or Control Requirements specified in section b) of these terms and conditions shall be determined in accordance with the following methods:

a. **Emission Limitation:**

Visible PE from any stack shall not exceed 20% opacity as a 6-minute average, except as provided by the rule.

**Applicable Compliance Method:**

Ongoing compliance with the opacity limitation contained in this permit, 40 CFR Part 60, and any other applicable standard(s) shall be demonstrated through the data collected as required in the Monitoring and Record keeping Section of this permit; and through demonstration of compliance with the quality assurance/quality control plan, which shall meet the testing and recertification requirements of 40 CFR Part 60.

If required, compliance with visible PE limitation above shall be demonstrated in accordance with Method 9 of 40 CFR Part 60, Appendix A.

b. **Emission Limitation:**

PE shall not exceed 0.1 lb/mmBtu of actual heat input.

**Applicable Compliance Method:**

Compliance with the PE limitation above shall be demonstrated based on the results of stack testing as required in f)(2).

c. **Emission Limitation:**

SO<sub>2</sub> emissions shall not exceed 4.65 lbs/mmBtu actual heat input

**Applicable Compliance Method:**

Ongoing compliance with the SO<sub>2</sub> emission limitations contained in this permit, 40 CFR Parts 60 and 75, and any other applicable standard(s) shall be demonstrated through the data collected as required in the Monitoring and Record keeping Section of this permit; and through demonstration of compliance with the quality assurance/quality control plan, which shall meet the testing and recertification requirements of 40 CFR Part 60 and 40 CFR Part 75.





Draft Permit-to-Install  
Avon Lake Power Plant  
Permit Number: P0120245  
Facility ID: 0247030013

Effective Date: To be entered upon final issuance

If required, compliance with the SO<sub>2</sub> emission limitation above shall be demonstrated in accordance with Methods 1-4 and 6 of 40 CFR Part 60, Appendix A.

[Authority for term: 40 CFR 60.13; 40 CFR Part 60, Appendices B & F; and 40 CFR Part 75]

- (2) As long as emissions unit B010 is designated as a limited-use boiler per 40 CFR Part 63, Subpart DDDDD, the permittee shall conduct, or have conducted, particulate emission testing to demonstrate compliance with the allowable particulate emission rate in section b)(1)b above in accordance with the following requirements:
- a. The testing of emissions unit B010 as a limited-use boiler shall be conducted on 5 year intervals with the next required test to be performed no later than February 28, 2020.
  - b. Compliance with the allowable mass emission rate for particulate emissions shall be determined in accordance with 40 CFR Part 60, Appendix A, Methods 1 through 5 and the procedures in OAC rule 3745-17-03(B)(9).
  - c. The test(s) shall be conducted while the emissions unit is operating at or near its maximum capacity.
  - d. Not later than 30 days prior to the proposed test date(s), the permittee shall submit an "Intent to Test" notification to the Ohio EPA Northeast District Office. The "Intent to Test" notification shall describe in detail the proposed test methods and procedures, the emissions unit operating parameters, the time(s) and date(s) of the test(s), and the person(s) who will be conducting the test(s). Failure to submit such notification for review and approval prior to the test(s) may result in the Ohio EPA Northeast District Office's refusal to accept the results of the emission test(s).
  - e. Personnel from the Ohio EPA Northeast District Office shall be permitted to witness the test(s), examine the testing equipment, and acquire data and information necessary to ensure that the operation of the emissions unit and the testing procedures provide a valid characterization of the emissions from the emissions unit and/or the performance of the control equipment.
  - f. A comprehensive written report on the results of the emissions test(s) shall be signed by the person or persons responsible for the tests and submitted to the Ohio EPA Northeast District Office within 30 days following completion of the test(s). The permittee may request additional time for the submittal of the written report, where warranted, with prior approval from the Ohio EPA Northeast District Office.

[Authority for term: OAC rule 3745-17-03(B)(9)]

g) Miscellaneous Requirements

- (1) None.



John R. Kasich, Governor  
Mary Taylor, Lt. Governor  
Craig W. Butler, Director

4/19/2016

Mr. Anthony Catanese  
Avon Lake Power Plant  
121 Champion Way, Suite 300  
Canonsburg, PA 15317

RE: FINALAIR POLLUTION PERMIT-TO-INSTALL  
Facility ID: 0247030013  
Permit Number: P0120245  
Permit Type: Administrative Modification  
County: Lorain

Certified Mail

|     |                                    |
|-----|------------------------------------|
| No  | TOXIC REVIEW                       |
| No  | PSD                                |
| No  | SYNTHETIC MINOR TO AVOID MAJOR NSR |
| Yes | CEMS                               |
| Yes | MACT/GACT                          |
| No  | NSPS                               |
| No  | NESHAPS                            |
| No  | NETTING                            |
| No  | MAJOR NON-ATTAINMENT               |
| No  | MODELING SUBMITTED                 |
| No  | MAJOR GHG                          |
| No  | SYNTHETIC MINOR TO AVOID MAJOR GHG |

Dear Permit Holder:

Enclosed please find a final Ohio Environmental Protection Agency (EPA) Air Pollution Permit-to-Install (PTI) which will allow you to install or modify the described emissions unit(s) in a manner indicated in the permit. Because this permit contains several conditions and restrictions, we urge you to read it carefully. Because this permit contains conditions and restrictions, please read it very carefully. In this letter you will find the information on the following topics:

- How to appeal this permit
- How to save money, reduce pollution and reduce energy consumption
- How to give us feedback on your permitting experience
- How to get an electronic copy of your permit
- What should you do if you notice a spill or environmental emergency?

**How to appeal this permit**

The issuance of this PTI is a final action of the Director and may be appealed to the Environmental Review Appeals Commission pursuant to Section 3745.04 of the Ohio Revised Code. The appeal must be in writing and set forth the action complained of and the grounds upon which the appeal is based. The appeal must be filed with the Commission within thirty (30) days after notice of the Director's action. The appeal must be accompanied by a filing fee of \$70.00, made payable to "Ohio Treasurer Josh Mandel," which the Commission, in its discretion, may reduce if by affidavit you demonstrate that payment of the full amount of the fee would cause extreme hardship. Notice of the filing of the appeal shall be filed with the Director within three (3) days of filing with the Commission. Ohio EPA requests that a copy of the appeal be served upon the Ohio Attorney General's Office, Environmental Enforcement Section. An appeal may be filed with the Environmental Review Appeals Commission at the following address:

Environmental Review Appeals Commission  
77 South High Street, 17th Floor  
Columbus, OH 43215

### **How to save money, reduce pollution and reduce energy consumption**

The Ohio EPA is encouraging companies to investigate pollution prevention and energy conservation. Not only will this reduce pollution and energy consumption, but it can also save you money. If you would like to learn ways you can save money while protecting the environment, please contact our Office of Compliance Assistance and Pollution Prevention at (614) 644-3469. Additionally, all or a portion of the capital expenditures related to installing air pollution control equipment under this permit may be eligible for financing and State tax exemptions through the Ohio Air Quality Development Authority (OAQDA) under Ohio Revised Code Section 3706. For more information, see the OAQDA website: [www.ohioairquality.org/clean\\_air](http://www.ohioairquality.org/clean_air)

### **How to give us feedback on your permitting experience**

Please complete a survey at [www.epa.ohio.gov/survey.aspx](http://www.epa.ohio.gov/survey.aspx) and give us feedback on your permitting experience. We value your opinion.

### **How to get an electronic copy of your permit**

This permit can be accessed electronically via the eBusiness Center: Air Services in Microsoft Word format or in Adobe PDF on the Division of Air Pollution Control (DAPC) Web page, [www.epa.ohio.gov/dapc](http://www.epa.ohio.gov/dapc) by clicking the "Search for Permits" link under the Permitting topic on the Programs tab.

### **What should you do if you notice a spill or environmental emergency?**

Any spill or environmental emergency which may endanger human health or the environment should be reported to the Emergency Response 24-HOUR EMERGENCY SPILL HOTLINE toll-free at (800) 282-9378. Report non-emergency complaints to the appropriate district office or local air agency.

If you have any questions regarding your permit, please contact Ohio EPA DAPC, Northeast District Office at (330)963-1200 or the Office of Compliance Assistance and Pollution Prevention at (614) 644-3469.

Sincerely,



Michael E. Hopkins, P.E.  
Assistant Chief, Permitting Section, DAPC

Cc: U.S. EPA  
Ohio EPA-NEDO; Canada



**FINAL**

**Division of Air Pollution Control  
Permit-to-Install  
for  
Avon Lake Power Plant**

|                |                             |
|----------------|-----------------------------|
| Facility ID:   | 0247030013                  |
| Permit Number: | P0120245                    |
| Permit Type:   | Administrative Modification |
| Issued:        | 4/19/2016                   |
| Effective:     | 4/19/2016                   |





**Division of Air Pollution Control  
Permit-to-Install  
for  
Avon Lake Power Plant**

**Table of Contents**

|  |    |
|--|----|
| Authorization .....  | 1  |
| A. Standard Terms and Conditions .....   | 3  |
| 1. Federally Enforceable Standard Terms and Conditions .....   | 4  |
| 2. Severability Clause .....   | 4  |
| 3. General Requirements .....  | 4  |
| 4. Monitoring and Related Record Keeping and Reporting Requirements .....  | 5  |
| 5. Scheduled Maintenance/Malfunction Reporting .....   | 6  |
| 6. Compliance Requirements .....   | 6  |
| 7. Best Available Technology .....   | 7  |
| 8. Air Pollution Nuisance .....  | 8  |
| 9. Reporting Requirements .....  | 8  |
| 10. Applicability .....  | 8  |
| 11. Construction of New Sources(s) and Authorization to Install .....  | 8  |
| 12. Permit-To-Operate Application .....  | 9  |
| 13. Construction Compliance Certification .....  | 10 |
| 14. Public Disclosure .....  | 10 |
| 15. Additional Reporting Requirements When There Are No Deviations of Federally Enforceable Emission<br>Limitations, Operational Restrictions, or Control Device Operating Parameter Limitations ..... | 10 |
| 16. Fees .....   | 10 |
| 17. Permit Transfers .....   | 10 |
| 18. Risk Management Plans .....  | 10 |
| 19. Title IV Provisions .....  | 10 |
| B. Facility-Wide Terms and Conditions .....  | 11 |
| C. Emissions Unit Terms and Conditions .....   | 13 |
| 1. B010, Boiler #10 .....  | 14 |





Final Permit-to-Install  
Avon Lake Power Plant  
Permit Number: P0120245  
Facility ID: 0247030013  
Effective Date: 4/19/2016

## Authorization

Facility ID: 0247030013  
Facility Description: Electric Utility Generating Station  
Application Number(s): A0054966  
Permit Number: P0120245  
Permit Description: PTI Administrative Modification to designate B010 as a coal-fired "limited-use" boiler.  
Permit Type: Administrative Modification  
Permit Fee: \$1,875.00  
Issue Date: 4/19/2016  
Effective Date: 4/19/2016

This document constitutes issuance to:

Avon Lake Power Plant  
33570 Lake Road  
Avon Lake, OH 44012-0000

of a Permit-to-Install for the emissions unit(s) identified on the following page.

Ohio Environmental Protection Agency (EPA) District Office or local air agency responsible for processing and administering your permit:

Ohio EPA DAPC, Northeast District Office  
2110 East Aurora Road  
Twinsburg, OH 44087  
(330)963-1200

The above named entity is hereby granted a Permit-to-Install for the emissions unit(s) listed in this section pursuant to Chapter 3745-31 of the Ohio Administrative Code. Issuance of this permit does not constitute expressed or implied approval or agreement that, if constructed or modified in accordance with the plans included in the application, the emissions unit(s) of environmental pollutants will operate in compliance with applicable State and Federal laws and regulations, and does not constitute expressed or implied assurance that if constructed or modified in accordance with those plans and specifications, the above described emissions unit(s) of pollutants will be granted the necessary permits to operate (air) or NPDES permits as applicable.

This permit is granted subject to the conditions attached hereto.

Ohio Environmental Protection Agency

A handwritten signature in black ink, appearing to read "Craig W. Butler".  
Craig W. Butler  
Director





**Final Permit-to-Install**  
**Avon Lake Power Plant**  
**Permit Number: P0120245**  
**Facility ID: 0247030013**  
**Effective Date: 4/19/2016**

## **Authorization (continued)**

**Permit Number:** P0120245

**Permit Description:** PTI Administrative Modification to designate B010 as a coal-fired "limited-use" boiler.

**Permits for the following Emissions Unit(s) or groups of Emissions Units are in this document as indicated below:**

|  |                       |
|--|-----------------------|
| <b>Emissions Unit ID:</b>                | <b>B010</b>           |
| <b>Company Equipment ID:</b>             | <b>Boiler #10</b>     |
| <b>Superseded Permit Number:</b>         |                       |
| <b>General Permit Category and Type:</b> | <b>Not Applicable</b> |



**Final Permit-to-Install  
Avon Lake Power Plant  
Permit Number: P0120245  
Facility ID: 0247030013  
Effective Date: 4/19/2016**

## **A. Standard Terms and Conditions**



Final Permit-to-Install  
Avon Lake Power Plant  
Permit Number: P0120245  
Facility ID: 0247030013  
Effective Date: 4/19/2016

**1. Federally Enforceable Standard Terms and Conditions**

- a) All Standard Terms and Conditions are federally enforceable, with the exception of those listed below which are enforceable under State law only:
  - (1) Standard Term and Condition A.2.a), Severability Clause
  - (2) Standard Term and Condition A.3.c) through A. 3.e) General Requirements
  - (3) Standard Term and Condition A.6.c) and A. 6.d), Compliance Requirements
  - (4) Standard Term and Condition A.9., Reporting Requirements
  - (5) Standard Term and Condition A.10., Applicability
  - (6) Standard Term and Condition A.11.b) through A.11.e), Construction of New Source(s) and Authorization to Install
  - (7) Standard Term and Condition A.14., Public Disclosure
  - (8) Standard Term and Condition A.15., Additional Reporting Requirements When There Are No Deviations of Federally Enforceable Emission Limitations, Operational Restrictions, or Control Device Operating Parameter Limitations
  - (9) Standard Term and Condition A.16., Fees
  - (10) Standard Term and Condition A.17., Permit Transfers

**2. Severability Clause**

- a) A determination that any term or condition of this permit is invalid shall not invalidate the force or effect of any other term or condition thereof, except to the extent that any other term or condition depends in whole or in part for its operation or implementation upon the term or condition declared invalid.
- b) All terms and conditions designated in parts B and C of this permit are federally enforceable as a practical matter, if they are required under the Act, or any of its applicable requirements, including relevant provisions designed to limit the potential to emit of a source, are enforceable by the Administrator of the U.S. EPA and the State and by citizens (to the extent allowed by section 304 of the Act) under the Act. Terms and conditions in parts B and C of this permit shall not be federally enforceable and shall be enforceable under State law only, only if specifically identified in this permit as such.

**3. General Requirements**

- a) Any noncompliance with the federally enforceable terms and conditions of this permit constitutes a violation of the Act, and is grounds for enforcement action or for permit revocation, revocation and re-issuance, or modification.



Final Permit-to-Install  
Avon Lake Power Plant  
Permit Number: P0120245  
Facility ID: 0247030013  
Effective Date: 4/19/2016

- b) It shall not be a defense for the permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the federally enforceable terms and conditions of this permit.
- c) This permit may be modified, revoked, or revoked and reissued, for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or revocation, or of a notification of planned changes or anticipated noncompliance does not stay any term and condition of this permit.
- d) This permit does not convey any property rights of any sort, or any exclusive privilege.
- e) The permittee shall furnish to the Director of the Ohio EPA, or an authorized representative of the Director, upon receipt of a written request and within a reasonable time, any information that may be requested to determine whether cause exists for modifying or revoking this permit or to determine compliance with this permit. Upon request, the permittee shall also furnish to the Director or an authorized representative of the Director, copies of records required to be kept by this permit. For information claimed to be confidential in the submittal to the Director, if the Administrator of the U.S. EPA requests such information, the permittee may furnish such records directly to the Administrator along with a claim of confidentiality.

**4. Monitoring and Related Record Keeping and Reporting Requirements**

- a) Except as may otherwise be provided in the terms and conditions for a specific emissions unit, the permittee shall maintain records that include the following, where applicable, for any required monitoring under this permit:
  - (1) The date, place (as defined in the permit), and time of sampling or measurements.
  - (2) The date(s) analyses were performed.
  - (3) The company or entity that performed the analyses.
  - (4) The analytical techniques or methods used.
  - (5) The results of such analyses.
  - (6) The operating conditions existing at the time of sampling or measurement.
- b) Each record of any monitoring data, testing data, and support information required pursuant to this permit shall be retained for a period of five years from the date the record was created. Support information shall include, but not be limited to all calibration and maintenance records and all original strip-chart recordings for continuous monitoring instrumentation, and copies of all reports required by this permit. Such records may be maintained in computerized form.
- c) Except as may otherwise be provided in the terms and conditions for a specific emissions unit, the permittee shall submit required reports in the following manner:
  - (1) Reports of any required monitoring and/or recordkeeping of federally enforceable information shall be submitted to the Ohio EPA DAPC, Northeast District Office.



Final Permit-to-Install  
Avon Lake Power Plant  
Permit Number: P0120245  
Facility ID: 0247030013  
Effective Date: 4/19/2016

- (2) Quarterly written reports of (i) any deviations from federally enforceable emission limitations, operational restrictions, and control device operating parameter limitations, excluding deviations resulting from malfunctions reported in accordance with OAC rule 3745-15-06, that have been detected by the testing, monitoring and recordkeeping requirements specified in this permit, (ii) the probable cause of such deviations, and (iii) any corrective actions or preventive measures taken, shall be made to the Ohio EPA DAPC, Northeast District Office. The written reports shall be submitted (i.e., postmarked) quarterly, by January 31, April 30, July 31, and October 31 of each year and shall cover the previous calendar quarters. See A.15. below if no deviations occurred during the quarter.
  - (3) Written reports, which identify any deviations from the federally enforceable monitoring, recordkeeping, and reporting requirements contained in this permit shall be submitted to the Ohio EPA DAPC, Northeast District Office every six months, by January 31 and July 31 of each year for the previous six calendar months. If no deviations occurred during a six-month period, the permittee shall submit a semi-annual report, which states that no deviations occurred during that period.
  - (4) This permit is for an emissions unit located at a Title V facility. Each written report shall be signed by a responsible official certifying that, based on information and belief formed after reasonable inquiry, the statements and information in the report are true, accurate, and complete.
- d) The permittee shall report actual emissions pursuant to OAC Chapter 3745-78 for the purpose of collecting Air Pollution Control Fees.

#### 5. Scheduled Maintenance/Malfunction Reporting

Any scheduled maintenance of air pollution control equipment shall be performed in accordance with paragraph (A) of OAC rule 3745-15-06. The malfunction, i.e., upset, of any emissions units or any associated air pollution control system(s) shall be reported to the Ohio EPA DAPC, Northeast District Office in accordance with paragraph (B) of OAC rule 3745-15-06. (The definition of an upset condition shall be the same as that used in OAC rule 3745-15-06(B)(1) for a malfunction.) The verbal and written reports shall be submitted pursuant to OAC rule 3745-15-06.

Except as provided in that rule, any scheduled maintenance or malfunction necessitating the shutdown or bypassing of any air pollution control system(s) shall be accompanied by the shutdown of the emission unit(s) that is (are) served by such control system(s).

#### 6. Compliance Requirements

- a) All applications, notifications or reports required by terms and conditions in this permit to be submitted or "reported in writing" are to be submitted to Ohio EPA through the Ohio EPA's eBusiness Center: Air Services web service ("Air Services"). Ohio EPA will accept hard copy submittals on an as-needed basis if the permittee cannot submit the required documents through the Ohio EPA eBusiness Center. In the event of an alternative hard copy submission in lieu of the eBusiness Center, the post-marked date or the date the document is delivered in person will be recognized as the date submitted. Electronic submission of applications, notifications or reports required to be submitted to Ohio EPA fulfills the requirement to submit the required information to the Director, the appropriate Ohio EPA District Office or contracted



Final Permit-to-Install  
Avon Lake Power Plant  
Permit Number: P0120245  
Facility ID: 0247030013  
Effective Date: 4/19/2016

local air agency, and/or any other individual or organization specifically identified as an additional recipient identified in this permit unless otherwise specified. Consistent with OAC rule 3745-15-03, the electronic signature date shall constitute the date that the required application, notification or report is considered to be "submitted". Any document requiring signature may be represented by entry of the personal identification number (PIN) by responsible official as part of the electronic submission process or by the scanned attestation document signed by the Authorized Representative that is attached to the electronically submitted written report.

Any document (including reports) required to be submitted and required by a federally applicable requirement in this permit shall include a certification by a Responsible Official that, based on information and belief formed after reasonable inquiry, the statements in the document are true, accurate, and complete.

- b) Upon presentation of credentials and other documents as may be required by law, the permittee shall allow the Director of the Ohio EPA or an authorized representative of the Director to:
  - (1) At reasonable times, enter upon the permittee's premises where a source is located or the emissions-related activity is conducted, or where records must be kept under the conditions of this permit.
  - (2) Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit, subject to the protection from disclosure to the public of confidential information consistent with ORC section 3704.08.
  - (3) Inspect at reasonable times any facilities, equipment (including monitoring and air pollution control equipment), practices, or operations regulated or required under this permit.
  - (4) As authorized by the Act, sample or monitor at reasonable times substances or parameters for the purpose of assuring compliance with the permit and applicable requirements.
- c) The permittee shall submit progress reports to the Ohio EPA DAPC, Northeast District Office concerning any schedule of compliance for meeting an applicable requirement. Progress reports shall be submitted semiannually or more frequently if specified in the applicable requirement or by the Director of the Ohio EPA. Progress reports shall contain the following:
  - (1) Dates for achieving the activities, milestones, or compliance required in any schedule of compliance, and dates when such activities, milestones, or compliance were achieved.
  - (2) An explanation of why any dates in any schedule of compliance were not or will not be met, and any preventive or corrective measures adopted.

## **7. Best Available Technology**

As specified in OAC Rule 3745-31-05, new sources that must employ Best Available Technology (BAT) shall comply with the Applicable Emission Limitations/Control Measures identified as BAT for each subject emissions unit.



Final Permit-to-Install  
Avon Lake Power Plant  
Permit Number: P0120245  
Facility ID: 0247030013  
Effective Date: 4/19/2016

**8. Air Pollution Nuisance**

The air contaminants emitted by the emissions units covered by this permit shall not cause a public nuisance, in violation of OAC rule 3745-15-07.

**9. Reporting Requirements**

The permittee shall submit required reports in the following manner:

- a) Reports of any required monitoring and/or recordkeeping of state-only enforceable information shall be submitted to the Ohio EPA DAPC, Northeast District Office.
- b) Except as otherwise may be provided in the terms and conditions for a specific emissions unit, quarterly written reports of (a) any deviations (excursions) from state-only required emission limitations, operational restrictions, and control device operating parameter limitations that have been detected by the testing, monitoring, and recordkeeping requirements specified in this permit, (b) the probable cause of such deviations, and (c) any corrective actions or preventive measures which have been or will be taken, shall be submitted to the Ohio EPA DAPC, Northeast District Office. If no deviations occurred during a calendar quarter, the permittee shall submit a quarterly report, which states that no deviations occurred during that quarter. The reports shall be submitted quarterly, by January 31, April 30, July 31, and October 31 of each year and shall cover the previous calendar quarters. (These quarterly reports shall exclude deviations resulting from malfunctions reported in accordance with OAC rule 3745-15-06.)

**10. Applicability**

This Permit-to-Install is applicable only to the emissions unit(s) identified in the Permit-to-Install. Separate application must be made to the Director for the installation or modification of any other emissions unit(s) not exempt from the requirement to obtain a Permit-to-Install.

**11. Construction of New Sources(s) and Authorization to Install**

- a) This permit does not constitute an assurance that the proposed source will operate in compliance with all Ohio laws and regulations. This permit does not constitute expressed or implied assurance that the proposed facility has been constructed in accordance with the application and terms and conditions of this permit. The action of beginning and/or completing construction prior to obtaining the Director's approval constitutes a violation of OAC rule 3745-31-02. Furthermore, issuance of this permit does not constitute an assurance that the proposed source will operate in compliance with all Ohio laws and regulations. Issuance of this permit is not to be construed as a waiver of any rights that the Ohio Environmental Protection Agency (or other persons) may have against the applicant for starting construction prior to the effective date of the permit. Additional facilities shall be installed upon orders of the Ohio Environmental Protection Agency if the proposed facilities cannot meet the requirements of this permit or cannot meet applicable standards.
- b) If applicable, authorization to install any new emissions unit included in this permit shall terminate within eighteen months of the effective date of the permit if the owner or operator has not undertaken a continuing program of installation or has not entered into a binding contractual obligation to undertake and complete within a reasonable time a continuing program of installation. This deadline may be extended by up to 12 months if application is made to the



Final Permit-to-Install  
Avon Lake Power Plant  
Permit Number: P0120245  
Facility ID: 0247030013  
Effective Date: 4/19/2016

Director within a reasonable time before the termination date and the permittee shows good cause for any such extension.

- c) The permittee may notify Ohio EPA of any emissions unit that is permanently shut down (i.e., the emissions unit has been physically removed from service or has been altered in such a way that it can no longer operate without a subsequent "modification" or "installation" as defined in OAC Chapter 3745-31) by submitting a certification from the authorized official that identifies the date on which the emissions unit was permanently shut down. Authorization to operate the affected emissions unit shall cease upon the date certified by the authorized official that the emissions unit was permanently shut down. At a minimum, notification of permanent shut down shall be made or confirmed by marking the affected emissions unit(s) as "permanently shut down" in "Air Services" along with the date the emissions unit(s) was permanently removed and/or disabled. Submitting the facility profile update electronically will constitute notifying the Director of the permanent shutdown of the affected emissions unit(s).
- d) The provisions of this permit shall cease to be enforceable for each affected emissions unit after the date on which an emissions unit is permanently shut down (i.e., emissions unit has been physically removed from service or has been altered in such a way that it can no longer operate without a subsequent "modification" or "installation" as defined in OAC Chapter 3745-31). All records relating to any permanently shutdown emissions unit, generated while the emissions unit was in operation, must be maintained in accordance with law. All reports required by this permit must be submitted for any period an affected emissions unit operated prior to permanent shut down. At a minimum, the permit requirements must be evaluated as part of the reporting requirements identified in this permit covering the last period the emissions unit operated.

Unless otherwise exempted, no emissions unit certified by the responsible official as being permanently shut down may resume operation without first applying for and obtaining a permit pursuant to OAC Chapter 3745-31 and OAC Chapter 3745-77 if the restarted operation is subject to one or more applicable requirements.

- e) The permittee shall comply with any residual requirements related to this permit, such as the requirement to submit a deviation report, air fee emission report, or other any reporting required by this permit for the period the operating provisions of this permit were enforceable, or as required by regulation or law. All reports shall be submitted in a form and manner prescribed by the Director. All records relating to this permit must be maintained in accordance with law.

## 12. Permit-To-Operate Application

The permittee is required to apply for a Title V permit pursuant to OAC Chapter 3745-77. The permittee shall submit a complete Title V permit application or a complete Title V permit modification application within twelve (12) months after commencing operation of the emissions units covered by this permit. However, if operation of the proposed new or modified source(s) as authorized by this permit would be prohibited by the terms and conditions of an existing Title V permit, a Title V permit modification of such new or modified source(s) pursuant to OAC rule 3745-77-04(D) and OAC rule 3745-77-08(C)(3)(d) must be obtained before operating the source in a manner that would violate the existing Title V permit requirements.





Final Permit-to-Install  
Avon Lake Power Plant  
Permit Number: P0120245  
Facility ID: 0247030013  
Effective Date: 4/19/2016

**13. Construction Compliance Certification**

The applicant shall identify the following dates in the "Air Services" facility profile for each new emissions unit identified in this permit.

- a) Completion of initial installation date shall be entered upon completion of construction and prior to start-up.
- b) Commence operation after installation or latest modification date shall be entered within 90 days after commencing operation of the applicable emissions unit.

**14. Public Disclosure**

The facility is hereby notified that this permit, and all agency records concerning the operation of this permitted source, are subject to public disclosure in accordance with OAC rule 3745-49-03.

**15. Additional Reporting Requirements When There Are No Deviations of Federally Enforceable Emission Limitations, Operational Restrictions, or Control Device Operating Parameter Limitations**

If no deviations occurred during a calendar quarter, the permittee shall submit a quarterly report, which states that no deviations occurred during that quarter. The reports shall be submitted quarterly by January 31, April 30, July 31, and October 31 of each year and shall cover the previous calendar quarters.

**16. Fees**

The permittee shall pay fees to the Director of the Ohio EPA in accordance with ORC section 3745.11 and OAC Chapter 3745-78. The permittee shall pay all applicable permit-to-install fees within 30 days after the issuance of any permit-to-install. The permittee shall pay all applicable permit-to-operate fees within thirty days of the issuance of the invoice.

**17. Permit Transfers**

Any transferee of this permit shall assume the responsibilities of the prior permit holder. The new owner must update and submit the ownership information via the "Owner/Contact Change" functionality in "Air Services" once the transfer is legally completed. The change must be submitted through "Air Services" within thirty days of the ownership transfer date.

**18. Risk Management Plans**

If the permittee is required to develop and register a risk management plan pursuant to section 112(r) of the Clean Air Act, as amended, 42 U.S.C. 7401 et seq. ("Act"), the permittee shall comply with the requirement to register such a plan.

**19. Title IV Provisions**

If the permittee is subject to the requirements of 40 CFR Part 72 concerning acid rain, the permittee shall ensure that any affected emissions unit complies with those requirements. Emissions exceeding any allowances that are lawfully held under Title IV of the Act, or any regulations adopted thereunder, are prohibited.



Final Permit-to-Install  
Avon Lake Power Plant  
Permit Number: P0120245  
Facility ID: 0247030013  
Effective Date: 4/19/2016

## **B. Facility-Wide Terms and Conditions**



Final Permit-to-Install  
Avon Lake Power Plant  
Permit Number: P0120245  
Facility ID: 0247030013  
Effective Date: 4/19/2016

1. All the following facility-wide terms and conditions are federally enforceable with the exception of those listed below which are enforceable under state law only:
  - a) None.
2. The permittee shall ensure that any emissions unit(s) subject to the Cross State Air Pollution Rule (CSAPR) complies/comply with the requirements of the Ohio Administrative Code (OAC) Chapter 3745-109, which includes submitting timely permit applications.
3. Acid Rain Permits and Compliance – OAC chapter 3745-103

The permittee shall ensure that any affected unit complies with the requirements of OAC Chapter 3745-103, which includes submitting timely permit applications. Emissions exceeding any allowances that are lawfully held pursuant to this rule are prohibited. The requirements of this rule will be specified in the Title V permit issued to this facility.
4. All asbestos renovation and demolition activities conducted at this facility shall be performed in accordance with the applicable requirements specified in 40 CFR Part 61, Subpart M.
5. The facility is subject to the applicable requirements specified in OAC Chapter 3745-25. In accordance with Ohio EPA Engineering Guide #64, the emission control action programs, as specified in OAC rule 3745-25-03, shall be developed and submitted within 60 days after receiving notification from the Ohio EPA.
6. When operating emissions unit B010 (boiler #10) as an auxiliary boiler, the permittee shall comply with the applicable provisions of the National Emissions Standards for Hazardous Air Pollutants (NESHAP) for Industrial, Commercial, and Institutional Boilers and Process Heaters, as promulgated by the United States Environmental Protection Agency under 40 CFR Part 63, Subpart DDDDD. The final rules found in 40 CFR Part 63, Subpart DDDDD establish national emission standards for hazardous air pollutants (NESHAP), operational limits, work practice standards, and compliance requirements for industrial, commercial, and institutional boilers located at a major source of hazardous air pollutants (HAP).



**Final Permit-to-Install  
Avon Lake Power Plant  
Permit Number: P0120245  
Facility ID: 0247030013  
Effective Date: 4/19/2016**

## **C. Emissions Unit Terms and Conditions**



Final Permit-to-Install  
Avon Lake Power Plant  
Permit Number: P0120245  
Facility ID: 0247030013  
Effective Date: 4/19/2016

1. B010, Boiler #10

Operations, Property and/or Equipment Description:

Coal-fired boiler - 1131 MMBtu/hr

- a) The following emissions unit terms and conditions are federally enforceable with the exception of those listed below which are enforceable under state law only.

(1) None.

- b) Applicable Emissions Limitations and/or Control Requirements

- (1) The specific operation(s), property, and/or equipment that constitute each emissions unit along with the applicable rules and/or requirements and with the applicable emissions limitations and/or control measures are identified below. Emissions from each unit shall not exceed the listed limitations, and the listed control measures shall be specified in narrative form following the table.

|    | Applicable Rules/Requirements   | Applicable Emissions Limitations/Control Measures  |
|----|---|--|
| a. | OAC rule 3745-31-05(D)<br>(Capacity factor restriction to qualify as a coal-fired "limited use boiler" per 40 CFR Part 63, Subpart DDDDD)   | See c)(1) and c)(2).   |
| b. | OAC rule 3745-17-10(C)  | Particulate emissions (PE) shall not exceed 0.1 lb/mmBtu of actual heat input.                                 |
| c. | OAC rule 3745-17-07(A)(1)   | Visible PE from any stack shall not exceed 20% opacity, as a 6-minute average, except as provided by the rule. |
| d. | OAC rule 3745-18-53(B)(2)   | Sulfur dioxide (SO <sub>2</sub> ) emissions shall not exceed 4.65 lbs/mmBtu actual heat input.                 |
| e. | 40 CFR Part 63, Subpart UUUUU - National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units   | See b)(2)f. & h.   |
| f. | 40 CFR Part 63, Subpart DDDDD (40 CFR 63.7480 – 63.7575)<br><br>[In accordance with 40 CFR 63.7500(c) this emissions unit is a limited use boiler subject to the tune-up requirements specified in this section.] | Tune-up requirements specified in Table 3 (40 CFR 63.7540).<br><br>See b)(2)f. & g.                            |



Final Permit-to-Install  
Avon Lake Power Plant  
Permit Number: P0120245  
Facility ID: 0247030013  
Effective Date: 4/19/2016

|    | Applicable Rules/Requirements               | Applicable Emissions Limitations/Control Measures  |
|----|---|--|
| g. | 40 CFR 63.1 – 63.16<br><br>(40 CFR 63.7565) | Table 10 to Subpart DDDDD of 40 CFR Part 63 – Applicability of General Provisions to Subpart DDDDD shows which parts of the General Provisions in 40 CFR 63.1 – 63.16 apply. |

(2) Additional Terms and Conditions

- a. This emissions unit is not subject to the requirements of 40 CFR Part 60, Subpart D (Standards of Performance for Fossil Fuel Fired Generators) or 40 CFR Part 60, Subpart Da (Standards of Performance for Electric Utility Steam Generating Units).
- b. The permittee shall maintain a written quality assurance/quality control plan for the continuous opacity monitoring system, designed to ensure continuous valid and representative readings of opacity and compliance with 40 CFR Part 60, Appendix B, Performance Specification 1. The plan shall include, at a minimum, procedures for conducting and recording daily automatic zero/span checks, provisions for conducting a quarterly audit of the continuous opacity monitoring system, and a description of preventive maintenance activities. The plan shall describe step by step procedures for ensuring accurate operation of the continuous opacity monitoring system on a continuous basis. The quality assurance/quality control plan and a logbook dedicated to the continuous opacity monitoring system must be kept on site and available for inspection during regular office hours.
- c. The continuous opacity monitoring system consists of all the equipment used to acquire data and record opacity.
- d. The permittee shall maintain a written quality assurance/quality control plan for the continuous SO<sub>2</sub> monitoring system, designed to ensure continuous valid and representative readings of SO<sub>2</sub> emissions in units of the applicable standard(s). Except as allowed below, the plan shall follow the requirements of 40 CFR Part 60, Appendix F and 40 CFR Part 75, Appendix B. The quality assurance/quality control plan and a logbook dedicated to the continuous SO<sub>2</sub> monitoring system must be kept on site and available for inspection during regular office hours.

The plan shall include the requirement to conduct relative accuracy test audits for the continuous SO<sub>2</sub> monitoring system in accordance with the frequencies required pursuant to 40 CFR Part 60 and 40 CFR Part 75; or may follow relative accuracy test audit frequency requirements for monitoring systems subject to 40 CFR 75, Appendix B, in lieu of frequencies required in 40 CFR Part 60. In either case, results shall be recorded and reported in units of the applicable standard(s) in accordance with 40 CFR Part 60.



Final Permit-to-Install  
Avon Lake Power Plant  
Permit Number: P0120245  
Facility ID: 0247030013  
Effective Date: 4/19/2016

The plan shall include the requirement to conduct quarterly cylinder gas audits or relative accuracy audits pursuant to 40 CFR Part 60, and linearity checks pursuant to 40 CFR Part 75; however, linearity checks completed pursuant to 40 CFR Part 75, Appendix B, may be substituted for the quarterly cylinder gas or relative accuracy audits required per 40 CFR Part 60.

- e. The continuous emission monitoring system consists of all the equipment used to acquire data to provide a record of emissions and includes the sample extraction and transport hardware, sample conditioning hardware, analyzers, and data recording/processing hardware and software.
- f. The following conditions apply to emissions unit B010 only when the emissions unit is operating as an industrial boiler subject to 40 CFR Part 63, subpart DDDDD. In addition, those conditions do not apply to the emissions unit during periods of operation as an Electric Generating Unit (EGU). Any electric utility steam generating unit that has the capability of combusting more than 25 MW of coal or oil but did not fire coal or oil for more than 10.0 percent of the average annual heat input during any 3 calendar years or for more than 15.0 percent of the annual heat input during any calendar year is not subject to 40 CFR Part 63, Subpart UUUUU.
  - i. This emissions unit is identified as a limited-use boiler and is not subject to the emission limits in Table 2 of the subpart, the operating limits in Table 4 of the subpart, or the energy assessment requirements in Table 3 of the subpart.
  - ii. The limited-use boiler is subject to 5-year tune-up requirements, conducted in accordance with 40 CFR 63.7540(a)(10)(i) through (vi) and Table 3 to the subpart: Each limited-use boiler identified above shall have a federally enforceable average annual capacity factor of no more than 10%.
  - iii. The permittee shall comply with the tune-up requirements specified in 40 CFR Part 63.7540(a)(10)(i) through (vi).
- g. An initial tune-up must be completed for emissions unit B010 no later than the compliance date specified in 40 CFR 63.7495, except as specified in paragraph (j) of 40 CFR 63.7510 section. Following the initial compliance date, tune-ups must be conducted for each boiler within the applicable 5-year schedule as specified in 40 CFR 63.7500(a)-(c), 40 CFR 63.7540(a)(10) through (13), and Table 3 to the subpart, unless alternative work practice standards are approved pursuant to 40 CFR 63.6(g). Each subsequent tune-up must occur no more than 61 months after the previous tune-up. If the boiler is not in operation at the time of its scheduled tune-up, the permittee is not required to perform the tune-up at that time but must complete the tune-up within 30 days after the re-start of the boiler. Units that produce electricity for sale may delay the inspection until the first outage, but may not exceed 36 months from the previous inspection. The frequency of tune-ups shall be based on the frequency identified in Table 3 to the subpart.



Final Permit-to-Install  
Avon Lake Power Plant  
Permit Number: P0120245  
Facility ID: 0247030013  
Effective Date: 4/19/2016

Each tune-up conducted to demonstrate compliance with the requirements of Part 63 Subpart DDDDD shall include the following elements as applicable:

- i. inspection of the burner(s) (and requirement to clean or replace any necessary components);
  - ii. inspection of the flame pattern and requirement to adjust the burner as necessary to optimize the flame pattern, consistent with the manufacturer's specifications if applicable;
  - iii. inspect the air-to-fuel ratio control system to ensure it is correctly calibrated and functioning properly;
  - iv. optimize total emissions of CO, in correlation with any applicable NO<sub>x</sub> standards, consistent with the manufacturer's specification if applicable;
  - v. measure the concentration of CO (in ppm, by volume) and oxygen (in volume percent) in the effluent gas stream, at the high-fire or typical operating load, and both before and after any adjustments (measurements can be made using a portable CO analyzer);
  - vi. maintain records of the tune-up, inspection, and any corrective actions taken; and
  - vii. where more than one type of fuel is used, records of the type and amount of each fuel type burned over the 12 months prior to the tune-up.
- h. On September 5, 2013, the permittee received a Mercury and Air Toxics Standards (MATS) Extension which extends the compliance date of 40 CFR Part 63, Subpart UUUUU to April 16, 2016. Since being subject to 40 CFR Part 63, Subpart UUUUU excludes one from being subject to 40 CFR Part 63, Subpart DDDDD, the permittee shall comply with the requirements and limits of 40 CFR Part 63, Subpart DDDDD for emissions unit B010 and shall be in compliance with this NESHAP no later than April 16, 2016, at the conclusion of the compliance extension for 40 CFR Part 63, Subpart UUUUU.
- i. The above applicable requirements in C.1.b)(1) and C.1.b)(2) are applicable when operating the emissions unit as an auxiliary boiler.
- c) Operational Restrictions
- (1) When operating emissions unit B010 as an auxiliary boiler:
- a. The maximum annual heat input for this emissions unit shall not exceed 990,756 MMBtu, based upon a rolling, 12-month summation of the monthly heat input values. The permittee has sufficient records to demonstrate compliance with the annual heat input limitation upon permit issuance in order to qualify as a "limited-use boiler" per 40 CFR Part 63, Subpart DDDDD.
  - b. The permittee shall perform all maintenance activities as specified per the manufacturer's recommendations. To the extent practicable, the permittee shall





Final Permit-to-Install  
Avon Lake Power Plant  
Permit Number: P0120245  
Facility ID: 0247030013  
Effective Date: 4/19/2016

maintain and operate the boiler, including associated air pollution control equipment, in a manner consistent with good air pollution control practice for minimizing emissions.

d) **Monitoring and/or Recordkeeping Requirements**

(1) The permittee shall maintain monthly records of heat input utilizing one of the following procedures:

a. Coal burn derived heat input:

- i. the fuel usage of coal for emissions unit B010, in pounds;
- ii. the heat input rate for emissions unit B010, in mmBtu (calculated by multiplying d)(1)a by the coal heating value); and
- iii. the rolling, 12-month summation of the monthly heat input rate, in mmBtu.

b. CEMS heat input:

- i. Heat input from a certified CEMS will be used for the 12-month summation of the monthly heat input rate.

(2) The permittee shall maintain on-site, the document of certification received from the U.S. EPA or the Ohio EPA's Central Office verifying that the continuous opacity monitoring system has been certified to meet the requirements of 40 CFR Part 60, Appendix B, Performance Specification 1. The letter/document of certification shall be made available to the Director (the appropriate Ohio EPA District Office or local air agency) upon request.

Each continuous monitoring system consists of all the equipment used to acquire and record data in units of all applicable standard(s), and includes the sample extraction and transport hardware, sample conditioning hardware, analyzers, and data processing hardware and software.

[Authority for term: 40 CFR 60.13 and 40 CFR Part 60, Appendix B]

(3) The permittee shall operate and maintain the continuous opacity monitoring system to continuously monitor and record the opacity of the particulate emissions from this emissions unit. The continuous monitoring and recording equipment shall comply with the requirements specified in 40 CFR Part 60.

The permittee shall maintain records of data obtained by the continuous opacity monitoring system including, but not limited to:

- a. percent opacity on an instantaneous (one-minute) and 6-minute block average basis;
- b. results of daily zero/span calibration checks and the magnitude of manual calibration adjustments;



**Final Permit-to-Install  
Avon Lake Power Plant  
Permit Number: P0120245  
Facility ID: 0247030013  
Effective Date: 4/19/2016**

- c. hours of operation of the emissions unit, continuous opacity monitoring system, and control equipment;
- d. the date, time, and hours of operation of the emissions unit without the control equipment and/or the continuous opacity monitoring system;
- e. the date, time, and hours of operation of the emissions unit during any malfunction of the control equipment and/or the continuous opacity monitoring system; as well as,
- f. the reason (if known) and the corrective actions taken (if any) for each such event in (d) and (e).

[Authority for term: 40 CFR 60.13 and 40 CFR Part 60, Appendix B]

- (4) The permittee shall maintain on-site, the document(s) of certification received from the U.S. EPA or the Ohio EPA's Central Office documenting that the continuous SO<sub>2</sub> monitoring system has been certified to meet the requirements of 40 CFR Part 60, Appendix B, Performance Specifications 2 and 6; and has been certified by U.S. EPA or recommended for certification by Ohio EPA to U.S. EPA under 40 CFR Part 75. The letter(s)/document(s) of certification under Part 60 and certification or recommendation for certification under Part 75 shall be made available to the Director (the appropriate Ohio EPA District Office or local air agency) upon request.

[Authority for term: 40 CFR 60.13; 40 CFR Part 60, Appendix B; and 40 CFR Part 75]

- (5) The permittee shall operate and maintain equipment to continuously monitor and record SO<sub>2</sub> emissions from this emissions unit in units of the applicable standard(s). The continuous monitoring and recording equipment shall comply with the requirements specified in 40 CFR Part 60 and 40 CFR Part 75.

The permittee shall maintain records of all data obtained by the continuous SO<sub>2</sub> monitoring system including, but not limited to:

- a. emissions of SO<sub>2</sub> in parts per million for each cycle time of the analyzer, with no resolution less than one data point per minute required;
- b. emissions of SO<sub>2</sub> in pounds per hour and in units of the applicable standard(s) in the appropriate averaging period;
- c. results of quarterly cylinder gas audits or linearity checks;
- d. results of daily zero/span calibration checks and the magnitude of manual calibration adjustments;
- e. results of required relative accuracy test audit(s), including results in units of the applicable standard(s);
- f. hours of operation of the emissions unit, continuous SO<sub>2</sub> monitoring system, and control equipment;



Final Permit-to-Install  
Avon Lake Power Plant  
Permit Number: P0120245  
Facility ID: 0247030013  
Effective Date: 4/19/2016

- g. the date, time, and hours of operation of the emissions unit without the control equipment and/or the continuous SO<sub>2</sub> monitoring system;
- h. the date, time, and hours of operation of the emissions unit during any malfunction of the control equipment and/or the continuous SO<sub>2</sub> monitoring system; as well as,
- i. the reason (if known) and the corrective actions taken (if any) for each such event in (g) and (h).

All valid data points generated and recorded by the continuous emission monitoring and data acquisition and handling system shall be used in the calculation of the pollutant concentration and/or emission rate over the appropriate averaging period.

[Authority for term: 40 CFR 60.13; 40 CFR Part 60, Appendices B & F; and 40 CFR Part 75]

e) Reporting Requirements

- (1) The permittee shall submit quarterly deviation (excursion) reports that identify the following:
  - a. all exceedances of the rolling, 12-month heat input limitation for emissions unit B010 when operating the emissions unit as an auxiliary boiler.

The quarterly deviation (excursion) reports shall be submitted in accordance with the reporting requirements of the Standard Terms and Conditions of this permit.

- (2) The permittee shall comply with the following quarterly reporting requirements for the emissions unit and its continuous opacity monitoring system:
  - a. Pursuant to the monitoring, record keeping, and reporting requirements for continuous monitoring systems contained in 40 CFR Parts 60.7 and 60.13(h) and the requirements established in this permit, the permittee shall submit reports within 30 days following the end of each calendar quarter to the appropriate Ohio EPA District Office or local air agency, documenting all instances of opacity values in excess of any limitation specified in this permit, 40 CFR Part 60, OAC rule 3745-17-07, and any other applicable rules or regulations. The report shall document the date, commencement and completion times, duration, and magnitude (percent opacity) of each 6-minute block average exceeding the applicable opacity limitation(s), as well as, the reason (if known) and the corrective actions taken (if any) for each exceedance.
  - b. These quarterly reports shall be submitted by January 30, April 30, July 30, and October 30 of each year and shall include the following:
    - i. the facility name and address;
    - ii. the manufacturer and model number of the continuous opacity monitor;



Final Permit-to-Install  
Avon Lake Power Plant  
Permit Number: P0120245  
Facility ID: 0247030013  
Effective Date: 4/19/2016

- iii. a description of any change in the equipment that comprises the continuous opacity monitoring system (COMS), including any change to the hardware, changes to the software that may affect COMS readings, and/or changes in the location of the COMS sample probe;
- iv. the excess emissions report (EER)\*, i.e., a summary of any exceedances during the calendar quarter, as specified above;
- v. the total operating time (hours) of the emissions unit;
- vi. the total operating time of the continuous opacity monitoring system while the emissions unit was in operation;
- vii. the date, time, and duration of any/each malfunction\*\* of the continuous opacity monitoring system, emissions unit, and/or control equipment;
- viii. the date, time, and duration of any downtime\*\* of the continuous opacity monitoring system and/or control equipment while the emissions unit was in operation; and
- ix. the reason (if known) and the corrective actions taken (if any) for each event in (b)(vii) and (viii).

Each report shall address the operations conducted and data obtained during the previous calendar quarter.

\* where no exceedance of the opacity limit has occurred or the continuous monitoring system(s) has/have not been inoperative, repaired, or adjusted during the calendar quarter, such information shall be documented in the quarterly EER report

\*\* each downtime and malfunction event shall be reported regardless of whether there is an exceedance of the opacity limit

[Authority for term: 40 CFR 60.7]

- (3) The permittee shall comply with the following quarterly reporting requirements for the emissions unit and its continuous SO<sub>2</sub> monitoring system:
  - a. Pursuant to the monitoring, record keeping, and reporting requirements for continuous monitoring systems contained in 40 CFR Parts 60.7 and 60.13(h) and the requirements established in this permit, the permittee shall submit reports within 30 days following the end of each calendar quarter to the appropriate Ohio EPA District Office or local air agency, documenting all instances of SO<sub>2</sub> emissions in excess of any applicable limit specified in this permit, 40 CFR Part 60, 40 CFR Part 75, OAC Chapter 3745-18, and any other applicable rules or regulations. The report shall document the date, commencement and completion times, duration, and magnitude of each exceedance, as well as the reason (if known) and the corrective actions taken (if any) for each exceedance. Excess emissions shall be reported in units of the applicable standard(s).



Final Permit-to-Install  
Avon Lake Power Plant  
Permit Number: P0120245  
Facility ID: 0247030013  
Effective Date: 4/19/2016

- b. These quarterly reports shall be submitted by January 30, April 30, July 30, and October 30 of each year and shall include the following:
- i. the facility name and address;
  - ii. the manufacturer and model number of the continuous SO<sub>2</sub> and other associated monitors;
  - iii. a description of any change in the equipment that comprises the continuous emission monitoring system (CEMS), including any change to the hardware, changes to the software that may affect CEMS readings, and/or changes in the location of the CEMS sample probe;
  - iv. the excess emissions report (EER)\*, i.e., a summary of any exceedances during the calendar quarter, as specified above;
  - v. the total SO<sub>2</sub> emissions for the calendar quarter (tons);
  - vi. the total operating time (hours) of the emissions unit;
  - vii. the total operating time of the continuous SO<sub>2</sub> monitoring system while the emissions unit was in operation;
  - viii. results and dates of quarterly cylinder gas audits or linearity checks;
  - ix. unless previously submitted, results and dates of the relative accuracy test audit(s), including results in units of the applicable standard(s), (during appropriate quarter(s));
  - x. unless previously submitted, the results of any relative accuracy test audit showing the continuous SO<sub>2</sub> monitor out-of-control and the compliant results following any corrective actions;
  - xi. the date, time, and duration of any/each malfunction\*\* of the continuous SO<sub>2</sub> monitoring system, emissions unit, and/or control equipment;
  - xii. the date, time, and duration of any downtime\*\* of the continuous SO<sub>2</sub> monitoring system and/or control equipment while the emissions unit was in operation; and
  - xiii. the reason (if known) and the corrective actions taken (if any) for each event in (b)(xi) and (xii).

Each report shall address the operations conducted and data obtained during the previous calendar quarter. Data substitution procedures from 40 CFR 75 are not to be used for showing compliance with the short term OAC 3745-31-05(A)(3) rule-based or NSPS-based limitation(s) in this permit.

\* where no excess emissions have occurred or the continuous monitoring system(s) has/have not been inoperative, repaired, or adjusted during the calendar quarter, such information shall be documented in the EER quarterly report

\*\* each downtime and malfunction event shall be reported regardless of whether there is an exceedance of any applicable limit

[Authority for term: 40 CFR 60.7 and 40 CFR Part 75]

- (4) The permittee shall collect, record, and maintain measurements, data, records, and reports required per 40 CFR Part 75; and shall submit certification, recertification, notifications, applications, monitoring plans, petitions for alternative monitoring systems, electronic quarterly reports, and any other pertinent record and/or report to the Administrator (U.S. EPA), as required by this Part.

[Authority for term: 40 CFR Part 75]

f) Testing Requirements

- (1) Compliance with the Emissions Limitations and/or Control Requirements specified in section b) of these terms and conditions shall be determined in accordance with the following methods:

a. Emission Limitation:

Visible PE from any stack shall not exceed 20% opacity as a 6-minute average, except as provided by the rule.

Applicable Compliance Method:

Ongoing compliance with the opacity limitation contained in this permit, 40 CFR Part 60, and any other applicable standard(s) shall be demonstrated through the data collected as required in the Monitoring and Record keeping Section of this permit; and through demonstration of compliance with the quality assurance/quality control plan, which shall meet the testing and recertification requirements of 40 CFR Part 60.

If required, compliance with visible PE limitation above shall be demonstrated in accordance with Method 9 of 40 CFR Part 60, Appendix A.

b. Emission Limitation:

PE shall not exceed 0.1 lb/mmBtu of actual heat input.

Applicable Compliance Method:

Compliance with the PE limitation above shall be demonstrated based on the results of stack testing as required in f)(2).

c. Emission Limitation:

SO<sub>2</sub> emissions shall not exceed 4.65 lbs/mmBtu actual heat input



Final Permit-to-Install  
Avon Lake Power Plant  
Permit Number: P0120245  
Facility ID: 0247030013  
Effective Date: 4/19/2016

Applicable Compliance Method:

Ongoing compliance with the SO<sub>2</sub> emission limitations contained in this permit, 40 CFR Parts 60 and 75, and any other applicable standard(s) shall be demonstrated through the data collected as required in the Monitoring and Record keeping Section of this permit; and through demonstration of compliance with the quality assurance/quality control plan, which shall meet the testing and recertification requirements of 40 CFR Part 60 and 40 CFR Part 75.

If required, compliance with the SO<sub>2</sub> emission limitation above shall be demonstrated in accordance with Methods 1-4 and 6 of 40 CFR Part 60, Appendix A.

[Authority for term: 40 CFR 60.13; 40 CFR Part 60, Appendices B & F; and 40 CFR Part 75]

- (2) As long as emissions unit B010 is designated as a limited-use boiler per 40 CFR Part 63, Subpart DDDDD, the permittee shall conduct, or have conducted, particulate emission testing to demonstrate compliance with the allowable particulate emission rate in section b)(1)b above in accordance with the following requirements:
- a. The testing of emissions unit B010 as a limited-use boiler shall be conducted on 5 year intervals with the next required test to be performed no later than February 28, 2020.
  - b. Compliance with the allowable mass emission rate for particulate emissions shall be determined in accordance with 40 CFR Part 60, Appendix A, Methods 1 through 5 and the procedures in OAC rule 3745-17-03(B)(9).
  - c. The test(s) shall be conducted while the emissions unit is operating at or near its maximum capacity.
  - d. Not later than 30 days prior to the proposed test date(s), the permittee shall submit an "Intent to Test" notification to the Ohio EPA Northeast District Office. The "Intent to Test" notification shall describe in detail the proposed test methods and procedures, the emissions unit operating parameters, the time(s) and date(s) of the test(s), and the person(s) who will be conducting the test(s). Failure to submit such notification for review and approval prior to the test(s) may result in the Ohio EPA Northeast District Office's refusal to accept the results of the emission test(s).
  - e. Personnel from the Ohio EPA Northeast District Office shall be permitted to witness the test(s), examine the testing equipment, and acquire data and information necessary to ensure that the operation of the emissions unit and the testing procedures provide a valid characterization of the emissions from the emissions unit and/or the performance of the control equipment.



**Final Permit-to-Install**  
**Avon Lake Power Plant**  
**Permit Number: P0120245**  
**Facility ID: 0247030013**  
**Effective Date: 4/19/2016**

- f. A comprehensive written report on the results of the emissions test(s) shall be signed by the person or persons responsible for the tests and submitted to the Ohio EPA Northeast District Office within 30 days following completion of the test(s). The permittee may request additional time for the submittal of the written report, where warranted, with prior approval from the Ohio EPA Northeast District Office.

[Authority for term: OAC rule 3745-17-03(B)(9)]

- g) **Miscellaneous Requirements**
  - (1) None.



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**Case No(s). 14-1717-GA-BLN**

Summary: Response Moore Road LLC's Response in Opposition to NRG's Motion to Extend the Duration of the Certificate for the Construction, Operation and Maintenance of a Natural Gas Pipeline, Metering Station, and Regulating Station in Lorain County, Ohio electronically filed by Robert W. McIntyre on behalf of Moore Road, LLC