

BEFORE

THE POWER SITING BOARD OF THE STATE OF OHIO

In the Matter of the Application of Duke)
Energy Madison, LLC for a Certificate of)
Environmental Compatibility and Public) Case No. 98-1603-EL-BGN
Need to Construct a Merchant Power Plant)
in Butler County, Ohio.) 0043

OPINION, ORDER, AND CERTIFICATE

The Ohio Power Siting Board (Board) coming now to consider the above-entitled matter, having appointed its administrative law judge to conduct a public hearing, having reviewed the report of investigation and the stipulation, and being otherwise fully advised, hereby issues its opinion, order, and certificate in this case as required by Section 4906.10, Revised Code.

APPEARANCES:

Bricker & Eckler LLP, by Sally W. Bloomfield, 100 South Third Street, Columbus, Ohio 43215-4291, on behalf of Duke Energy Madison, LLC.

Betty D. Montgomery, Attorney General, by Duane W. Luckey, Section Chief, William L. Wright and Robert A. Abrams, Assistant Attorneys General, Public Utilities Section, 180 East Broad Street, Columbus, Ohio 43215-3793, and Margaret A. Malone and Michael E. Idzkowski, Assistant Attorneys General, Environmental Enforcement Section, 30 East Broad Street, Columbus, Ohio 43215, on behalf of the Staff of the Ohio Power Siting Board.

OPINION:

All proceedings before the Board are conducted in accordance with the provisions of Chapter 4906, Revised Code, and Chapter 4906, Ohio Administrative Code (O.A.C.). On December 11, 1998, Duke Energy Madison, LLC (Duke or applicant) filed an application for a certificate of environmental compatibility and public need to construct an electric generating facility (hereinafter referred to as the "Madison Generating Station" or "project") in Madison Township, Butler County, Ohio (Applicant Ex. 1). The project will provide electric peaking capacity to Ohio and the surrounding region. Duke is a Texas corporation and a "person" within the definition of Section 4906.01(A), Revised Code. The project is a major utility facility as defined in Section 4906.01(B)(1), Revised Code.

On December 10, 1998, the applicant was granted a waiver of certain filing requirements under Rule 4906-1-03, O.A.C., including a waiver of the requirement to file an application two years prior to commencement of construction under Section 4906.06(A)(6), Revised Code. On January 19, 1999, the Dayton Power and Light

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Company (DP&L) filed a petition to intervene in this proceeding. On January 22, 1999, the Board notified Duke that, pursuant to Rule 4906-1-14, O.A.C., the application had been certified as being complete, whereupon copies of the application were served upon local government officials. On February 3, 1999, DP&L's motion to intervene was granted by the administrative law judge. In accordance with Rule 4906-5-08, O.A.C., public notice was published in The Journal News of Hamilton and The Middletown Journal, newspapers of general circulation in Butler County. Proof of publication was filed with the Board on February 17, 1999 (Applicant Ex. 3). On March 26, 1999, DP&L filed a motion to modify its motion to intervene indicating that the issues it had raised in its petition to intervene had been resolved. DP&L stated its intention to remain a party in this case for information purposes only and to participate further only if issues of importance to DP&L arose. The staff of the Board conducted an investigation concerning the environmental and social impacts of the proposed project and filed its report of investigation with the Board on March 31, 1999 (Staff Ex. 1).

A public hearing was held on April 15, 1999, in Middletown, Ohio, where no members of the public presented testimony regarding this matter. The adjudicatory hearing was held in Columbus, Ohio on April 19, 1999, at which Staff and Duke indicated that they had negotiated a settlement of all issues and would file a stipulation in this matter. On August 22, 1999, the staff and applicant filed a joint stipulation and recommendation (stipulation) (Jt. Ex. 1) which, if adopted, would resolve all matters at issue.

I. Proposed Facility:

The application before the Board proposes construction of an electric generating facility in Madison Township, Butler County, Ohio. The Madison Generating Station will be capable of producing a nominal 640 MW of electric power. A total of eight General Electric (GE) Frame-7EA combustion turbine generators, each capable of generating a nominal 80 MW, will provide electric peaking capacity to Ohio and the surrounding region. The combustion turbine generators will function in a simple-cycle mode. These turbines will primarily operate on natural gas. The applicant has filed for a permit based on 2,500 hours of operation with natural gas, and also on 2,000 hours with natural gas and 500 hours with transportation grade diesel fuel. The applicant hopes to commence construction by July 1999. The applicant has proposed to commence commercial operation of the project by June 1, 2000.

The applicant has selected two potential sites for their proposed generation facility. Both sites are located adjacent to Cincinnati Gas & Electric's (CG&E) existing Woodsdale generation station. The preferred site would share Woodsdale's northern property line and the alternate site would be located on the western boundary of the Woodsdale property. Both sites would also be located next to the Miller Brewing Company's wastewater treatment facilities, in an area zoned for industrial

development. Currently, land use within the industrial zone is being utilized for agricultural production of row crops. Terrain varies from gently sloping to flat.

The preferred site would utilize approximately 30 acres for construction and operation of the generating facility. In addition, another six acres will be needed for the access road and natural gas pipeline. The preferred site is located in close proximity to an existing 345 kV electric transmission line and substation. The necessary electrical interconnection would require less than 1,200 feet of transmission line.¹ A nearby natural gas transmission line would be tapped to provide service for the preferred site. Approximately 3,500 feet of natural gas transmission line would have to be installed, with the majority of the new line paralleling the entry road to the plant.

The alternate site would occupy approximately 27 acres. Necessary electrical and natural gas transmission interconnections would be considerably longer than those required for the preferred site. A 345 kV electric transmission line would traverse approximately 4,000 feet. To establish the gas supply, approximately 6,000 feet of pipeline would be required. The likely route for the natural gas transmission line would parallel Wayne Madison Road.

The parties stipulated that the facility should be installed on the applicant's preferred site as described in the application.

II. Certification Criteria:

Pursuant to Section 4906.10(A), Revised Code, the Board shall not grant a certificate for the construction, operation, and maintenance of a major utility facility, either as proposed or as modified by the Board, unless it finds and determines:

- (1) the basis of the need for the facility;
- (2) the nature of the probable environmental impact;
- (3) that the facility represents the minimum adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives, and other pertinent considerations;
- (4) in the case of an electric transmission line, that such facility is consistent with regional plans for expansion of the electric power grid of the electric systems serving this state and interconnected utility systems, and that such facilities

¹ Although the applicant originally proposed a 400 foot transmission line to accomplish the necessary electrical interconnection, Duke has modified its proposal to construct an approximately 1,200 foot line. Construction of this transmission line is the subject of Case No. 99-262-EL-BLN, and staff review and action regarding the transmission line will occur in that docket.

will serve the interests of electric system economy and reliability;

- (5) that the facility will comply with Chapters 3704, 3734, and 6111, Revised Code, all rules and standards under those chapters, and under Sections 1501.33, 1501.34, and 4561.32, Revised Code;
- (6) that the facility will serve the public interest, convenience, and necessity;
- (7) the probable impact of the facility on the viability as agricultural land of any land in an existing agricultural district established under Chapter 929 of the Revised Code that is located within the site and alternative site of the proposed major facility; and
- (8) that the facility incorporates maximum feasible water conservation practices as determined by the Board, considering available technology and the nature and economics of various alternatives.

The application addresses each of the criteria set forth above, as does the staff's report of investigation. Each criteria is discussed below.

A. Basis of Need:

Duke is proposing to build the Madison Generating Station ("Madison"), a 640 MW peaking generating facility, adjacent to CG&E's Woodsdale plant in Butler County, Ohio. Unlike most other electricity generating projects which have come before the Board, the project is not directly related to a specific need identified by an electric utility. Rather, the project is being proposed for construction by an independent power producer who believes Madison Generating Station will help meet an urgent and well-documented need for electric peaking capacity in Ohio and the East Central Area Reliability Region ("ECAR").

The Madison Generating Station is an electricity resource, which applicant wants to develop and for which applicant is willing to accept all risk. The project is being financed privately, and applicant does not have contracts to sell power. According to the staff report, if this facility is sited, there is little risk to Ohio ratepayers since Ohio's electric utilities will have no money invested in and no obligation to purchase energy from the project.

Staff believes the application does establish there is a regional need for capacity. But the staff emphasizes that establishing there is a regional need for capacity and

energy from the Madison Generating Station does not mean that such a need exists for any specific Ohio utility. Rather, the resource options to be included in the Integrated Resource Plan ("IRP") of an Ohio electric utility will be determined in an IRP proceeding before the Public Utilities Commission of Ohio (Commission).

As part of the stipulation, the staff and the applicant agree that adequate data on the project has been provided to determine the basis of need for the facility as required by Section 4906.10(A)(1), Revised Code.

B. Nature of Probable Environmental Impact and Minimum Adverse Environmental Impact:

Sections 4906.10(A)(2) and (3), Revised Code, require the Board to determine the nature of the probable environmental impact and whether the proposed facility represents the minimum adverse environmental impact, considering the state of available technology, the nature and economics of the various alternatives, and other pertinent considerations. The staff has reviewed the environmental information contained in the record compiled to date in this proceeding and has made site visits to the project area. As a result, the staff has found the following with regard to the nature of the probable environmental impact:

- (1) The project involves the construction of a 640 MW peaking facility consisting of eight simple cycle combustion turbines in Madison Township, Butler County, Ohio. In addition, two 1.5 MW emergency black-start diesel generators and a small diesel firewater pump will be installed at the site. The gas turbines are high-efficiency GE 7-EA units, with low NO_x combustors.
- (2) The proposed preferred site contains approximately 30 acres of land and is located adjacent to the Woodsdale Generation Station, along the northern property line. The alternate site contains approximately 27 acres and is also adjacent to the Woodsdale Generation Station on the western boundary.
- (3) The underlying geology of the area encompassing both the preferred and alternate site is considered suitable for development of this project. The bedrock is less than 35 feet below the surface, overlain by glacial tills and loose deposits. Test borings at the preferred site indicated that an aquifer was within four to ten feet of the surface. This condition is typical of impervious soil layers at shallow depths that impound percolated rainwater. United States Geological Service (USGS) topographical maps, for the Madison area, project the sole source aquifer to be 10 feet to 45 feet below the bottom of the deepest concrete foundation.
- (4) The vegetative survey revealed that most of the preferred site is under cultivation for corn and winter wheat. The only non-cultivated soil is the fencerow. The lands south and west of the preferred site are industrial

properties maintained as grass lawns. North and east of the property, the land is used for agriculture purposes.

- (5) During construction, volatile organic compounds, sulfur dioxide (SO₂), carbon monoxide (CO), nitrous oxides (NO_x), particulate matter (PM₁₀), and fugitive dust will be generated by equipment and earth-disturbing activities.
- (6) The applicant submitted an application for a Permit to Install an Air Pollutant Source and a Prevention of Significant Deterioration Analysis for the preferred site to the Ohio Environmental Protection Agency (OEPA) on December 18, 1998. Analyses were based on 2,500 hours of operation for each of the eight units fired on natural gas, and also based on 2,000 hours of operation on natural gas with another 500 hours of operation on fuel oil (transportation-grade diesel fuel).
- (7) Each gas turbine will be equipped with high-efficiency GE dry low NO_x burners, which maintain NO_x emissions below 15 parts per million by volume dry (ppmvd). Water injection will be used to control NO_x emission to 42 ppmvd when fired with fuel oil.
- (8) The proposed source of process water to be used for NO_x control will be obtained from one of the two neighboring industries. Wastewaters will be discharged into the Butler County Regional Wastewater System (BCRWS).
- (9) Potable water will be obtained from the local public water supply system. Sanitary wastewater will be discharged to the BCRWS. The expected discharges from the proposed station fall within the untapped capacity of the LeSourdsville plant.
- (10) The stormwater runoff and erosion control plan is now being designed. The anticipated date of completion is May of 1999. Simultaneously, a complete construction Stormwater Pollution Prevention Plan (SWPPP) will be prepared. The staff has inspected the site and does not expect any unusual conditions, as the land is flat to gently rolling with adequate drainage. Staff will review the plan before construction commences.
- (11) The Phase I Archaeological Investigation for the preferred site was completed in December of 1998. Survey of the proposed site included both surface reconnaissance and some shovel testing. No cultural resources were encountered at the preferred site. A Phase I Archaeological Investigation was not performed for the alternate site. If the alternate site is selected, then a Phase I Archaeological Investigation will be required.
- (12) A review of the National Register of Historic Places revealed that the Christian Ausberger Amish/Mennonite Settlement District surrounds but apparently

does not include the preferred site. The alternate site appears to be located between several eligible properties in the Ausberger District.

- (13) The preferred site is in an enterprise (industrial) zone. The land is now used for agricultural purposes. The site has been designed for the smallest footprint possible to accommodate the buildings and structures.
- (14) The selection of either site will not require the acquisition of any private residences nor the removal of any existing structures.
- (15) Neither site is expected to have a significant impact on existing recreational areas.
- (16) Negative impacts from noise levels are not likely to be significant at either site. The proximity to Woodsdale Generation Station will mask the noise to the south. The operational noise level is expected to be lower than the existing ambient noise level at the closest receptor.
- (17) The nearest residential land use to the preferred site is approximately 3,000 feet away. The nearest residential land use to the alternate site is approximately 1,500 feet away.
- (18) There are no commercial land uses within a one-mile radius of the preferred site.
- (19) The estimated cost of this project is \$192,000,000, including capital and intangible costs.
- (20) The preferred site is more consistent than the alternate site with future land use planning. Potential land use conflicts are minimized by siting the new generation facility adjacent to the Woodsdale Generation Station. Selection of the alternate site would require considerably longer electrical and gas interconnections, thus increasing the level of potential land use conflicts and disruptions in the future.

The staff and applicant have stipulated that adequate data on the project have been provided to determine both the nature of the probable environmental impact as required by Section 4906.10(A)(2), Revised Code, and that the preferred site contained in the application represents the minimum adverse environmental impact, considering the available technology and nature and economics of the various alternatives, and other pertinent considerations as required by Section 4906.10(A)(3), Revised Code.

The staff has studied the applicant's description of the ecological, social, and economic impacts, which would result from the construction, and operation of the

facility. In addition, the staff conducted site visits to the project area. Similar construction methods will be employed at both the preferred site and the alternate sites. The preferred site would require considerably shorter electric and natural gas interconnections. The electric transmission line would be approximately 1,200 feet for the preferred site. The natural gas line would be approximately 3,500 feet and would parallel the entry road to the plant. Only one additional landowner would be impacted by the pipeline other than the landowner already impacted by the plant site. For the alternate site, the natural gas line would be installed along side a heavily traveled highway and would be 6,000 feet in length. The natural gas line for the alternate site also would impact several additional landowners and one industrial facility.

The land use for both sites is agricultural. However, the surrounding area has been zoned for industrial use. Local geological features are similar at both sites. Neither site should present difficulties in constructing the plant. Although neither site would yield significant aesthetic impacts, the alternate site is closer to a residence and a major road. Thus the alternate site does result in a slightly greater aesthetic impact. Neither site would require the removal of any residence or structures.

The construction and operation of either site is not expected to produce any significant adverse impacts to rare, threatened or endangered species, flora or fauna. There are no wetlands on either site. Two endangered species are listed in the general area, the running buffalo clover and the Indiana bat. Both sites have been extensively farmed for most of the last 200 years and hence the likelihood that running buffalo clover exists is extremely rare. All fencerows will be maintained intact. Should temporary access be required, that fencerow will be restored. The sites are somewhat removed from open water sources and there are no trees to be removed, eliminating any threat to the Indiana bat from either site. During construction, traffic will have minor interruptions, as there will be heavy truck traffic for short periods of time. The road leading to plant access road for the preferred site is narrow. Some traffic control will be needed, but the staff considers this minor. In conclusion, social and environmental impacts are essentially similar for both sites.

The staff and applicant have stipulated that, as required by Section 4906.10(A)(3), Revised Code, the record establishes that the Madison Generating Station represents the minimum adverse environmental impact considering the state of technology and the nature and economics of the various alternatives, and other pertinent considerations.

C. Compliance with Section 4906.10(A)(4), Revised Code:

Section 4906.10(A)(4), Revised Code, requires that the facility is consistent with regional plans for expansion of the electric power grid of the electric systems serving this state and interconnected utility systems and that the facility will serve the interests of electric system economy and reliability.

The applicant requested certification for eight 80 MW generating units at the Madison Generating Station. However, the application contained a load-flow study for only four 80 MW generating units. The load-flow study was conducted for the projected 1999 summer peak load conditions and used ECAR's 1997 base case transmission model. Details of the CG&E transmission system were added. This study was based upon the condition that a total of 320 MW was to be sold and exported to a northern state utility from the Madison Generating Station. The results of this study indicated that, in general, the impact of the Madison Generating Station on the CG&E transmission system will be minimal. The only facilities that experience a significant change in power are those within the immediate vicinity of the Madison Generating Station.

The applicant submitted a supplement to the application on March 22, 1999, clarifying its operational intentions at the project. These were further explained in a memorandum of understanding (MOU) between DP&L and Duke, as well as in discussion with the staff. Since Madison will be utilized as a peaking facility, Duke does not intend to contract for long-term firm transmission service. As the MOU states, Duke agrees to acquire Available Transmission Capacity (ATC) through Open Access Same-Time Information System (OASIS) for firm and/or non-firm transmission service. Only after the transmission services are determined to be available through OASIS, will the applicant generate power. Generation at the proposed Madison facility will be curtailed or shut down if the necessary transmission service is not available or results in overloading the transmission system. These practices are consistent with the Federal Energy Regulatory Commission (FERC) Order 888 and 889 specifications for transmission service and OASIS. The applicant has acknowledged its full awareness to accept responsibility for all business risks in this regard.

The staff and applicant stipulate that, based on the fact that application intends to take transmission service based upon availability as posted under the OASIS system or any successor system, the requirements of Section 4906.10(A)(4), Revised Code are met.

D. Compliance with Section 4906.10(A)(5), Revised Code:

Section 4906.10(A)(5), Revised Code, requires that the Board find that the proposed facility will comply with Chapters 3704, 3734, and 6111, Revised Code, concerning air and water permits and solid waste disposal, and all rules and standards adopted thereunder, and under Sections 1501.33, 1501.34, and 4561.32, Revised Code. The staff has reviewed the applicant's description of the compliance requirements under Revised Code Chapters 3704, 3734, and 6111, for the proposed facility at the preferred site. In addition, the staff has investigated the compliance requirements of the proposed facility under section 1501.33 and 1501.34 of the Revised Code.

The applicant has submitted an application for a permit to install (PTI) an air contaminate source and a Prevention of Significant Deterioration New Source Analysis for the preferred site to the OEPA on December 18, 1998. The permit application is currently under review. The applicant would be required to obtain a permit to operate in addition to the PTI. The applicant proposed Best Available Control Technology (BACT) based on 2,500 hours of operation for each of the eight turbines fired on natural gas. In addition, the applicant submitted data for 2,000 hours of firing on natural gas and 500 hours of transportation grade diesel fuel for all eight turbines. The water waste stream from the plant operation and the sanitary waste will be discharged to the local publicly owned treatment works (POTW). The application indicates that all solid waste generated by site preparation, facility construction and facility operation will be disposed of in accordance with all applicable regulations.

The staff and applicant stipulate that, in accordance with Section 4906.10(A)(5), Revised Code, the record establishes that the Madison Generating Station will comply with Chapters 3704, 3734, and 6111, Revised Code, and all rules and standards adopted thereunder and under Section 4561.32, Revised Code.

E. Consideration of Section 4906.10(A)(6), Revised Code:

Section 4906.10(A)(6), Revised Code, requires that the Board find that the facility will serve the public interest, convenience, and necessity. Staff finds that the project will serve the public interest, convenience and necessity by providing reliable electrical generation when needed. A review of several independent studies demonstrates that ECAR region, including Ohio is in need of additional generation capacity. Reserve margins are at historical lows. In addition, as was previously discussed, the facility could have a detrimental impact upon the regional transmission system; however, the applicant's proposed operation of the facility alleviates any negative impacts. The presence of the new peaking facility will help stabilize the power supply situation and help ensure regional reliability. The plant is a merchant plant and will only generate revenue when generating electricity at competitive rates. Since 1990, merchant plants have provided approximately one half of all new capacity in the United States. This will be the first merchant plant sited in Ohio.

The applicant has discussed noise, aesthetics, health, and safety considerations in the application. The nearest residence to the preferred site is approximately 3,000 feet away. The noise should be attenuated to near existing background levels. The sources of existing sound are the Woodsdale generation units, Miller Brewery traffic and gas regulator valve across the road from the closest residence, in addition to the normal local traffic. Elevated electric and magnetic fields are confined to the site and will be attenuated to near background levels at the battery limits, except near the 345 kV transmission line. The fields generated by the existing double 345 kV will be exceedingly higher than the fields generated by the Duke-Madison generating station. The applicant will comply with safety standards set by the Occupational Safety and Health Administration (OHSA), the Commission, and the National Electrical Safety

Code.

The parties stipulate that the record establishes that the proposed facility will serve the public interest, convenience, and necessity.

F. Consideration of Section 4906.10(A)(7), Revised Code:

The applicant notes that the preferred site is currently designated as agricultural district land. The construction and operation of the proposed generating facility would remove 36 acres from agricultural production. However, the site area is also designated as an industrial enterprise zone. The applicant has designed the generating facility to occupy the smallest possible footprint, thus minimizing the amount of acreage required. Also, the preferred site requires only minimal electrical and natural gas interconnections. Therefore, no agricultural areas outside of the preferred site would be adversely affected in any significant manner. The alternate site would require significantly longer electrical and natural gas interconnections, thus posing a greater impact on agricultural land use.

In performing an assessment of the proposed project on agricultural district land, the staff has evaluated potential impacts on agricultural production. Both direct and indirect impacts to farmland have been reviewed. Direct impacts include: the taking of farmland for project use, the purchase of easements for right-of-way or access, the destruction of field drainage systems and the placement of structures and associated equipment in agricultural fields that require a change in cultivation patterns or access. Indirect impacts include: loss of crop productivity due to soil disturbance and redistribution, the migration of undesirable plant species and loss of market value for farmland.

The staff and applicant stipulate that record establishes that the impact of the proposed facility on the viability of existing agricultural districts has been determined for the facility.

G. Consideration of Section 4906.10(A)(8), Revised Code:

The proposed facility will use small amounts of water. Water will be needed for sanitary purposes and the cleaning of the equipment, periodically. Process water will be needed only if diesel fuel is utilized. The water will be obtained from neighboring industrial sources. No surface or ground water resources will be directly used. The proposed facility will not require new wells. The staff and applicant stipulate that the proposed facility will comply with Section 4906.10(A)(8), Revised Code.

III. CERTIFICATE OF ENVIRONMENTAL COMPATIBILITY AND PUBLIC NEED:

In addition to the stipulated matters discussed above, the staff and the applicant have agreed that a certificate of environmental compatibility and public need for the

proposed project using the preferred site should be issued to the applicant and conditioned as follows:

- (1) That the facility be installed on the applicant's preferred site as described in the application filed on December 11, 1998.
- (2) That the applicant shall utilize the equipment described in the application in Section 4906-13-02(B).
- (3) That the applicant shall utilize the mitigative measures described in the application, unless otherwise modified by conditions to the certificate or applicable federal and state permits.
- (4) That the applicant shall properly install erosion and sedimentation control measures at the project site. All such erosion control measures shall be inspected after each rainfall event, promptly repaired, and maintained until permanent vegetative cover has been established on disturbed soils. The applicant shall submit the Stormwater Pollution Prevention Plan to the staff for review and acceptance.
- (5) That during construction of the facility, the applicant shall seed all disturbed soil within seven days of final grading with a seed mixture acceptable to the appropriate County Cooperative Extension Service. Denuded areas including spoils piles shall be seeded and stabilized within seven days if they will be undisturbed for more than 45 days. Reseeding shall be done within several days of emergence of seedlings as necessary until vegetation in all areas has been established.
- (6) That the applicant shall not dispose of excess subsoil, excavated rock, and any bedding material during or following construction of the facility by spreading the material on agricultural land, wetlands, flood plains, and other similar sensitive areas.
- (7) That prior to construction, the applicant shall obtain all applicable permits and authorizations as required by federal and state entities at any location where such permit or authorization is required, including an NPDES general permit for stormwater management and a permit to install Air Contaminate Source(s), to be obtained through the OEPA. A copy of each permit or authorization, including terms and conditions, shall be provided to the Board staff within seven days of receipt.
- (8) That the applicant shall minimize to the extent practicable, any damage to field tile drainage systems resulting from construction and operation of the facility. Damaged systems shall be repaired by the applicant to maintain original drainage before construction.

- (9) That no disturbances will occur to any fencerow. If, during construction, it is determined such disturbance may be necessary, the applicant will submit to staff for review and acceptance a report describing the nature of impact to the habitat and the plan for restoration.
- (10) That the applicant shall obtain permission to acquire the necessary services for water and sewer privileges from existing systems and any necessary PTI before constructing the facility. Should such permission not be granted and the necessary PTI not be obtained, the applicant shall supply an alternative plan for acquiring water and sewer services to the Board staff for review and acceptance.
- (11) That the Madison Generating Station shall be operated in accordance with regional operating guidelines established by ECAR for generating plants within the ECAR region and in accordance with any and all agreements that it has entered into with interconnected transmission providers.
- (12) That Duke will seek and contract for transmission service through the Internet-provided OASIS as specified in FERC Orders 888, 889, and any subsequent related FERC orders, or through any successor OASIS system; (b) that Duke shall fully comply with the open access FERC approved transmission tariffs of all transmission providers that Duke has contacted with, including all applicable contract curtailment provisions; (c) that Duke shall comply with any applicable FERC approved transmission loading relief procedures issued by or through the NERC; (d) that Duke acknowledges the ability of CG&E, through its Woodsdale substation, to disconnect Duke's generation from CG&E's transmission system where Duke fails to or is unable to make required reductions in accordance with applicable tariff provisions.
- (13) That prior to construction, the applicant shall coordinate with Region V of the USEPA on potential impacts to aquifers. If any aquifer is defined as a sole source aquifer, the applicant will follow the USEPA's guidelines. The applicant will promptly report all findings to the Board staff.
- (14) That the applicant shall provide to the staff the following information as it becomes known:
 - (a) The date on which construction will begin;
 - (b) The date on which construction was completed; and
 - (c) The date on which the facility began commercial operation.
- (15) That at least 30 days before construction begins, the applicant shall submit to the staff engineering drawings that will show the location of the foundation and

each of the major components of the certificated facility, and as they become available shall provide updated drawings with sufficient detail to enable the staff to determine that the final project design is in compliance with the terms of the certificate.

- (16) That the certificate shall become invalid if construction of the proposed facility has not commenced within five years of the date of journalization of the certificate.

IV. CONCLUSION:

The staff and applicant agree that the record of evidence is sufficient for the Board to issue a certificate for the proposed facility (Jt. Ex. 1, at 2). Although not binding upon the Board, stipulations are given careful scrutiny and consideration, particularly where no party is objecting to the stipulation. Based on the application, staff investigation and report, testimony presented, stipulation and hearings, the Board finds that all the criteria established in Section 4906.10(A), Revised Code, are satisfied for the construction, operation, and maintenance of the project in the preferred location, subject to the conditions set forth by the staff. Accordingly, the Board adopts the stipulation and hereby issues a certificate of environmental compatibility and public need to construct the Madison generating station located in Madison Township, Butler county, Ohio, subject to the conditions listed in Section III of this order.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

- (1) Duke is a limited liability company organized under the laws of the state of Delaware as a merchant power plant developer.
- (2) The proposed Madison Generating station is a major utility facility as defined in Section 4906.01(B)(1), Revised Code.
- (3) On December 10, 1998, Duke's waiver request of certain filing requirements under Rule 4906-1-03, O.A.C., was granted.
- (4) On January 19, 1999, DP&L filed a motion to intervene.
- (5) On January 22, 1999, the application was certified as complete, with an effective filing date of February 5, 1999.
- (6) Duke caused public notice of the certificate application to be published in newspapers of general circulation in Butler County in accordance with Rule 4906-5-07, O.A.C.

- (7) By entry of February 3, 1999, DP&L's motion to intervene was granted.
- (8) Proof of publication was filed with the Board on February 17, 1999.
- (9) On March 26, 1999, DP&L filed a motion to modify its motion to intervene indicating that the issues it had raised in its petition to intervene had been resolved, and it intended to participate further only for informational purposes.
- (10) The staff's investigation report was filed on March 31, 1999.
- (11) The public hearing was held on April 15, 1999, in Middletown, Ohio.
- (12) The adjudicatory hearing was held on April 19, 1999.
- (13) Duke's proposed project is the construction of an electric generating facility in Madison Township, Butler County, Ohio.
- (14) Adequate data as to the proposed facility has been provided to make the determinations required by Sections 4906.10(A)(1) through (8), Revised Code.
- (15) Duke's application for a certificate fully complies with the requirements of Chapter 4906-15, O.A.C.
- (16) The record establishes the need for the facility under Section 4906.10(A)(1), Revised Code.
- (17) The record establishes the nature of the probable environmental impact of the proposed project under Section 4906.10(A)(2), Revised Code.
- (18) The record establishes that the Madison Generating Station represents the minimum adverse environmental impact, considering the state of available technology, the nature and economics of the various alternatives, and other pertinent considerations, under Section 4906.10(A)(3), Revised Code.
- (19) Based on the fact that Duke intends to take transmission service based upon availability as posted under the OASIS

system or any successor system, the requirements of Section 4906.10(A)(4), Revised Code, are met.

- (20) The record establishes, as required by 4906.10(A)(5), Revised Code, that construction of the proposed Madison Generating Station on the preferred site will comply with Chapters 3704, 3734, and 6111, Revised Code, all rules and standards adopted thereunder, and under Sections 1501.33, 1501.34, and 4561.32, Revised Code.
- (21) The record establishes that the Madison Generating Station will serve the public interest, convenience, and necessity under Section 4906.10(A)(6), Revised Code.
- (22) The facility's impact of the viability as agricultural land of any land in an existing agricultural district has been determined under Section 4906.10(A)(7), Revised Code.
- (23) The facility will comply with water conservation practices under Section 4906.10(A)(8), Revised Code.
- (24) Based upon the record in this case, a certificate of environmental compatibility and public need should be issued to Duke for the construction, operation, and maintenance of the Madison Generating Station at the preferred site.

ORDER:

It is, therefore,

ORDERED, That the stipulation is approved in its entirety. It is, further,

ORDERED, That a certificate of environmental compatibility and public need for the above-captioned project is hereby issued for the construction, operation, and maintenance of such facility. It is, further,

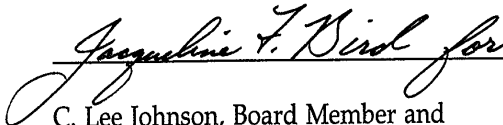
ORDERED, That the certificate shall contain the conditions set forth in Section III of this order. It is, further,

ORDERED, That a copy of this opinion, order, and certificate be served upon all parties of record.

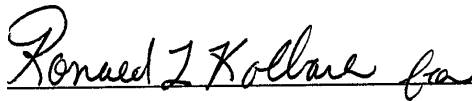
THE OHIO POWER SITING BOARD



Alan R. Schriber, Chairman of the
Public Utilities Commission of Ohio

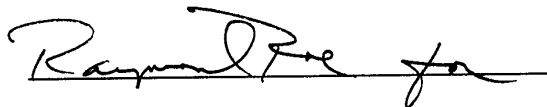


C. Lee Johnson, Board Member and
Director of the Ohio Department
of Development



Samuel W. Speck, Board Member
and Director of the Ohio Department
of Natural Resources

Lou Ellen Fairless, Board Member
and Director of the Ohio Department
of Health



Christopher Jones, Board Member and
Director of the Ohio
Environmental Protection Agency

98-1603-EL-BGN

-18-



Fred L. Dailey, Board Member and
Director of the Ohio Department
of Agriculture

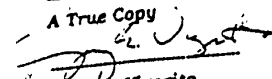
Stephen A. Sebo, Board
Member and Public Member

SEF/jkg

Entered in the Journal

MAY 24 1999

A True Copy



Gary E. Vigorito
Secretary

SERVICE NOTICE

PAGE 1

CASE NUMBER 98-1603-EL-BGN
CASE DESCRIPTION DUKE ENERGY POWER SERVICES
DOCUMENT SIGNED ON May ²⁴25, 1999
DATE OF SERVICE _____

PERSONS SERVED

PARTIES OF RECORD

ATTORNEYS

APPLICANT

DUKE ENERGY POWER SERVICES

SALLY W. BLOOMFIELD
BRICKER & ECKLER
100 SOUTH THIRD STREET
COLUMBUS, OH 43215

INTERVENOR

DAYTON POWER & LIGHT COMPANY
P.O. BOX 8825
DAYTON, OH 45401

EDWARD N. RIZER
DAYTON POWER & LIGHT COMPANY
P.O. BOX 8825
DAYTON, OH 45401

HERTZEL SHAMASH
SYSTEM PLANNING
DAYTON POWER & LIGHT COMPANY
P.O. BOX 8825
DAYTON, OH 45401

----- INTERESTED PARTIES -----

ALAN DANIEL
MADISON TOWNSHIP TRUSTEE
5610 W. ALEXANDRIA RD.
MIDDLETOWN, OH 45042

NONE

CHARLES R. FURMON, VICE PRES.
BUTLER COUNTY BOARD OF COMMISSIONER
130 HIGH STREET
HAMILTON, OH 45011-2759

NONE

COURTNEY B. COMBS, PRESIDENT NONE
BUTLER COUNTY COMMISSIONER
130 HIGH STREET
HAMILTON STREET, OH 45011-1759

DOUGLAS J. BEAN, DIR. NONE
MIDDLETOWN LIBRARY
125 SOUTH STREET
MIDDLETOWN, OH 45044

DWIGHT WALTER NONE
MADISON TOWNSHIP TRUSTEE
5610 W. ALEXANDRIA RD.
MIDDLETOWN, OH 45042

GERALD COTTONGIM NONE
MADISON TOWNSHIP TRUSTEE
5610 W. ALEXANDRIA RD.
MIDDLETOWN, OH 45042

JAMES A. PARROTT, DIR. BUTLER CO. NONE
DEPT. OF ENVIRON. SERVICES
130 HIGH STREET
HAMILTON, OH 45011-2759

JUDI GIRTON, ASST. DIR. & MGR. NONE
MIDDLETOWN LIBRARY - TRENTON BRANCH
17 E. STATE STREET
TRENTON, OH 45067

MICHAEL A. FOX, COMMISSIONER NONE
BUTLER COUNTY
130 HIGH STREET
HAMILTON, OH 45011-2759

MIKE JUENGLING, DIR. DIV. OF NONE
BUTLER CO. PLANNING COMM.
130 HIGH STREET
HAMILTON, OH 45011-2759

MR. DEAN C. FOSTER, P.E., P.S. BUTLER COUNTY ENGINEER 1921 FAIRGROVE AVE./SR 4 HAMILTON, OH 45011	NONE
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PATRICIA BURG, DIR. BUTLER CO. HEALTH DEPARTMENT 202 S. MONUMENT HAMILTON, OH 45011	NONE
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WILLIAM MCGUIRE MADISON TOWNSHIP TRUSTEE 5610 W. ALEXANDRIA RD. MIDDLETOWN, OH 45042	NONE
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