

**BEFORE  
THE OHIO POWER SITING BOARD**

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

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**NRG OHIO PIPELINE COMPANY LLC’S  
MEMORANDUM CONTRA LORAIN COUNTY PROPERTY OWNERS’  
MOTION FOR EXTENSION OF TIME**

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**I. INTRODUCTION**

On April 8, 2015 at 4:55 p.m., the Lorain County Property Owners (“Property Owners”) submitted to the Ohio Power Siting Board (“Board”) a motion for extension of time to file direct testimony, including a request for expedited ruling (the “Motion”). Specifically, Property Owners request that their current deadline of April 10, 2015 to file direct factual and expert testimony be extended to April 17, 2015.

Property Owners’ motion should be denied. Property Owner’s provide no good cause whatsoever, and to the extent that its request is based upon the need for discovery, its request is contrary to Board’s rules governing procedure and discovery.

**II. ARGUMENT**

NRG Ohio Pipeline Company LLC (“NRG Ohio Pipeline”) filed its Letter of Notification (“LON”) Application on the public docket on December 19, 2014. Property Owners intervened in this case on January 9, 2015. In their Petition to Intervene, the Property Owners raised their issues of concern posed by the LON Application. Discovery became available to the Property

Owners concerning these issues on the date of their intervention—three months before the date their testimony is due.

The Board issued its Entry suspending the LON Application and establishing a procedural schedule on March 9, 2015 (“Entry”). That Entry contained the April 10, 2015 date on which the Property Owners’ testimony would be due. It also established the fact that their testimony would be due four days after the date on which NRG Ohio Pipeline’s testimony would be due. Property Owners have had a month to anticipate and prepare for the need to file testimony under the timeline by the Entry.

The Entry also directed NRG Ohio Pipeline to file certain supplemental information. This supplemental filing was made on March 19, 2015 and served on all parties.

At no point before yesterday, April 8, 2015, did Property Owners serve any form of discovery on NRG Ohio Pipeline or request any modifications to the procedural schedule set by the Entry.

**A. Property Owners’ Motion Does not Establish Good Cause for Changing the Procedural Schedule**

The reasons provided in Property Owners’ Motion to extend the date for their direct testimony from April 10 to April 17, 2015 do not establish the good cause necessary to changing the procedural schedule on nearly the eve of the filing deadline.

Property Owners first argue that the extension is needed because one of their witnesses, a property owner, is on vacation until April 10, 2015.<sup>1</sup> Property Owners offer no detail beyond this statement. As noted above, Property Owners have been aware of the procedural schedule, including the April 10, 2015 deadline for their testimony, since March 9, 2015. Thus, Property Owners have had a month to secure this witness or to work with the Board and the other parties

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<sup>1</sup> Property Owners’ Motion for Continuance at p. 3.

to adjust the schedule. Property Owners' scheduling issues are entirely of their own making and therefore cannot constitute good cause.

Property Owners next state that a select group of landowners will provide representative testimony on behalf of the group. According to the Property Owners, the development of this testimony is taking longer than originally anticipated and that the extension is needed to enable its completion.<sup>2</sup> Again, however, this does not constitute good cause for requesting an extension less than two days before the deadline. As stated above, Property Owners have known of the April 10, 2015 deadline for over a month. Property Owners' are represented by experienced and able counsel—there was ample time to begin preparing witness testimony on the LON Application, the subject of the testimony in this proceeding.

The testimony filed by NRG Ohio Pipeline on April 6, 2015 provides no basis for seeking a delay in the development of Property Owners' testimony. NRG Ohio Pipeline's case is based on its LON Application and Supplemental filing, as required by the Board's rules. The testimony filed by NRG Ohio Pipeline summarizes and provides a roadmap for the LON Application and Supplement. The testimony does not add new substantive information that would warrant a significant delay in the preparation of Property Owners' testimony.

Property Owners next allege that their intended expert witness on the issue of pipeline safety needs more time to prepare testimony.<sup>3</sup> Specifically, Property Owners note that “there is a tremendous amount of material to consider, and that cannot be accomplished within the timeframe that presently exists.”<sup>4</sup> It must be presumed that the “tremendous amount of material to consider” is a reference to NRG Ohio Pipeline's LON Application and Supplement, because

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<sup>2</sup> *Id.* at p. 4.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

the direct testimony filed by NRG Ohio Pipeline on April 6, 2015 is only several pages in length and, as described above, simply summarizes the LON Application and Supplement. Property Owners have had access to these materials since the LON Application was filed on December 19, 2014.

Furthermore, Property Owners' interest in the issue of pipeline safety was raised in their Motion to Intervene, filed on January 9, 2015.<sup>5</sup> This is an unequivocal indication that pipeline safety was a concern to the Property Owners on that date, at which time they had full access to the LON Application, which details the proposed pipeline route and addresses pipeline safety issues. Further, Property Owners have known about the adjudicatory hearing since March 9, 2015. To the extent that Property Owners desired information beyond the LON Application and subsequent Supplement, they have had the right to conduct discovery for months. *See*, Ohio Administrative Code ("O.A.C.") Rule 4906-7-07(B)(1) (stating that "[d]iscovery may begin immediately after an application is filed or a proceeding is commenced and should be as expeditiously as possible"). Property Owners failure to prepare a witness in the months since its intervention and the weeks since the establishment of a procedural schedule on a known issue is not good cause to grant their requested extension.

**B. To the Extent Property Owners' Motion Relies on a Need for Discovery, it is Contrary to the Board's Rules**

The final reason cited by Property Owners for the proposed extension is their desire to "conduct depositions of NRG Ohio Pipeline's witnesses."<sup>6</sup> This request is contrary to the Board's rules. First, O.A.C. Rule 4906-7-07(10) states that "[d]iscovery may not be used . . . to delay existing procedural schedules." Here, Property Owners seek to use discovery as a justification to delay the long-established procedural schedule.

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<sup>5</sup> Property Owners' Motion to Intervene at p. 5.

<sup>6</sup> Property Owners' Motion for Continuance at p. 4.

Second, the Board's rules expressly state that "[d]iscovery . . . should be completed as expeditiously as possible[.]" *See*, O.A.C. Rule 4906-7-07(B)(1). Property Owners have had discovery rights since their intervention on January 9, 2015 and had access to the merits and bases for the LON Application since December 19, 2014. However, Property Owners failed to conduct *any* discovery during the ensuing period of time. Property Owners did not complete, or even *commence*, discovery "as expeditiously as possible."

Property Owners' attempt to extend the deadline for testimony in order to conduct discovery is also contrary to O.A.C. Rule 4906-7-07(A)(7). This rule expressly prohibits discovery of "information from any party which is available in prefiled testimony, prehearing data submission, or other documents which that party has filed with the board." Property Owners seek to depose NRG Ohio Pipeline's witnesses. However, as described above, these witnesses did not provide significant substantive content beyond what is already available in the LON Application and subsequent Supplement. Thus, because this information is already available in documents filed with the Board, it is simply not discoverable. Any continuance to seek such discovery would be futile and would present undue delay.

Finally, the delay sought by Property Owners would cause prejudice to NRG Ohio Pipeline by eliminating a full week otherwise available to NRG Ohio Pipeline to prepare for the cross-examination of Property Owners' witnesses. Further, an extension of the hearing date is not a viable solution to solve the prejudice that would be caused to NRG Ohio Pipeline if Property Owners' Motion were granted. As explained in NRG's direct testimony, this project has already experienced considerable delay in order to address landowner concerns. The need to complete the project in a timely manner is of paramount importance to Avon Lake Power Plant and the surrounding communities that rely on this facility for reliable electricity and the

economic opportunity it provides. A further delay in the hearing date without good cause would compound the prejudice posed by the Property Owners' request.

### **III. CONCLUSION**

For the reasons given above, the Property Owners' Motion for continuance should be denied.

Respectfully submitted on behalf of  
NRG OHIO PIPELINE COMPANY LLC



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## **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing Memo Contra has been served upon the following parties listed below via electronic mail, this 9<sup>th</sup> day of April 2015.



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Summary: Memorandum Contra of NRG Ohio Pipeline Company LLC electronically filed by  
Teresa Orahod on behalf of Thomas O'Brien