

BEFORE

THE OHIO POWER SITING BOARD

In the Matter of the Application of Duke)
Energy Ohio, Inc. for a Certificate of)
Environmental Compatibility and Public) Case No. 16-253-GA-BTX
Need for the C314V Central Corridor)
Pipeline Extension Project.)

ENTRY

The administrative law judge finds:

- (1) Duke Energy Ohio, Inc. (Duke or Company) is a person as defined in R.C. 4906.01.
- (2) R.C. 4906.04 provides that no person shall construct a major utility facility in the state without obtaining a certificate for the facility from the Ohio Power Siting Board (Board).
- (3) Ohio Adm.Code 4906-3-03 sets forth the requirements that an applicant for a Certificate of Environmental Compatibility and Public Need must follow in the course of its public information program, prior to the filing of an application.
- (4) On September 13, 2016, Duke filed an application for authority to construct a major utility facility in the state as well as a motion for waiver of certain provisions of Ohio Adm.Code 4906-3-03(B) to the extent that such a waiver is necessary or appropriate. Duke argues that paragraph (B) of Ohio Adm.Code 4906-3-03 identifies the Board's public information program jurisdiction as relating to location of the proposed facility and not pipeline design. Duke explains that the Company has already held three public information meetings and participated in other public forums and public meetings. Thus, Duke maintains that the Company has met and exceeded both the express language of the rule and its underlying intent. Moreover, since Duke has only reduced the size and pressure of the pipeline and since subparagraph (B)(3) establishes no requirement for an additional information meeting in the event of a change in size or pressure of the planned facility, Duke asserts that its public information program should be found to be complete as is.

- (5) Memoranda contra Duke's motion for waiver were filed by the city of Madeira (Madeira) and Neighbors Opposed to Pipeline Extension (NOPE) on September 28, 2016. Madeira asserts that Duke's reliance on subparagraph (B)(3) as defining what constitutes a "substantial change" is misplaced. NOPE submits that Duke's application filed on September 13, 2016, contains new information that was not addressed at a public meeting such as a substantial change in the route in addition to substantial changes in the design and risk factors of the project.
- (6) On October 5, 2016, Duke filed a reply to the memoranda contra filed by Madeira and NOPE.
- (7) Paragraph (B) of Ohio Adm.Code 4906-3-01 states that the Board may, upon motion filed by a party, waive any requirement of this chapter, other than a requirement mandated by statute.
- (8) The administrative law judge (ALJ) finds that Duke's motion for waiver filed on September 13, 2016, should be denied. While acknowledging that Duke has already held three public information meetings and modified the design of the project by reducing the proposed pipeline's size and pressure, the ALJ does not agree with Duke's position that the obligation to hold subsequent public information meetings is limited to changes in location of the facilities involved.
- (9) The requirements for the public information meeting are set forth in subparagraphs (1) through (4) of paragraph (B) of Ohio Adm.Code 4906-3-03. Subparagraph (1) sets forth the information to be included in newspaper notification of the public information meetings. Such information shall address the need for the project, the project schedule, the design of the facility and other pertinent data. Subparagraph (2) addresses information to be included in letters to each property owner and affected tenant. The letter shall include, inter alia, the date, time, and location of the informational meeting and a brief description of the project. While not defined in paragraph (B), paragraph (A) of Ohio Adm.Code 4906-3-03 explains that "description of the project" should include information about the anticipated function, equipment size, approximate areal extent, general location, schedule, and purpose of the project. Additionally, the last sentence of paragraph (B) states that "if

substantial changes are made to the application after the informational meeting, the executive director of the board shall have the authority to require another informational meeting at his/her discretion.” (Emphasis added). Thus, the ALJ determines that, contrary to Duke’s position, the authority of the executive director discussed in paragraph (B) of Ohio Adm.Code 4906-3-03 to require a subsequent informational meeting if substantial changes are made is not limited to changes in location of the facilities but rather extends to the entirety of the proposed project.

- (10) Ohio Adm.Code 4906-3-06 states that upon receipt of a standard certificate application for a major utility facility, the chairman shall examine the certificate application and, within 60 days of filing, shall either accept the application as complete or reject the application as incomplete. Should the executive director determine that a subsequent informational meeting should be held, the ALJ finds that the timing requirement of Ohio Adm.Code 4906-3-06 should be suspended or held in abeyance until such time as Duke complies with the notice requirements and conducts a subsequent informational meeting in accordance with paragraph (B) of Ohio Adm.Code 4906-3-03 at which time the timing requirement will continue from the point it was suspended.

It is, therefore,

ORDERED, That Duke’s motion for waiver be denied in accordance with findings (8) and (9). It is, further,

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

THE OHIO POWER SITING BOARD

/s/ Jeffrey R. Jones

By: Jeffrey R. Jones
Administrative Law Judge

sjp/vrm

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

10/6/2016 1:24:56 PM

in

Case No(s). 16-0253-GA-BTX

Summary: Administrative Law Judge Entry denying Duke's motion for waiver; electronically filed by Vesta R Miller on behalf of Jeffrey R. Jones, Administrative Law Judge, Ohio Power Siting Board