

THE OHIO POWER SITING BOARD

IN THE MATTER OF THE APPLICATION OF
HECATE ENERGY HIGHLAND LLC FOR A
CERTIFICATE OF ENVIRONMENTAL
COMPATIBILITY AND PUBLIC NEED FOR
AN ELECTRIC GENERATING FACILITY IN
MOWRYSTOWN, HIGHLAND COUNTY,
OHIO.

CASE NO. 18-1334-EL-BGN

ENTRY

Entered in the Journal on January 15, 2019

{¶ 1} Hecate Energy Highland LLC (Hecate or the Applicant) 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} On August 31, 2018, Hecate filed a pre-application notice with the Board indicating its intent to file an application to construct an electric generation facility. Thereafter, Hecate filed its formal application on October 10, 2018, which was supplemented on December 6, 2018. Hecate describes the proposed generation facility as a 300 megawatt solar-powered electric generation facility. The proposed generation facility would be located on approximately 2,500 acres in Highland County, Ohio.

{¶ 4} On October 9, 2018, Hecate filed a motion for waiver of Ohio Adm.Code 4906-4-08(A)(1)(c). Pursuant to the rule, applicants are to provide information on the safety and reliability of all equipment, including the generation equipment manufacturer's safety standards including a complete copy of the manufacturer's safety manual or similar document and any recommended setbacks from the manufacturer. Hecate explains that the final panel model will not be selected until after final engineering of the project is complete. Further, as a solar project, Hecate maintains that the reliability of the solar panels are highly unlikely to cause safety concerns and the components of the project will be either

fully fenced, and inaccessible to the public, or buried. Hecate affirms it will provide the safety manual once the panel model and manufacturer are selected. On December 6, 2018, Hecate supplemented its motion. The Applicant additionally requests a waiver of the requirements from Ohio Adm.Code 4906-4-08(D)(2) through (4). These rules require the applicant to evaluate the impact of the facility on cultural and archaeological landmarks, recreational and scenic areas, and visual impact within a ten-mile radius of the project area. According to Hecate, due to the project's low-to-the-ground profile and coverage by vegetation and existing structures, visibility of the project will be limited to, at most, five miles. Therefore, Hecate states it only evaluated the impact for a five-mile radius. Accordingly, the Applicant requests a waiver of the Board's rules.

{¶ 5} Pursuant to Ohio Adm.Code 4906-4-01(B) and based upon the circumstances presented in the motion for waiver, the administrative law judge (ALJ) determines that Hecate has established good cause to grant a waiver of Ohio Adm.Code 4906-4-08(A)(1)(c) and 4906-4-08(D)(2) through (4). Notwithstanding the grant of the requested waiver, Staff is not precluded from requesting and Hecate providing to Staff the waived information through request or discovery in order to complete a review of Hecate's application.

{¶ 6} Pursuant to Ohio Adm.Code 4906-3-06, within 60 days after receipt of an application for a major utility facility, the Chairman of the Board shall notify an applicant of the acceptance or rejection of the application as complete. By letter filed on December 10, 2018, the Board notified Hecate that its application was sufficiently complete to permit Staff to commence its review and investigation of the application. The letter directed Hecate, pursuant to Ohio Adm.Code 4906-3-07, to serve appropriate government officials and public agencies with copies of the complete, certified application and to file proof of service with the Board. Further, the letter directed Hecate, pursuant to R.C. 4906.06(F) and Ohio Adm.Code 4906-3-12, to submit the requisite application fee.

{¶ 7} On January 14, 2019, Hecate filed its certificate of service of its accepted and complete application, in accordance with the requirements of Ohio Adm.Code 4906-3-07.

Hecate also submitted the application fee to the Board, pursuant to Ohio Adm.Code 4906-3-12. The effective date of the filing of the application shall be January 14, 2019.

{¶ 8} R.C. 4906.07(A) provides that, upon receipt of an application complying with R.C. 4906.06, the Board must promptly fix a date for a public hearing not less than 60 nor more than 90 days after such receipt, and shall conclude the proceeding as expeditiously as practicable.

{¶ 9} Accordingly, the local public hearing in this case will be held on March 19, 2019, at 6:00 p.m., at Whiteoak High School, Student Activities Center, 44 N. High St., Mowrystown, Ohio 45155. The adjudicatory hearing will commence on March 26, 2019, at 10:00 a.m., 11th floor, Hearing Room 11-D, at the offices of the Public Utilities Commission of Ohio, 180 East Broad Street, Columbus, Ohio 43215-3793.

{¶ 10} Additionally, the ALJ finds that petitions to intervene in this proceeding will be accepted by the Board up to 30 days following publication of the notice required by Ohio Adm.Code 4906-3-09 or by March 1, 2019, whichever is later.

{¶ 11} Hecate should issue public notices of the application and hearings in accordance with Ohio Adm.Code 4906-3-09. As part of the information to be included in the notices, as required by Ohio Adm.Code 4906-3-09, Hecate shall include a statement that the public hearing in this case shall consist of two parts:

- (a) A local public hearing, pursuant to R.C. 4906.08(C), where the Board shall accept written or oral testimony from any person, commencing on March 19, 2019, at 6:00 p.m., at Whiteoak High School, Student Activities Center, 44 N. High St., Mowrystown, Ohio 45155.
- (b) An adjudicatory hearing to commence on March 26, 2019, at 10:00 a.m., 11th floor, Hearing Room 11-D, at the offices of the Public Utilities Commission of Ohio, 180 East Broad Street, Columbus, Ohio 43215-3793.

{¶ 12} Further, regarding the initial public notice required under R.C. 4906.06(C) and Ohio Adm.Code 4906-3-09, Hecate shall include the following statement as a part of the public notice:

Petitions to intervene in the adjudicatory hearing will be accepted by the Board up to 30 days following publication of the notice required by R.C. 4906.06(C), or by March 1, 2019, whichever is later. However, the Board strongly encourages interested persons who wish to intervene in the adjudicatory hearing to file their petitions as soon as possible. Petitions should be addressed to Docketing Division, the Ohio Power Siting Board, 180 East Broad Street, Columbus, Ohio 43215-3793 and cite the above-listed case number.

{¶ 13} Ohio Adm.Code 4906-2-09 provides that the ALJ shall regulate the course of the hearing including requiring that expert or factual testimony to be offered in Board proceedings be reduced to writing and filed with the Board, according to a schedule established by the ALJ. Accordingly, the ALJ finds that the following procedural schedule and process should be implemented:

- (a) Pursuant to Ohio Adm.Code 4906-3-06, Staff shall file its report of investigation (Staff Report) on or before March 4, 2019.
- (b) On or before March 12, 2019, each party shall file a list of issue(s) citing specific concerns about which they may be interested in pursuing cross-examination of witnesses at the evidentiary hearing.
- (c) All expert and factual testimony to be offered by Hecate shall be filed by March 20, 2019.

- (d) All expert and factual testimony to be offered by intervenors and Staff shall be filed by March 22, 2019.
- (e) The parties are strongly encouraged to arrange for electronic service of testimony and other pleadings among themselves. If electronic service is agreed to, the parties are also directed to provide an electronic copy to the ALJ assigned to this case.

{¶ 14} It is, therefore,

{¶ 15} ORDERED, That, in accordance with the above findings, Hecate's motion for waiver filed on October 9, 2018, and supplemented on December 6, 2018, be granted. It is, further,

{¶ 16} ORDERED, That hearings in this matter be scheduled at the times and places designated in paragraph 9. It is, further,

{¶ 17} ORDERED, That the application and hearings be noticed by Hecate in accordance with paragraphs 11 and 12. It is, further,

{¶ 18} ORDERED, That Staff file its Staff Report pursuant to paragraph 13. It is, further,

{¶ 19} ORDERED, That the parties file their issue lists and testimony in accordance with paragraph 13. It is, further,

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

THE OHIO POWER SITING BOARD

/s/ Nicholas J. Walstra

By: Nicholas J. Walstra
Administrative Law Judge

JRJ/hac

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Case No(s). 18-1334-EL-BGN

Summary: Administrative Law Judge Entry granting motion for waiver, scheduling hearings and setting deadline for filing of Staff Report electronically filed by Heather A Chilcote on behalf of Nicholas Walstra, Administrative Law Judge, Ohio Power Siting Board