

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 March 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} 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.

{¶ 5} 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.

{¶ 6} On January 15, 2019, the administrative law judge (ALJ) issued an Entry that, among other things, established a procedural schedule. The Entry scheduled a local public hearing to be held on March 19, 2019, at 6:00 p.m., and an adjudicatory hearing to be held March 26, 2019, at 10:00 a.m. Further, petitions to intervene would 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. Finally, regarding the hearing, the Entry directed that the Staff report be filed by March 4, 2019, and a list of issues citing specific concerns was to be filed by each party by March 12, 2019. Hecate was directed to file all expert testimony by March 20, 2019, and all other parties were directed to file expert testimony by March 22, 2019.

{¶ 7} On January 30, 2019, Hecate filed proof of initial public notice that was served to local public officials and local landowners.

{¶ 8} Staff filed its Report of Investigation on March 4, 2019. Hecate filed its list of issues on March 12, 2019.

{¶ 9} On March 8, 2019, Mark S. Partin filed a motion to intervene. Hecate filed a memorandum contra on March 14, 2019.

{¶ 10} Ohio Adm.Code 4906-2-12 outlines the process for intervention in Board proceedings and states intervention may only be granted for good cause shown. Specifically, Ohio Adm.Code 4906-2-12(B)(1) discusses the factors that the ALJ may consider. This includes: the nature and extent of the person's interest, the extent to which the person's interest is represented by other parties, the person's contribution to a just and expeditious resolution of the issues, and whether granting intervention would

unduly delay the proceeding or unjustly prejudice an existing party. Ohio Adm.Code 4906-2-12(C) requires that late-filed motions to intervene only be granted upon a finding of extraordinary circumstances to justify intervention, as well as good cause shown.

{¶ 11} In his request to intervene, Mr. Partin asserts he lives adjacent to the proposed project. Mr. Partin states that he was aware that his request is beyond the deadline to request intervention, but maintains that he, and other residents, were overwhelmed with information about the project and that it took time to learn, comprehend, and understand the nature of the project.

{¶ 12} In response, Hecate asks that Mr. Partin's request to intervene be denied. Hecate initially asserts that the request should be denied as untimely. According to Hecate, Ohio Adm.Code 4906-2-12(C) requires that late-filed motions to intervene should only be granted in extraordinary circumstances and for good cause shown. Hecate maintains that on January 29, 2019, all landowners adjacent to the project, including Mr. Partin, were served notice of the procedural schedule, including the March 1, 2019 deadline to seek intervention. Therefore, Hecate asserts Mr. Partin was provided sufficient time to file a timely request to intervene. Hecate further argues that Mr. Partin has not demonstrated good cause why he should be granted intervention. According to Hecate, Mr. Partin has not provided any specific reason why his intervention is necessary or why his interests are not represented. Finally, Hecate submits that Mr. Partin will be able to provide testimony at the public hearing on March 19, 2019, or file written comments through the Board's website. Applicant additionally states Hecate will reach out to Mr. Partin in order to address his concerns.

{¶ 13} Mr. Partin's request to intervene is denied as untimely. As discussed, pursuant to Ohio Adm.Code 4906-2-12(C), late-filed applications to intervene should not be granted absent a demonstration of extraordinary circumstances. Here, Mr. Partin submits that he was unable to meet the deadline because he needed additional time to understand the information associated with the project. However, Mr. Partin admits that

he was contacted about the project through certified mail and by Hecate representatives. Additionally, as required by Ohio Adm.Code 4906-5-08(B), Hecate held a public information meeting on September 17, 2018, and filed proof of notices sent to local landowners regarding the meeting and the project. Thereafter, on January 30, 2019, Hecate submitted additional filings demonstrating proof of public notice regarding the project. As required by Ohio Adm.Code 4906-3-09 and the January 15, 2019 ALJ Entry, the notices included the deadline to request intervention. A project of this scope naturally produces a significant amount of complex information, and it is understandable that processing this information requires a meaningful amount of time. However, as notice regarding the project was originally served in September 2018, and additional notice was provided on January 29, 2019, the ALJ finds Mr. Partin has not established extraordinary circumstances that support his inability to meet the March 1, 2019 deadline. Accordingly, Mr. Partin's motion to intervene is denied. Mr. Partin is encouraged to file written comments and submit them to the Board or, alternatively, to provide testimony at the March 20, 2019 public hearing. Further, Hecate is encouraged to contact Mr. Partin regarding any concerns.

{¶ 14} It is, therefore,

{¶ 15} ORDERED, That, the motion to intervene filed by Mr. Partin be denied. It is, further,

{¶ 16} 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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Summary: Administrative Law Judge Entry denying motion to intervene electronically filed by Heather A Chilcote on behalf of Nicholas Walstra, Administrative Law Judge, Ohio Power Siting Board