

## THE OHIO POWER SITING BOARD

IN THE MATTER OF THE APPLICATION OF  
HECATE ENERGY HIGHLAND 4 LLC FOR A  
CERTIFICATE OF ENVIRONMENTAL  
COMPATIBILITY AND PUBLIC NEED.

CASE NO. 20-1288-EL-BGN

### ENTRY

Entered in the Journal on December 13, 2023

{¶ 1} All proceedings before the Ohio Power Siting Board (Board) are conducted according to the provisions of R.C. Chapter 4906 and Ohio Adm.Code Chapter 4906-1, et seq.

{¶ 2} Hecate Energy Highland 4 LLC (Hecate) is a person as defined in R.C. 4906.01. Hecate Energy Highland 2, LLC (Hecate 2) is a person as defined in R.C. 4906.01.

{¶ 3} Pursuant to R.C. 4906.04, no person shall construct a major utility facility without first having obtained a certificate from the Board. Any facility, with respect to which such a certificate is required, shall thereafter be constructed, operated, and maintained in conformity with such certificate and any terms, conditions, and modifications contained therein.

{¶ 4} On September 2, 2020, Hecate filed its application with the Board for a certificate of environmental compatibility and public need to construct and operate New Market Solar, which was described as a combined project of New Market Solar I and New Market Solar II. Hecate supplemented its application on October 15, October 20, October 23, November 10, and December 1, 2020. Hecate sought certification to build a 100 megawatt (MW) solar-powered electric generation facility in Clay and Whiteoak townships, Highland County, Ohio (Facility). The Facility would be made up of two separate and distinct facilities: New Market Solar I, a 65 MW facility to be operated by Hecate; and New Market Solar II, a 35 MW facility to be operated by Hecate 2. Both facilities will consist of large arrays of ground-mounted photovoltaic modules, commonly referred to as solar panels, and

would include associated support facilities, such as access roads, meteorological stations, buried electrical collection lines, inverter pads, and a project substation that will feed into a newly constructed Dayton Power & Light substation known as the Clay Substation. Hecate sought to certify the project in one of two ways: (1) as two separate facilities with two separate certificates; or (2) as two separate facilities with a certificate for New Market Solar I and confirmation that New Market Solar II is non-jurisdictional. Hecate proposed to begin construction in early 2021, resulting in commercial operations in the fourth quarter of 2021.

{¶ 5} On January 4, 2021, Staff filed its Report of Investigation.

{¶ 6} On January 22, 2021, Hecate, the Ohio Farm Bureau Federation (OFBF), and Staff filed a Joint Stipulation and Recommendation. A Supplemental Joint Stipulation and Recommendation was filed by Hecate, OFBF, and Staff on January 25, 2021 (collectively, Combined Stipulations).

{¶ 7} On January 25, 2021, the adjudicatory hearing was held as scheduled.

{¶ 8} The Board issued an Opinion, Order, and Certificate on March 18, 2021, that approved the Combined Stipulations, with modifications, and issued a certificate of environmental compatibility and public need to Hecate for the construction, operation, and maintenance of an electric generation facility. The certificate was issued subject to 23 conditions outlined in the Combined Stipulations, and as modified by the Opinion, Order, and Certificate.

{¶ 9} Thereafter, Hecate filed an application for rehearing regarding the proposed bifurcation of the certificate. By Order on Rehearing dated June 24, 2021, the Board granted the application for rehearing, in part, finding that a certificate should be issued for the 100 MW utility-scale solar facility, and the certificate shall not be bifurcated. On August 19, 2021, the Board granted Hecate's request to transfer 35 MW of the project from Hecate to Hecate 2.

{¶ 10} On October 18, 2022, Staff filed a Compliance Inquiry Report. Staff first states that Hecate began construction of the Facility on July 9, 2021, and the Facility became operational for 24 of the 100 MWs on March 30, 2022. Staff asserts the certificate issued to Hecate is subject to 23 conditions, of which the first condition states “[t]he Facility shall be installed at Hecate’s proposed site as presented in the application and modified by supplemental filings.” According to Staff, consistent with Hecate’s application, all equipment associated with the Facility was to be set back at least 100 feet from all property boundaries. Staff explains that Hecate notified Staff on September 12, 2022, that the Facility was constructed utilizing minimum 45-foot setbacks rather than 100-foot setbacks. In response, Staff conducted a site inspection and determined that 38 of the 39 setbacks measured by Staff were not in compliance with the certificate. As described by Staff, the identified setbacks were between 71 feet 2 inches and 97 feet 2 inches.

{¶ 11} R.C. 4906.98(B) states “[n]o person shall construct, operate, or maintain a major utility facility \* \* \* other than in compliance with the certificate the person has obtained.”

{¶ 12} Pursuant to R.C. 4906.97(A), “[u]pon a finding by the power siting board that there are reasonable grounds to believe that a person has violated a provision of section 4906.98 of the Revised Code, the board shall fix a time for hearing such complaint and shall notify the person.” Further, as described in Ohio Adm.Code 4906-7-02(E), the hearing may include evidence on corrective action, forfeitures, and other remedies.

{¶ 13} On February 16, 2023, the Board ordered that a hearing should be set in this matter and directed that the administrative law judge (ALJ) establish a date and time for hearing, in accordance with R.C. 4906.97 and Ohio Adm.Code 4906-7-02.

{¶ 14} On July 10, 2023, the ALJ filed an Entry scheduling a status conference for August 8, 2023, and an adjudicatory hearing for October 10, 2023.

{¶ 15} On July 28, 2023, EVS, Inc. (EVS) filed a petition for leave out of time to intervene in the case. On August 14, 2023, Hecate filed its memorandum contra EVS's motion to intervene. On September 12, 2023, by Entry, the ALJ granted EVS's motion to intervene out of time.

{¶ 16} On October 2, 2023, EVS and Hecate jointly filed a motion for continuance of the adjudicatory hearing. On October 3, 2023, by Entry, the ALJ granted the joint motion for continuance of the evidentiary hearing, ordering that the hearing would commence on November 14, 2023.

{¶ 17} The adjudicatory hearing occurred as scheduled on November 14, 2023. At the conclusion of the hearing, the ALJs established a briefing schedule which required the parties to submit initial briefs by December 15, 2023 and reply briefs by January 5, 2024.

{¶ 18} On December 13, 2023, EVS filed a motion to extend the deadline for initial briefs, requesting that the date be extended from December 15, 2023 to December 19, 2023. EVS cites to an exigency with respect to its counsel, and requests expedited treatment of its motion, owing to the proximity to the current deadline. EVS certifies that it has contacted Hecate, OFBF, and Staff concerning its request and those parties indicated they have no objection to EVS's motion for an extension of time to file initial briefs.

{¶ 19} Motions for continuance are governed by Ohio Adm.Code 4906-2-07, which provides that motions for continuance must be made in writing and timely filed, and may be granted by the ALJ for good cause shown. Further, Ohio Adm.Code 4906-2-27(C) provides that any motion may include a specific request for an expedited ruling, the grounds of which should be set out in the accompanying memorandum in support.

{¶ 20} Upon review, the ALJ finds that EVS's motion for an extension of time to file initial briefs should be granted where there is good cause. In its memorandum in support of the motion, EVS cites to an exigency involving its counsel, which will require travel and time away from work. Further, with respect to EVS's request for expedited treatment, it has

certified that Staff, Hecate, and OFBF, the only other parties to this case, have no objection to either the motion or the request for expedited treatment.

{¶ 21} Accordingly, the ALJ finds that the due date of initial briefs in this matter should be extended to December 19, 2023.

{¶ 22} It is, therefore,

{¶ 23} ORDERED, That the unopposed motion for continuance and request for expedited treatment filed by EVS be granted. It is, further,

{¶ 24} ORDERED, That initial briefs in this matter be submitted to the Board by December 19, 2023, in accordance with Paragraph 21. It is, further,

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

THE OHIO POWER SITING BOARD

/s/ Jesse M. Davis

By: Jesse M. Davis  
Administrative Law Judge

NJW/dr

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**Case No(s). 20-1288-EL-BGN**

Summary: Administrative Law Judge Entry granting the unopposed motion for continuance and request for expedited treatment filed by EVS and ordering that initial briefs be submitted to the Board by December 19, 2023, in accordance with Paragraph 21 electronically filed by Debbie S. Ryan on behalf of Jesse M. Davis, Administrative Law Judge, Ohio Power Siting Board.