

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.)

MOTION FOR WAIVER

BY

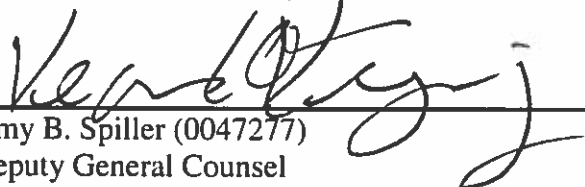
DUKE ENERGY OHIO, INC.

Now comes Duke Energy Ohio, Inc., (Duke Energy Ohio or the Company) and moves for a waiver of certain provisions of Ohio Administrative Code (O.A.C.) Rule 4906-3-03(B), to the extent that such a waiver is necessary or appropriate.

For the reasons more fully set forth in the attached memorandum in support, Duke Energy Ohio respectfully requests that the Ohio Power Siting Board (Board) either conclude that no waiver is necessary or appropriate or, in the alternative, grant this motion for waiver.

Respectfully submitted,

DUKE ENERGY OHIO, INC.



Amy B. Spiller (0047277)
Deputy General Counsel
Jeanne W. Kingery (0012172) (Counsel of Record)
Associate General Counsel
Duke Energy Business Services LLC
139 E. Fourth Street, 1303-Main
Cincinnati, Ohio 45201
(614) 222-1334 (telephone)
(614) 222-1337 (facsimile)
Amy.Spiller@duke-energy.com
Jeanne.Kingery@duke-energy.com

MEMORANDUM IN SUPPORT

Legal Requirements

O.A.C. Rule 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 time of filing its application. Paragraph (B) of that rule sets forth the general requirement that the applicant “conduct at least one informational meeting open to the public to be held in the area in which the project is located.”¹ Although the opening language also indicates that the executive director of the Board may require another informational meeting if “substantial changes” are made after the first meeting, Subparagraph (3) of that rule provides more detail concerning changes. That paragraph addresses steps to be taken in the event the location of the proposed facility changes after the informational meeting. As the Board’s jurisdiction relates to location, not pipeline design, the rule specifically does not set forth any requirements for actions to be taken in the event of a design change.

Duke Energy Ohio’s Public Information Program

Duke Energy Ohio initially scheduled two informational meetings for the public. The first was held near the north end of the proposed route corridors, on March 22, 2016. The second was held the next day, near the south end of the proposed route corridors.

Subsequent to those meetings, the Company continued to refine the routes, based both on internal investigation of constructability and on comments receive from members of the public. The refinements resulted in minor changes to each of the three corridors then under consideration. As some additional properties were potentially affected by the proposal, the Company held a third meeting, on June 15, 2016.

¹ O.A.C. Rule 4906-3-03(B).

As the Board is aware, many members of the public have filed comments in the docket. Many other people have contacted Duke Energy Ohio directly, to express their concerns. And a substantial percentage of those contacts have addressed the size and pressure of the proposed line. In response to those concerns, Duke Energy Ohio has reduced the size and pressure of the pipeline to one that has characteristics consistent with the pipelines that are already in use in southwest Ohio and that have been operated safely by Duke Energy Ohio for decades.

Argument

The public informational meetings already held by Duke Energy Ohio should be found to be sufficient and in full compliance with the requirements set forth in O.A.C. 4906-3-03, regardless of the subsequent change in the proposed pipeline's size and pressure. To the extent that the Board concludes otherwise, Duke Energy Ohio respectfully requests a waiver of such rule.

The Board is tasked, under Ohio law, with ensuring that a proposed facility is needed and will have no more than the minimum adverse impact to the environment and other identified aspects of society. Specifically, the Board must determine:

- The need for the facility,
- The nature of the environmental impact,
- That the facility will result in the minimum adverse environmental impact,
- That the facility will comply with certain laws, relating to air pollution, hazardous waste, water pollution, water usage, and airport obstruction,
- That the facility will serve the public interest, convenience, and necessity,
- The impact on agricultural land, and
- That the facility incorporates the maximum feasible water conservation practices.

The rule that the Board promulgated under this section focuses on the location of the proposed facility, comporting with its statutory jurisdiction. Indeed, Staff of the Board has

itself indicated its unwillingness to address issues around the specific capacity of a pipeline, leaving that to the jurisdiction of the Public Utilities Commission of Ohio.²

The Board must interpret the meaning of O.A.C. Rule 4906-3-03 in light of its statutory jurisdiction. Paragraph (3), as indicated above, establishes no requirement for an additional informational meeting – or even for written notice to the public – in the event of a change in size or pressure of the planned facility. Thus, Duke Energy Ohio’s public information program should be found to be complete, as is.

To the extent that the Board reads the rule otherwise, Duke Energy Ohio moves for a waiver of such requirement. The change in question is one that can only be seen as resulting in less impact to the public, as it is a reduction in the size and pressure proposed. Furthermore, the Company has already had three informational meetings, when one was all that was required. In addition, it has participated in other public forums, as requested by various constituents. It participated in a public meeting sponsored by the Hamilton County Board of Commissioners, presenting information about the project and responding to officials’ questions and comments. The Company has also responded, directly and on its website, to approximately 400 individual inquiries.

The public has certainly been informed of the project and the Company has received public input. Duke Energy Ohio has met and exceeded both the express language of the rule and its underlying intent.

² *In the Matter of the Application of Cincinnati Gas & Electric Company for a Certificate of Environmental Compatibility and Public Need for the C314 Natural Gas Transmission Pipeline in Butler, Warren and Hamilton Counties*, Case No. 01-520-GA-BTX, Staff Report of Investigation, pp. 13-14 (Oct. 15, 2001).

Conclusion

Duke Energy Ohio therefore respectfully requests that the Board find that its public information program is adequate under O.A.C. Rule 4906-03-03 or, in the alternative, grant its motion for a waiver.

Respectfully submitted,

DUKE ENERGY OHIO, INC.

A handwritten signature in black ink, appearing to read "Amy B. Spiller", is written over a horizontal line.

Amy B. Spiller (0047277)

Deputy General Counsel

Jeanne W. Kingery (0012172) (Counsel of Record)

Associate General Counsel

Duke Energy Business Services LLC

139 E. Fourth Street, 1303-Main

Cincinnati, Ohio 45201

(614) 222-1334 (telephone)

(614) 222-1337 (facsimile)

Amy.Spiller@duke-energy.com

Jeanne.Kingery@duke-energy.com