

BEFORE

THE OHIO POWER SITING BOARD

In the Matter of the Application of NRG)
Ohio Pipeline Company LLC for Approval)
of a Letter of Notification for the Avon) Case No. 14-1717-GA-BLN
Lake Gas Addition Project in Lorain)
County, Ohio.)

ENTRY

The administrative law judge finds:

- (1) On December 19, 2014, NRG Ohio Pipeline Company LLC (NRG Pipeline) filed a letter of notification application, pursuant to Ohio Adm.Code 4906-11-01, for the purpose of constructing the Avon Lake Gas Addition Project (project), which consists of a proposed natural gas pipeline, metering station, and regulating station in Lorain County, Ohio. In the application, NRG Pipeline states that the proposed pipeline would extend south for approximately 20 miles from the Avon Lake power plant in the city of Avon Lake to a proposed supply tap location southwest of the village of Grafton. NRG Pipeline asserts that the project qualifies for the Board's letter of notification process, because the project is primarily needed to meet the requirements of a specific customer or specific customers and, therefore, satisfies the criteria set forth in R.C. 4906.03(F). NRG Pipeline explains that, as of the time of the filing of its application, its sole customer is the Avon Lake power plant and the primary purpose of the project is to provide natural gas as a fuel source for the plant.
- (2) On March 3, 2015, the administrative law judge (ALJ) granted petitions to intervene in this proceeding filed by Ohio Edison Company, The Cleveland Electric Illuminating Company, and American Transmission Systems, Inc. (collectively, FirstEnergy), as well as various

property owners in Lorain County, Ohio (collectively, property owner intervenors).¹

- (3) By Entry dated March 9, 2015, the Board found that good cause exists to suspend NRG Pipeline's letter of notification application and the 90-day automatic certification process, pursuant to R.C. 4906.03(F), in order for the Board and Staff to further review this matter. Pursuant to Ohio Adm.Code 4906-5-02(A)(3)(c), the Board also found that a local public hearing and an adjudicatory hearing should be held in this matter. The Board, therefore, established a procedural schedule, which, inter alia, directed that all expert and factual testimony to be offered by FirstEnergy, the property owner intervenors, and Staff be filed by April 10, 2015.
- (4) On March 25, 2015, the ALJ granted NRG Pipeline's motion for a continuance of the adjudicatory hearing, which was rescheduled to commence on April 23, 2015.
- (5) On April 8, 2015, the property owner intervenors filed a motion seeking an extension of the deadline for the filing of expert and factual testimony by FirstEnergy, the property owner intervenors, and Staff, along with a request for an expedited ruling. The property owner intervenors request that the deadline be extended to April 17, 2015. In support of the motion, the property owner intervenors assert that, upon receipt of NRG Pipeline's direct testimony, they concluded that more time is needed to develop their own direct testimony that is responsive and narrowed to represent the concerns of their group as a whole. According to the property owner intervenors, the requested extension will benefit this proceeding and will not delay the commencement of the adjudicatory hearing or prejudice any party. With respect to the request for an expedited ruling, the property owner intervenors note that they seek a ruling in advance of the

¹ The property owner intervenors are Wesley Parker; Brandon and Mary Thorne; Charles Borling; Samuel Dennis; Carlos and Sonia Llado; Edmund and Angie Carter; Gary and Kathleen Conlin; Stephanie K. Unger; Edward Kurianowicz; Lawrence R. Plas; Mary B. Miller; Richard and Carol Petersen; Richard and Ellen Braatz; Thomas and Johanna Julius; Louis and Gale Betzel; Fathers of St. Joseph Church; and K. Hovnanian Oster Homes, LLC.

current filing deadline of April 10, 2015. The property owner intervenors state, however, that they cannot certify that no party objects to their request.

- (6) On April 9, 2015, NRG Pipeline filed a memorandum contra the motion for extension. According to NRG Pipeline, the property owner intervenors' motion does not establish good cause for a modification to the current procedural schedule. NRG Pipeline points out that the property owner intervenors have been aware of the procedural schedule since March 9, 2015, and have had ample time to prepare their testimony. NRG Pipeline adds that, to the extent that the property owner intervenors' motion is based on their intention to conduct depositions, the requested extension is contrary to the Board's rules addressing discovery, as set forth in Ohio Adm.Code 4906-7-07. Finally, NRG Pipeline asserts that it will be prejudiced by the requested extension, which, if granted, would eliminate a full week in which to prepare for the cross-examination of the property owner intervenors' witnesses.
- (7) Ohio Adm.Code 4906-7-12(F) provides that the ALJ may issue an expedited ruling on any motion, with or without the filing of memoranda, where the issuance of such ruling will not adversely affect a substantial right of any party.
- (8) Pursuant to Ohio Adm.Code 4906-7-12(F), the ALJ finds that the property owner intervenors' motion for an extension is reasonable and should be granted to the extent set forth in this Entry. The ALJ finds that a short extension of five days will not adversely affect a substantial right of any party, and is appropriate under the circumstances, particularly in light of the fact that the adjudicatory hearing was rescheduled from April 14, 2015, to April 23, 2015, at NRG Pipeline's request. Accordingly, FirstEnergy, the property owner intervenors, and Staff should file their expert and factual testimony by April 15, 2015.
- (9) As a separate matter, the ALJ notes that the list of property owner intervenors provided in footnote 1 of the

motion for extension includes individuals and business entities that were not listed in the petition to intervene filed on behalf of the property owner intervenors on January 9, 2015. Although the ALJ appreciates the efforts of interested persons with common interests to work together as an intervenor group in this proceeding, each such individual person or entity must seek and be granted intervention before being considered a party to this case, and counsel for the property owner intervenors should already be well aware that the Board has a formal process and procedural rules for pursuing intervention. By merely adding to the list of individuals and entities granted intervention by the ALJ on March 3, 2015, counsel has not complied with the Board's established process and procedures and such additional individuals and entities are, therefore, not parties to this case. Accordingly, the ALJ directs that, if there are additional individuals and entities that seek to join the property owner intervenors as a party to this case, and who are not listed among the property owner intervenors granted intervention in the Entry dated March 3, 2015, a petition for leave to intervene should be filed on their behalf no later than April 15, 2015, with any memoranda contra filed by April 17, 2015. No reply memorandum shall be filed.

It is, therefore,

ORDERED, That the property owner intervenors' motion for an extension be granted to the extent set forth in this Entry. It is, further,

ORDERED, That the process set forth in finding (9) be adopted. It is, further,

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

OHIO POWER SITING BOARD

s/Sarah Parrot

By: Sarah J. Parrot
Administrative Law Judge

JRJ/sc

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in

Case No(s). 14-1717-GA-BLN

Summary: Administrative Law Judge Entry granting the property owner intervenors' motion for an extension to the extent set forth in this Entry and directing that the process set forth in finding (9) be adopted. - electronically filed by Sandra Coffey on behalf of Sarah Parrot, Attorney Examiner, Public Utilities Commission of Ohio