

**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 Lake Gas Addition Project in Lorain)
County, Ohio)

Case No. 14-1717-GA-BLN

**NRG OHIO PIPELINE COMPANY LLC'S
MOTION FOR A PROTECTIVE ORDER**

Pursuant to Ohio Administrative Code ("O.A.C.") Rule 4906-7-07(H)(1), NRG Ohio Pipeline Company LLC ("NRG Ohio Pipeline") requests that the Ohio Power Siting Board ("Board") or the Administrative Law Judge issue an order limiting the scope of depositions scheduled for April 15, 2015 to: 1) prohibit discovery on subjects related to the ongoing appropriation proceedings between NRG Ohio Pipeline and the Lorain County Property Owners ("Property Owners"), and 2) prohibit discovery on the subject of NRG Ohio Pipeline's future revenue projections. NRG Ohio Pipeline respectfully requests an expedited ruling pursuant to the Board and the administrative law judge's authority under O.A.C. 4906-7-12(F). The grounds for the Motion are set forth in the attached Memorandum in Support.

Respectfully submitted on behalf of
NRG OHIO PIPELINE COMPANY LLC



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MEMORANDUM IN SUPPORT

I. Introduction

On Wednesday afternoon, April 8, 2015, Property Owners served a notice of deposition to NRG Ohio Pipeline for the purpose of deposing the three NRG Ohio Pipeline witnesses who filed direct testimony on April 6, 2015. On Friday afternoon, April 10, 2015, NRG Ohio Pipeline and Property Owners came to an agreement, via phone and electronic messages, to hold the requested depositions on Wednesday, April 15, 2015 at a location in Lorain County.

NRG Ohio Pipeline now moves for an order limiting the scope of the depositions to prohibit discovery on issues pertaining to the ongoing condemnation proceedings between NRG Ohio Pipeline and Property Owners. Specifically, issues of easement valuation and terms of potential easements should not be raised in the depositions. NRG Ohio Pipeline also moves for an order limiting the scope of the depositions to prohibit discovery on the subject of future revenue projections of NRG Ohio Pipeline.

II. Argument

O.A.C. Rule 4906-7-07(H)(1) establishes that the Board or administrative law judge may issue an order that “[c]ertain matters may not be inquired into” and that “[t]he scope of discovery be limited to certain issues.” NRG Ohio Pipeline now moves for an order limiting the scope of

the deposition to prohibit discovery on issues pertaining to the ongoing condemnation proceedings between NRG Ohio Pipeline and Property Owners.¹

An order limiting the scope of the deposition will protect the integrity of the Board. Appropriation proceedings are entirely separate from proceedings—in this case, NRG Ohio Pipeline’s LON Application—before the Board. While Property Owners have a right to conduct discovery on issues relating to NRG Ohio Pipeline’s LON Application, Property Owners should not be allowed to use the Board’s processes to extract information that will be beneficial to them in the ongoing appropriation proceedings between the parties.

In addition, NRG Ohio Pipeline also requests that the protective order include a prohibition of discovery by Property Owners on the issue of NRG Ohio Pipeline’s future revenue projections. This information is wholly irrelevant to the Board’s proceedings, and Property Owners should not be allowed to use the Board’s discovery rules as a vehicle to inquire about NRG Ohio Pipeline’s future revenue projections.

NRG Ohio Pipeline’s concerns are well-founded. Since Property Owners’ intervention in this proceeding, NRG Ohio Pipeline has been in regular communication with Property Owners’ counsel in order to better understand their concerns about NRG Ohio Pipeline’s LON Application and attempt to find a resolution. However, on multiple occasions, Property Owners’ counsel has detoured discussion about the LON Application to issues involving the condemnation proceedings, such as a per-linear-foot valuation of a negotiated easement and the terms of a potential easement agreement.

An order granting NRG Ohio Pipeline’s motion will protect against an attempt by Property Owners to use the opportunity of sworn depositions in this proceeding to aid their efforts in the appropriation proceedings. Granting the motion will also establish important precedent that

¹ The appropriation proceedings are being held in the Court of Common Pleas, Lorain County, Ohio.

the Board's processes are not to be used by intervening parties as a means to gain advantage in separate proceedings. It will also protect against attempts to inquire about sensitive financial information, irrelevant to Property Owners' issues in this proceeding.

Finally, granting the motion will set clear boundaries for the depositions, thereby enabling more efficient depositions for all parties involved. An order limiting the scope of discovery will also reduce the need to potentially involve the administrative law judge during the depositions over issues involving these same topics. Thus, an order granting the motion will promote administrative efficiency.

It is within the authority of the Board or the administrative law judge to "issue an expedited ruling on any motion, with or without the filing of memoranda, where the issuance of such a ruling will not adversely affect a substantial right of any party." O.A.C. 4906-7-12(F). Such a ruling will not adversely affect a substantial right of the Property Owners because discovery of the issues described above is not relevant to Property Owners' ability to effectively participate in the proceeding before the Board. Because Property Owners' substantial rights will not be adversely impacted and because the depositions are scheduled for Wednesday, April 15, 2015, NRG Ohio Pipeline respectfully requests an expedited ruling on this motion.

III. Conclusion

For the reasons stated herein, NRG Ohio Pipeline respectfully requests that the Board grant this Motion for Protective Order and limit the scope of discovery to matters before the Board.

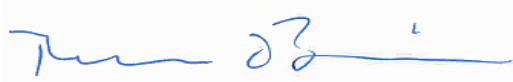
Respectfully submitted on behalf of
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Motion for Protective Order has been served upon the following parties listed below via electronic mail, this 13th day of April 2015.



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Summary: Motion NRG Ohio Pipeline Company LLC for Protective Order electronically filed by
Teresa Orahod on behalf of Thomas O'Brien