

THE OHIO POWER SITING BOARD

IN THE MATTER OF THE APPLICATION
OF DUKE ENERGY OHIO, INC. FOR
A CERTIFICATE OF ENVIRONMENTAL
COMPATIBILITY AND PUBLIC NEED FOR
THE C314V CENTRAL CORRIDOR PIPELINE
EXTENSION PROJECT.

CASE NO. 16-253-GA-BTX

ENTRY

Entered in the Journal on June 21, 2017

{¶ 1} Duke Energy Ohio, Inc. (Duke or Company) 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 January 20, 2017, as amended and supplemented on February 13, 2017, February 24, 2017, March 3, 2017, and May 11, 2017, Duke filed with the Board an application for a certificate of environmental compatibility and public need for a certificate to construct an approximately 14-mile, 20-inch natural gas pipeline extension from Duke's WW Feed Station to an existing gas pipeline in the village of Fairfax or the city of Norwood area (project). The gas pipeline project would be located entirely in Hamilton County, Ohio.

{¶ 4} By Entry dated April 13, 2017, a procedural schedule was established in this case, including the due date for timely petitions to intervene, the date of the local public hearing, June 15, 2017, and the commencement of the adjudicatory hearing, July 12, 2017.

{¶ 5} On May 31, 2017, Staff filed its Report of Investigation (Staff Report).

{¶ 6} On June 9, 2017, Duke filed its proof of publication of the second notice of the proposed project. However, on June 12, 2017, Duke filed a motion for waiver of Ohio

Adm.Code 4906-3-09(A)(2) with regard to the second notice required to be sent to affected property owners. Duke states that it published notice in the Cincinnati Enquirer and provided notice to public officials on June 8, 2017. However, the Company states that, due to inadvertent error, the mailing of the second notice to affected property owners was delayed. To compensate for the delay, Duke avers the Company mailed the notices by priority mail through the United States Postal Service in Cincinnati, such that the notices would be scheduled for delivery on June 13, 2017. As such, Duke asks that the Board find that delivery of the second notice to affected landowners constitutes substantial compliance with the requirements of Ohio Adm.Code 4906-3-09(A)(2). Further, pursuant to Ohio Adm.Code 4906-2-27(C), Duke requests an expedited ruling on its motion for waiver.

{¶ 7} No memoranda contra Duke's motion for waiver of Ohio Adm.Code 4906-3-09(A)(2) were filed.

{¶ 8} Ohio Adm.Code 4906-3-09(A)(2) requires the second notice of the hearings for a proposed utility facility be published in a newspaper of general circulation in the area, as well as sent to public officials in the affected area and to affected property owners, at least seven days but no more than 21 days before the public hearing.

{¶ 9} The administrative law judge (ALJ) notes that Duke, as a result of inadvertent error, did not send the second notice to affected property owners within the prescribed timeframe set forth in Ohio Adm.Code 4906-3-09(A)(2). To compensate for the delay, Duke expedited the delivery of the second notice to affected property owners, albeit less than seven days prior to the public hearing. Accordingly, Duke notified affected property owners of the proposed project and the hearings in this case. The second notice was otherwise published and sent to public officials, consistent with the requirements of Ohio Adm.Code 4906-3-09(A)(2). As such, the ALJ finds, consistent with

Ohio Adm.Code 4906-3-09(B), that Duke substantially complied with the applicable notice requirements and Duke's request for waiver should be granted.

{¶ 10} By Entry issued June 15, 2017, timely petitions to intervene or notices of intervention were granted to Coprop Inc.; RLB Inc.; Kenwood Mall, LLC (Kenwood Mall); 10149 LLC; BRE DDR Crocodile Sycamore Square LLC (DDR); Interstate Gas Supply, Inc.; The Jewish Hospital – Mercy Health; Columbia Township (Columbia); City of Deer Park (Deer Park); City of Reading (Reading); Village of Golf Manor (Golf Manor); Board of County Commissioners of Hamilton County (Hamilton County); Amberley Village (Amberley); Sycamore Township (Sycamore); City of Blue Ash (Blue Ash); Village of Evendale (Evendale); City of Cincinnati (Cincinnati); Pleasant Ridge Community Council; City of Madeira (Madeira); and NOPE - Neighbors Opposed to Pipeline Extension, LLC (NOPE).

{¶ 11} On June 13, 2017, Cincinnati, Blue Ash, Deer Park, Madeira, Reading, Hamilton County, Amberley, Columbia, Sycamore, Evendale, and Golf Manor (collectively, Intervening Communities) filed a motion for continuance of the adjudicatory hearing. Intervening Communities state that they require additional time to review and respond to the Staff Report, to collectively assess the suitability of the preferred and alternate routes and their potential effect on the Intervening Communities, to conduct additional discovery, to retain and consult with expert witnesses, and to engage all parties in discussions intended to resolve disputed issues in this proceeding. Accordingly, Intervening Communities request the adjudicatory hearing be continued until October 2, 2017, and the associated due dates for the issues list and testimony be similarly continued. Further, Intervening Communities request an expedited ruling on the motion for a continuance by June 20, 2017.

{¶ 12} On June 14, 2017, NOPE filed a motion for continuance of the adjudicatory hearing. NOPE states that, while it fully supports the motion filed by Intervening

Communities, NOPE requests that the adjudicatory hearing be continued an additional 45 days, until November 16, 2017. NOPE requests the continuance to allow all parties to adequately review, seek discovery on, and respond to the findings and recommendations in the Staff Report, including the differences and impacts of the preferred and alternate routes; to receive previously requested discovery responses from Duke and conduct additional discovery on information received; to retain and consult with expert witnesses; and to better prepare parties to collaboratively resolve the issues in this proceeding. NOPE requests an expedited ruling on its motion for a continuance on or by June 19, 2017.

{¶ 13} On June 19, 2017, Duke filed a memorandum contra the requests for continuance filed by Intervening Communities and NOPE. Duke argues that the assertions of the Intervening Communities and NOPE that more time is needed to review and assess the preferred and alternate routes, to conduct additional discovery, and to retain and consult with expert witnesses is merely a tactic to delay this proceeding. Duke notes that intervenors have had since Duke's first open house for the proposed project, in March 2016, to review and assess the two routes and have had more than a year to retain and consult with any experts they deem necessary. Duke notes that Hamilton County and Cincinnati served their first discovery requests on the Company on April 20, 2017, and NOPE served Duke with NOPE's first discovery requests on May 26, 2017 – more than a year after the project was announced. Further, as to intervenors' review of the Staff Report, Duke offers that the established procedural schedule allows for a 42-day period to prepare for hearing-May 31, 2017, until July 12, 2017, which is more time than similar applications filed with the Board since 2015 to date. Duke asserts that, as it repeatedly noted in the application, one of the goals of the proposed pipeline project is to facilitate the retirement of aging and outdated propane-air peaking plants and the replacement of other aging infrastructure. Accordingly, Duke contends that, with the passage of time, the facilities and pipelines continue to age and the risk associated therewith continues to increase. Duke notes that, when this project was first announced,

the construction schedule was estimated to have the pipeline operational by the fall of 2018; now, however, the Company estimates that the proposed pipeline project will not be operational until the fall of 2019 and, if the motions for continuance are granted, the pipeline would not be operational in time for the 2019-2020 heating season.

{¶ 14} In the event the Board determines the requests for continuance of the adjudicatory hearing should be granted, despite Duke's position, Duke requests that the continuance be as brief as possible, in order to avoid an excessive impact on the Company's need to upgrade its distribution system. Accordingly, Duke suggests a continuance of no more than two weeks, until July 26, 2017.

{¶ 15} On June 20, 2017, DDR and Kenwood Mall filed motions for continuance of the adjudicatory hearing until November 16, 2017. DDR and Kenwood Mall state that, while discovery is underway, depositions have not been scheduled, and experts may be required to evaluate the technical information in Duke's application and the Staff Report. Further, DDR and Kenwood Mall assert a continuance is necessary to address issues raised at the public hearing regarding the intended purpose of the proposed pipeline - intrastate versus interstate gas transmission, and the Board's jurisdiction to make a decision on Duke's application. In their motions for a continuance, DDR and Kenwood Mall request an expedited ruling on their respective motions and all other pending motions for continuance.

{¶ 16} On June 20, 2017, Duke filed a memorandum contra the motions for continuance filed by DDR and Kenwood Mall. In addition to the arguments Duke presented regarding the other motions for continuance, Duke specifically notes that DDR and Kenwood Mall have not served Duke with any discovery requests and, therefore, Duke concludes their argument regarding the scheduling of depositions and the possibility that they may need to hire experts should be dismissed out of hand. Regarding the claims that the purpose of the pipeline is to move natural gas in interstate

commerce and that the Board lacks jurisdiction, Duke states that DDR and Kenwood Mall are aware such claims have been discussed by opponents of the project for months and DDR and Kenwood Mall have nevertheless not made any effort to investigate such claims. Duke reiterates its assertions that any delay would impose undue risk and burden on the services provided to the Company's customers. Finally, Duke avers these intervenors have had ample opportunity for due process and should not be permitted to remain idle and then complain that there has not been sufficient time for discovery, analysis, or argument.

{¶ 17} Intervening Communities, NOPE, DDR, and Kenwood Mall (collectively, Movants) request the continuance of the adjudicatory hearing, at least in part, to evaluate the impact of the preferred and alternate routes and to collaborate with the intent of exploring the possibility to resolve the issues in this proceeding. As such, the ALJ finds a short-term continuance of the adjudicatory hearing to be reasonable. Simultaneously, in the event the parties are not able to reach a mutually agreeable resolution of this matter, the parties should also be preparing for the adjudicatory hearing. The Board is mindful that delays may impact Duke's stated goal to replace and retire aging infrastructure and, therefore, affect Duke's ability to serve its customers, particularly during upcoming winter heating seasons. For that reason, the ALJ finds a three- to four-month continuance, as Movants request, unreasonable. Accordingly, the Movants request for continuance of the adjudicatory hearing shall be granted until September 11, 2017.

{¶ 18} To that end, the adjudicatory hearing is rescheduled to commence on September 11, 2017, at 10:00 a.m., at the offices of the Board, 180 East Broad Street, 11th Floor, Hearing Room A, Columbus, Ohio 43215-3793.

{¶ 19} Further, in accordance with Ohio Adm.Code 4906-2-09(B), the ALJ finds that the procedural schedule should be revised as follows:

- (a) On or before August 21, 2017, each party shall file a list of issue(s) citing specific concerns about which they may be interested in pursuing cross-examination of witnesses at the evidentiary hearing.
- (b) All expert and factual testimony to be offered by Duke shall be filed by August 25, 2017.
- (c) All expert and factual testimony to be offered by intervenors and Staff shall be filed by September 1, 2017.

{¶ 20} The ALJ reiterates that the parties are encouraged to arrange for electronic service of testimony and all other pleadings among themselves. If electronic service is agreed to, the parties are also directed to provide electronic copies to the ALJs.

{¶ 21} It is, therefore,

{¶ 22} ORDERED, That Duke's motion for waiver of Ohio Adm.Code 4906-3-09(A)(2) is granted. It is, further,

{¶ 23} That the motions to continue the adjudicatory hearing are granted, in part, and denied, in part. It is, further,

{¶ 24} ORDERED, That the adjudicatory hearing be rescheduled to commence on September 11, 2017, at 10:00 a.m., in Hearing Room A, 11th Floor, at the offices of the Board. It is, further,

{¶ 25} ORDERED, That all parties file their issue(s) lists and expert and factual testimony in accordance with Paragraph 19. It is, further,

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

THE OHIO POWER SITING BOARD

/s/ Greta See

By: Greta See
Administrative Law Judge

JRJ/dah

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in

Case No(s). 16-0253-GA-BTX

Summary: Administrative Law Judge Entry ordering Duke's motion for waiver of Ohio Adm. Code 4906-3-09(A)(2) be granted; that the motions to continue the adjudicatory hearing are granted, in part, and denied, in part; and that the adjudicatory hearing be rescheduled to commence on September 11, 2017, at 10:00 a.m., in Hearing Room A, 11th Floor, at the offices of the Board. Entry electronically filed by Debra Hight on behalf of Greta See, Administrative Law Judge.