

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

ENTRY

Entered in the Journal on May 17, 2018

I. SUMMARY

{¶ 1} The Ohio Power Siting Board grants the motion of NRG Ohio Pipeline Company LLC for an extension of its certificate to June 4, 2020.

II. DISCUSSION

{¶ 2} NRG Ohio Pipeline Company LLC (NRG Pipeline or Company) is a person as defined in R.C. 4906.01.

{¶ 3} R.C. 4906.04 provides that no person shall commence to construct a major utility facility in the state without first having obtained a certificate for the facility from the Ohio Power Siting Board (Board). Additionally, R.C. 4906.03(F) requires the Board to adopt rules to provide for an accelerated review of an application for a construction certificate for a gas pipeline that is not more than five miles in length or is primarily needed to meet the requirements of a specific customer or specific customers. The statute specifies that the Board must adopt rules that provide for the automatic certification of such pipelines when the application is not suspended by the Board, administrative law judge, or chairperson or executive director of the Board for good cause shown, within 90 days of submission of the application. If an application is suspended, the Board shall approve, disapprove, or modify and approve the application not later than 90 days after the date of the suspension.

{¶ 4} On December 19, 2014, NRG Pipeline filed a letter of notification application, pursuant to R.C. 4906.03(F), for the purpose of constructing the Avon Lake Gas Addition Project (project), which consists of a proposed natural gas pipeline designed at 24 inches in diameter and approximately 20 miles in length, along with a metering station and regulating station, in Lorain County, Ohio. In the application, NRG Pipeline explained that 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.

{¶ 5} On January 9, 2015, and April 13, 2015, petitions to intervene in this proceeding were filed by various property owners in Lorain County, Ohio (collectively, LCPO): 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; K. Hovnanian Oster Homes, LLC; Barbara and Thomas Demaline; Matthias and Joanne Helfrich; Mark and Darlene Julius; Marty and Irene Kaulins; Thomas Oster, President, Avon Development, LLC; Robert and Debra Kubasak; George Mekker and Irene Noster; Joan Kerecz; Albert Kelling; William and Anna Marie Holt; and Theresa M. Wukie.

{¶ 6} By Entry dated March 9, 2015, the Board found that there was good cause 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 conduct a thorough review of the application. Additionally, the Board determined that a local public hearing and an adjudicatory hearing should be held in this matter.

{¶ 7} The adjudicatory hearing commenced on April 23, 2015, and concluded on April 24, 2015.

{¶ 8} On June 4, 2015, the Board issued an Opinion, Order, and Certificate granting NRG Pipeline authority to construct the project, subject to a number of specified conditions.

{¶ 9} On October 5, 2016, NRG Pipeline filed a motion to extend the duration of its certificate from two years to three years. By Entry dated March 2, 2017, the Board granted NRG Pipeline's motion and found that the certificate should be extended to June 4, 2018.

{¶ 10} On March 5, 2018, NRG Pipeline filed a motion to extend the duration of its certificate through June 4, 2020. In support of the motion, NRG Pipeline asserts that the Board is under no statutory or other constraint that limits its authority to grant the requested extension, while its precedent indicates that the Board has approved numerous requests for certificate extensions of multiple years for a variety of reasons, including changed economic conditions, construction delays, and litigation. In particular, NRG Pipeline contends that the Board has previously determined that changed economic circumstances and economic uncertainty constitute good cause to extend a certificate.

{¶ 11} NRG Pipeline notes that its request for an extension is due to the current uncertainty caused by an ongoing bankruptcy affecting the project's intended customer, the Avon Lake power plant. NRG Pipeline explains that the Avon Lake power plant is owned by NRG Power Midwest LP (NRG Power Midwest), which, in turn, is owned by GenOn Energy, Inc. (GenOn). NRG Pipeline further explains that, on June 14, 2017, GenOn and many of its affiliates, including NRG Power Midwest, filed for bankruptcy in the United States Bankruptcy Court for the Southern District of Texas. According to NRG Pipeline, GenOn is expected to emerge from bankruptcy later this year or in 2019, if necessary, for a sale process. With respect to the project, NRG Pipeline notes that, as part of a restructuring agreement in GenOn's bankruptcy proceeding, the current development of the project is to be preserved for the benefit of the Avon Lake power

plant and that GenOn has the option to acquire and complete the project following resolution of the bankruptcy proceeding.

{¶ 12} Additionally, NRG Pipeline asserts that it has actively pursued the project since the Board granted the certificate. In support of its contention, NRG Pipeline states that much of the initial development, engineering, and planning work for the project has been completed and that the Company has continued to refine its plans to accommodate landowner requests. NRG Pipeline adds that it has invested significant resources to acquire property rights to over two-thirds of the pipeline route through eminent domain and negotiations and that, only in light of the recent bankruptcy proceeding, did the Company suspend its remaining eminent domain activities. As a final point, NRG Pipeline states that its extension request, which seeks to lengthen the total duration of the certificate to five years, is reasonable, given that five years is the default length for a certificate granted for a standard application to construct a major utility facility. NRG Pipeline notes that the Board treated its application as if it were a standard application rather than a letter of notification application. NRG Pipeline concludes that it is, therefore, reasonable to extend the certificate for the project to the length of a standard certificate.

{¶ 13} On March 23, 2018, LCPO filed a response in opposition to NRG Pipeline's motion for an extension. LCPO requests that the Board enforce the current expiration date of June 4, 2018. In the alternative, LCPO requests that the Board establish a firm deadline for commencement of construction and grant the extension on the condition that no additional extensions will be granted. In support of its position, LCPO argues that GenOn's bankruptcy proceeding is not an economic condition outside of the control of NRG Pipeline's parent company, NRG Energy, Inc. (NRG), which controls both GenOn and NRG Power Midwest. LCPO asserts that, in any event, GenOn and NRG Power Midwest have no involvement in the project's development activities or eminent domain proceedings. For this reason, LCPO claims that NRG Pipeline's argument that further

development of the project is beyond the scope of the bankruptcy is disingenuous. LCPO also contends that extensions granted in other Board proceedings do not support NRG Pipeline's request, because those cases did not involve substantial disruptions to landowners subject to eminent domain proceedings. Finally, LCPO maintains that NRG's use of eminent domain against the property owners impacted by the project contradicts any potential justification for additional burdensome delays.

{¶ 14} NRG Pipeline filed a reply in support of its motion on March 30, 2018. Initially, NRG Pipeline notes that LCPO's response was untimely under Ohio Adm.Code 4906-2-27(B) and should, therefore, be disregarded. Addressing LCPO's arguments, NRG Pipeline asserts that GenOn's bankruptcy is beyond the Company's control, because GenOn and the Company are separate entities. Further, NRG Pipeline contends that LCPO appears to believe that the eminent domain proceedings alter the analysis with respect to the requested extension, despite the fact that 33 of the 40 property owners signed voluntary easements with the Company and no appropriations actually occurred. With respect to LCPO's alternative request, NRG Pipeline responds that it is premature to establish a firm construction deadline or to preclude future extensions. NRG Pipeline states that it cannot agree to a specific deadline for construction of the project because the bankruptcy proceeding is ongoing. NRG Pipeline adds that the Board has granted multiple extensions in the same case, where there is good cause.

{¶ 15} Upon review of NRG Pipeline's motion for an extension of its certificate, the Board finds that the motion is reasonable and should be granted. We find that an extension of NRG Pipeline's certificate for an additional two-year period is appropriate under the circumstances, given that the owners of the Avon Lake power plant, which is the sole customer for the project, are subject to the ongoing bankruptcy proceeding and the restructuring agreement obligating NRG to preserve the project for the benefit of the Avon Lake power plant. Additionally, according to NRG Pipeline, the Company has made significant investments in the project by completing much of the development,

engineering, and planning work, as well as by acquiring over two-thirds of the necessary land rights. NRG Pipeline also represented that, despite the recent delay due to the bankruptcy proceeding, the Company continues to view the project as a viable means to supply the Avon Lake power plant with natural gas, and continues to refine its plans in response to requests from affected property owners. Finally, we note that the Board has previously granted certificate extensions due to economic uncertainty or other economic circumstances. *See, e.g., In re Norton Energy Storage, LLC*, Case No. 99-1626-EL-BGN, Entry (Mar. 20, 2006). For these reasons, we find that NRG Pipeline has stated good cause for the requested extension, such that the Company's certificate to construct the project should be extended to June 4, 2020.

{¶ 16} With respect to LCPO's position, the Board notes that LCPO's response to NRG Pipeline's motion was untimely filed pursuant to Ohio Adm.Code 4906-2-27(B) and that LCPO has not sought leave to file its untimely response. Consequently, we find that LCPO's response is procedurally improper. In any event, we find that NRG Pipeline has demonstrated good cause for its motion, as addressed above.

III. ORDER

{¶ 17} It is, therefore,

{¶ 18} ORDERED, That NRG Pipeline's motion to extend the duration of its certificate be granted. It is, further,

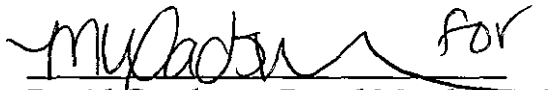
{¶ 19} ORDERED, That NRG Pipeline's certificate be extended in accordance with Paragraph 15. It is, further,

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

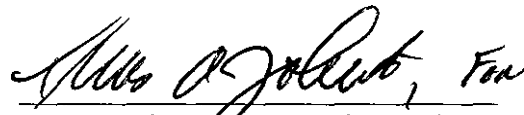
THE OHIO POWER SITING BOARD




Asim Z. Haque, Chairman
Public Utilities Commission of Ohio



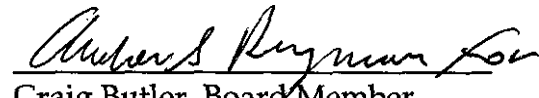
for
David Goodman, Board Member
and Director of the Ohio
Development Services Agency



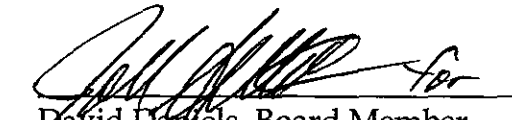
for
James Zehringer, Board Member
and Director of the Ohio
Department of Natural Resources



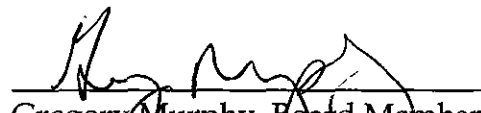
for
Lance Himes, Board Member
and Director of the Ohio
Department of Health



for
Craig Butler, Board Member
and Director of the Ohio
Environmental Protection Agency



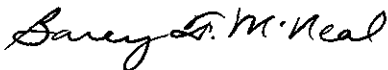
for
David Daniels, Board Member
and Director of the Ohio
Department of Agriculture



for
Gregory Murphy, Board Member
and Public Member

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Barcy F. McNeal
Secretary