

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 December 18, 2018

{¶ 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 to construct an approximately 14-mile, 20-inch natural gas pipeline extension from the Company's WW Feed Station to an existing gas pipeline in the village of Fairfax or the city of Norwood area. The gas pipeline project would be located entirely in Hamilton County, Ohio.

{¶ 4} By letter dated March 3, 2017, the Board notified Duke that its amended application had been certified as complete and directed the Company to serve appropriate government officials and public agencies with copies of the complete, certified application.

{¶ 5} By Entry dated April 13, 2017, a procedural schedule was established in this case, including a local public hearing to occur on June 15, 2017, and an adjudicatory hearing to commence on July 12, 2017.

{¶ 6} On May 31, 2017, Staff filed its Report of Investigation (Staff Report). In the Staff Report, Staff recommends that the project be installed on Duke's proposed alternate route, subject to numerous conditions.

{¶ 7} The local public hearing occurred, as scheduled, on June 15, 2017.

{¶ 8} On June 21, 2017, at the request of some of the intervenors in this case, the administrative law judge (ALJ) granted a continuance of the adjudicatory hearing. In the June 21, 2017 Entry, the adjudicatory hearing was rescheduled to commence on September 11, 2017. The procedural schedule was also amended to require that testimony to be offered by Duke be filed by August 25, 2017, with testimony on behalf of intervenors and Staff due no later than September 1, 2017.

{¶ 9} On August 23, 2017, Duke filed a motion to suspend the procedural schedule in this case, along with a request for expedited treatment. Specifically, Duke requested that the filing of testimony by any party, as well as the commencement of the adjudicatory hearing, be delayed until further notice. In support of its motion, Duke stated that, in the course of meeting with affected property owners and municipalities, the Company became aware of additional information concerning site-specific matters. Duke further stated that it was informed of potential concerns with engaging in construction activities in the vicinity of property on which environmental remediation has occurred. According to Duke, some of this information warranted additional examination and, potentially, contribution from entities that are not otherwise participating in this proceeding. In light of the fact that the additional investigation was expected to take some time, Duke proposed to delay the procedural schedule, while the Company worked through these issues, performed any inquiry that may be needed, and solicited input from affected communities and property owners.

{¶ 10} By Entry dated August 24, 2017, the ALJ granted Duke's motion and suspended the procedural schedule until otherwise ordered by the Board.

{¶ 11} On April 13, 2018, Duke filed supplemental information to its application, along with a motion seeking to reestablish the procedural schedule. In the motion, Duke requests that deadlines for the filing of testimony and a date for commencement of the adjudicatory hearing be established. In support of its request, Duke states that it has completed the necessary investigation of certain site-specific issues. Duke notes that it has confirmed the lack of pre-existing environmental issues of concern along the alternate route that would require route modifications. Duke adds that, following meetings with property owners and municipalities, additional information was obtained that resulted in adjustments to the proposed alternate route, which are addressed in the supplemental information filed with the motion.

{¶ 12} On April 16, 2018, NOPE - Neighbors Opposed to Pipeline Extension, LLC (NOPE) filed a memorandum in response to Duke's motion. NOPE requests that the Board consider the significant changes in Duke's proposed alternate route in developing a procedural schedule, evaluate the supplemented application for completeness pursuant to Ohio Adm.Code 4906-3-06, and require the Company to hold an additional informational meeting under Ohio Adm.Code 4906-3-03(B). NOPE contends that a public informational meeting and an additional public hearing are necessary for the public to gain a full understanding and to give full and complete testimony on the proposed changes to the project. NOPE argues that, if the Board finds that it is not necessary to determine completeness pursuant to Ohio Adm.Code 4906-3-06, an appropriate procedural schedule should be established, in order to permit Staff to review the revised alternate route and develop a report and recommendation for the Board, as well as afford all parties the opportunity for additional discovery to evaluate the changes to the application and Staff's recommendations.

{¶ 13} On April 20, 2018, the Board of County Commissioners of Hamilton County (Hamilton County) filed a response to Duke's motion. Hamilton County asserts that Duke proposes material changes to the alternate route. Hamilton County, therefore, states that

any procedural schedule established in this matter should enable the public to review and comment on the new information contained in the supplement; permit the Board to determine under Ohio Adm.Code 4906-3-06 whether Duke's application, as supplemented, is complete; afford intervenors an opportunity to conduct additional discovery; and provide Staff sufficient time to produce a new or supplemental Staff Report, all in advance of a new hearing date. Hamilton County adds that, given the heightened public interest in this proceeding, a public informational meeting and public hearing should be held.

{¶ 14} On April 23, 2018, the city of Blue Ash filed a memorandum stating that it supports the responses filed by NOPE and Hamilton County.

{¶ 15} On June 29, 2018, Staff filed a letter in response to Duke's filing of its supplemental information. Staff states that Duke's supplemental information includes seven significant adjustments to the proposed alternate route, with the furthest distance between the revised alternate route and the original alternate route being less than 500 feet. Staff also notes that the revisions appear to impact two additional property owners. According to Staff, Duke's supplemental information does not address whether land use agreements, in addition to those necessary for the original alternate route, would be required for any impacted properties along the revised alternate route. With respect to the procedural schedule, Staff requests that it be provided sufficient time to complete a thorough review of Duke's supplemental information.

{¶ 16} On July 26, 2018, Duke further supplemented its application by filing two environmental summary reports.

{¶ 17} Ohio Adm.Code 4906-3-11(A) distinguishes between amendments and modifications to an accepted, complete application that is pending before the Board. Ohio Adm.Code 4906-3-11(A)(1) through (A)(5) sets forth procedural requirements for amendments to a pending accepted, complete application. Consistent with paragraphs (A)(1), (A)(2), and (A)(3) of the rule, the applicant must specifically identify the portion of

the pending accepted, complete application that has been amended; serve a copy of the application for amendment upon all persons previously entitled to receive a copy of the application and supply the Board with proof of such service; and place a copy of such application for amendment or notice of its availability in all libraries, consistent with Ohio Adm.Code 4906-3-07, and supply the Board with proof of such action.

{¶ 18} With respect to modifications to a proposed route that are proposed by an applicant during review of the accepted, complete application and during the hearing process, Ohio Adm.Code 4906-3-11(A)(6) provides that, unless otherwise ordered by the Board or ALJ, such modifications shall not be considered amendments if such modifications are within the 2,000 foot study corridor and do not impact additional landowners by requiring easements for construction, operation, or maintenance or create further impacts within the planned right-of-way of the proposed facility.

{¶ 19} Upon review of Duke's supplemental information and Staff's correspondence in response, the ALJ finds that Duke's supplemental information should be considered an amendment of a pending accepted, complete application, in light of Staff's representation that the Company's revisions to the proposed alternate route may impact two additional landowners. Therefore, Duke is directed, in accordance with Ohio Adm.Code 4906-3-11(A)(2) and (A)(3), to serve a copy of the application for amendment upon all persons previously entitled to receive a copy of the application and to place a copy of such application for amendment or notice of its availability in all libraries, consistent with Ohio Adm.Code 4906-3-07. Duke should then supply the Board with proof of its compliance with the rule. Duke should also serve a copy of the complete application on any additional property owners impacted by the proposed revisions and file proof of service with the Board.

{¶ 20} Upon consideration of Duke's motion to reestablish the procedural schedule, as well as the responsive pleadings, the ALJ finds that the following procedural schedule should be implemented:

- (a) Pursuant to Ohio Adm.Code 4906-3-11(A)(5), Staff shall review the application for amendment and file its report of investigation on or before March 5, 2019.
- (b) On or before March 22, 2019, each party shall file a list of issue(s) citing specific concerns about which they may be interested in pursuing cross-examination of witnesses.
- (c) All expert and factual testimony to be offered by Duke shall be filed by March 26, 2019.
- (d) All expert and factual testimony to be offered by intervenors and Staff shall be filed by April 2, 2019.
- (e) The adjudicatory hearing will commence on April 9, 2019, at 10:00 a.m., at the offices of the Public Utilities Commission of Ohio, 180 East Broad Street, 11th Floor, Hearing Room 11-A, Columbus, Ohio 43215-3793. The purpose of the adjudicatory hearing is for Duke, Staff, and intervenors to provide evidence regarding the project.
- (f) Additionally, a second local public hearing in this matter will be held on March 21, 2019, commencing at 3:00 p.m. and continuing until 8:00 p.m., at University of Cincinnati-Blue Ash, 9555 Plainfield Road, Muntz Hall, Room 119, Blue Ash, Ohio 45236. The purpose of the local public hearing is to allow interested persons in the local community affected by the project, who are not parties to the case and who did not already testify at the first local public hearing, to provide written or oral testimony regarding the project.

{¶ 21} Pursuant to Ohio Adm.Code 4906-3-11(A)(4)(a), Duke should issue public notice of the hearings and the amendment to the application. The notice should be published in newspapers of general circulation in those municipal corporations and

counties in which the chief executive received service of a copy of the application pursuant to Ohio Adm.Code 4906-3-07 at least seven days but no more than 21 days before the public hearing. The notice should be published with letters not less than ten-point type, bear the heading “Notice of Proposed Major Utility Facility” in bold type not less than one-fourth inch high or thirty-point type, and include the following information: the name and a brief description of the project; a map showing the location and general layout of the proposed facility; a statement, including the assigned docket number, that an application for a certificate to construct, operate, and maintain said facility is now pending before the Board; and the date, time, and location of the adjudicatory and local public hearings.

{¶ 22} 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.

{¶ 23} Gov. Bar R. XII, Section 2(A) provides rules governing eligibility to practice pro hac vice in Ohio. Pursuant to Gov. Bar R. XII, Section 2(A)(7), motions for admission pro hac vice must be accompanied by a certificate of pro hac vice registration furnished by the Supreme Court Office of Attorney Services.

{¶ 24} On May 23, 2018, a motion to appear pro hac vice and certificate of pro hac vice registration were filed by Brian S. Heslin on behalf of Duke. The ALJ finds that the motion is reasonable and should be granted.

{¶ 25} It is, therefore,

{¶ 26} ORDERED, That Duke comply with the directives set forth in Paragraphs 19 and 21. It is, further,

{¶ 27} ORDERED, That the procedural schedule set forth in Paragraph 20 be adopted. It is, further,

{¶ 28} ORDERED, That the motion to appear pro hac vice filed on May 23, 2018, by Brian S. Heslin be granted. It is, further,

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

THE OHIO POWER SITING BOARD

/s/Sarah J. Parrot

By: Sarah J. Parrot
Administrative Law Judge

JRJ/hac

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

Summary: Administrative Law Judge Entry directing Duke to comply with directives, setting procedural schedule, and granting motion to appear pro hac vice electronically filed by Heather A Chilcote on behalf of Sarah J. Parrot, Administrative Law Judge, Power Siting Board