

THE OHIO POWER SITING BOARD

IN THE MATTER OF THE APPLICATION OF
HECATE ENERGY HIGHLAND 4 LLC FOR A
CERTIFICATE OF ENVIRONMENTAL
COMPATIBILITY AND PUBLIC NEED.

CASE NO. 20-1288-EL-BGN

ENTRY

Entered in the Journal on July 29, 2020

{¶ 1} Hecate Energy Highland 4 LLC (Hecate Energy) 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 first obtaining a certificate for the facility from the Ohio Power Siting Board (Board).

{¶ 3} On March 9, 2020, the governor signed Executive Order 2020-01D (Executive Order), declaring a state of emergency in Ohio to protect the well-being of Ohioans from the dangerous effects of COVID-19. As described in the Executive Order, state agencies are required to implement procedures consistent with recommendations from the Ohio Department of Health (ODH) to prevent or alleviate the public health threat associated with COVID-19. Additionally, all citizens are urged to heed the advice of the ODH regarding this public health emergency in order to protect their health and safety. The Executive Order was effective immediately and will remain in effect until the COVID-19 emergency no longer exists. The ODH is making COVID-19 information, including information on preventative measures, available via the internet at coronavirus.ohio.gov/.

{¶ 4} Pursuant to R.C. 3701.13, the ODH has supervision of “all matters relating to the preservation of the life and health of the people” and the “ultimate authority in matters of quarantine and isolation.” On March 12, 2020, the Director of the ODH issued an Order indicating that “all persons are urged to maintain social distancing (approximately six feet away from other people) whenever possible.”

{¶ 5} On July 16, 2020, Hecate Energy filed a motion seeking a limited waiver of Ohio Adm.Code 4906-3-03(B) and requested expedited treatment of such waiver. Hecate Energy is proposing to construct and operate a 100 megawatt solar facility in Highland County, Ohio (Project) and seeks waiver of Ohio Adm.Code 4906-3-03(B) to allow for the required public informational meeting to be conducted telephonically instead of in-person in the area in which the Project will be located.

{¶ 6} No memorandum contra Hecate Energy's motion for waiver was filed in this proceeding.

{¶ 7} Ohio Adm.Code 4903-3-03(B) requires, in part, an applicant to conduct at least one public informational meeting in the area in which the project is located no more than 90 days prior to filing a standard certificate application with the Board.

{¶ 8} Hecate Energy argues that, due to the ongoing COVID-19 pandemic and its effects on the gathering of large groups of people, it is unable to hold the prerequisite public information meeting "in the area in which the project is located," and therefore, unable to file the Project application with Board. In support of its waiver request, Hecate Energy points to the different orders issued by the Director of the ODH relating to protecting public health. The administrative law judge (ALJ) notes that these orders include an order issued on March 22, 2020, which has been amended several times since, directing Ohio residents to stay at home. Since the original ODH order, ODH has issued an additional "Director's Stay Safe Ohio Order" (Stay Safe Ohio Order), as well as providing continuing public safety guidance as part of the state's "Responsible Restart Ohio" plan. The Stay Safe Ohio Order and continuing Responsible Restart Ohio guidance generally prohibit gatherings of 10 or more people. Hecate Energy asserts that public informational meetings do not fall within an exception to these state social distancing recommendations.

{¶ 9} In lieu of complying with the express language of Ohio Adm.Code 4906-3-03(B), Hecate Energy proposes a three-step process to conducting the public informational meeting that it claims will meet the public information meeting requirement. The three-step

process includes: (1) posting a PowerPoint presentation that sets forth details of the Project on the Project website 10 days in advance of a public Question and Answer (Q&A) session; (2) preparing a recorded presentation of the material contained in the PowerPoint presentation, again to be posted on the Project website 10 days in advance of a public Q&A session; and, (3) conducting a live, telephonic Q&A session in which the public can participate and ask questions of Hecate Energy and the Board about the Project and the Board's certification process. In addition to the three-step process, Hecate Energy will maintain a Project information website that provides viewers with a map, Project information, and an opportunity to submit questions and contact Project representatives.

{¶ 10} Hecate Energy submits that it will solicit comments from attendees of the Q&A session and summarize in its certificate application how many and what types of comments were received, as required by Ohio Adm.Code 4906-2-03(B)(4). Hecate Energy states that the public will be able to attend the information meeting via telephone and will be able to interact with the Project's representatives in a variety of ways before, during, and after the meetings. Hecate Energy believes that its proposal creates an acceptable opportunity for direct stakeholder engagement in light of the ongoing COVID-19 public health limitations.

{¶ 11} On July 23, 2020, Staff filed a response to Hecate Energy's motion for waiver, in which it acknowledged the unique nature of COVID-19 and the changed environment that has resulted from the response to the virus. Staff concluded that, due to the above circumstances, it does not object to Hecate Energy's requested waiver of Ohio Adm.Code 4906-3-03(B).

{¶ 12} Ohio Adm.Code 4906-3-01(B) provides that the Board may waive any provisions in Ohio Adm.Code Chapter 4906-3 upon an application or a motion filed by a party, other than a requirement mandated by statute.

{¶ 13} Upon consideration of the unique circumstances of this case and the state of emergency, the ALJ finds that Hecate Energy's request to waive the requirement that the

public information meeting be held in the area where the project is to be located is reasonable and should be granted. However, while granting this limited waiver request, the ALJ further notes that the Board is not endorsing or objecting to the actual manner in which the public information meeting is proposed to be held, as detailed in the motion and memorandum in support. If Hecate Energy wishes to proceed with planning and holding the virtual public information meeting, it carries with it the risk associated with doing so. Nonetheless, the ALJ certainly encourages Hecate Energy to ensure that all those who may wish to participate in the virtual public information meeting have the opportunity to do so, just as they would under normal circumstances. This must include the creation of a process by which members of the public may request reasonable accommodations to obtain access to the public information meeting. The details of this process, and all requests for accommodation received, should be forwarded to Staff upon receipt. Such shared information shall include any proposed resolutions from Hecate Energy.

{¶ 14} It is, therefore,

{¶ 15} ORDERED, That Hecate Energy's motion seeking waiver of Ohio Adm.Code 4906-3-03(B) be granted to the extent it is requesting waiver of the Board's requirement that a public information meeting be held in the area in which the Project is to be located. It is, further,

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

THE OHIO POWER SITING BOARD

/s/Michael L. Williams

By: Michael L. Williams
Administrative Law Judge

JRJ/hac

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7/29/2020 2:18:31 PM

in

Case No(s). 20-1288-EL-BGN

Summary: Administrative Law Judge Entry granting motion seeking waiver electronically filed by Heather A Chilcote on behalf of Michael L. Williams, Administrative Law Judge, Ohio Power Siting Board