

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE APPLICATION OF
WESSINGTON SPRINGS WIND ENERGY
CENTER FOR CERTIFICATION AS AN
ELIGIBLE OHIO RENEWABLE ENERGY
RESOURCE GENERATING FACILITY.

CASE NO. 21-110-EL-REN

ENTRY

Entered in the Journal on June 3, 2021

{¶ 1} R.C. 4928.64 and 4928.645 contain the renewable energy resource requirements for electric utility and electric services companies providing electric retail generation in Ohio. R.C. 4928.01(A)(37) defines the types of renewable energy resource generating facilities that qualify in meeting the statutory mandates. Pursuant to Ohio Adm.Code 4901:1-40-04(F), any entity that desires to be designated an eligible renewable energy resource generating facility for the state of Ohio shall file an application for certification that demonstrates the facility satisfies the requirements of R.C. 4928.64 and 4928.645.

{¶ 2} On January 29, 2021, NextEra Energy (Applicant) filed an application for certification of the Wessington Springs Wind Energy Center (Facility), a 51 megawatt facility comprised of 34 General Electric wind turbines, located in Wessington Springs, South Dakota, as an eligible Ohio renewable energy resource generating facility, as defined in R.C. 4928.01.

{¶ 3} Ohio Adm.Code 4901:1-40-04(D)(2) provides for automatic approval of an application for certification as an eligible Ohio renewable energy resource generating facility unless the Commission suspends the application within 30 days. This application was suspended by attorney examiner Entry on February 4, 2021, to allow Staff additional time to review the application and obtain additional information from Applicant.

{¶ 4} Staff filed Applicant's responses to Staff questions concerning the application on February 22, 2021.

{¶ 5} On March 1, 2021, Staff filed a report of its review of the application, indicating that the Facility satisfies the statutory requirements for certification as a renewable energy facility, and recommending that the application be approved.

{¶ 6} On April 7, 2021, Carbon Solutions Group, LLC (CSG) filed a motion to intervene out of time, a motion to consolidate, and a motion to establish a procedural schedule in the case, along with a supporting memorandum.

{¶ 7} On April 20, 2021, the attorney examiner scheduled by Entry a prehearing conference in the case to address the coming procedural steps in the case.

{¶ 8} On April 30, 2021, the prehearing conference was held as scheduled. In attendance were representatives of Staff, the Heartland Consumers Power District (HCPD), and CSG. At the prehearing conference, the CSG and Staff proposed briefing the issues raised in this case in lieu of an evidentiary hearing.

{¶ 9} On May 5, 2021, Staff filed a memorandum contra CSG's motions to consolidate and intervene in the case.

{¶ 10} On May 11, 2021, CSG filed a reply memorandum to Staff's memorandum contra CSG's motions.

{¶ 11} On May 13, 2021, Blue Delta Energy, LLC (Blue Delta) filed a motion to intervene out of time in the case and an accompanying memorandum in support of its motion and in opposition to CSG's motions to intervene and to consolidate.

{¶ 12} On May 21, 2021, HCPD filed a motion to intervene out of time in the case and a memorandum in support of its motion and in opposition to CSG's motions to intervene and to consolidate.

{¶ 13} Pursuant to Ohio Adm.Code 4901:1-40-04(D)(1), any interested person may file a motion to intervene within 20 days of the date of the filing of the application. Pursuant

to Ohio Adm.Code 4901-1-12(B)(1)-(2), any party may file a memorandum contra within 15 days after the service of a motion, or such other period as the Commission or attorney examiner requires. Further, Ohio Adm.Code 4901-1-11(F) provides that an untimely motion to intervene will be granted only under extraordinary circumstances.

{¶ 14} The Ohio Supreme Court has held, in *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 856 N.E.2d 940 (2006), that "intervention ought to be liberally allowed so that the positions of all persons with a real and substantial interest in the proceedings can be considered by the [Commission]." Upon review of the motions to intervene and responsive pleadings, and given the fact that applications for eligible renewable energy resource generating facilities are no longer necessarily docketed at the same time the applications are filed with the Commission, the attorney examiner finds a liberal application of the intervention rules is warranted in this case. As such, any motions to intervene that would have been filed within 20 days of the February 4, 2021 Entry suspending the application would have been considered timely filed by the Commission. Although CSG, Blue Delta, and HCPD's motions to intervene would then still be considered untimely, the attorney examiner finds that extraordinary circumstances exist to grant the motions to intervene, given the novelty of the arguments presented in this proceeding and the nature of the interests presented by the parties in their motions. Furthermore, the attorney examiner notes that, as no procedural schedule has been issued, no party will be unduly prejudiced by granting these motions to intervene. Accordingly, the attorney examiner finds that the motions to intervene filed by CSG, HCPD, and Blue Delta in this case should be granted.

{¶ 15} The Commission considers consolidation as a matter of administrative economy in cases where consolidation will enhance the efficiency of the proceedings, or where the dockets in multiple cases involve the same matter. See *In re Cardinal Asphalt Company, Notice of Apparent Violation and Intent to Assess Forfeiture*, Case No. 19-2240-TR-CVF, Finding and Order (Dec. 2, 2020) at ¶ 10; *In re the Inquiry into the 1989 Long-Term*

Forecast Report of the Ohio Gas Company, Case No. 89-874-GA-GCR, Opinion and Order (June 26, 1989).

{¶ 16} As the cases CSG moves to consolidate are factually unique and involve different types of facilities, including both wind farms and solar facilities, as well as different facility owners, and are located in different states throughout the country, consolidation of the cases would not enhance the efficiency of the proceedings. Furthermore, the Commission maintains broad authority to organize its own docket. *See In re Arctic Express, Inc., Notice of Apparent Violation and Intent to Assess Forfeiture*, Case No. 03-1466-TR-CVF, et al., Entry (Sept. 9, 2003). Thus, the attorney examiner denies the motion to consolidate.

{¶ 17} As a final matter, during the prehearing conference held on April 30, 2021, the parties notified the attorney examiner that they were attempting to stipulate to the facts of this case and inquired whether briefing the arguments would be more appropriate than an evidentiary hearing, after alleging that this proceeding was limited to legal issues. Without reviewing the agreed upon stipulation of facts, the attorney examiner finds it premature to set a briefing schedule at this time, but will take the request under advisement. The parties shall file any stipulation of facts by June 25, 2021. The attorney examiner will then issue a subsequent entry detailing the next procedural steps to be taken in this case.

{¶ 18} It is, therefore,

{¶ 19} ORDERED, That the motions to intervene filed by CSG, HCPD, and Blue Delta be granted. It is, further,

{¶ 20} ORDERED, That CSG's motion to consolidate be denied. It is, further,

{¶ 21} ORDERED, That the parties file any stipulation of facts by June 25, 2021. It is, further,

{¶ 22} ORDERED, That a copy of this Entry be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

/s/Jesse M. Davis

By: Jesse M. Davis
Attorney Examiner

SJP/kck

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in

Case No(s). 21-0110-EL-REN

Summary: Attorney Examiner Entry granting the motions to intervene filed by CSG, HCPD, and Blue Delta; denying CSG's motion to consolidate and ordering that the parties file any stipulation of facts by June 25, 2021.

electronically filed by Kelli C. King on behalf of Jesse M. Davis, Attorney Examiner, Public Utilities Commission of Ohio