

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

ORDER ON REHEARING

Entered in the Journal on June 24, 2021

I. SUMMARY

{¶ 1} The Ohio Power Siting Board grants the application for rehearing filed by Hecate Energy Highland 4, LLC finding that (1) a certificate should be issued for the 100 MW utility-scale solar facility, and (2) the certificate shall not be bifurcated.

II. PROCEDURAL BACKGROUND

{¶ 2} All proceedings before the Ohio Power Siting Board (Board) are conducted according to the provisions of R.C. Chapter 4906 and Ohio Adm.Code Chapter 4906-1, et seq.

{¶ 3} Hecate Energy Highland 4, LLC (Hecate or Applicant) is a person as defined in R.C. 4906.01. Hecate Energy Highland 2, LLC (Hecate 2) is a person as defined in R.C. 4906.01.

{¶ 4} Pursuant to R.C. 4906.04, no person shall construct a major utility facility without first having obtained a certificate from the Board. In seeking a certificate, applicants must comply with the filing requirements outlined in R.C. 4906.04, as well as Ohio Adm.Code Chapters 4906-2 through 4906-4.

{¶ 5} Pursuant to R.C. 4906.01, a major utility facility includes an electric generating plant designed for, or capable of operation, at a capacity of at least 50 megawatts.

{¶ 6} R.C. 4906.12 provides that R.C. 4903.02 to 4903.10 and R.C. 4903.20 to 4903.23 apply to any proceeding or order of the Board, as if the Board were the Public Utilities Commission of Ohio (Commission).

{¶ 7} Ohio Adm.Code 4906-2-32(A) states, in relevant part, that any party or affected person may file an application for rehearing, within 30 days after the issuance of a Board order, in the manner, form, and circumstance set forth in R.C. 4903.10. R.C. 4903.10 states that any party to a Commission proceeding may apply for rehearing with respect to any matter determined by the Commission within 30 days after the entry of the order upon the journal of the Commission.

{¶ 8} On September 2, 2020, Hecate filed its application with the Board for a certificate of environmental compatibility and public need to construct and operate New Market Solar, which was described as a combined project of New Market Solar I and New Market Solar II. Hecate indicated that its application related to two separate and distinct facilities, with New Market Solar I expected to generate 65 MW of solar-powered electricity, and New Market Solar II expected to generate 35 MW of solar-powered electricity. Hecate advised that, given the separateness of the two facilities, it believed that New Market Solar II was non-jurisdictional. Accordingly, Hecate requested that the Board certificate the project either as (1) two separate facilities with two separate certificates, or (2) two separate facilities with a certificate for New Market Solar I and confirmation that New Market Solar II is non-jurisdictional.

{¶ 9} Hecate supplemented its application on October 15, October 20, October 23, November 10, and December 1, 2020. Pursuant to the supplement on December 1, 2020, Hecate requested that the Board (1) issue a certificate for the combined 100 MW facility, and (2) immediately bifurcate the certificate into two certificates to allow for the separate construction and operation New Market I and New Market II.

{¶ 10} On January 4, 2021, Staff filed its Report of Investigation (Staff Report).

{¶ 11} On January 19, 2021, the virtual public hearing was held as scheduled.

{¶ 12} On January 22, 2021, Hecate, Ohio Farm Bureau Federation (OFBF), and Staff filed a Joint Stipulation and Recommendation (Stipulation). A Supplemental Joint

Stipulation and Recommendation was filed by Hecate, OFBF, and Staff on January 25, 2021 (Supplemental Stipulation) (Collectively, “Combined Stipulations”). In the Supplemental Stipulation, the parties sought modification of the terms of the Stipulation should the Board decide to grant, and then immediately bifurcate, the certificate.

{¶ 13} On January 25, 2021, the adjudicatory hearing was held as scheduled through Webex.

{¶ 14} By Opinion, Order, and Certificate dated March 18, 2021 (March 2021 Order), the Board approved, with modification, the provisions of the Stipulation and Supplemental Stipulation, certifying 65 megawatts for New Market Solar I.

{¶ 15} On April 19, 2021, Hecate filed an application for rehearing of the March 2021 Order claiming that the Board erred either (1) in not adopting the Combined Stipulations as to certifying the 100 MW facility and immediately bifurcating and assigning the 35 MW phase of the certificate to Hecate 2, or (2) in failing to expressly state that the 35 MW phase of the project is non-jurisdictional.

{¶ 16} On May 17, 2021, the administrative law judge, pursuant to Ohio Adm.Code 4906-2-32(E), granted rehearing for the purpose of affording the Board more time to consider the issues raised in Hecate’s application for rehearing.

III. DISCUSSION

{¶ 17} In the March 2021 Order, the Board authorized a certificate for the construction, operation, and maintenance of the proposed project as recommended in the Combined Stipulations, subject to limited modifications. The limited modifications included, among other items, (1) requiring that New Market Solar I shall be operated in a manner that assures that it injects no more than 65 megawatts into the Bulk Power System, and (2) stating that the Applicant’s request for certification of 35 MW for New Market Solar II would not be addressed by the Board. (Order at 34.)

{¶ 18} Hecate’s application for rehearing claims that the Board erred in modifying the Combined Stipulations as they related to (1) issuing a certificate for a 100 MW facility, (2) bifurcating the certificate between the 65 MW (Hecate) and 35 MW (Hecate 2) phases of the facility, and (3) assigning the 35 MW phase of the certificate to Hecate 2. Hecate asserts that the entire 100 MW facility meets the definition of a major utility facility and is, therefore, jurisdictional to the Board. (R.C. 4906.01(B)(1)(a); R.C. 4906.04; Ohio Adm.Code 4906-1-01(F)(3)). Hecate claims that while the project will be divided into two phases, the Board should consider the entire project as a single 100 MW facility because the two phases feed through a single transformer to connect to the electrical grid. In the alternative, Hecate maintains that, if the Board intends to determine that the 35 MW phase of the project is non-jurisdictional, that the Board is required to expressly state that finding and provide the reasoning for that determination.

{¶ 19} The Board has reviewed and considered the arguments raised by Hecate in its application for rehearing. Upon review, the Board finds that Hecate’s application for rehearing should be granted, in part. In doing so, the Board determines that, initially, a certificate for construction, operation, and maintenance should be issued to Hecate for the full 100 MW facility, as proposed in the application and the stipulations.

{¶ 20} Pursuant to R.C. 4906.01(B)(1)(a), the Board has jurisdiction over “major utility facilities,” which includes “electric generating plant and associated facilities designed for, or capable of, operation at a capacity of fifty megawatts or more.” Further, “associated facilities” are described in Ohio Adm.Code 4906-1-01(F)(3) to include, among other things, “distribution lines and substations necessary to interconnect the facility to the electric grid.” While at times the project in this case has been described as two separate facilities, with a 65 MW portion and a 35 MW portion, as explained in the application for rehearing, what is before the Board is a single facility connected to the electrical grid through a single transformer and substation. In the Opinion, Order, and Certificate, because Hecate ultimately sought two separate certificates, the Board was extremely careful not to exceed the jurisdiction outlined in R.C. 4901.01 and only considered the portion of the project that

surpassed the 50 MW threshold. However, upon reconsideration, the entire 100 MW project meets the definition of a major utility facility and lies within the Board's jurisdiction. Accordingly, we grant the application for rehearing as it relates to the determination to grant Hecate a single certificate for the construction, operation, and maintenance of the 100 MW facility.

{¶ 21} Regarding Hecate's request to bifurcate the certificate, the Board finds good cause does not exist to grant the request. While R.C. 4906.04 discusses transferring a certificate, the relevant statutes and rules are silent as to bifurcation. Here, Hecate, or, formally, Hecate Energy Highland 4, LLC, seeks to split off 35 of the 100 MW to its affiliate Hecate Energy Highland 2, LLC. Hecate Energy Highland 4 would then maintain a certificate for the remaining 65 MW, in order to facilitate the separate construction and contractual sale of energy pursuant to separate purchase power agreements. As discussed, the Board has jurisdiction solely as to generation facilities over 50 MW. As such, we conclude that we lack authority to issue a *separate* certificate to Hecate Energy Highland 2, LCC to construct, operate, and maintain a 35 MW facility that is independent of the overall 100 MW facility addressed in the application. In making this finding, we note that separating off the 35 MW portion of the project could result in unintended consequences, including potentially (1) severing the Board's ongoing regulatory authority over the 35 MW facility, and (2) permitting the project to circumvent local governmental jurisdiction. Accordingly, we do not find good cause exists to grant the request to bifurcate.

{¶ 22} In reaching this conclusion, we acknowledge that we previously bifurcated a certificate to an entity to construct, maintain, and operate a facility less than 50 MW. *In the Matter of the Application of Hardin Solar Energy II LLC*, Case No. 18-1360-EL-BGN, and *In the Matter of the Application of Hardin Solar Energy III LLC*, Case No. 20-1678-EL-BGN, Entry, (March 18, 2021). We clarify that in that unique situation the smaller facility, as described in the Board's order, is now part of a certificate application still pending before the Board that exceeds the 50 MW threshold. Accordingly, we conclude that, consistent with this

decision, the Board will not issue a certificate for a project, or a separate portion of a project, that fails to satisfy the 50 MW threshold provided in R.C. 4906.01(B)(1)(a).

IV. ORDER

{¶ 23} It is, therefore,

{¶ 24} ORDERED, That the application for rehearing filed by Hecate be granted, in part, and denied, in part. It is, further,

{¶ 25} ORDERED, That a copy of this Order on Rehearing be served upon all parties and interested persons of record.

BOARD MEMBERS:

Approving:

Jenifer French, Chair
Public Utilities Commission of Ohio

Matt McClellan, Designee for Lydia Mihalik, Director
Ohio Development Services Agency

Mary Mertz, Director
Ohio Department of Natural Resources

W. Gene Phillips, Designee for Stephanie McCloud, Director
Ohio Department of Health

Drew Bergman, Designee for Laurie Stevenson, Director
Ohio Environmental Protection Agency

Sarah Huffman, Designee for Dorothy Pelanda, Director
Ohio Department of Agriculture

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Summary: Opinion & Order granting the application for rehearing filed by Hecate Energy Highland 4, LLC finding that (1) a certificate should be issued for the 100 MW utility-scale solar facility, and (2) the certificate shall not be bifurcated. electronically filed by Ms. Mary E Fischer on behalf of Ohio Power Siting Board