

THE OHIO POWER SITING BOARD

IN THE MATTER OF THE APPLICATION OF
GUERNSEY POWER STATION, LLC FOR A
THIRD AMENDMENT TO ITS CERTIFICATE
OF ENVIRONMENTAL COMPATIBILITY
AND PUBLIC NEED FOR AN ELECTRIC
GENERATING FACILITY IN GUERNSEY
COUNTY, OHIO.

CASE NO. 21-182-EL-BGA

ORDER ON CERTIFICATE

Entered in the Journal on July 15, 2021

I. SUMMARY

{¶ 1} The Ohio Power Siting Board grants the application of Guernsey Power Station, LLC to amend its certificate.

II. DISCUSSION

A. *Procedural History*

{¶ 2} On October 5, 2017, the Ohio Power Siting Board (Board) granted the application of Guernsey Power Station, LLC (GPS or Applicant) for a certificate to construct an electric power generating facility in Guernsey County, Ohio (the Facility). *In re Application of Guernsey Power Station, LLC*, Case No. 16-2442-EL-BGN (*Certificate Case*), Opinion, Order, and Certificate (Oct. 5, 2017.)

{¶ 3} On March 15, 2018, the Board granted GPS's application filed January 11, 2018, by which GPS had sought to amend its certificate in such a way as to allow the Facility's authorized generating output to increase from 1,100 megawatts (MW) to 1,650 MW. *In re First Amendment Application of Guernsey Power Station, LLC*, Case No. 18-90-EL-BGA (*First Amendment Application*), Order on Certificate (Mar. 15, 2018.)

{¶ 4} On April 16, 2020, the Board granted GPS's application filed January 8, 2020, by which GPS had sought to amend its certificate in such a way as to allow the Facility's authorized generating output to increase from 1,650 MW to 1,875 MW. *In re Second*

Amendment Application of Guernsey Power Station, LLC, Case No. 20-33-EL-BGA (Second Amendment Application), Order on Certificate (Apr. 16, 2020.)

{¶ 5} On March 15, 2021, GPS filed the present application (*Third Amendment Application*) seeking a third amendment to the certificate of environmental compatibility and public need granted in the *Certificate Case*. The purpose of the *Third Amendment Application* is to address needs which arise because construction of the Facility is taking place during the current COVID-19 pandemic. These include a need for increased staffing levels, along with the need to maintain social distancing requirements. The Applicant asserts that the Facility itself, as already authorized by the Board, will remain unchanged. Rather, the *Third Amendment Application* requests authorization for parcels now owned by the Applicant, which are adjacent to the Facility, to be used temporarily during the construction phase of the Facility which currently continues, for construction parking, material storage, and trailer uses. As the Applicant explains, the *Third Amendment Application* solely addresses the temporary use of two parcels adjacent to the existing facility, work areas that are now owned by the Applicant. The use of these additional temporary workspaces will allow for compliance with pandemic requirements while Facility construction is ongoing, protecting health and safety with no material change in environmental effect.

{¶ 6} As required by Ohio Adm.Code 4906-3-11, the Applicant served copies of its *Third Amendment Application* upon local officials and filed proof of service with the Board on March 30, 2021.

{¶ 7} On June 9, 2021, the Board's Staff (Staff) filed its Report of Investigation (Staff Report) containing its analysis of the *Third Amendment Application*. In its report, Staff recommends approval of the *Third Amendment Application*, subject to certain conditions.

{¶ 8} On June 11, 2021, Applicant filed a letter stating that GPS does not object to the conditions proposed in the Staff Report. The letter apprises the Board that there are currently over 750 construction workers at the project site, and that the additional parcels

that are the subject matter of the *Third Amendment Application* continue to be needed to help with COVID-19 distancing considerations and other temporary uses.

B. *Applicable Law*

{¶ 9} All proceedings before the Board are conducted according to the provisions of R.C. Chapter 4906 and Ohio Adm.Code Chapters 4906-1 et seq.

{¶ 10} R.C. 4906.10 provides that the Board's authority applies to major utility facilities and requires any proposed facility to be certified by the Board before the start of construction. In accordance with R.C. Chapter 4906, the Board promulgated the rules set forth in Ohio Adm.Code Chapter 4906-3 regarding the procedural requirements for filing applications for major utility facilities and amendments to certificates.

{¶ 11} Pursuant to R.C. 4906.07, when considering an application for an amendment of a certificate, the Board "shall hold a hearing * * * if the proposed change in the facility would result in any material increase in any environmental impact of the facility or a substantial change in the location of all or a portion of such facility * * *." R.C. 4906.06(B) and (C), as well as Ohio Adm.Code 4906-3-11, 4906-3-06, and 4906-3-09, require the applicant to provide notice of its application for amendment to interested parties and potentially effected members of the public.

{¶ 12} GPS is a corporation and, therefore, a person under R.C. 4906.01(A). Additionally, pursuant to the Board's Order in the *Certificate Case*, GPS is certificated to construct, operate, and maintain a major utility facility under R.C. 4906.10. As indicated above, the Applicant provided the required notices in this proceeding, its proposed third amendment to its certificate.

C. *Summary of Staff Report*

{¶ 13} Initially, Staff explains that amendment proposed in the *Third Amendment Application*, is for authorization of two parcels to be used for temporary workspace during construction of the Facility. Staff observes the Applicant's statement that the two parcels

are needed for construction of the Facility due to the need to maintain social distancing requirements associated with constructing the Facility during the COVID-19 pandemic. Staff explains that the Facility is currently under construction, with an anticipated completion date of winter 2022/2023. Staff finds that the two involved parcels will provide additional workspaces which will allow the Applicant to continue to construct the Facility safely and timely, without affecting change to any aspect of the impact of the Facility, itself, as already approved.

{¶ 14} Staff notes that the first additional parcel is located adjacent to the Facility on the north side of Seneca Lane. The parcel is approximately one acre and was purchased by the Applicant prior to the filing of the *Third Amendment Application*. The property was previously used as a residential property that consisted of a single home and residential lawn. The Applicant demolished and removed the home from the property which now consists mainly of open space. The Applicant will use the property to house construction trailers, as parking for employees, and to store construction materials. The Applicant has informed Staff that, after construction is complete, all materials will be removed, and the property will be restored to open vegetated area or conveyed to others for agricultural use.

{¶ 15} The second additional parcel is located adjacent to the Facility on the south side of Seneca Lane. The parcel is approximately one acre and was purchased by the Applicant prior to the filing of the *Third Amendment Application*. The property was previously used as a residential property and informal automotive repair facility. The Applicant will use the property for additional employee parking and to store construction materials. The Applicant has informed Staff that, after construction is complete, all materials will be removed, and the property restored to an open vegetated area.

{¶ 16} The Staff Report indicates that the modifications proposed in the *Third Amendment Application* would not significantly increase impacts to existing land uses. No additional agricultural districts would be impacted. As already noted, two residential

properties were purchased by the Applicant and demolished prior to the filing of the application in the above-captioned case.

{¶ 17} According to the Staff Report, the Applicant has prepared mapping and desktop research on archeological resources in the project area and is coordinating its field investigation with the Ohio Historic Preservation Office (OHPO). The additional temporary workspaces are prior residential properties and have been previously disturbed. The OHPO is reviewing the literature review and consultant recommendations of no impact to cultural resources. Staff recommends that construction of this project not commence until such time that the Applicant finalizes coordination with OHPO to ensure no adverse impacts to cultural resources.

{¶ 18} Three wetlands within the purview of the Clean Water Act¹ were delineated within the project area for the two additional parcels. The applicant states that all three wetlands will be avoided by all temporary structures and no wetlands will be crossed during construction. No new stream impacts are proposed. No additional impacts to surface waters would occur.

{¶ 19} Adherence to the conditions of the original certificate, including implementation of the storm water pollution prevention plan, would minimize impacts to surface water resources that could occur as a result of the proposed modifications.

{¶ 20} The proposed modifications would not result in increased impacts to listed wildlife species. The Applicant has informed Staff that 18 total trees will be cleared during construction on the two parcels, and all potential suitable habitat trees will be cleared during the seasonal clearing dates of October 1 through March 31. Adherence to the conditions of the original certificate would minimize impacts to listed species.

¹ Wetlands falling within the purview of the Clean Water Act are regulated within Ohio by R.C. 6111, et seq. and Ohio Adm.Code 3745-1-50, et seq. Ohio Adm.Code 3745-1-54 establishes wetland categories.

{¶ 21} Staff confirms that the proposed use of the two parcels owned by the Applicant which are adjacent to the Facility, as proposed in the *Third Amendment Application*, would not require any physical change to the Facility previously approved in the *Certificate Case*, the *First Amendment Application* case, or the *Second Amendment Application* case. As a result, the proposed change would not increase any ecological, cultural, or socioeconomic impacts of the Facility previously approved by the Board. Therefore, Staff determined that its review of the requirements listed in R.C. 4906.10 conducted in the *Certificate Case* is sufficient and should continue to apply to the present application.

{¶ 22} Upon its review, which included consideration of all statutory requirements, Staff states that the *Third Amendment Application* meets the necessary criteria for granting an amended certificate. Accordingly, Staff recommends that the Board approve the proposed amendment to the certificate, provided that the following four conditions are satisfied:

- (1) The Applicant shall continue to adhere to all conditions of the Opinion, Order, and Certificate issued on October 5, 2017, in *Certificate Case*, as further amended by the Order on Certificate issued March 15, 2018, in the *First Amendment Application* case, and by the Order on Certificate issued April 16, 2020, in the *Second Amendment Application* case.
- (2) The certificate authority provided in the *Third Amendment Application* case shall not exempt the Facility from any other applicable and lawful local, state, or federal rules or regulations nor be used to affect the exercise of discretion of any other local, state, or federal permitting or licensing authority with regard to areas subject to their supervision or control.
- (3) Prior to commencement of construction activities in areas that require permits or authorizations by federal or state laws and regulations, the Applicant shall obtain and comply with such

permits or authorizations. The Applicant shall provide copies of permits and authorizations, including all supporting documentation, on the case docket prior to commencement of construction.

- (4) Prior to commencement of construction, the Applicant shall obtain a coordination letter from OHPO regarding potential impacts to cultural resources and shall coordinate with the OHPO and with Staff regarding compliance (if any) with the coordination letter.

{¶ 23} On June 22, 2021, the Applicant filed a letter indicating its compliance with Staff-proposed Condition No. 4, regarding the Applicant's need to obtain a coordination letter from OHPO regarding potential impacts to cultural resources. Attached to the Applicant's June 22, 2021 letter is a June 18, 2021 letter from the Ohio State Historic Preservation Office in which that office concludes that, with respect to the two additional parcels that are the subject of the *Third Amendment Application*, no additional survey work is necessary, that the project as proposed continues to have no adverse effect on historic properties, and that no further coordination with the Ohio State Historic Preservation Office is necessary at this time.

D. Board's Conclusion

{¶ 24} After considering the application and the Staff Report, the Board finds that the *Third Amendment Application's* proposed temporary use of two parcels adjacent to the Facility, in a manner intended to address needs which arise because construction of the Facility is taking place during the current COVID-19 pandemic, does not result in any material increase in any environmental impact or a substantial change in the location of all or a portion of the Facility. Therefore, pursuant to R.C. 4906.07, the Board finds that a hearing on the application is not necessary under the circumstances presented in this case. Furthermore, the Board concludes that GPS' certificate should be amended as described in

the *Third Amendment Application*, subject to the four conditions set out in Paragraph 22 of this Order on Certificate.

E. Findings of Fact and Conclusions of Law

{¶ 25} GPS is a corporation and a person under R.C. 4906.01(A).

{¶ 26} GPS's proposed electric generation facility is a major utility facility under R.C. 4906.01(B)(1).

{¶ 27} GPS filed the *Third Amendment Application* on March 15, 2021.

{¶ 28} On June 9, 2021, Staff filed its Report of Investigation containing its evaluation of the *Third Amendment Application*.

{¶ 29} The proposed amendment to the certificated facility does not result in a substantial change in the location of the facility or any material increase in any environmental impact; therefore, in accordance with R.C. 4906.07, an evidentiary hearing is not necessary.

{¶ 30} Based on the record, in accordance with R.C. Chapter 4906, the certificate of environmental compatibility and public need previously issued to GPS should be amended as described in the *Third Amendment Application*, subject to all conditions set forth herein.

III. ORDER

{¶ 31} It is, therefore,

{¶ 32} ORDERED, That GPS' *Third Amendment Application* be approved, subject to the conditions set forth in the *Certificate Case*, the *First Amendment Application* case, the *Second Amendment Application* case, as well as the four conditions set forth in Paragraph 22 of this Order on Certificate. It is, further,

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

BOARD MEMBERS:

Approving:

Jenifer French, Chair
Public Utilities Commission of Ohio

Lydia Mihalik, Director
Ohio Development Services Agency

Brittney Colvin, Designee for 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

DEF/kck

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Case No(s). 21-0182-EL-BGA

Summary: Opinion & Order granting the application of Guernsey Power Station, LLC to amend its certificate. electronically filed by Ms. Mary E. Fischer on behalf of Ohio Power Siting Board