

THE OHIO POWER SITING BOARD

IN THE MATTER OF THE APPLICATION
OF CEPHEUS ENERGY PROJECT, LLC FOR
A CERTIFICATE OF ENVIRONMENTAL
COMPATIBILITY AND PUBLIC NEED.

CASE NO. 21-293-EL-BGN

ENTRY

Entered in the Journal on January 19, 2022

{¶ 1} Cepheus Energy Project, LLC (Cepheus or Applicant) 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 May 17, 2021, Cepheus filed a pre-application notification letter with the Board within which Cepheus proposes to construct an up to 68-megawatt, solar-powered electric generating facility in Defiance County, Ohio (Project).

{¶ 4} On July 30, 2021, Cepheus filed an application with the Board for a certificate of environmental compatibility and public need to construct the Project. Pursuant to Ohio Adm.Code 4906-3-06, within 60 days of receipt of an application for a major utility facility, the Board Chair must either accept the application as complete and compliant with the content requirements of R.C. 4906.06 and Ohio Adm.Code Chapters 4906-1 through 4906-7 or reject the application as incomplete.

{¶ 5} On September 28, 2021, the Board notified Cepheus that its application was found to be sufficiently compliant with the requirements of Ohio Adm.Code Chapters 4906-01, et seq., and provided sufficient information to permit Staff to commence its review and investigation. Pursuant to Ohio Adm.Code 4906-3-06 and 4906-3-07, the Board's letter instructed Cepheus to serve appropriate government officials and public agencies with copies of the complete, certified application and to file proof of service with the Board. The

letter further instructed the Applicant to submit its application fee pursuant to R.C. 4906.06(F) and Ohio Adm.Code 4906-3-12.

{¶ 6} On October 5, 2021, Cepheus filed proof of service of its accepted and complete application on local officials and the main public library as required by Ohio Adm.Code 4906-3-07(A).

{¶ 7} On October 8, 2021, Cepheus also filed, pursuant to Ohio Adm.Code 4906-3-07(A)(5), proof of submission of its application fee.

{¶ 8} Ohio Adm.Code 4906-3-08(A) states that, once the applicant has complied with Ohio Adm.Code 4906-3-07, the Board or the administrative law judge (ALJ) shall file an entry indicating the date on which the accepted, complete application is deemed filed. Additionally, once the effective date is established, the ALJ must promptly fix the dates for public hearings. R.C. 4906.07(A) directs that the public hearing be held not less than 60 nor more than 90 days after the effective date.

{¶ 9} By Entry issued October 19, 2021, the effective date of the application was established as October 15, 2021, the local public hearing scheduled for December 16, 2021, and the adjudicatory hearing scheduled to commence on January 11, 2022. Also, the October 19, 2021 Entry advised that the Board would accept petitions to intervene up to November 29, 2021, and established a procedural schedule directing Staff to file its report of investigation (Staff Report) on or before December 1, 2021; Cepheus to file all expert and factual testimony by December 30, 2021; Staff and intervenors to file all expert and factual testimony by January 6, 2022; parties to file a list of issues citing specific concerns about which they may be interested in pursuing cross-examination of witnesses at the adjudicatory hearing by December 28, 2021; and, parties to file any stipulation no later than 12:00 p.m. on January 10, 2022, along with associated testimony supporting the stipulation.

{¶ 10} On November 2, 2021, Cepheus filed proof of publication of a description of the accepted, complete application published on October 21, 2021 in the *The Crescent-News*,

in accordance with R.C. 4906.06(C). The published notice also contained information regarding the scheduled hearing dates, including the December 16, 2021 local public hearing.

{¶ 11} On November 24, 2021, the Ohio Farm Bureau Federation (OFBF) filed a motion to intervene in this proceeding.

{¶ 12} On December 1, 2021, Staff filed the Staff Report, which recommends denial of a certificate of environmental compatibility and public need to construct the Project. Among other recommendations, Staff recommends that the Board find that the proposed Project would not serve the public interest, convenience, and necessity, as required by R.C. 4906.10(A)(6).

{¶ 13} On December 2, 2021, Cepheus and OFBF filed a joint motion to suspend the procedural schedule and a request for expedited treatment. The movants requested that, in light of Staff's recommended denial of the certificate, the procedural schedule be suspended to allow Cepheus additional time to address the concerns set forth on pages 40 through 42 of the Staff Report regarding perceived local opposition to the Project. The movants noted that only the OFBF formally intervened in this proceeding and that Staff identified informal indications of opposition among certain local organizations. Cepheus believes there is an opportunity to address the local opposition concerns raised in the Staff Report through ongoing engagement with the community and local leaders; therefore, it requested the procedural schedule be suspended to allow for further engagement. Cepheus requested that the schedule remain suspended until such time as Cepheus notifies Staff that concerns have been addressed or the case is otherwise prepared to proceed.

{¶ 14} By Entry issued December 9, 2021, the ALJ granted the joint motion, in part, and denied it, in part. The ALJ denied the joint motion with respect to suspending the local public hearing scheduled for December 16, 2021, and noted that doing so would be an inconvenience to those in the community who had planned to attend and present testimony. Further, the ALJ suspended the remaining procedural deadlines; however, instead of

cancelling the January 11, 2022 evidentiary hearing, the ALJ converted this hearing to a call-and-continue hearing after which the parties would remain on Webex to discuss future procedural scheduling.

{¶ 15} On December 16, 2021, the local public hearing was held as scheduled.

{¶ 16} The adjudicatory hearing was held via Webex, as scheduled, on January 11, 2022. The record in the case was opened, counsel for attending parties entered appearances, and then discussions were had concerning the setting of a new procedural schedule and hearing date. The hearing then adjourned to reconvene at a later date.

{¶ 17} The ALJ now finds it appropriate to set a new procedural schedule and the date at which to reconvene the adjudicatory hearing. The adjudicatory hearing shall be reconvened on April 11, 2022, at 10:00 a.m., EST. The adjudicatory hearing shall be held via Webex virtual hearing technology. Instructions for participation in the adjudicatory hearing will be emailed to the parties. Additionally, all exhibits intended to be used on direct and cross-examination shall be marked and exchanged by the parties and provided to the ALJ via electronic means prior to the hearing. Individuals interested in attending the adjudicatory hearing as a non-party can access the hearing using the link <https://bit.ly/21-293-ADJ2> and entering the password OPSB, or by calling 1-408-418-9388 and entering the access code 2340 002 0110.

{¶ 18} Ohio Adm.Code 4906-2-09 provides that the ALJ shall regulate the course of the hearing including requiring that expert or factual testimony to be offered in Board proceedings be reduced in writing and filed with the Board, according to a schedule established by the ALJ. As the December 9, 2021 Entry suspended the remaining procedural deadlines in this case, the ALJ now establishes the following procedural schedule and process:

- (c) All expert and factual testimony to be offered by Applicant shall be filed by March 28, 2022.

- (d) All expert and factual testimony to be offered by intervenors and Staff shall be filed by April 4, 2022.
- (e) Any stipulation entered into by the parties shall be filed by noon on April 8, 2022, along with the associated testimony supporting the stipulation.

{¶ 19} The ALJ encourages the parties to arrange for electronic service of testimony and other pleadings among themselves. If electronic service is agreed to, the parties are also directed to provide an electronic copy to the ALJ.

{¶ 20} It is, therefore,

{¶ 21} ORDERED, That the adjudicatory hearing in this matter be scheduled to reconvene via Webex on April 11, 2022, as stated in Paragraph 17. It is, further,

{¶ 22} ORDERED, That the parties observe the filing deadlines set forth in Paragraph 18. It is, further,

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

THE OHIO POWER SITING BOARD

/s/ Matthew J. Sandor

By: Matthew J. Sandor
Administrative Law Judge

NJW/kck

**This foregoing document was electronically filed with the Public Utilities
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in

Case No(s). 21-0293-EL-BGN

Summary: Administrative Law Judge Entry ordering that the adjudicatory hearing in this matter be scheduled to reconvene via Webex on April 11, 2022, as stated in Paragraph 17 and ordering that the parties observe the filing deadlines set forth in Paragraph 18. electronically filed by Kelli C. King on behalf of Matthew Sandor, Administrative Law Judge, Ohio Power Siting Board