

THE OHIO POWER SITING BOARD

IN THE MATTER OF THE APPLICATION OF
DUKE ENERGY OHIO, INC. FOR A
CONSTRUCTION NOTICE FOR THE
MUDDY CREEK EMERGENT POLE
RELOCATION PROJECT.

CASE NO. 22-831-EL-BNR

ENTRY

Entered in the Journal on September 7, 2022

{¶ 1} Duke Energy Ohio, Inc. (Duke) is a person as defined in R.C. 4906.01.

{¶ 2} On September 2, 2022, Duke filed an accelerated certification application, pursuant to R.C. 4906.03(F) and Ohio Adm.Code Chapter 4906-6, for a construction notice associated with the Muddy Creek Emergent Pole Relocation Project (Project). The Project is associated with a broader effort to replace, on an emergent basis, various pole structures in the Project area which are at risk of failure. This construction notice is associated with a particular pole relocation, the previous location for which had already received automatic approval in Case No. 22-746-EL-BNR.¹ Additionally, the Project is associated with an outage window commencing September 12, 2022, which is imperative to the Project's ability to be completed and for the security of continued reliable service to the Project area.

{¶ 3} Concurrently with its application, Duke filed a motion for waiver, in which it seeks a waiver from certain Board requirements related to an application for a construction notice. Specifically, Duke requests waivers from the following Administrative Code sections: 4906-6-03(A), pre-filing notifications; 4906-6-04(A)(1), requirement to provide the Board with a paper copy of the application; and 4906-6-07(A) and (B), requiring service upon elected officials and local libraries. As explained in the supporting memorandum, the pre-filing notification required by Ohio Adm.Code 4906-6-03(A) requires that at least five days prior to submitting an accelerated application, an applicant must request a case number and file a preapplication notification letter with the Board. Given the imminent outage schedule

¹ The application in Case No. 22-746-EL-BNR was automatically approved on August 25, 2022.

associated with this relocation (as approved in Case No. 22-746-EL-BNR), Duke believes that filing a preapplication notification letter is not feasible in this case. Duke also points out that it has been in close contact with Staff regarding the desire to perform the pole relocation contemplated in this application. Based upon Staff's prior awareness of Duke's planning, and that this application represents a revision to an already-approved project and an imminent scheduled outage, Duke believes that a waiver of Ohio Adm.Code 4906-6-03(A) is warranted. With respect to Ohio Adm.Code 4906-6-04(A)(1), which requires applicants to provide the Board with a paper copy of an application, Duke also believes that the accelerated timeline of its planning makes the rule impractical in this case and that a waiver is appropriate. Again, Duke points out that Staff was aware of the impending construction notice application and already reviewed a number of the initial materials. Finally, regarding Ohio Adm.Code 4906-6-07(A) and (B), which require service of an application upon elected officials and local libraries, Duke believes that such service on local officials and libraries concurrently with the application would be difficult given the compressed timeline for the Project. Further, given that the Project in this application was previously incorporated into the broader project area approved in Case No. 22-746-EL-BNR, and customary notice provisions were complied with in that case, Duke believes that further notifications for this application could confuse the public. Duke, therefore, requests waivers for each of the cited Administrative Code provisions.

{¶ 4} On September 2, 2022, Staff filed its Staff Report of Investigation (Staff Report) concerning the accelerated application in this case. The Staff Report recommends the application for automatic approval on September 9, 2022, unless otherwise suspended by the Board, authorized Board representatives, or an administrative law judge (ALJ). Also, as part of the Staff Report, Staff states that it supports Duke's requested waivers of certain provisions of Ohio Adm.Code 4906-6-03, 4906-6-04, and 4906-6-07.

{¶ 5} After reviewing the motion for waiver and considering Staff's position regarding the requested waivers as stated in the Staff Report, the ALJ finds that Duke's

motion is reasonable and should be granted. Accordingly, the requested waivers of Ohio Adm.Code 4906-6-03(A), 4906-6-04(A)(1), and 4906-6-07(A) and (B) are granted.

{¶ 6} It is, therefore,

{¶ 7} ORDERED, That Duke's motion for waiver be granted, in accordance with Paragraph 5. It is, further,

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

THE OHIO POWER SITING BOARD

/s/ David M. Hicks

By: David M. Hicks
Administrative Law Judge

NJW/dmh

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Commission of Ohio Docketing Information System on**

9/7/2022 11:14:31 AM

in

Case No(s). 22-0831-EL-BNR

Summary: Administrative Law Judge Entry ordering that Duke's motion for waiver be granted in accordance with Paragraph 5 electronically filed by Ms. Donielle M. Hunter on behalf of David M. Hicks, Administrative Law Judge, Ohio Power Siting Board