

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

ENTRY

Entered in the Journal on November 7, 2023

{¶ 1} 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.

{¶ 2} Hecate Energy Highland 4 LLC (Hecate) 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.

{¶ 3} Pursuant to R.C. 4906.04, no person shall construct a major utility facility without first having obtained a certificate from the Board. Any facility, with respect to which such a certificate is required, shall thereafter be constructed, operated, and maintained in conformity with such certificate and any terms, conditions, and modifications contained therein.

{¶ 4} 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 supplemented its application on October 15, October 20, October 23, November 10, and December 1, 2020. Hecate sought certification to build a 100 megawatt (MW) solar-powered electric generation facility in Clay and Whiteoak townships, Highland County, Ohio (Facility). The Facility would be made up of two separate and distinct facilities: New Market Solar I, a 65 MW facility to be operated by Hecate; and New Market Solar II, a 35 MW facility to be operated by Hecate 2. Both facilities will consist of large

arrays of ground-mounted photovoltaic modules, commonly referred to as solar panels, and would include associated support facilities, such as access roads, meteorological stations, buried electrical collection lines, inverter pads, and a project substation that will feed into a newly constructed Dayton Power & Light substation known as the Clay Substation. Hecate sought to certify the project in one of two ways: (1) as two separate facilities with two separate certificates; or (2) as two separate facilities with a certificate for New Market Solar I and confirmation that New Market Solar II is non-jurisdictional. Hecate proposed to begin construction in early 2021, resulting in commercial operations in the fourth quarter of 2021.

{¶ 5} On January 4, 2021, Staff filed its Report of Investigation.

{¶ 6} On January 22, 2021, Hecate, the Ohio Farm Bureau Federation (OFBF), and Staff filed a Joint Stipulation and Recommendation. A Supplemental Joint Stipulation and Recommendation was filed by Hecate, OFBF, and Staff on January 25, 2021 (collectively, Combined Stipulations).

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

{¶ 8} The Board issued an Opinion, Order, and Certificate on March 18, 2021, that approved the Combined Stipulations, with modifications, and issued a certificate of environmental compatibility and public need to Hecate for the construction, operation, and maintenance of an electric generation facility. The certificate was issued subject to 23 conditions outlined in the Combined Stipulations, and as modified by the Opinion, Order, and Certificate.

{¶ 9} Thereafter, Hecate filed an application for rehearing regarding the proposed bifurcation of the certificate. By Order on Rehearing dated June 24, 2021, the Board granted the application for rehearing, in part, finding that a certificate should be issued for the 100 MW utility-scale solar facility, and the certificate shall not be bifurcated. On August 19, 2021, the Board granted Hecate's request to transfer 35 MW of the project from Hecate to Hecate 2.

{¶ 10} On October 18, 2022, Staff filed a Compliance Inquiry Report. Staff first states that Hecate began construction of the Facility on July 9, 2021, and the Facility became operational for 24 of the 100 MWs on March 30, 2022. Staff asserts the certificate issued to Hecate is subject to 23 conditions, of which the first condition states “[t]he Facility shall be installed at Hecate’s proposed site as presented in the application and modified by supplemental filings.” According to Staff, consistent with Hecate’s application, all equipment associated with the Facility was to be set back at least 100 feet from all property boundaries. Staff explains that Hecate notified Staff on September 12, 2022, that the Facility was constructed utilizing minimum 45-foot setbacks rather than 100-foot setbacks. In response, Staff conducted a site inspection and determined that 38 of the 39 setbacks measured by Staff were not in compliance with the certificate. As described by Staff, the identified setbacks were between 71 feet 2 inches and 97 feet 2 inches.

{¶ 11} R.C. 4906.98(B) states “[n]o person shall construct, operate, or maintain a major utility facility * * * other than in compliance with the certificate the person has obtained.”

{¶ 12} Pursuant to R.C. 4906.97(A), “[u]pon a finding by the power siting board that there are reasonable grounds to believe that a person has violated a provision of section 4906.98 of the Revised Code, the board shall fix a time for hearing such complaint and shall notify the person.” Further, as described in Ohio Adm.Code 4906-7-02(E), the hearing may include evidence on corrective action, forfeitures, and other remedies.

{¶ 13} On February 16, 2023, the Board ordered that a hearing should be set in this matter and directed that the administrative law judge (ALJ) establish a date and time for hearing, in accordance with R.C. 4906.97 and Ohio Adm.Code 4906-7-02.

{¶ 14} On July 10, 2023, the ALJ filed an Entry scheduling a status conference for August 8, 2023, and an adjudicatory hearing for October 10, 2023.

{¶ 15} On July 28, 2023, EVS, Inc. (EVS) filed a petition for leave to intervene out of time in the case. On August 14, 2023, Hecate filed its memorandum contra EVS's motion to intervene. On September 12, 2023, by Entry, the ALJ granted EVS's motion to intervene out of time.

{¶ 16} On October 2, 2023, EVS and Hecate jointly filed a motion for continuance of the evidentiary hearing. Thereafter, on October 3, 2023, the motion for continuance was granted and the hearing was rescheduled to commence on November 14, 2023, at 10:00 a.m.

{¶ 17} On October 25, 2023, and revised on November 3, 2023, EVS filed multiple motions for subpoena.

{¶ 18} On November 6, 2023, Hecate filed a motion to quash the motions for subpoena concerning Hecate.

{¶ 19} At this time, the ALJ directs that any memoranda contra the motions to quash be filed by November 9, 2023.

{¶ 20} It is, therefore,

{¶ 21} ORDERED, That any memoranda contra the motions to quash be filed by November 9, 2023. It is, further,

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

THE OHIO POWER SITING BOARD

/s/Nicholas J. Walstra

By: Nicholas J. Walstra
Administrative Law Judge

PAS/dr

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Case No(s). 20-1288-EL-BGN

Summary: Administrative Law Judge Entry ordering that any memoranda contra the motions to quash be filed by November 9, 2023 electronically filed by Ms. Mary E. Fischer on behalf of Nicholas J. Walstra, Administrative Law Judge, Ohio Power Siting Board.