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In re Application of Duke Energy Ohio, Inc.

Supreme Court of Ohio - September 22, 2021 - N.E.3d - 2021 WL 4301266 - 2021-Oh-3301

Electric power and natural gas company applied for a certificate of environmental compatibility and public need to construct a natural gas pipeline.

The Power Siting Board granted company a certificate for the construction, operation, and maintenance of the pipeline along an alternative route. City and other intervenors appealed.

The Supreme Court held that:

- Even if company's alternate-route proposal was not "fully developed information" at the time of submission of application, city was not harmed by the power citing board's failure to deny the application based on the error;
- Board's determination that natural gas pipeline would begin to address system supply balance and mitigate electric power and natural gas company's dependence upon Kentucky station was not erroneous;
- Board adequately considered the nature of the probable environmental impact of company's proposed gas pipeline in relation to planned sewer project;
- Evidence supported board's finding that company thoroughly addressed safety concerns relating to its application for a certificate of environmental compatibility and public need to construct a natural gas pipeline; and
- Record supported power siting board's evaluation of gas pipeline's estimated tax benefits.

Even if electric power and natural gas company's alternate-route proposal in its application for a certificate of environmental compatibility and public need to allow construction of a natural gas pipeline was not "fully developed information" at the time of submission of application, in violation of administrative code filing requirements, city was not harmed by the power siting board's failure to deny the application based on the error; company provided supplemental information, power citing board determined that company eventually provided all information required by statute, staff received the information necessary to conduct its investigation, and intervenors had access to the information through discovery.

Power siting board's determination, in granting certificate for the construction, operation, and maintenance of natural gas pipeline, that natural gas pipeline would begin to address system supply balance and mitigate electric power and natural gas company's dependence upon Kentucky station as it would reduce company's substantial dependence upon Kentucky station with the station serving approximately 45 to 50 percent of peak day load after construction of natural gas pipeline, rather than 55 percent, was not erroneous; there was no qualitative standard for determining the sufficiency of an improvement, and report indicated that company's dependence upon Kentucky station posed a "significant exposure to reliability" and threatened "far reaching" consequences should a supply disruption occur.

Evidence supported finding that power siting board adequately considered the nature of the probable environmental impact of electric power and natural gas company's proposed gas pipeline in relation to planned sewer project before granting company a certificate for the construction, operation, and maintenance of the pipeline, even if company did not address its pipeline's potential conflict with the planned sewer project; board addressed the potential conflict in its order, and adjustments to avoid a conflict with sewer project were filed with the board in a separate case.

Evidence supported power siting board's finding that electric power and natural gas company thoroughly addressed safety concerns relating to its application for a certificate of environmental compatibility and public need to construct a natural gas pipeline; company made commitments to apply enhanced design, construction, operation and assessment criteria to the installation and maintenance of pipeline, including having a wall thickness of more than twice that required for transmission lines, using remote control valves, and installing the pipeline at a depth of 48 inches of cover, which was twice that required for distribution lines and a foot deeper than that required for transmission lines, as well as complying with federal gas pipeline safety requirements.

The record supported power siting board's evaluation of gas pipeline's estimated tax benefits, in granting certificate for the construction, operation, and maintenance of gas pipeline; electric power and natural gas company estimate in its amended application that the alternate route for pipeline would generate approximately \$2.2 million in tax benefits under 2016 tax rates, with \$617,000 going to city, and company later supplemented the information, estimating that the alternate route would generate nearly \$2.9 million in tax benefits under 2018 tax rates, with a little more than \$1 million going to city.