

FILE

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Power Siting Board's)
Review of Chapters 4906-1, 4906-5, 4906-7,)
4906-9, 4906-11, 4906-13 and 4906-15) Case No. 08-581-GE-ORD
of the Ohio Administrative Code.)

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**INITIAL COMMENTS OF
COLUMBUS SOUTHERN POWER COMPANY
AND OHIO POWER COMPANY**

INTRODUCTION

By entry dated June 2, 2008, the Ohio Power Siting Board (Board) initiated a review of the various rules in the Ohio Administrative Code. The Board's Staff recommends that the rules contained in Chapters 4906-1, 4906-5, 4906-7, 4906-9, 4906-11, 4906-13 and 4906-15 be amended. The Board established a deadline for initial comments of June 24, 2008 and a deadline of July 15 for reply comments concerning proposed revisions to these rules. The Board stated that, in addition to the normal criteria for a 5-year rulemaking review found in R.C. 119.032(C), the proposed rules would also be reviewed in light of the Governor's Executive Order 2008-04S, entitled "Implementing Common Sense Business Regulation." Columbus Southern Power Company and Ohio Power Company (collectively "AEP Ohio") commend the Board and its Staff for pursuing these purposes and submit comments below in response to the Board's invitation for input. For efficiency and practical reasons, AEP Ohio's comments focus on a subset of the rule changes but it reserves the right to submit reply comments on any matter encompassed by this proceeding.

CHAPTER 4906-1, GENERAL PROVISIONS FOR FILINGS AND PROCEEDINGS

1. Proposed Rule 4906-1-01, Appendix A

The Staff proposes to add two categories for filing a Construction Notice in Appendix A to this rule concerning electric transmission lines: (1) lines 300 kV and above and not greater than 0.1 miles in length, and (2) lines 125 kV and above and not greater than 0.2 miles in length. AEP Ohio supports these proposed rule changes and applauds the Staff for pursuing a more efficient and streamlined approval process. This will allow AEP Ohio to serve its customers more quickly and efficiently. The Board should adopt these proposed rule changes.

2. Rule 4906-1-11, Number of Copies

The Staff does not propose changes to this rule but AEP Ohio would respectfully suggest a change for the Board's consideration. Regarding the filing of certificate applications under paragraph (B), AEP Ohio suggests a reduction in the number of copies required for filing a certification application. If needed, this paperwork reduction could be supplemented by a requirement to submit an electronic copy of an application (in .pdf format, for example). As with other filings before the Board, the Docketing Division immediately creates an electronically scanned version of a certificate application that is readily available on the Board's website. Those who wish to print the entire application can do so and those who do not can avoid doing so. Thus, AEP Ohio suggests that the number of paper copies could feasibly be reduced.

3. Rule 4906-1-14, Site Visits

The Staff suggests adding the word "proposing" to this rule, apparently to ensure that Staff can make field visits to proposed or alternative sites. The proposed language suggests that, not only is an owner or operator of a major utility facility required to ensure access to proposed sites for Staff visits, but a person proposing a site or route or alternative route must provide ready access to the site or route or alternative route. Although AEP Ohio can understand Staff's desire to ensure proposed sites are readily accessible for its field visits, a practical problem exists in

broadly placing this obligation upon applicants and it is not always within applicant's power to make this happen.

An applicant does not always control a proposed or alternative route for an electric transmission line at the time of filing for Board approval of a project. Obtaining full control over both the proposed and alternative routes prior to filing an application with the Board does not reflect the practice of utilities and it would not be prudent for an applicant to expend time and expenses to secure all such property rights prior to filing with the Board. Indeed, the Board's requirement for presentation of an alternative route means that the utility should not finalize its plans or secure right-of-way needed for both the proposed and alternative routes until after the application is filed and approved by the Board. Absent those property rights, an applicant cannot guarantee unrestricted access to proposed and alternative routes by Staff. In recognition of these practical matters, AEP Ohio recommends that the existing rule should be retained without additional changes.

CHAPTER 4906-5, PROCEDURAL REQUIREMENTS

1. Proposed Rule 4906-5-02, Letter of notification and construction notice application requirements: form, content, and processing.

In paragraphs (A)(1), (A)(3), (B)(1) and (B)(3), the Staff proposes expedited processes for letters of notification and construction notices and clarifies the automatic approval process for such filings. AEP Ohio supports those proposed rule changes and applauds the Staff for pursuing a more efficient and streamlined approval process. In this regard, AEP Ohio also generally supports expansion of the executive director's authority to grant waivers and suspend applications. AEP Ohio does suggest, however, that the Board consider additional changes set forth below to clarify the suspension process that is addressed in paragraphs (A)(3) and (B)(3) of Staff's proposed rule changes and to address language changes for consistency (note: the

proposed incremental changes submitted by AEP Ohio below are redlined after first incorporating Staff's proposed changes).

As a housekeeping matter, the proposed language for paragraph (A)(3) twice references a "construction notice" when this portion of the rule only applies to letters of notification. Similarly, the language in paragraph (A)(3)(a) should probably also reference the executive director and administrative law judge for consistency with the other changes. Finally with respect to editing suggestions within this paragraph, the language in paragraph (A)(3)(b) referring to an "application" should probably also be changed to reference a "letter of notification" so as to parallel the language in paragraph (B)(3) regarding construction notices.

On a more substantive level, AEP Ohio suggests that an outside limit of 90 days be established for suspension of a letter of notification (60 days for a construction notice), especially if the suspension process becomes available for Staff to trigger without a formal entry issued by the Board or its administrative law judge. Under the existing rule allowing the Board or its administrative law judge to issue a suspension decision, such an order is subject to R.C. 4903.09 (requirement for written findings supporting an order) and the rehearing and appeal process is available to an aggrieved applicant; while granting this power to the Executive Director may be appropriate (and AEP Ohio generally supports doing so), additional provisions are reasonable to ensure due process is afforded in all cases. And given the streamlined process applicable to letters of notification and construction notices, a 90-day period for suspension for letters of notification (60-day period for construction notices) seems more than adequate to address complications that may arise. Ultimately, if the reason for suspension is an incomplete filing or an unanswered data request from Staff or the Board is not otherwise convinced to grant the letter of notification or construction notice within the maximum suspension period, it can still

deny the filing or set it for hearing. In any case, placing a 90-day limit on suspensions of letters of notification (60-day limit for construction notices) is a reasonable compromise that will provide more certainty to applicants while also ensuring that difficult cases do not remain on the Board's docket indefinitely.

➤ **Additional Rule Changes Recommended by AEP Ohio for 4906-5-02**

(A)(3) IF THE BOARD DOES NOT ACT UPON A LETTER OF NOTIFICATION OR ANY WAIVER REQUESTS FILED WITH IT WITHIN SIXTY-THREE DAYS OF THE FILING DATE, THE LETTER OF NOTIFICATION AND/OR WAIVER REQUESTS SHALL BE DEEMED AUTOMATICALLY APPROVED, SUBJECT TO ANY CONDITIONS CONTAINED IN THE BOARD'S STAFF REPORT, ON THE SIXTY-FOURTH DAY AFTER THE FILING DATE. IF THE BOARD DOES NOT ACT UPON AN EXPEDITED ~~CONSTRUCTION NOTICE~~ LETTER OF NOTIFICATION OR ANY WAIVER REQUESTS FILED WITH IT WITHIN TWENTY-EIGHT DAYS OF THE FILING DATE, THE EXPEDITED ~~CONSTRUCTION NOTICE~~ LETTER OF NOTIFICATION AND/OR WAIVER REQUESTS SHALL BE DEEMED AUTOMATICALLY APPROVED, SUBJECT TO ANY CONDITIONS CONTAINED IN THE BOARD'S STAFF REPORT, ON THE TWENTY-NINTH DAY AFTER THE FILING DATE. UPON GOOD CAUSE, THE BOARD, ITS EXECUTIVE DIRECTOR, OR AN ADMINISTRATIVE LAW JUDGE ASSIGNED BY THE BOARD MAY SUSPEND CONSIDERATION OF A LETTER OF NOTIFICATION FOR UP TO 60 DAYS. THE BOARD, ITS EXECUTIVE DIRECTOR, OR THE ADMINISTRATIVE LAW JUDGE MAY SPECIFY THE TIME PERIOD FOR WHICH THE APPLICATION IS SUSPENDED. AT THE EXPIRATION OF SUCH TIME PERIOD, THE LETTER OF NOTIFICATION SHALL BE DEEMED AUTOMATICALLY APPROVED UNLESS THE BOARD, ITS EXECUTIVE DIRECTOR OR THE ADMINISTRATIVE LAW JUDGE ORDERS OTHERWISE DURING THE SUSPENSION PERIOD. IF THE BOARD, ITS EXECUTIVE DIRECTOR, OR AN ADMINISTRATIVE LAW JUDGE ASSIGNED BY THE BOARD ACTS TO SUSPEND A LETTER OF NOTIFICATION, THE BOARD, ITS EXECUTIVE DIRECTOR, OR AN ADMINISTRATIVE LAW JUDGE WILL:

- (a) DOCKET ITS DECISION AND NOTIFY THE APPLICANT OF THE REASONS FOR SUCH SUSPENSION AND MAY DIRECT THE APPLICANT TO FURNISH ANY ADDITIONAL INFORMATION AS THE BOARD, ITS EXECUTIVE DIRECTOR OR THE ADMINISTRATIVE LAW JUDGE DEEMS NECESSARY TO EVALUATE THE ~~APPLICATION~~LETTER OF NOTIFICATION.
- (b) IF NO TIME PERIOD IS SPECIFIED, ACT TO APPROVE OR DENY THE CONSTRUCTION NOTICE WITHIN SIXTY ~~NINETY~~ DAYS FROM THE DATE THAT THE CONSTRUCTION NOTICE WAS SUSPENDED.
- (c) AT ITS DISCRETION, SET THE MATTER FOR HEARING.

(B)(3) IF THE BOARD DOES NOT ACT UPON A CONSTRUCTION NOTICE OR ANY WAIVER REQUESTS FILED WITH IT WITHIN FORTY-TWO DAYS OF THE FILING DATE, THE CONSTRUCTION NOTICE AND/OR WAIVER REQUESTS SHALL BE DEEMED AUTOMATICALLY APPROVED, SUBJECT TO ANY CONDITIONS CONTAINED IN THE BOARD'S STAFF REPORT, ON THE FORTY-THIRD DAY AFTER THE FILING DATE. IF THE BOARD DOES NOT ACT UPON AN EXPEDITED CONSTRUCTION NOTICE OR ANY WAIVER REQUESTS FILED WITH IT WITHIN TWENTY-ONE DAYS OF THE FILING DATE, THE EXPEDITED CONSTRUCTION NOTICE AND/OR WAIVER REQUESTS SHALL BE DEEMED AUTOMATICALLY APPROVED, SUBJECT TO ANY CONDITIONS CONTAINED IN THE BOARD'S STAFF REPORT, ON THE TWENTY-SECOND DAY AFTER THE FILING DATE. UPON GOOD CAUSE, THE BOARD, ITS EXECUTIVE DIRECTOR, OR AN ADMINISTRATIVE LAW JUDGE ASSIGNED BY THE BOARD MAY SUSPEND CONSIDERATION OF A CONSTRUCTION NOTICE **FOR UP TO 60 DAYS**. THE BOARD, ITS EXECUTIVE DIRECTOR, OR THE ADMINISTRATIVE LAW JUDGE MAY SPECIFY THE TIME PERIOD FOR WHICH THE CONSTRUCTION NOTICE IS SUSPENDED. AT THE EXPIRATION OF SUCH TIME PERIOD, THE CONSTRUCTION NOTICE SHALL BE DEEMED AUTOMATICALLY APPROVED UNLESS THE BOARD, ITS EXECUTIVE DIRECTOR, OR THE ADMINISTRATIVE LAW JUDGE ORDERS OTHERWISE DURING THE SUSPENSION PERIOD. IF THE BOARD, ITS EXECUTIVE DIRECTOR, OR AN ADMINISTRATIVE LAW JUDGE ASSIGNED BY THE BOARD ACTS TO SUSPEND A CONSTRUCTION NOTICE, THE BOARD, ITS EXECUTIVE DIRECTOR, OR AN ADMINISTRATIVE LAW JUDGE WILL:

- (a) DOCKET ITS DECISION AND NOTIFY THE APPLICANT OF THE REASONS FOR SUCH SUSPENSION AND MAY DIRECT THE APPLICANT TO FURNISH ANY ADDITIONAL INFORMATION AS THE BOARD, ITS EXECUTIVE DIRECTOR OR THE ADMINISTRATIVE LAW JUDGE DEEMS NECESSARY TO EVALUATE THE CONSTRUCTION NOTICE.
- (b) IF NO TIME PERIOD IS SPECIFIED, ACT TO APPROVE OR DENY THE APPLICATION LETTER OF NOTIFICATION WITHIN NINETY DAYS FROM THE DATE THAT THE APPLICATION IS LETTER OF NOTIFICATION WAS SUSPENDED.

2. Proposed Rule 4906-5-04, Alternatives in certificate applications.

In paragraph (A), the Staff proposes to clarify the test for determining whether two routes are considered alternatives by providing that the percentage in common shall be calculated based on the shorter of the two routes. The current rule is ambiguous on this point and it is in need of clarification. AEP Ohio welcomes the proposal to bring certainty to the test and applauds the Staff for addressing this point in its proposed rule changes.

3. Proposed Rule 4906-5-08, Public notice of accepted, complete certificate applications.

The Staff proposes to add new paragraph (A) to require a pre-application notification, including the requirement in paragraph (A)(3) for a list of any waivers of the board's rules that the applicant anticipates requesting for the project. Although this information may be helpful to Staff at the time of the pre-application notification, it may not always be practical or possible for an applicant to provide a complete list of waivers to be requested in the application at the time of this notification. Further, circumstances beyond applicant's control or reasonable anticipation may develop during the course of a proceeding that may cause the need for a waiver. Consequently, AEP Ohio suggests adding language to clarify that the pre-application "anticipated" waivers list is not binding on applicant.

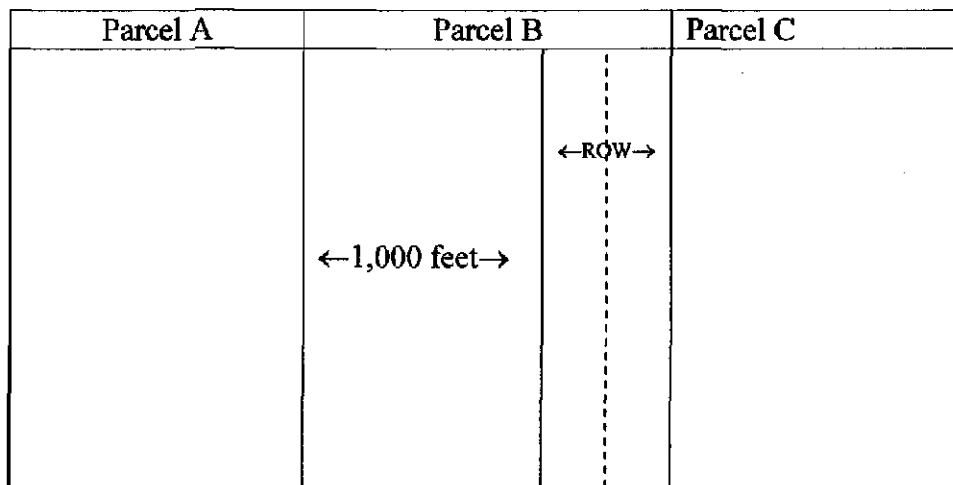
Staff also proposes to add language in paragraph (C)(3) to expand the applicant's obligation to send property owners a notification letter. In addition to notifying property owners within the planned site or potential routes and property owners who may be approached for additional easements in connection with the proposed facility, Staff proposes to also include "each residence within and contiguous to the planned site or potential routes..." This additional notification requirement could potentially require an applicant to notify property owners that will not be directly affected by the project. AEP Ohio submits that the existing requirement of notifying those property owners directly affected by the project, as well as the newspaper advertisements and the inevitable local press coverage, are adequate to reasonably notify the public about a project.

If the Board does wish to consider create additional notification requirements, AEP Ohio would have concerns with using this language because of the potential ambiguity of the proposed language. For example, with respect to the phrase "potential routes," AEP Ohio recommends for

clarification that the phrase “proposed routes” be used instead. And use of the term “residence” opaquely suggests, perhaps consistent with the Staff’s intentions, that businesses and institutions do not have to be notified.

Regarding the phrase “contiguous to,” if this phrase is intended to include only those property parcels that are directly contiguous to the planned site or proposed routes, the proposed changes would seem to be a reasonably narrow clarification that is consistent with existing practice. This would seem to be the intent and the best “plain meaning” interpretation of the language. There is, however, a possibility that the language could be interpreted as including any property parcel adjacent to the parcel where the planned site or proposed routes are located – regardless of the location of the site or proposed routes on the adjacent property and even if the boundary between the two properties is several hundred yards or a half mile or more away from the planned site or proposed routes.

Consider the following diagram (not to scale):



Under AEP Ohio’s proposed clarification, the owner of parcel A would not need to be notified whereas the owners of parcels B and C would be notified, given that the proposed route lies on the eastern border of parcel B as indicated. And there is not apparent need to personally notify

the owner of parcel A, whether or not a residence is on the property, since the right-of-way is more than 500 feet away from the property borderline. Given the adequacy of the existing notice requirements and the added expense and burden of imposing new requirements, any expansion of notice requirements should be narrowly-tailored to achieve the targeted problem being addressed. AEP Ohio's suggested changes for this rule are set forth below.

➤ **Additional Rule Changes Recommended by AEP Ohio for 4906-5-08**

(A)(3) A LIST OF ~~ANY~~ WAIVERS OF THE BOARD'S RULES THAT THE APPLICANT ANTICIPATES REQUESTING FOR THE PROJECT. **THE PRE-APPLICATION LIST OF ANTICIPATED WAIVERS SHALL NOT BE BINDING.**

(C)(3) AT LEAST THIRTY DAYS BEFORE THE PUBLIC HEARING, THE APPLICANT SHALL SEND A LETTER DESCRIBING THE FACILITY TO EACH PROPERTY OWNER WITHIN THE PLANNED SITE OR ~~POTENTIAL~~ **PROPOSED** ROUTES OF THE PROPOSED FACILITY, AND TO EACH RESIDENCE WITHIN **A PARCEL WHOSE AND CONTIGUOUS BORDER IS WITHIN FIVE HUNDRED FEET OF TO THE PLANNED SITE OR POTENTIAL PROPOSED** ROUTES OF THE PROPOSED FACILITY, AND TO EACH PROPERTY OWNER WHO MAY BE APPROACHED BY THE APPLICANT FOR ANY ADDITIONAL EASEMENT NECESSARY FOR CONSTRUCTION, OPERATION, OR MAINTENANCE OF THE FACILITY. ***

CHAPTER 4906-11, NOTIFICATION REQUIREMENTS

1. Proposed Rule 4906-11-01, Letter of notification requirements.

The Staff proposes to add new paragraph (A) to require service of an application requesting expedited processing upon the board's executive director. It is consistent with current practice for most utilities to provide Staff an informal filing (if not an advance discussion) where there is an expedited schedule involved. As a general matter, however, OAC 4906-7-06(C) provides that "service" may be accomplished, among other means, by U.S. mail. Since the Staff probably gets service of filed documents through the Docketing Division quicker than filings served by mail, the proposed rule would not seem to benefit Staff unless it gets quicker notice of the filing than it would otherwise. Thus, to the extent Staff intended to require personal delivery,

the Board may wish to use the phrase "serve by hand delivery" or "personal service" an equivalent phrase in order to ensure timely delivery to Staff. As a related matter, because the phrase "at or before the filing" is awkward and potentially ambiguous, the phrase "contemporaneous with filing" is recommended.

Proposed paragraph (B)(7) seems to presume an applicant owns or has easement rights on all property prior to submitting a letter of notification and requires an affidavit affirming the same when filing a letter of notification. This may be difficult to do and could cause delays in filing letters of notification and completing needed projects on a timely basis. Often times, the applicant will simply receive written or verbal permission to proceed with the installation of the proposed facilities with the understanding that a signed easement will follow at a later date. This procedure is common when dealing with institutions or corporations where an easement must be reviewed and possibly revised by the institution's or corporation's lawyers. It is also not uncommon for delays in obtaining the proper signatures. In easements involving condemnations, it would be best to have all permits in place prior to the condemnation filing.

It is not clear what Staff's concern about easements is or why it would justify this kind of requirement. But AEP Ohio does not see the need or the benefit.

Ultimately, AEP Ohio cannot and will not construct any facility without appropriate legal easements (whether obtained voluntary or through legal proceedings) and this should be a matter to be resolved between that applicant and the landowner. This is the way Applications for Certificates are handled and letters of notification should be no different. AEP Ohio suggests instead of affirming that the applicant has obtained all properties or easements, that an applicant provides the status of obtaining land or land rights at the time of filing the application. That

would give the staff the information they need without being an undue burden on the applicant or the property owner.

➤ **Additional Rule Changes Recommended by AEP Ohio for 4906-11-01**

(A) A LETTER OF NOTIFICATION FILED WITH THE BOARD SHALL CONTAIN THE INFORMATION DESCRIBED IN PARAGRAPHS (B) THROUGH (E) OF THIS RULE. IF THE APPLICANT REQUESTS EXPEDITED PROCESSING OF THE LETTER OF NOTIFICATION, IN ADDITION TO FILING THE LETTER WITH THE DOCKETING DEPARTMENT, THE APPLICANT SHALL ALSO SERVE **BY HAND DELIVERY** A COPY OF THE LETTER OF NOTIFICATION DIRECTLY ~~WITH~~ **UPON** THE BOARD'S EXECUTIVE DIRECTOR OR THE EXECUTIVE DIRECTOR'S DESIGNEE ~~AT~~ **CONTEMPORANEOUS WITH OR BEFORE THE FILING THE** EXPEDITED LETTER OF NOTIFICATION.

(B)(7) A NOTARIZED AFFIDAVIT AFFIRMING THAT THE APPLICANT HAS OBTAINED ALL PROPERTIES, EASEMENTS, OPTION, AND/OR LAND USE AGREEMENTS NECESSARY TO CONSTRUCT AND OPERATE THE FACILITY **OR REPORTING ON THE STATUS OF APPLICANT'S EFFORTS TO OBTAIN THE NEEDED PROPERTY RIGHTS.**

2. Proposed Rule 4906-11-02, Construction notice requirements.

Similar to proposed rule 4906-11-01, the Staff proposes to add new paragraph (A) to require service of an application requesting expedited processing upon the board's executive director. For the reasons discussed above in connection with proposed rule 4906-11-01, AEP Ohio recommends modifying the language concerning service upon the Executive Director. Also like Staff's proposed rule 4906-11-01, proposed paragraph (B)(8) of this rule seems to presume an applicant owns or has easement rights on all property prior to submitting a letter of notification and requires an affidavit affirming the same when submitting a construction notice. For the reason stated above in connection with proposed rule 4906-11-01, AEP Ohio recommends modifying the language concerning the affidavit.

➤ **Additional Rule Changes Recommended by AEP Ohio for 4906-11-02**

(A) A CONSTRUCTION NOTICE FILED WITH THE BOARD SHALL CONTAIN THE INFORMATION DESCRIBED IN PARAGRAPHS (B) AND (C) OF THIS RULE. IF THE APPLICANT REQUESTS EXPEDITED PROCESSING OF THE CONSTRUCTION NOTICE, IN ADDITION TO FILING THE LETTER WITH THE DOCKETING DEPARTMENT, THE APPLICANT SHALL ALSO SERVE BY HAND DELIVERY A COPY OF THE LETTER OF NOTIFICATION DIRECTLY ~~WITH~~ UPON THE BOARD'S EXECUTIVE DIRECTOR OR THE EXECUTIVE DIRECTOR'S DESIGNEE AT CONTEMPORANEOUS WITH ~~OR BEFORE THE FILING THE~~ EXPEDITED CONSTRUCTION NOTICE.

(B)(8) A NOTARIZED AFFIDAVIT AFFIRMING THAT THE APPLICANT HAS OBTAINED ALL PROPERTIES, EASEMENTS, OPTION, AND/OR LAND USE AGREEMENTS NECESSARY TO CONSTRUCT AND OPERATE THE FACILITY OR REPORTING ON THE STATUS OF APPLICANT'S EFFORTS TO OBTAIN THE NEEDED PROPERTY RIGHTS.

CHAPTER 4906-13, APPLICATIONS FOR CERTIFICATES FOR ELECTRIC GENERATION FACILITIES

1. Proposed Rule 4906-13-01, Project summary and general instructions.

The Staff proposes to add two new paragraphs to this rule, (C) and (D). Paragraph (C) requires an applicant to provide mapping information in "shapefile" format if the applicant has computerized geographic information system (GIS) capabilities. From a language perspective, there is ambiguity as to whether an applicant that has computerized GIS capabilities but does not have the GIS data for a particular map that is required is still bound to obtain and submit the GIS data solely to satisfy the requirements of this rule. This is an important distinction because the rule seems intended to only require submission of information when the applicant already has it (as opposed to requiring that every applicant procure the information using this particular software). Imposing the requirement that all applicants obtain the GIS capabilities is an entirely different matter than requiring applicants who already possess the GIS capabilities to submit available data. The former would not be cost-effective for all applicants and is not needed for

purposes of processing applications; the latter may have some merit as long as the potential problems discussed below are addressed in the rule.

Avoiding a rule that promotes or “ordains” a particular software or copyrighted format is appropriate. Not all data is available in the “shapefile” format. And there may be copyright issues with submitting some of the data. Other data may create problems to electronically disclose or make available. For example, archeological data may also be sensitive and unwise to publicly release and the location of endangered plants or animals is not information that should be widely disseminated. If publicly available, shapefiles could be used by anyone to determine the exact location of those things. Requiring submission of data using a particular brand of software could also cause applicants to lose bargaining power and drive the price of the software up. Further, there are conflicts between paper maps and GIS data at times; when that happens, the hard copy map should be used.

For these reasons, AEP Ohio recommends changing the language to clarify that the rule is intended to only require submission of the data when the applicant already has it (and to do so without specifying a particular software format). When GIS data is submitted to Staff, it should be treated as potentially sensitive information. As such, the Staff should be required to give an applicant three business days notice if it intends to publicly disclose the GIS data. This would give an applicant a reasonable opportunity to file a motion for a protective order under OAC 4906-7-07(H) and trigger temporary protection of the information pending a ruling by the Board. That approach is consistent with the approach taken historically with sensitive data submitted to Commission Staff by utilities in data request responses, pursuant to R.C. 4901.16. It should also provide a workable solution here, unless the Staff intends to systematically use the GIS data for purposes other than processing the cases before the Board (if the Staff intends to systematically

use the GIS data for other purposes than processing the case before the Board, AEP Ohio would question the propriety of requiring submittal of such information through these rule if it is to be used for purposes other than processing applications pending before the Board, especially given the sensitivity of some of the data). If a public records request is the event that triggers Staff giving notice to an applicant that the information may be publicly released, a three-day notice would ensure that the Board can proceed to promptly address the issue, consistent with OAC 4906-7-07(H). AEP Ohio proposes language to accomplish this below.

Concerning proposed paragraph (D), AEP Ohio is concerned about the ambiguity of the phrase "known to be of potential concern." Given the subjectivity of one's concerns, an applicant cannot fairly be expected to address everything that might be a potential concern for each member of the Board and each member of the Staff. As a related matter, the extensive and detailed rules of Title 4906 of the OAC generally provide for submission of technological, financial, environmental, social and ecological information known to be of potential concern for the Board; those extensive and detailed filings requirements should not be supplemented through an ambiguous provision that essentially says anything else important must be filed. The purpose and effect of the proposed paragraph (D)'s second sentence is not clear and arguably deprives applicants of due process to impose a mandatory filing requirement that is so ambiguous. In any case, an applicant should only be required to submit information that is known by the applicant to be of concern to the applicant. AEP Ohio, therefore, recommends deleting the second sentence of proposed paragraph (D). Alternatively, the phrase "known to be of potential concern for" should be changed to "not required by Chapter 4906-13 of the Administrative Code but thought by the applicant to helpful to the board in considering matters associated with."

➤ **Additional Rule Changes Recommended by AEP Ohio for 4906-13-01**

- (C) IF THE APPLICANT HAS COMPUTERIZED GEOGRAPHIC INFORMATION SYSTEM CAPABILITIES AND HAS ALL OF THE DATA RELATING TO A PROPOSED PROJECT, ALL INFORMATION REQUIRED TO BE PROVIDED IN HARD COPY MAP FORM SHALL BE PROVIDED TO THE BOARD STAFF ON COMPUTER DISK ~~IN SHAPEFILE FORMAT~~ CONCURRENT WITH SUBMISSION OF THE APPLICATION. STAFF SHALL TREAT SUCH DATA AS POTENTIALLY CONFIDENTIAL INFORMATION AND PROVIDE APPLICANT WITH AT LEAST THREE BUSINESS DAYS WRITTEN NOTICE IF IT INTENDS TO PUBLICLY RELEASE THE INFORMATION. IF APPLICANT FILES A MOTION FOR PROTECTION UNDER PARAGRAPH (H) OF RULE 4906-7-07 WITHIN THREE BUSINESS DAYS OF RECEIVING THE WRITTEN NOTICE, STAFF SHALL CONTINUE TO TREAT THE DATA AS CONFIDENTIAL PENDING A RULING BY THE BOARD. IF CONFLICT EXISTS BETWEEN A PAPER MAPS AND GIS DATA, THE PAPER MAP SHALL GOVERN.
- (D) IF THE APPLICANT FOR A GENERATION FACILITY ASSERTS THAT A PARTICULAR REQUIREMENT IN CHAPTER 4906-13 OF THE ADMINISTRATIVE CODE IS NOT APPLICABLE, THE APPLICANT MUST PROVIDE AN EXPLANATION ABOUT WHY THE REQUIREMENT IS NOT APPLICABLE. ~~FURTHER, THE APPLICANT SHALL PROVIDE IN ITS APPLICATION ALL RELEVANT TECHNOLOGICAL, FINANCIAL, ENVIRONMENTAL, SOCIAL AND ECOLOGICAL INFORMATION THAT IS KNOWN TO BE OF POTENTIAL CONCERN FOR THE PARTICULAR TYPE OF FACILITY PROPOSED.~~

CHAPTER 4906-15, GENERAL PROVISIONS FOR FILINGS AND PROCEEDINGS

1. Proposed Rule 4906-15-01, Project summary and facility overview.

The Staff proposes to add paragraph (C) that requires an applicant to provide mapping information in "shapefile" format if the applicant has computerized geographic information system (GIS) capabilities. For the reasons discussed above in relation to proposed rule 4906-13-01, AEP Ohio also recommends similarly modifying the language for this rule.

➤ **Additional Rule Changes Recommended by AEP Ohio for 4906-15-01**

- (C) IF THE APPLICANT HAS COMPUTERIZED GEOGRAPHIC INFORMATION SYSTEM CAPABILITIES AND HAS ALL OF THE DATA RELATING TO A PROPOSED PROJECT, ALL INFORMATION REQUIRED TO BE PROVIDED IN HARD COPY MAP FORM SHALL BE PROVIDED TO THE BOARD STAFF ON COMPUTER DISK ~~IN SHAPEFILE FORMAT~~ CONCURRENT WITH SUBMISSION OF THE APPLICATION. STAFF SHALL TREAT SUCH DATA AS POTENTIALLY CONFIDENTIAL INFORMATION AND PROVIDE APPLICANT WITH AT LEAST THREE BUSINESS DAYS WRITTEN NOTICE IF IT INTENDS TO

PUBLICLY RELEASE THE INFORMATION. IF APPLICANT FILES A MOTION FOR PROTECTION UNDER PARAGRAPH (H) OF RULE 4906-7-07 WITHIN THREE BUSINESS DAYS OF RECEIVING THE WRITTEN NOTICE, STAFF SHALL CONTINUE TO TREAT THE DATA AS CONFIDENTIAL PENDING A RULING BY THE BOARD.

2. Proposed Rule 4906-15-02, Review of need for proposed project.

The Staff proposes to generally require that an applicant provide transcription diagrams that show the transmission system fails to meet mandatory reliability standards for the bulk electric power system. This standard would only be met, however, for projects that are directly related to reliability. Applicants are involved with other types of projects that are not driven by reliability. In these cases an applicant cannot provide transcriptions showing a failure to the mandatory reliability standards. As a related matter, the term "Bulk Electric Power System" also needs to be clearly defined –either in this rule or in Section 4906-1-01 "Definitions." The definition for Bulk Electric Power Systems has changed over the years and without a clear definition of this term, applicants could submit data based upon their own interpretation of what is meant by a Bulk Electric Power System.

➤ **Additional Rule Changes Recommended by AEP Ohio for 4906-15-02**

(A)(4) FOR ELECTRIC POWER TRANSMISSION FACILITIES, ONE COPY OF POWER FLOW TRANSCRIPTION DIAGRAMS THAT SHOW, **WHERE APPLICABLE**, THE TRANSMISSION SYSTEM FAILS TO MEET THE MANDATORY RELIABILITY STANDARDS FOR THE BULK ELECTRIC POWER SYSTEM AND ONE COPY OF TRANSCRIPTION DIAGRAMS WITH THE PROPOSED FACILITY.

3. Proposed Rule 4906-15-04, Technical data.

The Staff proposes to require the most current reference materials be used, even though the best available may not be the most current reference materials available. AEP Ohio notes that this additional wording has not been suggested by Staff in the corollary rule for generation facilities, Rule 4906-13-04. The existing phrase "best available" makes this point while

retaining flexibility. For example, although aerial photography and other technical data is available on the web, some of it is of very poor quality. It is better to use the highest quality data rather just the most current available. AEP Ohio recommends alternative language for this purpose below.

Regarding the new paragraph (D), AEP Ohio notes that provision (D)(2) concerning construction debris is already covered by existing paragraph (B)(1)(e). AEP Ohio recommends that the Board need not adopt that new provision. Also, paragraph (D)(5)'s phrase "anticipated typical and maximum possible heights" is confusing and should be simplified to "anticipated heights." Finally in this regard, AEP Ohio submits that new paragraph (D)(6) is too ambiguous to be meaningful and should not be adopted, especially given that muddy conditions are covered in the above-referenced storm water protection plan.

Additional Rule Changes Recommended by AEP Ohio for 4906-15-04

(A) SITE/ROUTE ALTERNATIVES. INFORMATION ON THE LOCATION, MAJOR FEATURES, AND THE TOPOGRAPHIC, GEOLOGIC AND HYDROLOGIC SUITABILITY OF SITE/ROUTE ALTERNATIVES SHALL BE SUBMITTED BY THE APPLICANT. IF THIS INFORMATION IS DERIVED FROM REFERENCE MATERIALS, IT SHALL BE DERIVED FROM THE BEST AVAILABLE AND MOST CURRENT REFERENCE MATERIALS.

* * *

(D) ENVIRONMENTAL AND AVIATION COMPLIANCE INFORMATION. THE APPLICANT SHALL PROVIDE:

- (1) A LIST AND BRIEF DISCUSSION OF ALL PERMITS THAT WILL BE REQUIRED FOR CONSTRUCTION OF THE FACILITY.
- (2) ~~A DESCRIPTION, QUANTIFICATION AND CHARACTERIZATION OF DEBRIS THAT WILL RESULT FROM CONSTRUCTION OF THE FACILITY, AND THE PLANS FOR DISPOSAL OF THE DEBRIS.~~
- (3) DISCUSSION OF THE PROCESS THAT WILL BE USED TO CONTROL STORM WATER AND MINIMIZE EROSION DURING CONSTRUCTION AND RESTORATION OF SOILS, WETLANDS AND STREAMS DISTURBED AS A RESULT OF CONSTRUCTION OF THE FACILITY.
- (4) A DISCUSSION OF PLANS FOR DISPOSITION OF CONTAMINATED SOIL AND HAZARDOUS MATERIALS GENERATED OR ENCOUNTERED DURING CONSTRUCTION.

- (5) THE ANTICIPATED ~~TYPICAL AND MAXIMUM POSSIBLE~~ HEIGHTS OF ABOVE GROUND STRUCTURES. FOR CONSTRUCTION ACTIVITIES WITHIN THE VICINITY OF AIRPORTS OR LANDING STRIPS, PROVIDE THE MAXIMUM POSSIBLE HEIGHT OF CONSTRUCTION EQUIPMENT AS WELL AS ALL INSTALLED ABOVE GROUND STRUCTURES.
- (6) A ~~DESCRIPTION OF THE PLANS FOR CONSTRUCTION DURING EXCESSIVELY DUSTY OR EXCESSIVELY MUDDY SOIL CONDITIONS.~~

4. Proposed Rule 4906-15-07, Ecological impact analysis.

Although not covered by any of the Staff's proposed rule changes, AEP Ohio notes that existing paragraph (B)(4) of this rule requires the applicant to produce a map showing the soil associations in the study area. Since the applicant must already define wetlands and report on land use including agricultural lands, this soils map is of little or no value. This is especially true in regards to projects in urban or suburban areas. Asphalt is not considered a soil type even though it may be predominant in a project area. This proceeding is a good opportunity for the Board to eliminate paperwork by eliminating this requirement.


➤ Additional Rule Changes Recommended by AEP Ohio for 4906-15-07

~~(B)(4) SOIL ASSOCIATIONS IN THE CORRIDOR.~~

CONCLUSION

For the foregoing reasons, AEP Ohio recommends the above comments and changes be considered and adopted by the Board in finalizing its rule review.

Respectfully submitted,



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