

FILE

BEFORE
THE OHIO POWER SITING BOARD

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 of)
The Ohio Administrative Code)
)

Case No. 08-581-GE-ORD

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**Reply Comments of FirstEnergy Service Company To Comments filed by Ohio
Environmental Council**

I. Introduction.

FirstEnergy Service Company submits these reply comments to the untimely initial comments of the Ohio Environmental Council on behalf of its affiliates owning or operating major utility facilities in Ohio. This includes American Transmission Systems, Incorporated, The Cleveland Electric Illuminating Company, FirstEnergy Generation Corp., FirstEnergy Nuclear Generation Corp., Ohio Edison Company, and The Toledo Edison Company (collectively FirstEnergy).

FirstEnergy reviewed the initial comments submitted on June 24th by other interested parties regarding the proposed rule changes to Chapters 4906-1, 4906-5, 4906-7, 4906-9, 4906-11, 4906-13, and 4906-15 of the Ohio Administrative Code, and provided reply comments on July 15, 2008, in accordance with the Board's June 2, 2008 Entry.

On July 15, 2008 the Ohio Environmental Council (hereinafter "OEC") filed its initial comments in this rulemaking proceeding. Contrary to the Board's June 2, 2008 Entry, the comments filed by OEC were not reply comments, but rather were OEC's initial comments regarding the rules, and were due on June 24, 2008, not July 15, 2008. As a consequence, unlike every other party who filed comments in this rulemaking proceeding, OEC did not timely

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file its comments on the proposed changes to the Board's rules, and thereby deprived all other parties of the opportunity to respond to OEC's comments. FirstEnergy files these reply comments to OEC's late-filed comments and respectfully requests that the Board consider these reply comments if it decides to consider OEC's untimely comments on the Board's proposed rule changes. To the extent necessary, FirstEnergy moves for leave to submit these reply comments to the OEC's initial comments.

II. Specific Comments by Ohio Environmental Council

A. Proposed OAC 4906-5-02(A)(4) and (B)(4).

OEC filed comments in support of limiting the term of the letter of notification and construction notice to two years --- i.e. to a term which is three years shorter than a Certificate of Environmental Compatibility and Public Need. Since the letter of notification and construction notice procedures are a variation of the Certificate process for simpler projects with far less impact to the environment or the public, there is no particularly compelling public policy reason to limit the term of these approvals to two years, as compared with the five years allowed for major projects. If, for any reason, a utility is not able to obtain necessary land rights from a particular property owner, or if other permits required for the project require lengthy permitting processes (any disturbances to wetlands or streams may require both a Corps of Engineers and Ohio EPA permits --- which can take several months, or years, to procure, the two year limitation will not be practical or reasonable. First Energy again recommends that a five year term be imposed for these smaller projects.

B. Proposed OAC 4906-5-11(A).

The OEC supports the \$2,000 expedited application fee because an "expedited review increases expenses related to analysis, processing, and monitoring of applications. It's

unclear from OEC's comments why expedited processing would increase expenses, but assuming that to be true, an applicant also pays those increased expenses, as proposed by the Board Staff's following proposed amendment to provisions of OAC 4906-5-11(A):

"THE BOARD'S EXPENSES ASSOCIATED WITH THE REVIEW, ANALYSIS, PROCESSING, AND MONITORING OF APPLICATIONS MADE PURSUANT TO CHAPTER 4906 OF THE ADMINISTRATIVE CODE SHALL BE BORNE BY THE PERSON SUBMITTING THE APPLICATION AND SHALL INCLUDE ALL EXPENSES ASSOCIATED WITH MONITORING, CONSTRUCTION, OPERATION OF THE FACILITY AND COMPLIANCE WITH CERTIFICATE CONDITIONS. APPLICATION FEES SUBMITTED TO THE BOARD SHALL BE UTILIZED FOR ALL DIRECT EXPENSES ASSOCIATED WITH THE CONSIDERATION OF THE AN APPLICATION AND GRANTING OF A CERTIFICATE AND MONITORING OF CONSTRUCTION AND INITIAL OPERATION OF THE FACILITY. (Emphasis added).

The Board's rules further provide, in OAC 4906-5-11(H) that "...Board expenses for the resolution of jurisdictional issues, letters of notification, construction notices, and all other incidental services will be invoiced at cost. Payment shall be due upon receipt of an invoice." (Emphasis added). Contrary to OEC's comments, the \$2,000 fee is not intended to recover costs incurred by the Board for processing an expedited application. It is simply an additional fee added to the other fees normally assessed by the Board for costs associated with processing a letter of notification or construction notice. FirstEnergy is not attempting to avoid the costs of expedited processing. Rather, FirstEnergy seeks a clear and (to use a term employed by OEC) transparent understanding of the basis for the \$2,000 fee.

C. Proposed OAC 4906-7-04(A)(2)(b).

OEC advocates replacing the current intervention rule in Board proceedings with some sort of "centralized notice system administered by the State Chief Information Officer that all interested parties can access." This suggestion is misguided for two reasons. First, the Ohio Power Siting Board's Docket is fully available on the internet, and is easily accessible both to

parties and members of the public. This ease of access to the Board's docket fully addresses any concerns about access. Secondly, OEC's reference to section 5(h) of Executive Order 2008-04S exhibits a misunderstanding of both OAC 4906-7-04(A)(2)(b) and Executive Order 2008-04S, which address different matters. OAC 4906-7-04(A)(2)(b) establishes a 30 day deadline for an interested party to intervene into a Board proceeding. Section 5(h) of Executive Order 2008-04S would establish a centralized electronic system that will allow interested parties to register and receive notices and communications regarding agencies' proposed development, amendment or rescission of any rule of interest to them. OEC is "mixing apples and oranges" with its suggestion to combine these two unrelated processes.

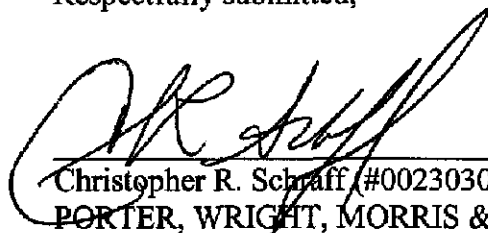
D. Proposed OAC 4906-7-17(D).

OEC supports the proposed language of OAC 4906-7-17(D), which allows non-parties to seek rehearing of orders of the Board, under the guise of "...allowing for greater public participation." But why should such an approach be employed only by this Board? No other Ohio administrative agency, including the Public Utilities Commission of Ohio, allows for rehearing applications to be filed by a person who is not a party to that proceeding, and parties may only seek rehearing in accordance with the provisions of statute. *See* Section 4903.10, Ohio Revised Code. Even if such a procedure could lawfully be adopted, it would be undesirable. Such a procedure, if adopted, would create uncertainty and unpredictability in the Board's adjudicative proceedings, and would promote untimely, belated collateral attacks on the decisions of the Board. FirstEnergy strongly opposes such a proposed rule.

III. Conclusion.

FirstEnergy respectfully requests that the Board consider these reply comments in the event it chooses to consider OEC's untimely comments on the proposed rule changes set forth in the Board's June 2, 2008 Entry.

Respectfully submitted,



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Certificate of Service

I hereby certify that a copy of the foregoing "Reply Comments of FirstEnergy Service Company to Comments Filed by Ohio Environmental Council" was served by causing a copy to mailed, by U.S. Mail, first class, postage prepaid, on August 7, 2008, addressed to the following:

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