

**BEFORE
THE OHIO POWER SITING BOARD**

In the matter of the application of AEP Ohio Transmission Company for a certificate of environmental compatibility and public need for the [765/345/138 kV] Vassell Substation Project.))) Case No. 11-1313-EL-BSB)))
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**POST-HEARING BRIEF OF APPLICANT
AEP OHIO TRANSMISSION COMPANY**

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Filed February 22, 2012

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I. INTRODUCTION

Applicant AEP Ohio Transmission Company (“AEP Transco,” Company, or Applicant) files this Post-Hearing Brief in support of its Application for a Certificate of Environmental Compatibility and Public Need to construct the 765/345/138 kV Vassell Station Project, which is a switching substation, located in Delaware County, Sunbury, Ohio.

As established in the Application, the testimony of AEP witness Scott Joseph, and throughout the evidence provided by the Staff of the OPSB and the Company, the Vassell Project promises to be beneficial for the local community, Central Ohio, and the electric system as a whole. Specifically, the Vassell Project will help meet the increased demands of electricity in Delaware and the Central Ohio region. The project is slated to produce \$7,619,884 in tax revenue in its first full year of operation for the local school district and local community. And the project is also expected to have a positive impact on development in the region.

The matters in contention in this case between the parties are clear and should be resolved by the Board based on the evidentiary record. The issues raised by the Intervenors in this case are not new to the OPSB and have their place in the wider overall review and responsibility of the Board. Likewise, some of the proposed conditions raised by Staff are appropriate, while others are outdated or unsupported by any record evidence. The lack of testimony in support of the proposed conditions leaves the Company testimony as the only evidence in the case on many of the issues. At the end of the day, the Board is responsible for making a decision based on the record before it and the facts of the case before it in this docket. This record supports the granting of a certificate for the Vassell Project as outlined in this post-hearing brief.

II. COURSE OF PROCEEDINGS

A public meeting regarding the proposed Vassell Station Project was held on May 12, 2011 in Sunbury, Ohio. On July 26, 2011, AEP Transco filed a motion for waiver requirements of the Power Siting Board's enabling statute and rules, specifically from the one year notice requirement provided in Revised Code Section 4906.06(A)(6) and from the twenty percent commonality requirement for the alternate site/route provided in Rules 4906-01-03 and 4906-05-04 of the Administrative Code. AEP Transco also filed a motion to include associated facilities in its Application. By entry dated September 27, 2011, AEP Transco's motion was granted.

The Application for the proposed Vassell Station Project was filed on July 29, 2011. On September 26, 2011, the Chairman of the Public Utilities Commission of Ohio notified AEP Transco that the application had been certified as complete. On October 20, 2011 AEP Transco filed proofs of service of the certified Application pursuant to OAC Rule §4906-05-07. The effective date of the filing of the Application was October 27, 2011.

On October 28, 2011, the Board, by entry, set a local public hearing on January 19, 2012, at the Sunbury Town Hall in Sunbury, Ohio. An adjudication hearing was scheduled for January 24, 2012.

On December 19, 2011 a petition for leave to intervene was filed by Alvin and Susan Barkaloo. The petition specified that leave to intervene was sought because the proposed facility site is in close proximity to their home and would have a major impact on them and the greater Sunbury community. Alvin and Susan Barkaloo own property just north of State Route 37. On January 3, 2012 AEP Transco filed a memorandum contra of Alvin and Susan Barkaloo's petition for leave to intervene in the instant case citing the fact that the prescribed thirty day time period after the date of the publication of the notice in which the Barkaloos had to file a motion

to intervene had expired. On January 12, 2012, the Board, by entry, granted Alvin and Susan Barkaloo's motion for intervention.

The adjudicatory hearing was convened on January 24, 2012 and January 25, 2012. It became apparent during the course of the hearing that Intervenors had objections to the construction and operation of the Vassell Station Project at the preferred site.

AEP Transco offered testimony from nine witnesses to support the issuance of the certificate for the construction of the proposed Vassell Station Project. The testimony of each witness is discussed in greater detail below. Mr. Barkeloo appeared on behalf of the Intervenors and the Staff prefiled the testimony of one witness and provided the testimony of another at the request of Intervenors.

III. STATUTORY CRITERIA

The General Assembly created the Board to serve as an objective arbiter of such disputes, to sift through the passionate debate and to analyze projects based not upon acceptance by individuals in the local community, but instead upon the statutory criteria set forth in Chapter 4906, Ohio Revised Code, and the rules of the Board in the Ohio Administrative Code. By enacting comprehensive siting process and vesting the Board with broad and exclusive authority¹ to implement it, the General Assembly ensures orderly, objective, and consistent policy and decision making in the siting of major utility facilities, while affording ample opportunity for public input. In short, individual opponents concerns regarding noise, aesthetics and property

¹ This exclusivity is demonstrated by the Ohio General Assembly's enactment of R.C. 4906.13 and 519.211 that exempts siting matters from local regulation. See also *State ex rel. Ohio Edison Co. v. Parrott* 1995, 73 Ohio St. 3d 705, 654 N.E.2d 106 (matters involving construction and placement of major utility facilities are exclusively within the purview of the Ohio Power Siting Board.)

values should not divert the Board's focus away from the greater public good or otherwise be permitted to thwart that which the state of Ohio encourages as sound public policy.

The purpose of the Ohio Power Siting Board is to provide a statewide review of the power siting needs of Ohio. It is not hard to imagine how a power siting approval process set on a local level would lose sight of the regional impact and importance of the addition of major utility facilities. The Intervenor in this case has provided the local perspective that is typical in any and every case before the Board. Certainly that does not mean the opinions and testimony should be ignored. But the Board should ensure that the review of this application is done under the parameters defined in the law and administrative code. Ohio law requires a detached, technical analysis of the merits of AEP Transco's application to ensure that the broader interests the Board was created to promote and oversee are properly balanced with local individual interests that are considered with all of the other considerations of a proper review.

In considering the pending application, the Board, as did its Staff, must consider the quality and character of the area, its growth and its land uses in and around the proposed site. So, although it is important that the Board be aware that there are residential properties in the area, it is equally important that the Board recognize the close proximity to the intersection of extra high voltage (EHV) powered transmission lines. The Board should also consider the shown local benefits in tax proceeds, electric reliability and the positive impact on regional development in the Central Ohio region.

Under Ohio Revised Code Section 4906.10(A), the Board shall not grant a certificate for the construction, operation, and maintenance of a major utility facility, either as proposed or modified by the Board, unless it finds and determines, based upon the record before it. Specifically the law states:

(A)(1) The basis of the need for the facility if the facility is an electric transmission line or gas or natural gas transmission line;

(2) The nature of the probable environmental impact;

(3) That the facility represents the minimum adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives, and other pertinent considerations;

(4) In the case of an electric transmission line or generating facility, that the facility is consistent with regional plans for expansion of the electric power grid of the electric systems serving this state and interconnected utility systems and that the facility will serve the interests of electric system economy and reliability;

(5) That the facility will comply with Chapters 3704., 3734., and 6111. of the Revised Code and all rules and standards adopted under those chapters and under sections 1501.33, 1501.34, and 4561.32 of the Revised Code. In determining whether the facility will comply with all rules and standards adopted under section 4561.32 of the Revised Code, the board shall consult with the office of aviation of the division of multi-modal planning and programs of the department of transportation under section 4561.341 of the Revised Code.

(6) That the facility will serve the public interest, convenience, and necessity;

(7) In addition to the provisions contained in divisions (A)(1) to (6) of this section and rules adopted under those divisions, what its impact will be on the viability as agricultural land of any land in an existing agricultural district established under Chapter 929. of the Revised Code that is located within the site and alternative site of the proposed major utility facility. Rules adopted to evaluate impact under division (A)(7) of this section shall not require the compilation, creation, submission, or production of any information, document, or other data pertaining to land not located within the site and alternative site.

(8) That the facility incorporates maximum feasible water conservation practices as determined by the board, considering available technology and the nature and economics of the various alternatives.

Under the statute, the Board must consider each criterion in light of the evidence of record. The remainder of this brief will analyze AEP Transco's application in light of these criteria and the information and evidence presented.

IV. LEGAL ARGUMENT

A. Applicant has demonstrated that Certificate of Environmental Compatibility And Public Need Should be granted for the Vassell Station Project

The record in this case clearly demonstrates that the construction and operation of AEP Transco's Vassell Station Project at the preferred site meets the statutory criteria set forth in Section 4906.10(A)(1-8) of the Revised Code. Therefore, a Certificate of Environmental Compatibility and Public Need should be granted by the Ohio Power Siting Board for this project.²

1. The Application for the Vassell Station Project establishes the basis for the need for this facility, as required by Section 4906.10(A)(1) of the Revised Code.

AEP Transco's Application for the proposed Vassell Station Project provides evidence of the need for the substation and associated transmission line interconnections to improve and maintain the quality of electric service and reliability in the Central Ohio area. AEP Ex. 1, Application at pp. 02-1 to 02-7.³

The OPSB Staff Report of Investigation (Staff Ex. 1) also concluded that AEP Transco demonstrated that there was a need for the proposed Vassell Station Project, as required by Section 4906.10(A)(1). Staff Ex. 1, OPSB Staff Report of Investigation at pp. 9-10. The Central Ohio Transmission System provides service to over 4,000 MW of peak summer electric demand to Central Ohio and the surrounding suburbs. Id. at p. 02-1. Staff Ex. 1, OPSB Staff Report of

² AEP Transco points out that it is difficult to anticipate all the arguments a party may choose to raise in its initial post-hearing brief, but has attempted to anticipate arguments that will be made to provide the Board a more timely review of the arguments. To the extent a party fails to raise an argument that AEP Transco rebuts in anticipation of arguments made at hearing that party on rehearing should not be allowed to reply to that argument and in essence raise an argument it did not raise in its initial post-hearing brief in response to AEP Transco's statement.

³ See the section below on R.C. 4906.10(A)(4) that provides more specifics on how the project fits into the regional plans for expansion of the electric power grid and the associated benefits that support the need.

Investigation at p. 9. Utilizing the PJM forecasted growth projections as a basis, it was determined that the projected load growth would necessitate the need of the Vassell Station Project. In addition to the projected load growth in Central Ohio, it was determined that by summer of 2014, low voltage and thermal overloads to the system as a result of credible double contingencies could result in wide spread cascading outages in Central Ohio. AEP Ex. 1, Application at p. 02-1 to 02-2. Staff Ex. 1, OPSB Staff Report of Investigation at p. 10. These factors in conjunction with the announced generator retirements planned for Conesville and Muskingum River Power Plants in 2014 result in the need for the Vassell Station Project. Id.

Intervenors offered no evidence or testimony to dispute the basis of the need for the Vassell Station Project, as set forth in the Application and the OPSB Staff Report of Investigation. As there is no evidence to the contrary, it is lawful and reasonable for the Board to conclude that the criterion in Section 4906.10(A)(1) has been met and the need for the facility has been demonstrated.

2. The Application fully describes the nature of the probable environmental impact of the Vassell Station Project and supports a finding that the proposed project represents the minimum adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives, and other pertinent considerations as required by Section 4906.10(A)(2) and (3) of the Revised Code.

AEP Ex. 1, the Application for the Vassell Station Project, contained an evidence of the probable environmental impact if the proposed facility were to be located at the preferred site, and carefully evaluated the likely environmental impact from the construction of the proposed generating plant in terms of the expected socioeconomic impacts, ecological impacts, impacts to public services and facilities. See generally AEP Ex. 1, Application at pp. 06-1 to 06-22 and 07-1 to 07-13. The Intervenors provided no evidence to the contrary and the Board Staff found that

the project satisfied these statutory criteria and recommended the issuing of a certificate, provided its stated conditions were followed.⁴

The OPSB Staff Report of Investigation carefully considered all of these factors of R.C. 4906.10(A)(2) and 4906.10(A)(3) in its evaluation of the preferred site and detailed the expected environmental impact from construction of the facility. See Staff Ex. 1, OPSB Staff Report of Investigation at pp. 11-16 and 17-18 respectively. Staff ultimately found that the nature of probable environmental impact has been determined for the proposed facility and therefore complies with the requirements specified in the Revised Code. *Id.* at p. 16. Likewise, the Staff found that the proposed facility represents the minimum adverse environmental impact and therefore complies with the requirements specified in ORC Section 4906.16(A)(3). See Staff Ex. 1, OPSB Staff Report of Investigation at pp. at 17-18.

3. The Application establishes that the facility is consistent with regional plans for expansion of the electric power grid of the electric systems serving this state and interconnected utility systems and that the facility will serve the interests of electric system economy and reliability as required by Section 4906.10(A)(4).

AEP Transco's Application provides evidence through a detailed discussion and analysis of the key role the Vassell Station Project will play in the reinforcement and sustainability of the Central Ohio Transmission System and other systems at-large. AEP Transco's Application provides a detailed load flow analysis during the summer 2014 peak load conditions to illustrate system load flows. Load flow analysis identified several double contingency conditions that would result in low voltage and thermal loading criteria violations. See AEP Ex. 1, Application at pp. 02-2 to 02-3. The analysis took into consideration system load growth, generation

⁴ The need or relevance of the conditions proposed by the Board Staff will be discussed later in this post-hearing brief.

retirements and certain double contingencies during power transfers. *Id.* at p. 02-3. In order to meet AEP Transmission Planning Criteria, system voltage must be maintained at or above 92% for contingencies, and equipment thermal loadings may not exceed 100% of the equipment's emergency rating. Normal system voltages should not go below 95%, otherwise the condition of the system could drastically deteriorate. *Id.* at p. 02-2. If system voltages decline below 92%, the grid may become unstable and voltage collapse could occur. See Staff Ex. 1, OPSB Staff Report of Investigation at p. 19.

The Vassell Station Project directly addresses the reliability, voltage and thermal concerns for the central Ohio AEP Transmission system outlined above and will only serve to improve system reliability, but the reliability of other utilities as well. See AEP Ex. 1, Application at p. 02-5. While the successful integration of the Vassell Station Project into the existing regional transmission grid is of utmost importance, the project was developed in connection with future regional plans for expansion to ensure system economy and reliability. In addition to the proposed Vassell Station Project, AEP Transco's application outlines several other major planned projects. *Id.* at p. 02-2. Planned construction includes a Static Var System located at the existing Saint Clair Substation; a 138 kV line from Trent to Vassell Substation, which will help form a new 138 kV Vassell-Delaware 138 kV Circuit; and a 345 kV line extension to connect Hyatt (Ohio Power) Substation to Hyatt (Columbus Southern Power) Substation. *Id.* Ultimately, the proposed Vassell Station Project provides the foundation upon which the other planned construction projects will be realized. These new sources to the area transmission system will result in (1) improved grid reliability by rectifying potential voltage collapse situations, (2) will improve the Central Ohio Transmission System voltage profile so voltages are maintained within AEP Planning Criteria, and (3) will rectify forecasted thermal

overloads on area transmission lines maintaining equipment loading levels with AEP Planning Criteria. Id. at 02-5. Staff Ex. 1, OPSB Staff Report of Investigation at p. 19.

There was no evidence presented at the adjudication hearing to the contrary, therefore, the criterion in Section 4906.10(A)(4) has been met and system economy and reliability has been demonstrated.

4. The Application demonstrates that the Vassell Station Project will comply with Chapters 3704, 3734, 6111 and Sections 1501.33, 1501.34 and 4561.23 of the Revised Code as required by Section 4906.10(A)(5) of the Revised Code.

AEP Transco's Application, AEP Ex. 1, provides evidence on the impacts of the Vassell Station Project on air, water, waste and aviation, and the ways in which the Application satisfies the requirements of Chapters 3704 (air pollution code), 3734 (hazardous and solid waste code), 6111 (water pollution code) and Sections 1501.33, 1501.34 and 4561.23 of the Revised Code. AEP Ex. 1, Application at pp. 4-11 to 4-14. Air quality permits are not required for construction of the proposed facility; however, pursuant to Chapter 3704 of the Revised Code, air pollution control laws are applicable to the Vassell Station Project. Staff Ex. 1, Staff Report of Investigation at p. 22. The Application provides that the Site and surrounding areas will be kept free of dust nuisance resulting from site-related activities and during excessively dry periods of active construction, efforts will be made to mitigate dust through irrigation, mulching, or application of tackifier resins. AEP Ex. 1, Application at p. 04-14; Staff Ex. 1, Staff Report of Investigation at p. 22. The OPSB Staff Report of Investigation indicates that these methodologies are sufficient to comply with fugitive dust rules and therefore complies with Chapter 3704 of the Revised Code. Staff Ex. 1, OPSB Staff Report of Investigation at p. 22.

The Application outlines the project's plans for the removal and disposal of construction debris and the disposition of contaminated soil and hazardous materials generated or encountered

during construction pursuant to Chapter 3734 of the Revised Code. AEP Ex. 1, Application at p. 04-11 to 04-13. It is estimated that approximately 500 cubic yards of construction debris could be generated from the project, including such items as conductor scrap, construction material packaging and used stormwater erosion materials. Id. Construction debris will be disposed of in accordance with state and federal requirements in an Ohio Environmental Protection Agency approved landfill or other appropriately licensed facility. Id. A Stormwater Pollution Prevention Plan (“SWPPP”) will be prepared and incorporated into the construction of the proposed facility to address the disposition of contaminated soil and hazardous materials generated or encountered during construction. Id. The SWPPP will address disposition of contaminated soil and hazardous materials generated or encountered during construction. The SWPPP will address spill prevention through a Spill Prevention Plan that includes monitoring and preventative maintenance, containment and cleanup measures. AEP Ex. 1, Application at p. 04-13. The OPSB Staff Report of Investigation provides that the Applicant’s solid waste and hazardous materials disposal plans comply with the requirements of Chapter 3734 of the Revised Code. Staff Ex. 1, OPSB Staff Report of Investigation at p. 23.

The proposed facility, if constructed on the preferred site, will not directly impact wetlands or streams pursuant to Chapter 6111 of the Revised Code. Furthermore, the project will not require the use of significant amounts of water during the construction of or operation of the facility, making Sections 1503.33 and 1501.34 of the Revised Code inapplicable. Staff Ex. 1, OPSB Staff Report of Investigation. The Application provides that there are no streams, ponds, or other water crossings anticipated during the construction of the proposed substation footprint or access road portions of the Preferred Site. The 765 kV Extensions East and West and the 345 kV Loops East and West for the Preferred Site cross a stream. AEP Ex. 1, Application at p. 07-

9. The Application also provides that once the substation and associated interconnections are in operation, there will be no significant impacts to streams or drainage channels or wetland areas. *Id.* at p. 07-10. The SWPPP and Best Management Practices will be implemented during construction to control erosion and areas that are disturbed will be seeded and mulched to prevent soil erosion and sedimentation. *Id.* In fact, Applicant's expert, Ms. Christina Svoboda, testified that she can categorically attest to the fact that the stormwater management plan will have absolutely no effect on stream 1C. (January 24, 2012 Tr. at 77-78). Therefore, the requirements of Chapter 6111 of the Revised Code have been satisfied.

The Application provides that the height of the tallest anticipated above-ground structure is designed to be approximately 175 feet. After consulting the Federal Aviation Administration's Office of Aeronautical Information Services, it was determined that 17 airports, landing strips or heliports are located in Delaware County. The closest of which include two private airports located 4.5 miles away from the proposed site. AEP Ex. 1, Application at p. 04-14. Because of the distance and the fact that no structures related to the proposed project exceed 200 feet above ground level, the construction and operation of the proposed facility is not expected to have an impact on airport facilities. Staff Ex. 1, OPSB Staff Report of Investigation at p. 23. In accordance with Section 4561.32 of the Revised Code, Staff contacted the Ohio Office of Aviation to coordinate review of potential impacts of the proposed facility on local airports. No such concerns have been identified. *Id.* Therefore, the requirements of Section 4561.32 of the Revised Code have been satisfied and as a whole, the Application complies with the criterion set forth in Section 4906.10(A)(5) of the Revised Code.

5. The Vassell Station Project will serve the public interest, convenience, and necessity, as required by Section 4906.10(A)(6) of the Revised Code.

The OPSB Staff concluded that provided the recommended conditions are met that the proposed Vassell Station Project will serve the public interest, convenience and necessity and therefore complies with Section 4906.10(A)(6) of the Revised Code.⁵ Staff Ex. 1, OPSB Staff Report of Investigation at p. 25. The Board Staff pointed out that the substation is part of a larger transmission system reinforcement project focused on maintaining, improving, and reinforcing electric service quality and reliability for multiple communities in the greater Columbus and Delaware County areas. Staff Ex. 1, OPSB Staff Report of Investigation at p. 24. The Board Staff also determined that the project would serve the public interest because it would ensure that Central Ohio's increased demands for reliable electricity continue to be met. *Id.* The OPSB Staff reached this conclusion after full consideration of potential impacts from the proposed facility, including impacts related to the generation of electromagnetic fields ("EMF") from energized transmission lines. *Id.* at p. 24. The report further concluded that the magnetic fields for the proposed facility were estimated at the right-of-way edge to be less than 296 milligauss and the electric field would be less than 4 kilovolt/meter. *Id.* While the Application provided a discussion of EMF values and the maximum magnetic field scenarios, the report concluded that daily current load levels would normally operate below the maximum load conditions, thereby further reducing normal EMF values. AEP Ex. 1, Application at pp. 06-11 to 06-18; Staff Ex. 1, OPSB Staff Report of Investigation at p. 24. The report goes on to find that the Vassell substation would have screening to shield electric fields and the fields generated by the substation are attenuated as the distance from the substation increases. Ultimately, the report

⁵ Again, the need or relevance of the conditions proposed by the Board Staff to support this conclusion will be discussed later in this post-hearing brief.

finds that magnetic fields would not be measurable at any residence near the Vassell substation. Id.

The Intervenor raises four primary arguments in opposition to the project. Specifically, Intervenor argues: (1) that the substation will cause damage to their health, comfort, enjoyment and property resulting from such problems as bright night lights, noise, electromagnetic fields, and the interference with television, radio and radio reception, (2) the enjoyment of the natural environment will be impaired by the construction and maintenance of the substation, which will destroy or damage streams, vegetation, animals and other wildlife in and around the area of the substation, (3) the impact of the substation on the surrounding property value, and (4) AEP failed to offer a meaningful alternate site for the proposed project and that neither the Preferred nor Alternate Sites are appropriate for the location of the substation because it is too close to residential property.

Intervenor provided the testimony on behalf of themselves and offered Mr. Barkeloo who testified to the concerns with the Vassell Project, but also testified that his property is not just a residence but also where he runs a commercial business. January 25, 2012 Tr. at p. 259. In fact, although he attempted to downplay how busy he is, the fact remains he runs a business that applies large-scale wrap to vehicles as large as tour buses that he produces on site with specialized equipment that he cannot buy at a Wal-Mart or Target. Id. at 264. He also lives across a State Route from the project a street that is not your normal neighborhood street. That street is State Route 37 that indirectly leads to Big Walnut High School. The Board should not lose sight of Intervenor's business shop/residence and its surroundings when reading the arguments.

Mr. Barkeloo admitted that he was not testifying as an expert witness and the Intervenors failed to provide any expert witnesses or data to support their contentions. *Id.* at 259. The Applicant, however, offered several expert witnesses who addressed several of the aforementioned concerns raised by Intervenors. Applicant's expert witness, Matthew Hales, testified that lighting associated with the substation is predicated on safety and industry-wide standards. January 24, 2012 Tr. at pp. 130-131. Mr. Hales testified that the proposed facility will utilize standard 2.0 footcandles when workers are working on the substation and 0.5 footcandles when no one is working on the substation and that Applicant will utilize down lighting to minimize the effects of bright lights on surrounding residents. January 24, 2012 Tr. at pp. 131-132.

In his testimony, Applicant's expert witness, James Cowan, discussed the effects of low-frequency noise and the alleged health concerns related to low-frequency noise. Specifically, Mr. Cowan testified to the fact that transformers and transmission lines generate tones that are at frequencies that are integer multiples of 120 hertz and the dominant tone is 120 hertz. January 24, 2012 Tr. at p. 97. Mr. Cowan went on to testify that just because something has frequency components that are below 250 hertz does not directly imply that it's a problem; we also need to address how loud that is and what the level is. January 24, 2012 Tr. at p. 97. Furthermore, Mr. Cowan testified that he took 20 foot berms [20 foot western berm, 12-17 foot berm adjacent to Carol Watson's eastern property line, 18 foot northeast berm near St. Rt. 37 and 2-10 foot berms leading to the 345/138 kV station yard entrance, as stated AEP's response to the OPSB follow up question submitted on December 1, 2011] into consideration as a mitigating factor and utilized the worst-case scenario of operation of the substation at full-load capacity, 24-hours a day as a basis for his noise study. January 24, 2012 Tr. at pp. 103-104.). Mr. Cowan testified that he

determined that the minimum background levels measured at two homes included in the study (including Intervenorss' home) over two 24-hour periods and predicted for the surrounding homes including the four homes discussed during the testimony (including the Intervenorss' home) were roughly in the 40 decibel range, which is 10 decibels higher than the level predicted at the homes for the maximum noise level that would be produced by the substation. January 24, 2012 Tr. at pp. 104-105. Thus, Mr. Cowan concluded, there is no reason to put up walls around the proposed facility because the noise levels are well below the background levels at the closest residences and that the noise emanating from the substation would not bother anyone. January 24, 2012 Tr. at pp. 111-112.

Applicant's expert witness, Louis Hosek, testified that once you get about past the size of a football field, you almost have no magnetic field exposures. Electric fields are shielded by most everything. Magnetic fields aren't as easy to shield; they operate by the inverse-square law and that is why they drop off rapidly. January 24, 2012 Tr. at p. 195. Mr. Hosek testified that Intervenorss' exposure to EMF would be very low given the location of their property in proximity to the proposed facility and that if the substation were not built at the proposed Preferred Site, people in and around the area would still be subject to EMF effects. January 24, 2012 Tr. at pp. 195-196. Mr. Hosek went on to testify that everyone is exposed to electric and magnetic fields. Every day items like lights, elevators, and hairdryers all have electric and magnetic fields and some of them are pretty significant. January 24, 2012 Tr. at pp.196.

Applicant's expert witness, David Klinect, testified about the potential for the proposed facility to interfere with television or radio reception.⁶ Mr. Klinect testified that in his 32 year

⁶ AEP Transco points out that while the Attorney Examiner granted a motion to strike a portion of Mr. Klinect's direct testimony, a ruling AEP Transco believes was in error and should be overturned by the Board, that the motion did not seek to strike the extensive cross-

tenure with the company, he is aware of less than ten instances where electric lines or substations have interfered with radio reception and one time where electric lines or substations have interfered with television reception January 24, 2012 Tr. at pp. 147-149. Mr. Klinec testified that in these instances the problems can be attributed to lower voltage lines and loose hardware and that once replaced, resolves the problem. January 24, 2012 Tr. at p. 150.⁷

Intervenors contend that Applicant failed to provide a meaningful alternate site for consideration of the proposed facility. Intervenors base this argument on the fact that Applicant's Preferred and Alternate Sites are located on the same parcel of land. Applicant's expert witness, Scott Joseph, testified regarding the site selection study and discussed the process by which Applicant determined that the Preferred Site would be ultimately serve the public's best interest, convenience, and necessity. Mr. Joseph testified that numerous people were involved in the site selection process and that his team worked with their consultant, URS, to select five options for consideration (January 24, 2012 Tr. at p. 202). Mr. Joseph testified that a

examination done by counsel for the Intervenors on issues dealing with radio and television signals. January 24, 2012 Transcript at 147-162. The testimony of Mr. Klinec and his experience with both television and radio signals is still valid evidence of record even beyond the portions struck by the Attorney Examiner.

⁷ AEP Transco proffered the stricken testimony from page 3 of Mr. Klinec's direct testimony and asks the Board to reinstate the stricken language to the prefled direct. Mr. Klinec adopted the entirety of his testimony that was prefled but received questions on radio transmissions that were allowed and are still in the record on cross-examination. The question of whether the testimony concerned radio or television was treated broadly by the counsel for Staff in asking about telecommunications. Staff counsel did not seek to strike in advance for lack of knowledge. The point was raised after cross and redirect was done so there was no opportunity for the witness to point out that he was referring to radio and not telephone interference. There is no reason in an administrative hearing as this to strike prefled testimony that the witness available for cross-examination on the specific points only because unclear general questions were asked which may or may not relate to what the witness intended because the specific context was not provided. The decision to strike the testimony of a witness present that could have been asked about the specific provisions, when in other rulings the entirety of a report of an individual not even at the hearing was allowed in over objection to be treated as evidence, treats AEP Transco and the record unfairly.

half-mile radius was established due to the close proximity of the area to the 765 [kV] and 345 [kV] lines that are already established in the area. Mr. Joseph explained that when you extend transmission facilities of the nature of 765 [kV], which require a large right-of-way path, and 345 [kV], it requires a large study of socioeconomic and environmental issues (January 24, 2012 Tr. at p. 205). The Application provides an in-depth analysis of the five sites that were considered for the location of the proposed facility. AEP Ex. 1, Application at pp. 3-1 – 3-2 and the attached site selection study. This section of the Application discusses the many factors evaluated to determine the best site in proximity to the intersection being utilized including the strengths and weaknesses of the sites and the availability of the land involved. Intervenors provided no expert or evidence to contradict the analysis in AEP Ex. 1. The only evidence of record for the Board to rely upon is the Staff Report and testimony and evidence of the Applicant supporting the preferred site.

In conclusion, the record as a whole supports the conclusion that the construction of the Vassell Station Project at the preferred location would serve the public's best interest, convenience, and necessity, as required by Section 4906.10(A)(6) of the Revised Code.

6. The Application demonstrates that the Vassell Station Project will not have any impact upon the viability of agricultural land and therefore complies with Section 4906.10(A)(7).

AEP Transco's Application provides that one agricultural district land parcel was identified within 1,000 feet of both the Preferred and Alternate Sites, but there will be no impact on agricultural districts in the construction of the proposed facility. AEP Ex. 1, Application at p. 06-5; Staff Ex. 1, OPSB Staff Report of Investigation at p. 26. This 27-acre parcel is located just north of the western portion of the property, approximately 300 feet north of the 138 kV yard of the Preferred Site and 50 feet north of the Alternate Site. AEP Ex. 1, Application at p. 06-5.

Notwithstanding this fact, both the Preferred and Alternate Sites are situated on 265-acre property that, with the exception of bordering wooded lots, is predominantly agricultural. The Application provides that approximately 200 acres of the project area, which has been used for row crops, will be affected by the construction of the substation. AEP Ex. 1, Application at pp.06-4 to 06-5; Staff Ex. 1, OPSB Staff Report of Investigation at p. 26. Approximately 140 acres of this land will be restored to agricultural production after construction of the facility is complete. Id.

Intervenors offer no testimony that the proposed project would produce an unacceptable adverse effect upon agricultural land or any agricultural district. Therefore, due to the fact that no land proposed for use of the Preferred or Alternate Site is an existing agricultural district established under Chapter 929 of the Revised Code, the criterion set forth in Section 4906.10(A)(7) has been satisfied.

7. The Vassell Station Project incorporates maximum feasible water conservation practices as determined by the board, considering available technology and the nature and economics of the various alternatives as Required by Section 4906.10(A)(8).

The proposed Vassell Station Project will not utilize water for operation of the facility; therefore, water conservation practice as specified under Section 4906.10(A)(8) is inapplicable. Staff Ex. 1, Staff Report of Investigation at p. 11. Therefore, the Board should find that the proposed facility would incorporate maximum feasible water conservation practices and therefore complies with the criterion set forth in Section 4906.10(A)(8).

IV. OBJECTIONS TO STAFF CONDITIONS

The OPSB Staff supported the granting of a certificate for the Vassell project provided the Board adopt the list of proposed conditions raised in its Staff Report of Investigation. Many of the conditions are overbroad, unrelated to the project, lack any evidentiary support, or fail to recognize the realities of building a major utility facility. AEP Transco prefiled an issues list detailing its concerns and testimony prior to the due date of the Board Staff's due date for testimony in this proceeding, yet the OPSB staff did not refute any of the evidence or testimony offered in that prefiled testimony. As discussed above the Board must make a decision based upon the evidence in this record. Unsupported conclusions by the OPSB Staff or unsupported legacy conditions should not be attached to a certificate when there is record evidence refuting the purpose or need and the Staff fails to carry its burden to justify its proposed condition. Many of the conditions are acceptable to the Company and are not in need of further support. Those conditions were not raised in the Company's pre-testimony issues list or its testimony. The matters of concern were included in both of those procedural duties to provide the OPSB ample opportunity to provide justification for its proposed conditions in its testimony due after the filing of the Company's position. AEP Transco is confident that a review of the conditions in these areas will provide guidance for amendments to those conditions or highlight the only record evidence that highlights the lack of a need for the condition while still promoting the certification of the project.

Staff Proposed Condition 4:

- (4) That prior to the commencement of construction, the Applicant shall obtain and comply with all applicable permits and authorizations as required by federal and state laws and regulations for any activities where such permit or authorization is required. The Applicant shall provide copies of permits and authorizations, including all supporting documentation, to OPSB Staff within seven days of issuance or receipt by the Applicant.*

Staff proposed condition 4 is an example of the type of condition that is overbroad and not tied to the realities of the construction process. OPSB staff provided no evidence or justification in the record for the condition. AEP witness Hales testified that the project will be designed in stages and construction will commence in stages. AEP Ex. 7 at 3. Mr. Hales testified that a rewording of the proposed condition to include the “associated” construction would be more appropriate. That amendment would better represent the construction process. The condition even requires the Applicant to “obtain and comply with all applicable permits” prior to commencement of construction. It is possible that an Applicant may not need to comply with a permit until the final stage of a project but the condition as written requires compliance with a method or practice long before the actual purpose of the permit is in existence. Such a requirement is unrealistic and impractical.

Staff Proposed Condition 6:

- (6) *That at least 30 days prior to the pre-construction conference and subject to OPSB Staff review and approval, the Applicant shall have in place a complaint resolution procedure to address potential public grievances resulting from project construction and operation. The Applicant shall work to mitigate or resolve any issues with those who file a complaint. All complaints submitted must be immediately forwarded to OPSB Staff.*

Staff proposed condition number 6 is also too broad and should be amended. The word “complaint” used in this condition and others is not a complaint in a legal context. As such the process set up by the Applicant should be viewed as a process to deal with concerns but not a legal proceeding. OPSB Staff witness Pawley agreed that Staff did not intend the word to be used in a legal setting but more akin to a program to deal with concerns raised. January 25, 2012 Tr. at pp. 292-293. The proposed condition also fails to define the pool of impacted grievors

with concerns. Just as anyone may have concerns with the lighting or landscaping of the project as discussed in proposed condition 8, there is an infinite number of individuals that could raise a concern with the project under this condition. Such an infinite universe of eligible aggrieved parties is too broad and unrealistic. Accordingly, the Board should amend the condition to apply to “adjacent property owners” and change complaint to concerns.

Staff Proposed Condition 8:

- (8) *That prior to commencement of construction, the Applicant shall prepare a landscape and lighting plan for OPSB Staff’s review and approval that addresses the aesthetic and lighting impacts of the facility, including minimum berm heights and lighting locations. The Applicant shall coordinate with affected property owners in the development of this plan.*

Staff proposed condition number 8 is vague and appears to favor local aesthetic preferences over safety. OPSB staff provided no evidence or justification in the record for the condition. AEP witness Hales testified that this condition leaves the safety issues open to debate based on personal preference. AEP Ex. 7 at 3. Mr. Hales testified that the lighting will be based on the security needs of the station and the safety of the personnel operating the station. *Id.* If coordination with “affected property owners” would force AEP Transco to move landscaping or amend lighting that decreased safety, the condition is unacceptable.

The condition also fails to provide any definition of an “affected property owner,” leaving the condition too broad for application. When dealing with matters like lighting and landscaping that is prone to personal preference, defining the class of individuals is important. The project will be directly off of a busy state highway with a number of individuals passing and the addition of any facility in an area where none existed before could lead to a wide variety of people with their own opinions on what should be done. Mr. Hales testified that the proposed

condition is open ended making it impossible to determine who is an affected property owner.

Id.

As written the proposed condition is overbroad and threatens the safety of the public and Company staff. Mr. Hales testified that AEP is always open to working as a community partner and being respectful of its place in the community, but safety is a matter of concern for the Company. Id. The proposed condition to be modified to read: “provide an opportunity for input by adjacent landowners.”

Staff Proposed Condition 9:

- (9) *That prior to commencement of construction, the Applicant shall submit to OPSB Staff, for review and approval, a construction and maintenance access plan based on final plans for the access roads, transmission line, substation facilities, and types of equipment to be used. The plan shall consider the location of streams, wetlands, wooded areas, and sensitive plant species (as identified by the DOW), and explain how impacts to all sensitive resources will be avoided or minimized during construction, operation, and maintenance. The plan shall provide specific details on all wetlands, streams, and/or ditches to be crossed by the transmission line, including those where construction or maintenance vehicles and/or facility components such as access roads cannot avoid crossing the water body. In such cases, specific discussion of the proposed crossing methodology for each wetland and stream crossing (such as culverts), and post-construction site restoration, must be included. The plan shall include the measures to be used for restoring the area around all temporary access points, and a description of any long-term stabilization required along permanent access routes.*

Staff proposed condition 9 is similar to a premature requirement as discussed in response to proposed condition number 4 above. OPSB staff provided no evidence or justification in the record for the condition. AEP witness Hales testified that the project will be constructed over a long time period and the construction and maintenance access plan will evolve over the length of the project. AEP Ex. 7 at 4. To avoid the over breadth of the proposal the Board should amend the condition to include “associated construction” as indicated by Mr. Hales. With that change the condition is clear and applicable and is acceptable to AEP Transco.

Staff Proposed Condition 12:

- (12) *That prior to any clearing or other construction activity associated with the placement of the new 345 kV electric transmission interconnection lines, as currently proposed, the Applicant shall further evaluate the possibility of relocating one or both of these new 345 kV lines to reduce and/or eliminate the need for further clearing of the wooded riparian corridor along stream 1C beyond that required for the 765 kV line. If the Applicant demonstrates that there is no acceptable alternative but to continue with the current plan, that is, to clear approximately seven acres of wooded riparian vegetation adjacent to stream 1C for the placement of a 765 kV and two 345 kV electric transmission interconnection lines, then thirty (30) days prior to the commencement of clearing activities, the Applicant shall submit to OPSB Staff, for review and approval, a draft wetland and stream 2A and 2B, and streams 4A and 4B, including buffers, located on an adjacent parcel that is owned by the Applicant. The Applicant shall submit to OPSB Staff an acceptable, notarized, recorded, and filed conservation instrument within six (6) months after the issuance of this certificate. Conservation instrument holders must meet the requirements of section 5301.68 of the Ohio Revised Code. The conservation instrument shall include, as attachments, a metes and bounds (survey) description of the protected area(s), survey map(s), and an aerial photograph showing the boundaries of, and protected area(s), within the parcel. Preservation signs shall be placed within visual distance of each other along the boundary of the conservation area(s). The signs will indicate that the area(s) are preserved and that mowing, dumping, or any other activity that would result in a degradation of the wetlands, streams, and buffer area(s) is prohibited without prior authorization from the Ohio Power Siting Board. The Applicant shall ensure the signs are present and shall promptly replace missing signs. The Applicant shall promptly notify and seek input from OPSB Staff on any delays to implementation of this conservation easement proposal which may be beyond the control of the Applicant.*

Staff proposed condition 12 seeks to impose a potential change in the lay-out of the project or in the alternative calls for an unjustified penalty provision. Again the OPSB staff provided no evidence or justification in the record for this condition or in support of the penalty provision. As indicated in the testimony of AEP witness Hales, the Company has already discussed with Staff the issues involved with relocating the 765 kV [transmission] line or 345 kV [transmission] lines along any other path. AEP Ex. 7 at 5. Mr. Hales testified that result of relocating one or both the 345 kV lines to the east side of the station may result in slightly less

clearing on the overall project, but there are a host of other issues to consider making the proposed option preferable. *Id.* Those considerations include increasing the overall footprint of the substation, adding cost to the project, the change could require longer construction time and increased time periods of outages related to construction, the change would block any future potential additions to the facility if those were justified at a later date, and the change would not allow the 1200' linear feet under the 765 kV corridor to grow back to its original state as proposed by the Preferred layout. *Id.*

The alternative to making the Staff proposed change is an inappropriate penalty provision requiring the preservation of unrelated wetlands. Again Staff provides no testimony in support of this penalty provision. AEP Transco provided the testimony of Christina Svoboda, a Senior Environmental Specialist. Ms. Svoboda testified that the condition is not appropriate. AEP Ex. 5 at 3. Ms. Svoboda testified that the report assumes that the tree clearing would result in increased sedimentation, higher water temperatures, and a reduction in food source and therefore requires this additional easement as mitigation for these impacts. *Id.* Ms Svoboda points out that vegetation management plan and streamside vegetation restoration plan will address the potential impacts to stream 1C. *Id.* In fact, Ms. Svoboda testified that, “[r]equiring conservation of wetlands and buffers along different streams as “mitigation” for the assumed indirect impact to the stream would not have any direct benefit to stream 1C and therefore preventing impacts to Stream 1C through a vegetation management plan and streamside vegetation restoration plan is a better option.” *Id.* Ms. Svoboda highlighted the US Army Corps of Engineers rules that deal with compensatory mitigation like the one proposed by Staff. As indicated that compensatory mitigation involves actions taken to offset unavoidable adverse impacts to wetlands, streams and other aquatic resources and that the rule states that impacts must be first avoided, and then

minimized, and that compensatory mitigation should be used only for impacts that cannot be avoided or minimized. Id. at 4. Ultimately, as provided in testimony all in-stream and/or wetland impacts have been avoided in this project therefore this type of mitigation is not applicable or relevant to the project. Id.

Staff proposed condition 12 should not be part of the certificate approving the application. The OPSB Staff failed to provide any evidence to contradict Ms. Svoboda or Mr. Hales explanation of the inapplicability or rationale for the preferred layout. The only evidence of record supports elimination of this proposed condition.

Staff Proposed Conditions 10-11:

- (10) That prior to commencement of construction, the Applicant shall submit a vegetation management plan, for OPSB Staff review and approval, identifying all areas of proposed vegetation clearing for the project, specifying the extent of the clearing, and describing how trees and shrubs around structures, along access routes, in the transmission line corridor, at construction staging areas, at the substation, during maintenance operations, and in proximity to any other project facilities will be protected from damage, and, where clearing cannot be avoided, how such clearing work will be done so as to minimize removal of woody vegetation. Priority should be given to protecting mature trees throughout the project area, and all woody vegetation in wetlands and riparian areas, both during construction and during subsequent operation and maintenance of all facilities; low growing trees and shrubs in particular should be protected wherever possible within the proposed right-of-way. The Vegetation Management Plan should also explore various options for disposing of downed trees, brush, and other vegetation during initial clearing for the project, and recommend methods that minimize the movement of heavy equipment and other vehicles within the right-of-way that would otherwise be required for removing all trees and other woody debris off site.*
- (11) That thirty (30) days prior to the commencement of clearing activities, the Applicant shall submit to OPSB Staff, for review and approval, a streamside vegetation restoration plan for the clearing of any riparian vegetation adjacent to stream 1C for the placement of the associated electric transmission interconnection line(s).*

Staff proposed conditions 10 and 11 are redundant and could be combined into one condition. The existence of two separate conditions makes the requirement confusing and leave the Applicant unsure if two different items are required. AEP witness Svoboda testified that the two proposed conditions should be combined to reduce redundancy and provide better clarity. AEP Ex. 5 at 3. She also testified that the Applicant has already prepared a streamside vegetation restoration plan for the riparian area adjacent to Stream 1C that was presented to Staff. Id. The Conditions should be merged and made clear they relate to the same matter. Staff provided no testimony to state that Ms. Svoboda was incorrect in her assessment leaving the only record evidence that the proposed conditions are proper to merge.

Staff Proposed Condition 13:

- (13) *That for both construction and future right-of-way maintenance, the Applicant shall limit to the greatest extent possible the use of herbicides in proximity to surface waters, including wetlands along the right-of-way. Individual treatment of tall-growing woody plant species is preferred, while general, widespread use of herbicides during initial clearing or future right-of-way maintenance should only be used where no other options exist, and with prior approval from the Ohio EPA. The Applicant shall submit a plan describing the planned herbicide use for all areas in or near any surface waters during initial project construction and/or future right-of-way maintenance for review and approval by OPSB Staff prior to commencement of construction.*

Staff proposed condition 13 is also overbroad, but could be amended to be understandable and practical. As testified by AEP witness Hales, it is unclear if the condition applies to all tree removal or just the proposed work of the wooded riparian corridor along stream 1C. AEP Ex. 7 at 6. Mr. Hales indicated that if the proposed recommendation was limited to that riparian corridor then AEP Transco could comply. If it is not limited to that area, Mr. Hales testified that AEP will need to remove some sumps within other wooded areas to allow safe vehicle travel.

Staff proposed condition 13 should be amended to limit the condition to the appropriate wooded riparian corridor along stream 1C.

Staff Proposed Condition 17:

- (17) *That if the golden-winged warbler preferred habitat types are present and will be impacted, then construction in this habitat is prohibited during the nesting period of May 15 to July 15.*

Staff proposed condition 17 is another inapplicable condition apparently retained from past staff reports. As indicated in the testimony of AEP witness Aaron Geckle, the condition is not applicable because no habitat for the golden-winged warbler was observed at the site. AEP Ex. 3 at 2. Mr. Geckle cited to Appendix 7-2 of AEP Ex. 1, the Application, that details the URS coordination with the Department of Natural Resources and the communication indicated the habitat is not present and ODNR's concurrence with the communication. *Id.* at 2-3. The chart in the Staff Report of Investigation even indicates that the presence is unknown and that it is not found in the field survey. Staff Ex. 1 at 13. So the only evidence of record is that the habitat does not exist and none were found in the survey that was done, yet a condition is still proposed by Staff. The Board should not place conditions not based on any evidence of record into the certificate. OPSB Staff had an opportunity to provide evidence in the report and in testimony due after the Applicant filed its testimony reiterating the lack of a need in the certificate. The OPSB Staff did not include any evidence to contradict that supplied by the Applicant and therefore the condition should not be included in the final certification.

Staff Proposed Condition 19:

- (19) *That the Applicant shall not work in the types of streams listed below during fish spawning restricted periods (April 15 to June 30), unless a waiver is sought from and issued by the ODNR and approved by OPSB Staff releasing the Applicant from a portion of, or the entire restriction period.*

- (a) *Class 3 primary headwater streams (watershed < one mi²)*

(b) Exceptional Warmwater Habitat

(c) Coldwater Habitat

(d) Warmwater Habitat

(e) Streams supporting threatened or endangered species

Staff proposed condition 19 is also inapplicable. AEP witness Aaron Geckle testified that the only presence in the area covered by the condition is an aerial crossing and no in-water work is proposed. AEP Ex. 3 at 3. Mr. Geckle testified that pole locations will be accessed from either side of the stream. Id. The OPSB Staff were provided with this explanation in the pre-filed testimony of the Applicant and did not provide any testimony to the contrary when it later filed its testimony. The only evidence of record supports that the condition is not needed. The proposed condition ignores the framework of the project and should not be included in the certificate approving the project.

Staff Proposed Condition 24:

(24) That the Applicant shall restrict public access to the site with appropriately placed warning signs or other necessary measures.

Staff proposed condition 24 is again vague and overbroad. As indicated in the testimony of AEP witness Hales, the property owned by AEP Transco is 265 acres, yet the station equipment is only on 36.8 acres. AEP Ex. 7 at 6. Mr. Hales points out that it does not make sense to fence the entire 265 acres but instead, where there are areas with associated risks. Mr. Hales indicated that signage will be placed to alert the public both during construction and during operation. Id. He also testified that the station facilities will be fenced to prevent public

access in accordance with the National Electric Safety Code. Id. The Staff proposed condition 24 should be amended accordingly.

Staff Proposed Condition 25:

- (25) *That prior to commencement of construction, the Applicant shall obtain all required transportation permits. The Applicant shall coordinate with the appropriate authority regarding any temporary or permanent road closures, lane closures, road access restrictions, and traffic control for access/egress off of SR 37 necessary for construction and operation of the proposed facility. Coordination shall include, but not be limited to, the County Engineer, ODOT, local law enforcement, and health and safety officials. This coordination shall be detailed as part of a final traffic plan submitted to OPSB Staff prior to the preconstruction conference for review and acceptance.*

Staff proposed condition 25 is another example of a condition that does not recognize the realities of construction of a major utility facility. AEP witness Hales testified that it is impractical to obtain all permits prior to construction. Id. at 7. He stated that the site grading contractor will need permits and start construction before the contractor who will do the steel erection is even selected. Id. The reasonable amendment to align the goal of the Staff to ensure permits are received and followed is to amend the language, as was suggested in other sections above, to require the permits for “associated” construction. Again this amendment would allow the project to move forward in a realistic and practical timeframe.

Mr. Hales also testified to a concern that the Staff of the Board would need to accept a permit granted by the Ohio Department of Transportation, as an example. Id. If a state agency like the ODOT grants a permit it should not need redundant approval by the OPSB Staff.

Staff Proposed Conditions 26-29:

- (26) *That, should site-specific conditions warrant blasting, the Applicant shall submit a blasting plan, at least sixty (60) days prior to blasting, to OPSB Staff for review and acceptance. The Applicant shall submit the following information as part of its blasting plan:*

(a) The name, address, and telephone number of the drilling and blasting company.

(b) A detailed blasting plan for dry and/or wet holes for a typical shot. The blasting plan shall address blasting times, blasting signs, warnings, access control, control of adverse effects, and blast records.

(c) A plan for liability protection and complaint resolution.

- (27) That prior to the use of explosives, the Applicant or explosive contractor shall obtain all required local, state, and federal licenses/permits. The Applicant shall submit a copy of the license or permit to OPSB Staff within seven days of obtaining it from the local authority.*
- (28) That the blasting contractor shall utilize two blasting seismographs that measure ground vibration and air blast for each blast. One seismograph should be placed at the nearest dwelling and the other placed at the discretion of the blasting contractor.*
- (29) That at least thirty (30) days prior to the initiation of blasting operations, the Applicant must notify, in writing, all residents or owners of dwellings or other structures within 1,000 feet of the blasting site. The Applicant or explosive contractor shall offer and conduct a preblast survey of each dwelling or structure within 1,000 feet of each blasting site, unless waived by the resident or property owner. The survey must be completed and submitted to OPSB Staff at least ten (10) days before blasting begins.*

Staff proposed conditions 26 through 29 do not relate in any manner to the proposed project. The conditions purport to place a number of requirements on the Applicant for any blasting that might occur during construction. However, as included in the testimony of AEP witness Hales, the Company previously informed the Board Staff that it does not intend to utilize blasting for this project. *Id.* at 7. In fact, this communication was docketed on December 1, 2011 by AEP Transco. Yet, the OPSB staff still included four conditions in the proposed conditions related to requirements for blasting. The inclusion of these proposals in the report indicates the presence of legacy conditions that do not apply to the application and should not be included in a certificate approving the Vassell Project. Each of the conditions should not be

assumed but as indicated by the adjudicatory nature of the proceeding be supported by evidence of record and proven as necessary to be added to the certificate.

Staff Proposed Condition 30:

- (30) *That the Applicant shall provide a low-frequency noise study prior to the pre-construction conference that conforms to the parameters outlined within any applicable data requests. Any concerns raised by OPSB Staff in regard to shall be sufficiently addressed and mitigated to the satisfaction of OPSB Staff, in coordination with the affected resident(s), prior to commencement of construction.*

The Staff proposed condition 30 is another of the inapplicable conditions not supported by any record evidence. AEP witness Jim Cowan testified that the equipment associated with this project does not generate any measurable tones below 60 Hz. AEP Ex. 6 at 2. Mr. Cowan testified that low frequency noise issues are not typical for electrical substation projects. Id. at 3. Mr. Cowan went on to testify that there is no justification for the proposed recommendation and in addition there are not any proven impacts associated with low frequency noise.

Staff Proposed Condition 31:

- (31) *That after commencement of commercial operation, the Applicant shall conduct further review of the impact and possible mitigation of all project noise complaints. Mitigation shall be required if the project contribution at the exterior of any residence within 1,500 feet of the project boundary exceeds the forecasted maximum sound levels generated by the facility, as provided within the AEP Vassell Substation Noise Analysis dated December 27, 2011. For the purposes of determining exceedances of these values, sampling shall be conducted at the location of the complaint and during the same time of day or night as that identified in the complaint. Mitigation, if required, shall consist of either reducing the impact so that the project contribution does not exceed the forecasted maximum sound levels generated by the facility, as provided within the AEP Vassell Substation Noise Analysis dated December 27, 2011, or other means of mitigation approved by OPSB Staff in coordination with the affected receptor(s).*

The Staff proposed condition 31 is an overbroad and unrealistic condition that if left unchanged could cripple a project. The condition as written would create an impossible burden

on the Company. As pointed out in the cross-examination of Staff witness Pauley, the language defining how an exceedance is determined would create a standard that could have the Company conducting a sampling at the plant every second of every day of every year if a residence within 1500 miles complained. January 25, 2012 Tr. at pp. 297-299. Such a standard is divorced from reality and empowers any individual in opposition to the project to burden the construction and operation of the facility with constant sampling and testing. Such a requirement is inappropriate and a condition to require the Applicant to operate in conformance with the study provided is a more appropriate condition.

Staff Proposed Condition 33:

- (33) That thirty (30) days prior to commencement of construction, the Applicant notify, in writing, any owner of an airport located within 20 miles of the project boundary, whether public or private, whose operations, operating thresholds/minimums, landing/approach procedures and/or vectors are expected to be altered by the siting, operation, maintenance, or decommissioning of the facility.

Staff proposed condition 33 is another example of an inapplicable condition in the Staff proposed conditions. AEP witness Hales provided pre-filed testimony that indicated the condition related to notification to airports was inapplicable to this project. AEP Ex. 7 at 8. Specifically, Mr. Hales testified how the Company determined there were no airports in the area that required notification by using the Federal Aviation Administration's "Notice Criteria Tool." Using this tool, Mr. Hales was able to testify that there are no notifications required in this area. Id. The Staff proposed condition appears to go beyond the FAA's requirements without any explanation or testimony in support. In fact, the Staff's report even recognizes the Applicant's use of the FAA's tool and that it found that no further coordination was required. Staff Ex. 1, OPSB Staff Report of Investigation at p 23. The Board should review the Staff proposed

conditions carefully and avoid adding conditions without any record basis and ones like proposed condition 33 that go beyond the FAA requirements without justification.

Proposed Conditions 34-36:

- (34) *That at least thirty (30) days prior to the pre-construction conference, the Applicant shall complete a baseline television reception and signal strength study and provide the results to OPSB Staff for review and acceptance.*
- (35) *That at least thirty (30) days prior to the pre-construction conference, the Applicant shall conduct a telephone noise survey in coordination with the local service provider(s) and provide the results to OPSB Staff for review and acceptance.*
- (36) *That the Applicant must meet all Federal Communications Commission and other federal agency requirements to construct an object that may affect communications and, subject to OPSB Staff approval, mitigate any effects or degradation caused by substation operation or placement. For any residence that is shown to experience a degradation of TV reception or interference of wired telephone service due to facility operation, the Applicant shall provide, at its own expense, cable or direct broadcast satellite TV service or other mitigation acceptable to the affected resident(s), the Applicant, and OPSB Staff.*

Staff proposed conditions 34, 35 and 36 represent a step well beyond the Board's normal operations and are not based in any evidence of record. As discussed above, AEP witness David Klinec testified about the potential for the proposed facility to interfere with television or radio reception. On cross-examination, Mr. Klinec testified that in his 32 year tenure with the company, he is aware of less than ten instances where electric lines or substations have interfered with radio reception and one time where electric lines or substations have interfered with television reception. January 24, 2012 Tr. at pp. 147-149. Mr. Klinec testified that in these instances the problems can be attributed to lower voltage lines and loose hardware and that once replaced, resolves the problem. January 24, 2012 Tr. at p. 150. In his pre-filed direct testimony, Mr. Klinec testified that advanced in technology make the concern in proposed condition 34 obsolete. AEP Ex. 8 at 2. Mr. Klinec testified to the overall strength of the signal in the area

and the fact that “[t]he need for a baseline television reception and signal strength is outdated and unnecessary.” Id. at 2-3. Staff witness Pawley also admitted that these conditions related to free cable and telephone service for those affected by the facility. Januar 25, 2012 Tr. at 292. The conditions are broad and beyond the functions of the Board to open up free services for other service offerings, especially in the absence of any proof that there is or even could be a problem. There is no testimony in the record supporting the need for any of the conditions. The only testimony for the Board to rely upon is provided by Company witness Klinect that scientifically there is no concern. In the absence of any justification and any evidentiary support such an extreme condition without parameters that appears to provide a civil damage by the Ohio Power Siting Board should not be entertained.

Proposed Conditions 37-38:

- (37) *That at least thirty (30) days prior to the pre-construction conference, the Applicant shall conduct a microwave path study that identifies all existing microwave paths that intersect the project area, and a worst-case Fresnel zone analysis for each path. A copy of this study shall be provided to the path licensee(s), for review, and to OPSB Staff for review and acceptance. The assessment shall conform to the following requirements:*
- (a) An independent and registered surveyor, licensed to survey within the state of Ohio, shall determine the exact location and worst-case Fresnel zone dimensions of the above-referenced paths, and the center point and boundary of the proposed substation site, using the same survey equipment.*
 - (b) Provide the distance (feet) between the surveyed center point and boundary of the proposed substation and the surveyed worst-case Fresnel zone of each microwave path.*
 - (c) Provide a map of the surveyed microwave paths, center points, and boundaries at a legible scale.*
 - (d) Describe the specific, expected impacts of the project on all paths and systems considered in the assessment.*

- (38) *That all existing licensed microwave paths and communication systems shall be subject to avoidance or mitigation. The Applicant shall complete avoidance or mitigation measures prior to commencement of construction for impacts that can be predicted in sufficient detail to implement appropriate and reasonable avoidance and mitigation measures. After construction, the Applicant shall mitigate all observed impacts of the project to microwave paths and systems within seven (7) days or within a longer time period approved by OPSB Staff. Avoidance and mitigation for any known point-to-point microwave paths shall consist of measures acceptable to OPSB Staff, the Applicant, and the affected path owner, operator, or licensee(s). If interference with an omni-directional or multi-point system is observed after construction, mitigation would be required only for the affected receptor(s).*

The Staff proposed conditions 37 and 38 are also inapplicable conditions that the Board does not need to include in the final certification. The only evidence of record on this issue in the proceeding is the evidence provided by AEP witness Matt Williams. Mr. Williams testified that there are no FCC requirements that AEP is aware of that would require this type of study to be performed. AEP Ex. 9 at 2. He also testified that there is no basis or precedence for these items and the only knowledge he had of this issue even being raised was in relation to the construction of wind farms. *Id.* Regardless of all of this, Mr. Williams testified that there is no licensed or coordinated microwave crossing or path over the footprint of the project and therefore the conditions are not necessary. *Id.* Mr. Williams also included verification from a consultant to support his testimony. *Id.* at Attachment 1. This is another example of a condition that was not based in any evidence of record or testimony. AEP Transco was able to conduct a test prior to the hearing and show the lack of the need for the condition. However, the fact that the test was performed should not be used as an indication that other proposed conditions without evidentiary support should be entertained. The Board should avoid proposed conditions not based in evidentiary support for the need. The Applicant provided evidence as part of the procedural process established by the Board to ensure a proper record was developed for a Board decision. The lack of any testimony responding to points raised in the Applicant's testimony

swings the weight of the evidence to the application and the positions of the Applicant as amended in this filing to recognize proposals by the OPSB Staff that should still apply.

V. CONCLUSION

For the reasons set forth above, Applicant AEP Transco respectfully requests that a recommendation be made that the Board issue a Certificate of Environmental Compatibility and Public Need for the proposed Vassell Station Project at the Preferred site, in accordance with the findings and recommendations of the Ohio Power Siting Board Staff. Many of the conditions properly balance the ongoing project oversight in building a major utility facility. But other conditions appear to have no relation to the project, have no basis in the record, or go beyond the apparent risk the OPSB staff is seeking to address. AEP Transco respectfully urges the Board to stay focused on the record in this case to make its decision. The record evidence provided at the adjudicatory hearing support approval of a certificate of environmental compatibility and public need under with the conditions as discussed in this post-hearing brief.

//ss// Matthew J. Satterwhite

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the Post-Hearing Brief of Applicant AEP Ohio Transmission Company was served upon the parties in this proceeding by sending a copy to the following persons via email and U.S. Mail, first class, postage prepaid, on the 22nd day of February, 2012 addressed to:

//s// Matthew J. Satterwhite

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This foregoing document was electronically filed with the Public Utilities

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2/22/2012 4:54:45 PM

in

Case No(s). 11-1313-EL-BSB

Summary: Brief Post Hearing Brief electronically filed by Mr. Matthew J Satterwhite on behalf of AEP Ohio Transmission Company