

BEFORE THE OHIO POWER SITING BOARD

In the matter of the Application of AEP)	
Ohio Transmission Company for a)	
Certificate of Environmental)	Case No. 11-4505-EL-BTX
Compatibility and Public Need for)	
138 kV Elk North 138 kV Extension)	
and Elk South 138 kV Extension)	
Transmission Project.)	

JOINT STIPULATION AND RECOMMENDATION

I. INTRODUCTION

AEP Ohio Transmission Company (“AEP Transco” or “Applicant”), and Staff of the Ohio Power Siting Board (“OPSB Staff”) (at times, collectively referred to as the “Parties”) submit and recommend this Joint Stipulation and Recommendation (“Joint Stipulation” or “Stipulation”) for adoption by the Ohio Power Siting Board (“Board”). This Joint Stipulation is intended by the Parties to resolve all matters pertinent to Applicant’s proposed 138 kV Elk Transmission Line Project.

AEP has a critical need to reinforce and rebuild its 69,000-volt (69-kV) transmission system located in eastern Vinton County and northeastern Jackson County in Ohio. AEP proposes to build a new 7-mile 138-kV transmission line along Route 50 from the Poston-Lick 138-kV line to Elk station near McArthur and to replace the existing 69-kV transmission line toward Wellston approximately 10.5 miles south of Elk Station. This project, known as the Elk 138 kV Transmission Line Project, is being

proposed to alleviate rehabilitation concerns, maintain reliability and retire approximately 40 miles of 1920s vintage 69-kV line.

This Stipulation is the product of serious bargaining among capable and knowledgeable parties. The Parties have each participated in negotiations. This Stipulation and Recommendation filed in this case has been signed by the Applicant and OPSB Staff (collectively “Signatory Parties”). Each of the Signatory Parties was represented by experienced counsel.

The Stipulation will benefit customers and the public interest. In the Stipulation, the Applicant has made commitments (as more fully described below) to comply with OPSB Staff conditions to minimize adverse impacts associated with the Project. The Stipulation does not violate any important regulatory principle or criteria.

The Project is fully described in the Application, which was filed with the Board on January 3, 2012. This Joint Stipulation and Recommendation results from discussions between the Parties, who agree that it is supported by the record, and is therefore entitled to careful consideration by the Board. Accordingly, the Parties recommend that the Board issue a Certificate of Environmental Compatibility and Public Need for construction and operation of the Preferred Route, including the Common Route, as identified in the Application filed with the Board on January 3, 2012, and subject to the conditions described in this Joint Stipulation and Recommendation.

II. STIPULATIONS

A. Recommended Findings of Fact

The Parties agree that the record in this case, which consists of the Application, any supplemental or related information and the Staff Report of Investigation, contains sufficient probative evidence for the Board to find and determine, as findings of fact, that:

- (1) AEP Transco is a wholly-owned subsidiary of AEP Transmission Company, LLC, which is an Ohio Corporation.
- (2) The proposed Elk 138 kV Transmission Line Project is a “major utility facility,” as defined in Section 4906.01(B)(1) of the Ohio Revised Code.
- (3) On August 3, 2011, the Applicant filed a motion for waiver from the one year notice provision of Section 4906.06(A)(6), Revised Code and from the twenty percent commonality requirement for the alternate route should the ultimate alternate route exceed the twenty percent threshold.
- (4) On August 17, 2011 the Applicant held a public information meeting regarding the proposed transmission line.
- (5) On November 1, 2011, the Applicant filed responses to OPSB Staff data requests and interrogatories.
- (6) On December 2, 2011, the Applicant filed supplemental responses to OPSB Staff data requests and interrogatories.
- (7) On December 21, 2011 the hearing examiner granted the Applicant’s motion for waiver.
- (8) On January 3, 2012, the Applicant filed the Elk 138 kV Transmission Line Project application.
- (9) On March 2, 2012, the Applicant was issued a letter of compliance regarding the application from the Chairman of the OPSB.

- (10) On June 4, 2012, the Applicant filed responses to OPSB Staff questions.
- (11) On June 6, 2012, the Applicant filed proofs of publication for the project.
- (12) On June 13, 2012, the Applicant filed a motion and memorandum in support of a 60-day extension to extend the procedural schedule.
- (13) On June 25, 2012, the hearing examiner granted the Applicant's motion for a 60-day extension of the procedural schedule.
- (14) On August 9, 2012, the Applicant filed proofs of publication notifying the public that the public hearing and adjudicatory hearing had been postponed to a later date.
- (15) On September 5, 2012, the Applicant filed its supplemental application materials, which provided for adjustments to the Preferred Route.
- (16) On October 3, 2012, the Applicant was issued a letter of compliance regarding the application from the Chairman of the OPSB.
- (17) On October 17, 2012, the Applicant filed proof of service of the certified application on local officials.
- (18) On November 20, 2012, OPSB Staff filed its Report of Investigation ("Staff Report").
- (19) On December 4, 2012, the Applicant filed proof of notification to property, landowners, and public officials regarding the time, date, and location of the public and adjudicatory hearings.

- (20) On December 6, 2012, a local public hearing was held at the Vinton County Community Building, 31935 State Route 93, McArthur, Ohio 45651.
- (21) Proofs of publication of the public informational meeting and first and second public notices will be docketed within 10 business days of the filing of the Joint Stipulation.
- (22) Adequate data on the proposed Elk 138 kV Transmission Line Project has been provided to the Board and OPSB Staff to determine the basis of the need for the proposed facility, as required by Section 4906.10(A)(1) of the Ohio Revised Code.
- (23) Adequate data on the proposed Elk 138 kV Transmission Line Project has been provided to the Board and OPSB Staff to determine the nature of the probable environmental impact of the proposed facility, as required by Section 4906.10(A)(2) of the Ohio Revised Code.
- (24) Adequate data on the proposed Elk 138 kV Transmission Line Project has been provided to the Board and OPSB Staff to determine that the Preferred Route, including the Common Route, contained in the Application, as filed by the Applicant on January 3, 2012 and supplemented on September 5, 2012, represents the minimum adverse environmental impact, considering the available technology and nature and economics of the various alternatives, and other pertinent considerations, as required by Section 4906.10(A)(3) of the Ohio Revised Code.

- (25) Adequate data on the proposed Elk 138 kV Transmission Line Project has been provided to the Board and its Staff to determine that construction of the proposed transmission line along Applicant's Preferred Route will have no adverse impact upon the electric grid.
- (26) Adequate data on the proposed Elk 138 kV Transmission Line Project has been provided to the Board and OPSB Staff to determine that the proposed transmission line will comply with Chapters 3704, 3734 and 6111 of the Ohio Revised Code, Sections 1501.33 and 1501.34 and 4561.32 of the Ohio Revised Code, and all regulations adopted thereunder, all as required by Section 4906.10(A)(5) of the Ohio Revised Code.
- (27) Adequate data on the proposed Elk 138 kV Transmission Line Project has been provided to the Board and OPSB Staff to determine that the proposed facility will serve the public interest, convenience and necessity, as required by Section 4906.10(A)(6) of the Ohio Revised Code.
- (28) Adequate data on the proposed Elk 138 kV Transmission Line Project has been provided to the Board and OPSB Staff to determine the proposed facility's impact on the viability as agricultural land of any land in an existing agricultural district established under Chapter 929 of the Ohio Revised Code that is located within the Preferred Route and Alternate Route of the proposed project, as required by Section 4906.10(A)(7) of the Ohio Revised Code.
- (29) Due to the fact that the facility will not require the use of water for operation, consideration of water conservation practices, considering

available technology and the nature and economics of the various alternatives under Section 4906.10(A)(8) of the Ohio Revised Code is not applicable to certification of the Project.

- (30) The information, data and evidence in the record of this proceeding provide substantial and adequate evidence and information to enable the Board to make an informed decision on the Application for the proposed Elk 138 kV Transmission Line Project.

B. Recommended Conclusions of Law

The parties further agree that the record in this case contains sufficient probative evidence for the Board to find and determine, as conclusions of law, that:

- (1) Applicant, AEP Transco, is a “person” pursuant to Section 4906.01(A) of the Ohio Revised Code.
- (2) The proposed Elk 138 kV Transmission Line Project is a “major utility facility” as defined by Section 4906.01(B)(2) of the Ohio Revised Code.
- (3) Applicant’s application filed on January 3, 2012 complies with the requirements of OAC §4906-15-01 *et seq.*
- (4) The record establishes the need for the proposed Elk 138 kV Transmission Line Project as required by Section 4906.10(A)(1) of the Ohio Revised Code.
- (5) The record establishes the nature of the probable environmental impact from construction, operation and maintenance of the proposed Elk 138 kV Transmission Line Project as required by Section 4906.10(A)(2) of the Ohio Revised Code.

- (6) The record establishes that the proposed Preferred Route for the Elk 138 kV Transmission Line 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)(3) of the Ohio Revised Code.
- (7) The record establishes that the proposed Elk 138 kV Transmission Line Project, if conditioned in the certificate as recommended by the parties, will comply with Chapters 3704, 3734 and 6111 of the Ohio Revised Code, and all rules and regulations adopted under those chapters, and under Sections 1501.33, 1501.34 and 4561.32 of the Revised Code, all as required by Section 4906.10(A)(5) of the Ohio Revised Code.
- (8) The record establishes that the proposed Elk 138 kV Transmission Line Project will serve the public interest, convenience and necessity, as required by Section 4906.10(A)(6) of the Ohio Revised Code.
- (9) The record establishes the impact of the proposed Elk 138 kV Transmission Line Project on the viability as agricultural land of any land in an existing agricultural district established under Chapter 929 of the Ohio Revised Code that is located within the Preferred Route and Alternate Route of the proposed project as required by Section 4906.10(A)(7) of the Ohio Revised Code.

C. Recommended Conditions of the Certificate of Environmental Compatibility and Public Need

The parties recommend that the Board issue a Certificate of Environmental Compatibility and Public Need, as requested by AEP Transco, subject to the following conditions:

- (1) The facility shall be installed at the Applicant's Preferred Route, including the Common Route, as presented in the application, and as modified and/or clarified by the Applicant's supplemental filings and further clarified by recommendations in the *Staff Report of Investigation*.
- (2) The Applicant shall utilize the equipment and construction practices as described in the application and as modified and/or clarified in supplemental filings, replies to data requests, and recommendations in the *Staff Report of Investigation*.
- (3) The Applicant shall implement the mitigation measures as described in the application and as modified and/or clarified in supplemental filings, replies to data requests, and recommendations in the *Staff Report of Investigation*.
- (4) The Applicant shall conduct a preconstruction conference prior to the start of any construction activities. Staff, the Applicant, and representatives of the prime contractor and all subcontractors for the project shall attend the preconstruction conference. The conference shall include a presentation of the measures to be taken by the Applicant and contractors to ensure compliance with all conditions of the certificate, and discussion of the procedures for on-site investigations by Staff during construction. Prior to the conference, the Applicant shall provide a proposed conference agenda for Staff review. The Applicant may conduct separate preconstruction meetings for each stage of construction.
- (5) At least 30 days before the preconstruction conference, the Applicant shall submit to Staff, for review and acceptance, one set of detailed engineering drawings of the final project design, including the transmission line, electric tower and pole locations, temporary and permanent access roads, construction staging areas, and any other associated facilities and access points, so that Staff can determine that the final project design is in compliance with the terms of the certificate. The final project layout shall be provided in hard copy and as geographically-referenced electronic data. The final design shall include all conditions of the certificate and references at the locations where the Applicant and/or its contractors must adhere to a specific condition in order to comply with the certificate.
- (6) At least 30 days prior to the preconstruction conference, the Applicant shall have in place a complaint resolution procedure to address potential public grievances resulting from project construction and operation. The resolution procedure must provide that the

Applicant will work to mitigate or resolve any issues with those who submit either a formal or informal complaint and that the Applicant will immediately forward all complaints to Staff. The Applicant shall provide the complaint resolution procedure to Staff, for review and confirmation that it complies with this condition, prior to the preconstruction conference.

(7) If any changes are made to the project layout after the submission of final engineering drawings, all changes shall be provided to Staff in hard copy and as geographically referenced electronic data. All changes outside the environmental survey areas and any changes within environmentally-sensitive areas will be subject to Staff review and acceptance, to ensure compliance with all conditions of the certificate, prior to construction in those areas.

(8) Within 60 days after the commencement of commercial operation, the Applicant shall submit to Staff a copy of the as-built specifications for the entire facility. The Applicant shall provide as-built drawings in both hard copy and as geographically-referenced electronic data.

(9) The certificate shall become invalid if the Applicant has not commenced a continuous course of construction of the proposed facility within five years of the date of journalization of the certificate.

(10) As the information becomes known, the Applicant shall provide to Staff the date on which construction will begin, the date on which construction was completed, and the date on which the facility begins commercial operation.

(11) Prior to commencement of any construction, the Applicant shall develop a cultural resource avoidance plan in consultation with Staff and the OHPO, detailing procedures for flagging and avoiding all potentially NRHP-eligible archeological sites in the project area. The avoidance plan shall also contain measures to be taken should previously-unidentified archeological deposits or artifacts be discovered during construction of the project.

(12) The Applicant shall notify property owners or affected tenants within the meaning of Rule 4906-5-08(C)(3), OAC, of upcoming construction activities including potential for nighttime construction activities.

(13) The Applicant shall have a construction access plan based on final plans for the access roads, transmission line, and types of equipment to be used, that addresses the concerns outlined in the staff report. Prior to commencement of construction, the Applicant shall submit the plan to Staff, for review and confirmation that it complies with this condition.

(14) The Applicant shall have a vegetation management plan that addresses the concerns outlined in the staff report. Prior to commencement of construction, the Applicant shall submit this plan to Staff, for review and confirmation that it complies with this condition.

(15) The Applicant shall have a Staff-approved environmental specialist on site during construction activities that may affect sensitive areas, as mutually agreed upon between the Applicant and Staff, and as shown on the Applicant's final approved construction plan. Sensitive areas include but are not limited to areas of vegetation clearing, designated wetlands and streams, and locations of threatened or endangered species or their identified habitat. The environmental specialist shall be familiar with water quality protection issues and potential threatened or endangered species of plants and animals that may be encountered during project construction.

(16) The Applicant shall contact Staff, ODNR, and the USFWS within 24 hours if state or federal threatened or endangered species are encountered during construction activities. Construction activities that could adversely impact the identified plants or animals shall be halted until an appropriate course of action has been agreed upon by the Applicant, Staff, and ODNR in coordination with the USFWS. Nothing in this condition shall preclude agencies having jurisdiction over the facility with respect to threatened or endangered species from exercising their legal authority over the facility consistent with law.

(17) The Applicant shall adhere to seasonal cutting dates of September 30 through April 1 for removal of suitable Indiana bat habitat trees, if avoidance measures cannot be achieved.

(18) The Applicant shall utilize pole placement options on upland areas adjacent to wetland w-skb10/12/2011-1 that would result in spanning the wetland, eliminate the need for entry of construction equipment into the wetland, and help minimize the number of trees that have to be removed within the wetland setting.

(19) Prior to commencement of construction activities that require transportation permits, the Applicant shall obtain all such permits. The Applicant shall coordinate with the appropriate authority regarding any temporary or permanent road closures, lane closures, road access restrictions, and traffic control 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 Staff prior to the preconstruction conference for review and confirmation that it complies with this condition.

(20) In order to determine if mitigation is necessary, the Applicant shall measure the EMF levels before construction of the transmission line and no more than 30 days after the line is operational at the nearest exterior wall of any current residences within 100 feet of the centerline. The Applicant shall provide the readings to Staff for review within 60 days of operation.

(21) General construction activities shall be limited to the hours of 7:00 a.m. to 7:00 p.m., or until dusk when sunset occurs after 7:00 p.m. Impact pile driving and hoe ram

operations, if required, shall be limited to the hours between 10:00 a.m. to 5:00 p.m., Monday through Friday. Construction activities that do not involve noise increases above ambient levels at sensitive receptors are permitted outside of daylight hours when necessary.

(22) The Applicant is prohibited, under all circumstances, from blasting during the construction of the proposed facility.

(23) Prior to the commencement of construction activities that require permits or authorizations by federal or state laws and regulations, the Applicant shall obtain and comply with such permits or authorizations. The Applicant shall provide copies of permits and authorizations, including all supporting documentation, to Staff within seven days of issuance or receipt by the Applicant. The Applicant shall provide a schedule of construction activities and acquisition of corresponding permits for each activity at the preconstruction conference.

(24) Because engineering of the pole locations has not been finalized, the Applicant shall provide final pole coordinates and heights to the ODOT Office of Aviation, the FAA, and Staff for authorization at least 60 days prior to the commencement of construction.

III. EXHIBITS

The Parties agree and stipulate that the following information has been filed in the docket and are to be marked and admitted into the record as Exhibits of this proceeding and that cross-examination is waived thereon:

Applicant Exhibit No. 1: The application filed on January 3, 2012, supplemental application materials filed on September 5, 2012 and certified as complete by the Board on October 3 2012.

Applicant Exhibit No. 2: Proof of Notification of public hearing on landowners and public officials filed on December 4, 2012.

Staff Exhibit No. 1: Staff Report of Investigation, issued and filed on November 20, 2012.

Joint Exhibit No. 1: This Joint Stipulation and Recommendation, signed by counsel for Applicant and OPSB Staff.

In deliberating the merits of the application and reasonableness of this Joint Stipulation, the parties encourage the Board to review and consider all evidence and exhibits submitted and admitted in this case.

IV. OTHER STIPULATIONS

(1) This Joint Stipulation is expressly conditioned upon its acceptance by the Board without material modification. In the event the Board rejects or materially modifies all or part of this Joint Stipulation, or imposes additional conditions or requirements upon the parties, each party shall have the right, within thirty (30) days of the Board's order, to file an application for rehearing with the Board. Upon a grant of rehearing by the Board, each party shall have the right, within ten (10) days of the Board's order granting rehearing, to file a notice of termination and withdrawal of the Joint Stipulation. Upon notice of termination and withdrawal of the Stipulation by any party, pursuant to the above provisions, the Joint Stipulation shall immediately become null and void, and any party to the Joint Stipulation shall be free to petition the Board or the Attorney Examiner for such additional process as may be necessary to address any of the remaining issues in this case. In such an event, a hearing shall go forward, and the Parties shall be afforded the opportunity to present evidence through witnesses, to cross-examine all witnesses, to present rebuttal testimony, and to file briefs on all issues.

(2) The Parties agree and recognize that this Joint Stipulation has been entered into only for the purpose of this proceeding. Each party agrees not to assert against another party in any proceeding before the Board or any court, other than in a proceeding to enforce the terms of this Joint Stipulation, that party's participation in this Joint Stipulation as support for any particular position on any issue. Each party further agrees

that it will not use this Joint Stipulation as factual or legal precedent on any issue, except as may be necessary to support enforcement of this Joint Stipulation. The Parties request that the Board recognize that its use of this Joint Stipulation in any proceeding other than this proceeding is contrary to the intentions of the Parties in entering into this Joint Stipulation.

WHEREFORE, based upon the record, and the information and data contained therein, the parties recommend that the Board issue a Certificate of Environmental Compatibility and Public Need for construction, operation and maintenance of the proposed Elk 138 kV Transmission Line Project for the Preferred Route, including the Common Route, as described in the application filed with the Board on January 3, 2012 and supplemental application materials filed on September 5, 2012, and subject to all conditions enumerated in this Joint Stipulation and Recommendation.

The undersigned stipulate and represent that they are authorized to enter into this Joint Stipulation and Recommendation on this 7th day of December, 2012.

Respectfully submitted on behalf of:

STAFF OF THE OHIO POWER SITING BOARD

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Summary: Stipulation (Joint) and Recommendation electronically filed by Erin C Miller on behalf of AEP Ohio Transmission Company, Inc.