

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 345/138/69 kV Biers Run Substation Project.)	
)	
)	Case No. 12-1361-EL-BSB
)	
)	
)	

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 345/138/69 kV Biers Run Substation Project (“Project”).

AEP has a critical need to reinforce its transmission system in southern Ohio. As such, AEP Transco proposes to construct a 345/138/69 kV substation and associated electric transmission line interconnections (Case Numbers 13-0429-EL-BTX and 13-0430-EL-BTX) in Union Township of Ross County, Ohio. The Project is a major transmission reinforcement effort designed to help AEP maintain an adequate level of transmission reliability and availability of electric power to residential, commercial, institutional and industrial users in southern Ohio. The Preferred and Alternate sites of the Biers Run station and proposed interconnecting transmission lines are situated on an

approximately 102-acre property situated between U.S. Route 35 and Biers Run Road in Ross County.

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 December 20, 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 site, as identified in the Application filed with the Board on December 20, 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 345/138/69 kV Biers Run Substation Project is a “major utility facility,” as defined in Section 4906.01(B)(1) of the Ohio Revised Code.
- (3) On June 12, 2012, the Applicant filed a notice of rescheduled public information meeting.
- (4) On July 7, 2012, the Applicant filed proof of publication for the notice that was issued regarding the rescheduled public information meeting.
- (5) On June 25, 2012, the Applicant held a public information meeting regarding the proposed substation.
- (5) On December 20, 2013, the Applicant filed the 345/138/69 kV Biers Run Substation Project Application.
- (6) On February 13, 2013, the Applicant was issued a letter of compliance regarding the application from the Chairman of the OPSB.
- (7) On March 21, 2013, the Applicant filed proof of service of the certified application on local officials.
- (8) On April 15, 2013, the Applicant filed its first proof of publication regarding the date and time of the public hearing and adjudicatory hearing.

- (9) On May 23, 2013, OPSB Staff filed its Report of Investigation (“Staff Report”).
- (10) On June 10, 2013, the Applicant filed proof of notification to property, landowners, and public officials regarding the time, date, and location of the public and adjudicatory hearings.
- (11) On June 11, 2013, a local public hearing was held at the Pioneer School of Developmental Disabilities in Chillicothe, Ohio.
- (12) On June 13, 2013, the Applicant filed its second proof of publication regarding the date and time of the public hearing and adjudicatory hearing.
- (13) Adequate data on the proposed 345/138/69 kV Biers Run Substation 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.
- (14) Adequate data on the proposed 345/138/69 kV Biers Run Substation 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.
- (15) Adequate data on the proposed 345/138/69 kV Biers Run Substation Project has been provided to the Board and OPSB Staff to determine that the Preferred site contained in the Application, as filed by the Applicant on December 20, 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.

- (16) Adequate data on the proposed 345/138/69 kV Biers Run Substation Project has been provided to the Board and its Staff to determine that construction of the proposed substation located on Applicant's Preferred site will have no adverse impact upon the electric grid.
- (17) Adequate data on the proposed 345/138/69 kV Biers Run Substation Project has been provided to the Board and OPSB Staff to determine that the proposed substation will comply with Chapters 3704., 3734. and 6111. of the Ohio Revised Code and all rules and standards adopted under those Section 1501.33, 1501.34 and 4561.32 of the Ohio Revised Code, as required by Section 4906.10(A)(5) of the Ohio Revised Code.
- (18) Adequate data on the proposed 345/138/69 kV Biers Run Substation 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.
- (19) Adequate data on the proposed 345/138/69 kV Biers Run Substation 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 site and Alternate

site of the proposed project, as required by Section 4906.10(A)(7) of the Ohio Revised Code.

- (20) 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.
- (21) 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 proposed 345/138/69 kV Biers Run Substation 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 345/138/69 kV Biers Run Substation 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 December 20, 2012 complies with the requirements of OAC §4906-15-01 *et seq.*

- (4) The record establishes the need for the proposed 345/138/69 kV Biers Run Substation 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 345/138/69 kV Biers Run Substation Project as required by Section 4906.10(A)(2) of the Ohio Revised Code.
- (6) The record establishes that the proposed Preferred site for the 345/138/69 kV Biers Run Substation 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 345/138/69 kV Biers Run Substation 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 345/138/69 kV Biers Run Substation 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 345/138/69 kV Biers Run Substation 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 Site, 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 substation, 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) 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.
- (7) 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.
- (8) 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.
- (9) 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.
- (10) 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 construction access 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.
- (11) 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.

- (12) 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.
- (13) 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, with Staff approval.
- (14) Prior to the commencement of construction activities that require permits, licenses, or authorizations by federal or state laws and regulations, the Applicant shall obtain and comply with such permits, licenses, 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.

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 December 20, 2012 and certified as complete by the Board on February 13, 2013.

Applicant Exhibit No. 2: Proof of Publication filed on July 5, 2012.

Applicant Exhibit No. 3: Proof of Publication filed on April 15, 2013

Applicant Exhibit No. 4: Proof of Notification filed on June 10, 2013.

Applicant Exhibit No. 5: Proof of Publication filed on June 13, 2013.

Staff Exhibit No. 1: Staff Report of Investigation, issued and filed on May 23, 2013.

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 345/138/69 kV Biers Run Substation Project for the Preferred site as described in the application filed with the Board on December 20, 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 14th day of June, 2013.

Respectfully submitted on behalf of:

STAFF OF THE OHIO POWER SITING BOARD

By: //ss// Devin Parram per e-mail authority 6-14-13

Devin Parram
Assistant Attorney General
Public Utilities Section
180 East Broad Street, 6th Floor
Columbus, Ohio 43215
Telephone: (614) 644.8599
E-mail: devin.parram@puc.state.oh.us

By: //ss// Summer Koladin Plantz per e-mail authority 6-14-13

Summer Koladin Plantz
Clint White
Assistant Attorneys General
Environmental Enforcement Section
30 East Broad Street, 25th Floor
Columbus, Ohio 43215
Telephone: (614) 466-2766
Facsimile: (614) 644-1926
E-mail: summer.plantz@ohioattorneygeneral.gov
clint.white@ohioattorneygeneral.gov

AEP OHIO TRANSMISSION COMPANY

By: //ss// Erin C. Miller

Erin C. Miller
Matthew J. Satterwhite
Counsel for AEP Ohio Transmission Company
1 Riverside Plaza, 29th Floor
Columbus, Ohio 43215
Telephone: (614) 716-1637
Facsimile: (614) 716-1687
E-mail: ecmiller1@aep.com
mjsatterwhite@aep.com

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

6/14/2013 2:24:32 PM

in

Case No(s). 12-1361-EL-BSB

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