

## THE OHIO POWER SITING BOARD

IN THE MATTER OF THE APPLICATION OF  
AEP OHIO TRANSMISSION COMPANY,  
INC. FOR AN AMENDMENT TO THE  
LAMPING-ROUSE 138 kV TRANSMISSION  
LINE REBUILD PROJECT.

CASE NO. 19-972-EL-BTA

### ORDER ON CERTIFICATE

Entered into the Journal on August 15, 2019

#### I. SUMMARY

{¶ 1} The Ohio Power Siting Board grants the application filed by AEP Ohio Transmission Company, Inc. to amend its certificate.

#### II. DISCUSSION

##### A. *Procedural History*

{¶ 2} All proceedings before the Ohio Power Siting Board (Board) are conducted according to the provisions of R.C. Chapter 4906 and Ohio Adm.Code Chapters 4906-1 et seq.

{¶ 3} On August 17, 2017, the Board granted the application filed by AEP Ohio Transmission Company, Inc. (AEP Ohio Transco or Applicant) for a certificate to construct a new 138 kilovolt (kV) overhead transmission line between the proposed Lamping Substation to the proposed Rouse Substation in Monroe County, Ohio. *In re AEP Ohio Transmission Company, Inc.*, Case No. 16-701-EL-BTX (*Certificate Case*), Opinion, Order, and Certificate (August 17, 2017). The Board granted AEP Ohio Transco's application in the *Certificate Case*, pursuant to a joint stipulation filed by AEP Ohio Transco and the Board's Staff (Staff), subject to 22 conditions.

{¶ 4} On May 7, 2019, AEP Ohio Transco filed an application in the above-captioned case (*First Amendment Application*) proposing four changes to the route approved by the Board in the *Certificate Case*.

{¶ 5} On May 23, 2019, AEP Ohio Transco filed proof of service of the *First Amendment Application*, pursuant to Ohio Adm.Code 4906-3-11(B)(2)(b).

{¶ 6} Thereafter, on July 17, 2019, Staff filed a report evaluating the *First Amendment Application*. On July 19, 2019, AEP Ohio Transco filed its response to the Staff report.

**B. Applicable Law**

{¶ 7} R.C. 4906.04, provides that the Board's authority applies to major utility facilities and requires any proposed facility to be certified by the Board before the start of construction. In accordance with R.C. Chapter 4906, the Board promulgated the rules set forth in Ohio Adm.Code Chapter 4906-3 regarding the procedural requirements for filing applications for major utility facilities and amendments to certificates.

{¶ 8} Pursuant to R.C. 4906.07, when considering an application for an amendment of a certificate, the Board "shall hold a hearing \* \* \* if the proposed change in the facility would result in any material increase in any environmental impact of the facility or a substantial change in the location of all or a portion of such facility \* \* \*." R.C. 4906.06(B) and (C), as well as Ohio Adm.Code 4906-3-11, 4906-3-06, and 4906-3-09, require the applicant to provide notice of its application for amendment to interested parties and potentially effected members of the public.

{¶ 9} R.C. 4906.97, briefly summarized, provides that, upon a Board finding that reasonable grounds have been presented, the Board shall fix a time for hearing of any complaint alleging that a person has violated a provision of R.C. 4906.98. Further, R.C. 4906.97 authorizes the Board, or its chairperson, subject to adherence with certain procedural requirements, to suspend during the complaint's pendency, any activity that is the subject of the complaint. Additionally, the Board may assess a forfeiture, in an amount to be determined as provided for in R.C. 4906.97, if, following the hearing, the Board finds a violation as alleged in the complaint to have occurred. Finally, R.C. 4906.97 indicates that, upon written request of the Board, the forfeiture assessed shall be recovered through a civil

action brought by the attorney general, and that all forfeitures collected shall be deposited into the state treasury to the credit of the general revenue fund.

{¶ 10} R.C. 4906.98 prohibits certain acts. Among other things, it provides, in pertinent part, that: (a) no person shall construct a major utility facility without first obtaining a certificate; (b) no person shall construct, operate, or maintain a major utility facility other than in compliance with the certificate the person has obtained; and (c) no person shall fail to comply with any order issued pursuant to R.C. Chapter 4906 or with a suspension otherwise required under division (B) of R.C. 4906.97.

{¶ 11} R.C. 4906.99 is a penalty statute. It provides that whoever willfully violates any provision of R.C. 4906.98 may be fined not less than one thousand dollars nor more than ten thousand dollars for each day of violation, or imprisoned for not more than one year, or both.

{¶ 12} AEP Ohio Transco is a corporation and, therefore, a person under R.C. 4906.01(A). Additionally, pursuant to the Board's Order in the *Certificate Case*, AEP Ohio Transco is certificated to construct, operate, and maintain a major utility facility under R.C. 4906.10. As indicated above, the Applicant provided the Board with proof of service as required of it in this proceeding, the *First Amendment Application*.

### C. *Summary of Staff Report*

{¶ 13} Staff observes that construction of the involved project began in January 2018 and has since been halted. Structures or foundations along the northern-most three miles of the route have been installed, as described in more detail below. (Staff Report at 2.)

{¶ 14} Staff states that the four alignment changes proposed in this *First Amendment Application* can be broken down into two categories of requested revisions to the route approved in the *Certificate Case*: one shift within the existing right-of-way, and three areas of rerouting, identified as Reroute 1, Reroute 2, and Reroute 3; which are outside of the existing right-of-way. The requested revisions would amount to a net increase of 0.6 miles

to the route, resulting in a 5.4 mile route as compared to the approved 4.8 mile route. (Staff Report at 2.)

**{¶ 15} Shift within the existing right-of-way.** Within the existing right-of-way, the Applicant has proposed a shift of five to ten feet of the approved route between structures 6 through 36, and between structures 41 through 51. Several structures along this shift were constructed prior to this amendment request. The Applicant states that during detailed engineering it was determined that the approved alignment was too close to the parallel Washington Electric Cooperative (WEC) electric distribution line for operational purposes. No additional parcels or previously unaffected landowners would be impacted by this shift. (Staff Report at 2, 3.)

**{¶ 16} Reroute 1 (outside the existing right of way).** Reroute 1 was constructed prior to this amendment request. Reroute 1 involves an extension of 0.5 mile, including two new structures, beyond the northern endpoint of the route. Reroute 1 was needed to reach the revised location of the 138 kV station pad of the proposed Lamping Substation, which was approved in Case No. 17-801-EL-BLN. Initially, the 138 kV and 345 kV Lamping substations were going to be incorporated into one large substation, but due to terrain issues, the substations require two separate station pad sites. No additional parcels or previously unaffected landowners would be impacted by Reroute 1. (Staff Report at 3.)

**{¶ 17} Reroute 2 (outside the existing right of way).** Reroute 2 involves placing the new line up to 56 feet west of the approved route between structures 36 and 40. Reroute 2 is proposed in order to avoid environmental impacts associated with a large amount of riparian tree clearing. The total length of Reroute 2 is approximately 0.3 mile. No additional parcels or previously unaffected landowners would be impacted by Reroute 2. (Staff Report at 3.)

**{¶ 18} Reroute 3 (outside the existing right of way).** Reroute 3 involves an extension of 0.2 mile, including two new structures, beyond the southern endpoint of the approved

route. The Applicant states that Reroute 3 was necessitated by WEC's relocation of the proposed Rouse Substation to the adjacent parcel. The Applicant states that two additional parcels, including one previously unaffected landowner, would be impacted by Reroute 3. One parcel is owned by the WEC. No structures would be located on the other parcel, and the Applicant has obtained an overhang easement for a portion of that property that overlaps with a portion of the 100-foot right-of-way. (Staff Report at 3.)

**{¶ 19} Characteristics of the project that are left unchanged by the proposed certificate amendment.** Staff reports that the proposed adjustments would not change the type of transmission equipment (related to transmission voltage, structure, and conductor types) associated with the facility approved in the *Certificate Case*. Both the need for the facility, and grid impacts associated with the facility, as identified and approved in the *Certificate Case*, would also not be impacted by the proposed route changes. Nor are the changes proposed in the *First Amendment Application* expected to affect the overall project's economic impacts. (Staff Report at 2.)

**{¶ 20} Social Impacts.** In Staff's opinion, the proposed adjustments are not expected to significantly alter existing land uses, including agricultural land. With these adjustments, the total number of residences located within 100 feet of the route would remain zero. These alignments sections have been studied for the presence of archeological and historic impacts and no significant adverse impacts on cultural resources are expected. Reroute 3 would cross an agricultural district, including one structure proposed within the agricultural district. However, construction and operation of the line would have no impact on this designation. (Staff Report at 3.)

**{¶ 21} Surface Waters.** The approved right-of-way contains 46 streams, including 10 perennial streams, 17 intermittent streams, and 19 ephemeral streams. The approved right-of-way contained 6,443 linear feet of streams, including 2,590 linear feet of perennial streams. The proposed adjustments to the route eliminate four previously approved stream crossings, including three ephemeral streams and one intermittent stream. The proposed

adjusted route right-of-way contains 6,532 linear feet of streams, including 2,358 linear feet of perennial streams. The overall increase in linear feet of streams is primarily due to additional intermittent and ephemeral streams, which are crossed by Reroute 1. The reduction of linear feet of perennial streams is primarily a result of Reroute 2. The reduction of riparian tree clearing associated with Reroute 2 would be an improvement, as riparian vegetation helps to stabilize stream banks and reduces potential erosion and sedimentation. The approved route right-of-way contains 28 wetlands, with 3.1 total acres of wetland within the right-of-way. The proposed adjusted route right-of-way contains approximately 2.8 acres of wetlands. All delineated wetlands are category 1 and category 2 wetlands. Adherence to the conditions of the original certificate as well as implementation of the Storm Water Pollution Prevention Plan would minimize impacts to listed species. (Staff Report at 3, 4.)

**{¶ 22} Threatened and Endangered Species.** According to Staff, the proposed adjustments would not result in increased impacts to listed wildlife species. Adherence to the conditions of the original certificate would minimize impacts to listed species. (Staff Report at 4.)

**{¶ 23} Staff-noted past instances, in other cases, of the Company's route adjustments occurring outside of certificated project areas.** In the above-captioned case, the Applicant began construction under the certificate approved in the *Certificate Case*. However, portions of the route were installed outside the certificated project area. Staff notes that, in the recent past, AEP Ohio Transco has had other instances of constructing outside of Board-certificated project areas. Staff cites, as examples of this happening, to the Staff Reports which were submitted in two prior cases. *In the Matter of the Application of AEP Ohio Transco for an Amendment to the Certificate to Install an Electric Transmission Line in Pickaway and Ross Counties* Case No. 15-1291-EL-BTA (*Biers Run Certificate Amendment case*) Staff Report (Dec. 23, 2015); *In the Matter of the Application of AEP Ohio Transco for an Amendment to the Dennison-Yager 138 kV Transmission Line Rebuild Project* Case No. 18-1856-

EL-BTA (*Dennison-Yager Certificate Amendment case*) Staff Report (June 7, 2019). (Staff Report at 4.)

{¶ 24} **Staff-noted past instances, in other cases, of the Company's construction of structures prior to obtaining corresponding certification.** Staff also notes that there have been past instances in which the Applicant has constructed structures prior to obtaining a certificate. Staff cites, as examples of this happening, to the Staff Reports which were submitted in three prior cases. *In the Matter of the Construction Notice Application of AEP Ohio Transco for the Dublin-Davidson 138 kV Transmission Line Extension Project* Case No. 16-2122-EL-BNR (*Dublin-Davidson Transmission Line case*) Staff Report (Nov. 21, 2016); *In the Matter of the Letter of Notification Application by AEP Ohio Transco for a Certificate for the Sciippo Extension and Scioto Trail-Circleville Project* Case No. 15-357-EL-BLN (*Sciippo Extension and Scioto Trail-Circleville Certificate case*) Staff Report (Jun. 24, 2015); *In the Matter of the Letter of Notification Application by AEP Ohio Transco for a Certificate for the Delano-Scioto Trail 138 kV Transmission Line Rebuild Project* Case No. 15-681-EL-BLN (*Delano-Scioto Trail Transmission Line case*) Staff Report (Oct. 29, 2015). (Staff Report at 4.)

{¶ 25} **Board-expressed concern.** Staff points out that the Board itself has previously also expressed concern with regard to such Company activity, stating, in the *Biers Run Certificate Amendment case*, that:

[T]he Board expresses its concern regarding Staff's observation that the Applicant had commenced and completed work addressed in the application prior to the Board's approval of any modifications in the current case. AEP is directed to refrain from such conduct in the future and to properly monitor the activities of its contractors in this regard.

(Staff Report at 4.)

{¶ 26} **Staff recommendation that the Board should give further consideration to the Company's construction practices.** In its report in the above-captioned case, Staff expresses its concern that the Board should continue to monitor what it describes as the Applicant's "apparent pattern and practice" as described above. Specifically, Staff

recommends that the Board give “further consideration to AEP Ohio’s construction practices pursuant to R.C. 4906.97 through R.C. 4906.99.” (Staff Report at 4.)

**{¶ 27} Staff-proposed additional condition.** In the above captioned case, while Staff recommends that the Board approve the certificate amendment proposed, it recommends that such approval should be made subject to the following new condition:

The applicant shall continue to adhere to all conditions of the Opinion, Order, and Certificate for the Lamping-Rouse 138 kilovolt project in Case No. 16-0701-EL-BTX, following the route as amended through this application.

(Staff Report at 4.)

**{¶ 28}** Thus, upon its review, overall, Staff recommends that the Board approve the amendment to the certificate, provided that the Applicant shall continue to adhere to all conditions of the Opinion, Order, and Certificate issued in the *Certificate Case*, as well as the additional condition Staff itself recommends in the above-captioned case. (Staff Report at 4.)

**D. AEP Ohio Transco’s Response to the Staff Report**

**{¶ 29}** As already noted, on July 19, 2019, AEP Ohio Transco filed a response to the July 17, 2019 Staff Report. The Applicant argues that the Board should not adopt Staff’s recommendation that “the Board give further consideration to AEP Ohio Transco’s construction practices pursuant to R.C. 4906.97-4906.99.” (Company Response at 2.)

**{¶ 30}** In its response, AEP Ohio Transco admits, as explained in its application, that the Company began construction of the Lamping-Rouse Transmission Line Project in January 2018. After identifying, in early 2019, the alignment changes that are the subject of the application in the above-captioned case, and that construction of some of those alignment changes had begun, AEP Ohio Transco suspended construction activities on March 29, 2019. The Company’s management voluntarily disclosed the alignment changes



and met with Staff on April 2, 2019, to discuss the issue and request guidance from Staff on the best approach to address it. (Company Response at 1.)

{¶ 31} Since the April 2, 2019 meeting, explains the Company, AEP Ohio Transco has continued to work collaboratively and transparently with Staff to remedy the execution errors that the Company self-reported and which it is seeking to resolve through this proceeding. AEP Ohio Transco notes that, as Staff's report confirms, the alignment changes at issue do not significantly impact land uses, cultural resources, surface waters, or threatened and endangered species. (Company Response at 2.)

{¶ 32} Continuing its response, AEP Ohio Transco submits that the limited alignment changes that occurred in this case are not indicative of the Company's construction practices. AEP Ohio Transco suggests that "further consideration of \* \* \* [those] practices pursuant to R.C. 4906.97 through R.C. 4906.99 is not warranted in this case, given the totality of the circumstances presented, including the Company's self-identification and disclosure of the construction alignment changes, proactive coordination with Staff, and continued transparency. The Company submits that, since April 2019, its management has undertaken a holistic and comprehensive review of its project development, siting, and construction practices and has implemented additional process improvements and controls designed to ensure that future alignment changes are minimized to the extent practicable and are appropriately coordinated with Staff and the Board prior to construction when they do occur. The Company claims that it routinely coordinates with Staff on all projects subject to the Board's jurisdiction, and it looks forward to continuing to work with Staff to ensure that projects are executed in full compliance with the Board's approvals. (Company Response at 2.)

#### **E. Board's Conclusion**

{¶ 33} After considering the application and the Staff Report, the Board finds that the proposed alignment changes presented in the *First Amendment Application* do not result in any material increase in any environmental impact or a substantial change in the location of

all or a portion of the facility approved in the *Certificate Case*. Therefore, pursuant to R.C. 4906.07, the Board finds that a hearing on the *First Amendment Application* is not necessary under the circumstances presented in this case. Further, the Board finds that the proposed changes to the project do not affect our conclusion from the *Certificate Case* that the project satisfies the criteria set forth in R.C. Chapter 4906, promotes the public interest, and does not violate any important regulatory principle or practice. Therefore, the Board concludes that the *First Amendment Application* should be approved, subject to the conditions set forth in the Opinion, Order, and Certificate in the *Certificate Case*, as well as the additional condition Staff recommended in its report in the *First Amendment Application* case, following the route as amended in the above-captioned case.

{¶ 34} The Board stands ready, on a going forward basis, to, if necessary, give further consideration to AEP Ohio Transco's construction practices. However, based on the information Applicant has provided in its response to the Staff Report, the Board does not find that application of any of the provisions of R.C. 4906.97 through R.C. 4906.99 is presently called for in this case, given the totality of the circumstances presented. AEP Ohio Transco, in its response, has informed the Board that, within just the last six months or less, and following upon its own comprehensive review of its construction practices, it has implemented its own new set of operating procedures designed to ensure that future alignment changes are minimized to the extent practicable and are appropriately coordinated with Staff and the Board prior to construction when they do occur. The Board finds these expressed goals of the Company's new program to be primary among the objectives that should be served by any Board-undertaken "further review" of the Company's construction practices. The Board finds that, under such circumstances, the Company should now be permitted additional time within which to evaluate, on its own, whether and how effectively its newly implemented procedures are functioning to serve their intended and expressed purpose. If the Board, at some future point, should deem it necessary to undertake any additional action, in order to ensure these same objectives are appropriately being met by the Company, it stands ready to do so.

**F. Findings of Fact and Conclusions of Law**

{¶ 35} AEP Ohio Transco is a corporation and a person under R.C. 4906.01(A).

{¶ 36} On May 7, 2019, AEP Ohio Transco filed an application seeking a first amendment to the certificate issued in the *Certificate Case*.

{¶ 37} On July 17, 2019, Staff filed its Report of Investigation containing its evaluation of the *First Amendment Application*.

{¶ 38} The proposed amendment to the certificated facility does not result in a substantial change in the location of the facility or any material increase in any environmental impact; therefore, in accordance with R.C. 4906.07, an evidentiary hearing is not necessary.

{¶ 39} Based on the record, and in accordance with R.C. Chapter 4906, the *First Amendment Application* should be approved, subject to the conditions set forth in the Opinion, Order, and Certificate in the *Certificate Case*, as well as the additional condition Staff recommended in its report in the *First Amendment Application* case, following the route as amended in the above-captioned case.

**III. ORDER**

{¶ 40} It is, therefore,


{¶ 41} ORDERED, That, in accordance with the above findings, AEP Ohio Transco's *First Amendment Application* be approved, subject to the conditions set forth in the Opinion, Order, and Certificate in the *Certificate Case*, as well as the additional condition Staff recommended in its report in the *First Amendment Application* case, following the route as amended in the above-captioned case. It is, further,


{¶ 42} ORDERED, That a copy of this Order on Certificate be served upon all parties and interested persons of record.


THE OHIO POWER SITING BOARD


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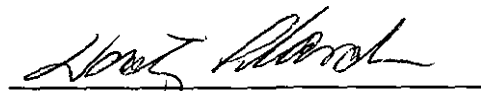
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Tanowa Troupe  
Secretary