

BEFORE

THE OHIO POWER SITING BOARD

In the Matter of the Application of The)
Cleveland Electric Illuminating Company) Case No. 95-599-EL-BTX
for Certification of the Pawnee 138 kV)
Electric Transmission Line Project.) 0074

ENTRY

The Administrative Law Judge finds:

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- (1) By Opinion, Order and Certificate issued November 4, 1996, the Ohio Power Siting Board (Board, OPSB) granted the Cleveland Electric Illuminating Company's (CEI) application for a certificate of environmental compatibility and public need to construct the Pawnee 138 kV Transmission Line Project (facility) in Lake and Geauga counties, Ohio subject to certain conditions. Parties to this proceeding stipulated that as a condition of granting the certificate the Pawnee Advisory Committee be formed. The purpose of the Pawnee Advisory Committee (Committee) is to provide CEI with non-technical advice regarding the facility not specifically addressed by the conditions contained in the certificate. The company must consider the advice and suggestions of the Committee in good faith and consistent with good utility practice; however, CEI is not be legally bound to follow the Committee's advice.
- (2) On July 17, 1997, Andrew Parker, the Campton Ridge representative to the Committee filed a request for determination of non-compliance. Mr. Parker requests that the OPSB find that CEI has failed to comply with the conditions of the certificate in the following respects: (a) the clear cutting of trees within 10 feet horizontally of pole structures, as recommended by the Committee; (b) use of mitigative measures during construction; (c) preservation of all vegetation within 100 feet on both sides of any streams crossed by the facility except for danger trees; (d) prior to construction the development of a detailed storm water management plan demonstrating how sediment from the construction area will be prevented from entering any streams within or near the project area and submission of such plan to the OPSB staff for staff's approval.
- (3) On August 5, 1997, as supplemented August 25, August 27, and October 17, 1997, CEI filed a response to the request for determination of non-compliance. CEI argues that Mr. Parker

was never a party to this proceeding and therefore, is estopped and barred from claiming harm in this matter. CEI also contends that based on the language which created the Committee, the Committee was not to usurp the jurisdiction of the OPSB or require CEI to adhere to the advice or suggestions of the Committee. CEI emphasizes that the Committee was only organized to provide advice and suggestions. More specifically, CEI states that the allegations that the clear cutting of trees, removal of danger trees and the clearing of vegetation within 10 feet of the centerline of the facility was not performed in compliance with the conditions of the certificate is untrue. CEI further states that as to the remainder of Mr. Parker's allegations that they are inherently technical in nature and therefore, more appropriate for OPSB staff evaluation. CEI met with the Parkers and the staffs of the OPSB and Ohio Environmental Protection Agency (OEPA) prior to the filing of the Mr. Parker's request. CEI further notes that it has met with, and will continue to meet with, the staffs of the OPSB and the OEPA to address any concerns raised by either agency. CEI states that as a result of concerns raised by the OPSB and OEPA, CEI halted construction from June 27, 1997 to July 3, 1997 and assigned an independent environmental expert on site to monitor construction activities. Accordingly, CEI contends that its efforts to better communicate with the representatives of various regulatory agencies and the changes made during construction of the facilities have clarified and resolved the issues raised by the OPSB, OEPA, as well as the allegations of Mr. Parker.

- (4) On November 17, 1997, the OPSB staff filed a report of field investigation in this matter. The OPSB staff concluded that CEI had acted in accordance with the conditions of the certificate as to the advice and suggestions of the Committee, the crossing of streams with vehicles or large equipment and the pruning and removal of trees within the right-of-way. The OPSB staff also determined that CEI is taking the appropriate corrective measures to comply with the conditions of the certificate. Accordingly, the OPSB staff recommends that the Board find that CEI is in compliance with the conditions referred to by Mr. Parker.
- (5) A copy of the OPSB staff's field investigation report shall be served upon Mr. Parker and his counsel, the Committee and CEI. If Mr. Parker wishes to file a response to the staff's report, Mr. Parker's response must be filed with the Board and served

upon CEI on or before January 5, 1998. CEI shall have until January 16, 1998 to file a reply to Mr. Parker's response, if any.

It is, therefore,

ORDERED, That a copy of the OPSB staff's report be served upon Mr. Parker and his counsel, the Committee and CEI and its counsel. It is, further,

ORDERED, That Mr. Parker file any response to the staff's report with the Board and serve a copy on CEI by January 5, 1998 and that CEI file any reply thereto with the Board and serve a copy on Mr. Parker by January 16, 1998. It is, further,

ORDERED, That a copy of this Entry be served upon Andrew Parker and his counsel, CEI and its counsel and all other interested persons of record.

THE OHIO POWER SITING BOARD

Greta See

Greta See
Administrative Law Judge

REC- /pdc

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DEC 03 1997

A True Copy

G. E. Vigorito
Gary E. Vigorito
Secretary

SERVICE NOTICE

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CASE NUMBER 95-599-EL-BTX
CASE DESCRIPTION CEI/PAWNEE TRANSMISSION LINE
DOCUMENT SIGNED ON December ~~2~~³, 1997
DATE OF SERVICE 12-5-97

*ENTRY & STAFF REPORT
(11-17-97)*

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