

BEFORE

THE OHIO POWER SITING BOARD

In the Matter of the Ohio Power Siting)
Board's Report to the General Assembly) Case No. 21-796-EL-UNC
Regarding the Power Transmission System.)

**INITIAL COMMENTS
OF
DUKE ENERGY OHIO, INC.,
AND
THE DAYTON POWER AND LIGHT COMPANY D/B/A AES OHIO**

As part of House Bill 128, the 134th General Assembly enacted Revised Code (R.C.) 4906.105, requiring the Ohio Power Siting Board (Board) to submit a report to the General Assembly by December 1, 2021, addressing issues related to “whether the current requirements for the planning of the power transmission system and associated facilities investment in this state are cost effective and in the interest of consumer.” On July 14, 2021, the Board opened the above-captioned proceeding and issued an entry calling for comments and recommendations for legislative changes regarding the criteria that are included in R.C. 4906.105, which comments and recommendations must be filed no later than August 4, 2021. Duke Energy Ohio, Inc. and The Dayton Power and Light Company d/b/a AES Ohio (collectively, the EDUs) hereby provides its comments and recommendations in response.

As an initial observation, the EDUs note that reliability of the transmission system is of paramount concern. While cost effectiveness is always a priority, the goal has to be how to cost-effectively achieve a high degree of reliability. It is also important to recognize that there is an inherent tension between goals of cost-effectiveness and additional regulatory processes. Even if

the additional regulatory processes are intended to determine whether a proposed project is a cost-effective means to maintain or improve reliability, the additional time and money spent by both the regulated entity and by the regulator can itself add sizable costs – particularly when multiplied by hundreds of projects.

Second, the EDUs observe that there have been sharp increases in the number of generator interconnections requested as numerous solar and wind facilities are planned. While public policy promotes this, the sheer volume of these expected requests is already stretching resources thin at utility companies, PJM, and state siting agencies. Some caution should be taken before adding new categories of projects to the list of projects already subject to substantial regulatory review processes.

Thus, some key points should be fundamentally understood before Ohio makes significant changes to the process currently used to enhance reliability of the transmission system.

1. Ohio is generation deficient and is reliant on imports from other states through the transmission system.
2. The transmission system in Ohio is, overall, both old and being used more than ever.
3. There are trade-offs in the regulatory process where additional reviews may add costs to utilities' ratepayers and the regulators as well, due to the number of highly trained staff required to produce and review a significant number of new siting applications at the 69kV level.

A. Should the definition of a major utility facility include an electric transmission line of a design capacity at or above 69 kilovolts and associated facilities, the costs of which are recovered as a transmission asset by the transmission owners?

The definition of a “major utility facility” should not be reduced to 69 kilovolts (kV).

The Board was created as a way to allow all relevant state agencies to review projects in one process; it was designed as a one-stop shop to ease the burden on utilities and other facilities

owners. This fact can be seen both in the membership of the Board and the factors that the Board considers when determining whether a certificate should be granted. The voting members comprise the leaders of six state agencies: Public Utilities, Environmental Protection, Agriculture, Development, Health, and Natural Resources, as well as one member of the public with qualification as an engineer and four non-voting members of the General Assembly.¹ Similarly, the criteria that the Board considers in its process reflect that same diversity of interests. The vital question here is whether work on a 69 kV facility triggers the diverse interests that are impacted by higher voltage facilities that are currently jurisdictional. Lower voltage means smaller, shorter structures, resulting in less negative impact to communities and fewer health and safety concerns. There may be similar environmental and natural resources interests, but the same could be said about even the neighborhood distribution poles. And, as will be discussed below, development interests would favor a higher threshold for Board consideration, in order to foster a positive climate for job creation.

The public member of the Board, the members of the General Assembly, and the general public would also oppose a change that would encompass 69 kV facilities as that expansion in regulation would add a further financial burden to both the Board and the utilities, all of which pass on their costs to their customers.

The interests of the state of Ohio are also a relevant consideration, particularly with regard to economic development interests.² According to the U.S. Bureau of Labor Statistics, as of June

¹ R.C. 4906.02(A).

² <https://opsb.ohio.gov/wps/portal/gov/opsb/about-us> (accessed July 30, 2021) (“Our mission is to support sound energy policies that provide for the installation of energy capacity and transmission infrastructure for the benefit of the Ohio citizens, promoting the state's economic interests, and protecting the environment and land use.”).

2021, Ohio ranked 28th in the nation with regard to its unemployment rate.³ Economic development is therefore of utmost interest to the state. Unfortunately, large employers considering where to locate any new facilities are not interested in risky or lengthy endeavors that are beyond their control. Thus, the need to go through a Board proceeding is often a factor that removes Ohio from consideration by possible new employers, particularly if the proceeding would be lengthy.

As part of the present consideration of broadening the Board's jurisdiction to include 69 kV, it must be recognized that 69 kV is a voltage level that is often used to extend service to new large industrial customers and is also a voltage level often used to service local communities. Under the current regulatory regime, it plays a major role in local economic development because it can deliver a sizable amount of power to a location without having to go through Board processes. A simpler environmental permitting process can typically be completed within a few months. If it takes longer to permit and build infrastructure to serve local growth, it will make Ohio less competitive for new business growth.

Finally, it should be acknowledged that there has not been an overwhelming call from members of the public—or from interested state agencies—for a broadening of the reach of the Board. It is certainly not apparent that there is an unfulfilled need for Board oversight at the 69 kV level of construction.

B. Should the criteria for an accelerated certificate application be modified?

³ <https://www.bls.gov/web/laus/laumstrk.htm> (accessed July 30, 2021).

Yes, the criteria for accelerating the process for consideration of projects should be amended. First, economic development applications should always be able to be accelerated so as not to have the siting process be a negative element in these inherently speedy projects. This will likely result in Ohio winning more frequently and growing the state's job opportunities. Second, where a utility needs to repair or replace existing equipment on an emergency basis, the repair or replacement should be allowed on an immediate basis, or accelerated further than current rules would allow, even if the repair or replacement is not "like-for-like" or in precisely the same spot. Rather, rules should clearly spell out how much difference is allowed without prior Board approval.

At the same time, consideration should be given to establishing rules that are more clear as to what kind of changes can be made without triggering a new set of regulatory processes. If, for example, a particular segment of a proposed line is strongly opposed by affected landowners, but there is a nearby alternative path where landowners are willing to sign easement agreements for a fair price, the shift in path should not create substantial new delays and new processes to implement.

C. Is the certification process sufficiently transparent?

This question could relate to two different levels of transparency, both of which will be addressed.

First, with regard to the transparency of the Board's consideration of applications, the certification process is undeniably transparent. Where a standard application is filed, the rules require multiple (costly) newspaper publications, as well as open houses, multiple mailings to landowners and renters, and communications with community leaders. Applications are available

for public access through local libraries, the applicant's website, the Board's website, and by request from the applicant. More transparency is inconceivable.

With accelerated applications, the Board requires less public transparency and outreach, but still requires that applications be available to the public in multiple ways, that neighbors be contacted and, for letters of notification, that newspapers publish the relevant information.

The other aspect of transparency is that associated with FERC's process. Although there has been criticism that there is insufficient transparency in FERC's consideration of supplemental projects, the EDUs disagree. Through FERC's M-3 planning and modeling process, interested parties have the opportunity to learn about upcoming needs and have input on proposed solutions.

While it is true that maintenance projects under 100 kV and creating no change in power flow or topology do not go through that process, such projects should not be subject to competitive bidding by other transmission owners and do not need the same level of transparency as others. Rather, maintenance of facilities that are in a utility's system should be undertaken by that utility, and the Board should consider whether changes to the certification process could threaten or undermine the utility's obligation to provide reliable service by creating barriers or imposing unnecessary processes and procedures that might delay needed maintenance work. Any transparency needed is provided through the utilities' annual explanation of the maintenance process to participants in the M-3 process.

D. Should the Board require the following for, or determine if the following apply to, a transmission project certification application?

1. That alternative transmission projects were considered.

It is sometimes reasonable for an applicant to consider alternatives, but often not. For example, if a utility is replacing a conductor on an existing line of structures, consideration of alternatives should not be expected. If structures are being replaced with more modern types, still on existing easements or rights of way, again the consideration of alternatives is likely not necessary. On the other hand, if the goal of a project is a river crossing, there might be alternatives that are reasonable.

Thus, the existing requirement that an applicant describe any alternatives that it did consider is appropriate and sufficient.

2. That the project was competitively bid or compared to the results of a competitive bid.

If the project is one in which contractors will be hired, one of two possibilities is true: either the potential contractors will bid on the project after it has received certification from the Board or the utility will be using a contractor that has already bid for and won the right to do construction for the utility. In either case, competitive bidding will have been accomplished and no rule or statute is required. Because utilities ultimately must demonstrate that their expenditures of customer monies were prudent, competitive bidding is already expected.

3. That the project has been considered in the context of the utility's larger transmission plan.

Electric utilities are already required to file long-term forecast reports with the Commission on a yearly basis. Those reports include substantial, forward-looking data on the utilities' transmission plans. The inclusion of projects in those reports is already required to be addressed

in Board applications. Thus, only emergent or other unexpected projects (such as ones required by local governments) are not already reported, and no revised long-term reporting or planning requirement could foreseeably include such emergent or unexpected projects.

4. That the project has been considered in the context of the regional transmission planning process of PJM Interconnection, LLC.

No, the Board should not require an applicant to demonstrate that a project has been considered by PJM, because many categories of projects are necessary but totally outside the PJM planning process. A few examples will suffice, such as emergency replacement due to storm damage, emergency maintenance, relocations required by road projects, or projects required by a local government entity. Only where a project actually overlaps with PJM planning criteria is it reasonable to expect a discussion of the consistency of the project with the planning, and the M-3 process already addresses coordination with PJM when such an overlap exists.

5. That the project could not have been deferred or redesigned to achieve the same operational result at a lower overall cost.

“Deferral” of projects is not always a good idea. Planning for reliability is inherently dealing with probabilities; a project is planned to ensure reliability in future years based on the expected demands. Deferring a project, therefore, will generally not have immediately negative consequences. But if those “expected” demands arrive sooner than expected, or if new solar and wind facilities in the area cause new transmission flows not originally projected, it may be too late to start a project and complete it prior to when actual reliability problems start occurring.

Constructing facilities as cheaply as possible is also not always a good idea if that means a trade-off with the paramount objective of having a reliable transmission system. Moreover, it is not an area of special expertise for the Board or its Staff. The Board’s expertise and, indeed, the

reason that it comprises the members that it does, is to consider reliability and impacts. The Board does not include members from the state's procurement or budget departments. The prudence of a utility's expenditure of funds is already considered by the Commission and is best left in that venue.

6. That the project has provided historical information for an existing transmission project or information for a planned or proposed project.

Historic information is provided to all stakeholders at the monthly PJM M-3 meetings. There is no reason to have a second layer of review, especially because much of that information would be confidential.

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Initial Comments of Duke Energy Ohio, Inc., and The Dayton Power and Light Company D/B/A AES Ohio was served on the following parties this 4th day of August 2021 by regular U. S. Mail, overnight delivery, or electronic delivery.

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