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June 24, 2008

Ms. Renee Jenkins
Secretary
Public Utilities Commission of Ohio
180 East Broad Street
13th Floor
Columbus, Ohio 43215

RE: In the Matter of the Power Siting Board's Review of Chapters 4906-1, 4906-5, 4906-7, 4906-9, 4906-11, 4906-13, and 4906-15 of the Ohio Administrative Code, Ohio Power Siting Board Case No. 08-581-GE-ORD

Dear Ms. Jenkins:

Enclosed is the original and 10 copies of "Comments of FirstEnergy Service Company Regarding Proposed Rule Changes" which are to be filed in the above-captioned matter. Also enclosed are extra copies of the Comments which are to be time-stamped and returned.

Thank you for your assistance in this matter.

Sincerely,

Christopher R. Schraff

CRS:mkd
Enclosures

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BEFORE
THE OHIO POWER SITING BOARD

In the Matter of the Power Siting Board's Review of Chapters 4906-1, 4906-5, 4906-7, 4906-9, 4906-11, 4906-13, and 4906-15 of The Ohio Administrative Code	)))))	Case No. 08-581-GE-ORD

Comments of FirstEnergy Service Company Regarding Proposed Rule Changes

FirstEnergy Service Company submits these comments on behalf of its affiliates owning or operating major utility facilities in Ohio. This includes American Transmission Systems, Incorporated, The Cleveland Electric Illuminating Company, FirstEnergy Generation Corp., FirstEnergy Nuclear Generation Corp., Ohio Edison Company, and The Toledo Edison Company (collectively FirstEnergy). FirstEnergy has reviewed the proposed rule changes to Chapters 4906-1, 4906-5, 4906-7, 4906-9, 4906-11, 4906-13, and 4906-15 of the Ohio Administrative Code. The June 2, 2008 Entry in this docket indicates that the Board Staff has recommended that certain of the Board's rules "...be amended to clarify the rules, the application processes and the applicant obligations as delineated in the attachment to this entry." *See* June 2 Entry, ¶ (4). FirstEnergy's comments on the proposed rules are provided below.

While many of the proposed changes are helpful, some of the proposed changes introduce confusion, ambiguity or additional regulatory burden to Applicants seeking approval of major utility facilities in Ohio. This result would be contrary to Governor Strickland's emphasis in Executive Order 2008-04S that proposed rules should "promote transparency and predictability regarding regulatory activity, consistency of business regulation within the State, appropriate flexibility, and a reasonable balance between the underlying regulatory objectives and the burdens imposed by regulatory activity. *See* Paragraph 4.c. The Governor further directed that:

"agency rules are expected to impose the least burden and costs to business, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective." *See* Paragraph 4.f., Executive Order 2008-04S.

With these guiding principles in mind, the following comments are offered regarding the proposed rules:

1. Proposed OAC 4906-1-01--- Definitions (Appendix A(1)(a) and A(1)(d).

While the proposed changes in Definitions, Appendix A (1)(a) and A(1)(d) are an improvement to the rule, the wording of the change is effectively negated by the current language found in OAC 4906-5-02(A) and (B), which provide that:

> If a project falls under the requirements of both a "letter of notification application (BLN) required" and a "construction notice application (BNR) required" in Appendix A or B of rule 4906-1 of the Administrative Code, a letter of notification shall be filed.

Because of the current language of OAC 4906-1-01, Appendix A(1)(a)(proposed (b)) and (c)(proposed (e)), the current language of Appendix A also covers the projects in proposed Appendix A(1)(a)and (d). Therefore, the above-quoted language of OAC 5-02(A) and (B) would require letters of notification for these projects, notwithstanding the proposed language which would require only construction notifications. In order to implement the intention of this proposed rule change, FirstEnergy recommends the following language for proposed Appendix A(1)(b):

> Line(s) three hundred kV and above, and greater than 0.1 mile in length, but not greater than one mile in length.

Similarly, FirstEnergy recommends that proposed Appendix A(1)(e) also be reworded to state:

> Line(s) one hundred twenty-five kV and above, but less than three hundred kV and greater than 0.2 miles in length, but not greater than two miles in length.

2. REQUESTED CHANGE --- OAC 4906-1-01 Appendix A(8)

While not proposed by Board Staff as part of its 5-year review of the Board's Rules, FirstEnergy identifies and proposes a change to Appendix A(8) as a means of complying with the goals of promoting transparency and predictability regarding the Board's regulation of utility facilities, and promoting consistency of business regulation within the State, appropriate flexibility, and a reasonable balance between the underlying regulatory objectives and burdens imposed by regulatory activity. First Energy's proposed revision to Appendix A(8) is:

> Constructing additions to existing power transmission substations or upgrading existing electric power distribution substations to electric power transmission substations where:

This modification would provide an opportunity to propose projects with *de minimis* impacts that would upgrade an existing distribution substation to a transmission substation, which would occur under a CN or LON filing process similar to the process afforded for expanding an existing transmission substation and comparable to the process of submitting a LON for the upgrading of two-miles or less of distribution lines to transmission lines, as provided in Appendix A(6). In the event the proposed upgrade of an existing distribution substation to a transmission substation is identified by Staff as having more than *de minimis* impacts, or if an affected member of the public petitions to intervene into the proceeding and objects to the project (similar to what occurs if the same type of objection occurred with respect to a proposed expansion of an existing transmission substation or the upgrading of "2 miles or less" of distribution lines to transmission lines filed under a LON or CN), the CN or LON could be withdrawn and project resubmitted as a normal application.

3. Proposed OAC 4906-1-14 --- Site Visits.

This proposed rule change would require an Applicant to ensure that the Board Staff and representatives may make visits to sites which the Applicant is "proposing" for a major utility facility. Unfortunately, while such a provision might be desired, as a practical matter, an Applicant cannot "ensure" or guarantee access to every proposed site where the Applicant has not yet secured ownership or access to a proposed site. While the Applicant has certain rights of entry under Section 163.03 of the Revised Code, that section does not "ensure" or guarantee access for Board Staff. The Board may wish to consider whether an amendment to Chapter 163. or 4906. of the Revised Code is necessary or desirable to secure the access which it apparently desires under this proposed rule change. However, the Board cannot, by rule change, impose an obligation for securing access where the Applicant does not have clear legal authority to do so. This proposed change should be deleted.

Alternatively, FirstEnergy recommends the following language:

> Persons proposing, owning or operating major utility facilities should ensure, to the extent feasible under Chapter 163 of the Ohio Revised Code, that upon prior notification, the board, its representatives, or staff may make visits to proposed or alternative sites or routes of a major utility facility or a substantial addition in order to carry out board responsibilities pursuant to Chapter 4906. of the Revised Code.

4. Proposed OAC 4906-5-02(A)(3) --- Letter of Notification and construction notice application requirements: form, content, and processing.

This subsection governs letters of notification, but the proposed language changes make reference to Construction Notifications. FirstEnergy suggests replacing the term "Construction Notices" with "Letters of Notification."

5. Proposed OAC 4906-5-02(A)(4) and (B)(4) --- Letter of notification and construction notice application requirements: form, content, and processing.

Staff proposes a new two year limitation on the effective period of both letters of notification and construction notices. Previously, LONs and CNs had no expiration date, and it's not clear what sort of "problem" the Staff seeks to cure with this new limitation. As stated in the Executive Order 2008-04S, ¶4.e: "Proposed rules should focus on achieving outcomes rather than the process used to achieve compliance." It is FirstEnergy's preference that this proposed change be deleted. Further, if a time limitation must be imposed, a two year limitation is too short. Rather than submitting a LON or CN as early as possible, a two year limitation is an encouragement to the Applicant to submit a LON or CN shortly before a project is to be constructed and placed in service. Moreover, submitting the LON or CN as early as possible provides the most flexibility for the Applicant and Staff to complete the regulatory review process, and if Staff requests that an application be submitted for a facility, also affords the Applicant time to convert an LON or CN to a full-blown application.

Further, under some circumstances, if a LON or CN project requires complicated engineering, prolonged material and equipment ordering and delivery times or protracted real estate acquisition processes for the project, two years may not be sufficient to complete such work. Given the apparent intention to avoid granting permission, in perpetuity, to construct a minor project, FirstEnergy would suggest that LONs and CNs have the same expiration date as other major utility facility certificates --- i.e. five years. Additionally, FirstEnergy would also suggest the inclusion of a provision that would allow the Board, or the Board Staff, to extend the time period for work proposed under a LON or CN --- similar to what is done presently for extending the term of a Certificate issued in response to a complete Application.

6. Proposed OAC 4906-5-08(B) — Public notice of accepted complete certificate applications.

First Energy would propose that the language of proposed change to OAC 4906-5-08(B) be revised to state:

"to be published not more than 14 ~~10~~ days or fewer than 7 days.....

FirstEnergy cannot identify a compelling reason to require newspaper notification of the accepted complete certificate application within a three-day window. And, in contrast, FirstEnergy's proposed change should allow additional flexibility to the publication time period, consistent with the objectives of Executive Order 2008-04S, ¶ 4.f.

7. Proposed OAC 4906-5-08(C)(3) --- Public notice of accepted complete certificate applications.

The Board Staff would propose two language changes to Rule OAC 4906-5-08(C)(3) which, in FirstEnergy's opinion, introduces confusing and ambiguous terms. The first problematic language change is utilization of the term "potential routes" – a term nowhere defined in the rules, and for which there is no commonly accepted definition. FirstEnergy recommends that the phrase "potential route" be changed to preferred and alternate route(s).

The second problematic change is the new language which calls for an Applicant to send notification letters to each "resident within and contiguous to the planned site or potential routes of the proposed facility,...." In contrast, the existing rule provides for the letter to be sent "...to each property owner with the planned site or route of the proposed facility, and to each property owner who may be approached by the applicant for any additional easement necessary for the construction, operation or maintenance of the facility." FirstEnergy respectfully submits that the current rule describes the requirement clearly, and in an unambiguous fashion.

Further problems with the second language change include a new obligation for an Applicant to ascertain the identity of any and all occupants of residential property contiguous to a proposed major utility facility, such as, *e.g.*, each family member residing in a home, a renter, guest or other occupant of property who is not the owner of record. Securing such information would be time-consuming, assuming it could be accomplished at all. Moreover, the term "contiguous" is also of concern because it is open to numerous potential interpretations. For example, the term "contiguous could be read literally as meaning a residential structure which is physically contiguous to a proposed facility? It could also be read as meaning a residence, the property line of which is physically contiguous to an easement for the proposed facility. Additional interpretations could encompass any residence within some undefined, close proximity or distance to a proposed utility facility.

Based on these an other issues, FirstEnergy respectfully recommends that the phrase "...and to each residence within and contiguous to the planned site of potential routes of the proposed facility" be deleted and that, as an alternative, that each letter sent out under Rule OAC 4906-5-08(C)(3) contain the following statement:

> This letter is being sent to the property owner of record. We request that you share the information contained in this letter with any other occupants, renters, guests or other persons utilizing the property.

8. Proposed OAC 4906-5-10(B) --- Amendments of accepted, complete certificate applications and of certificates.

While FirstEnergy is generally in agreement with the substance of the proposed change to this rule, FirstEnergy suggests the following clarifying language:

> (B) Applications for amendments to certificates for facilities not placed in service shall be submitted in the same manner as if they were applications

for a certificate. Amendments for facilities installed under certificates and previously placed in service shall be submitted under the provisions for Applications, Letters of Notification or Construction Notices pursuant to Appendices A and B to OAC 4906-1-01.

9. Proposed OAC 4906-5-11(A) and (I)--- Application Fees and Board Expenses.

The Board Staff proposes new and exceedingly broad language in OAC 4906-5-11(A) allowing it to recover all manner and form of expenses it may incur and which are "associated with monitoring, construction, operation of the facility and compliance with certificate conditions." At a minimum, FirstEnergy requests that the proposed language of OAC 4906-5-11 be amended to state "all reasonable and documented expenses...."

In proposed OAC 4906-5-11(I), the Board Staff proposes a new $2,000.00 fee for filing an expedited request for a LON or CN --- and that this "fee" is to be in addition to any expenses incurred by the Board for processing such an expedited application for a LON or CN. As such, the $2,000 "fee" bears no rational relationship to any cost incurred by the Board in processing such a request. Thus, the proposed new $2,000 "fee" is, in reality, not a fee at all --- but some sort of revenue raising measure not specifically (or generally) authorized by the General Assembly. FirstEnergy recommends the deletion of this proposed provision. Alternatively, FirstEnergy would suggest that this proposed language not be adopted until additional discussion has occurred between Board Staff and other stakeholders in the application process.

10. Proposed OAC 4906-7-09 ---- Evidence.

The Board Staff propose a wholesale repeal of the evidentiary rules set forth in OAC 4906-7-09. No rationale is offered for this wholesale repeal. In contrast, the current rule

provides useful guidelines for the conduct of hearings, particularly for parties who do not regularly practice before the Board. While arguably the existing rules could be improved somewhat, FirstEnergy is aware of no facts of circumstances which compel a wholesale repeal of the rules. And, in contrast, a host of reasons justify retaining the existing rules. For example, if the existing rules are repealed, the utility industry and other practitioners would be justified in asking what "replacement" evidentiary rules, if any, would apply in Board proceedings. Moreover, the OPSB Staff and the affected industry participants are familiar with the existing rules, and thus understand and operate subject to the settled expectations regarding evidentiary rules in Board proceedings. In contrast, unnecessary repeal of the existing rules (and potential replacement with unspecified new rules) would impose a "shakeout" period for the affected practitioners to acclimate to the new rules. Then there is the fact that existing OPSB precedents cite to and interpret the existing rules. But repeal (and potential replacement) of these rules would require the OPSB and its administrative law judges to devote significant time to developing new evidentiary interpretations for the new rules. For these and other reasons, First Energy recommends that OAC 4906-7-09 be retained in its present form.

11. REQUESTED CHANGE --- OAC 4906-7-10 --- Prehearing Conferences

FirstEnergy proposes that the rule governing prehearing conferences be amended to provide for an "issues conference" in each proceeding where some aspect of an application for a major utility facility is contested by an intervener. The purpose of this issues conference would be to narrow and simplify the factual and legal issues which are in dispute among the parties, to clarify the party status of any person petitioning for intervention under OAC 4906-7-04, and to resolve any other pending motions which have previously not been ruled upon. Issues

conferences of this type are used by other states, and would seem to be a constructive process for simplifying the hearing process. *See, e.g.,.* 6 NY ADC 624.4. FirstEnergy therefore respectfully proposes the following amendment to OAC 4906-7-10:

(B) In any case where one or more persons have petitioned to intervene into a proceeding pursuant of OAC 4906-7-04, at least ____ days prior to the scheduled adjudicatory hearing, the Administrative Law Judge shall schedule an issues conference (if one was not scheduled in the hearing notice). The issue conference shall be convened for the following purposes:

a. to hear argument and determine whether any petitioner for intervention should be accorded party status, and if so, whether such party status should be granted under any conditions or limitations.

b. to narrow or resolve disputed issues of fact through stipulations or otherwise, without resort to taking testimony.

c. to determine whether there are any legal issues whose resolution is not dependent upon facts which are in substantial dispute and, if so, to hear argument or direct the submission of briefs on such issues or resolution; and

d. to decide any pending motions.

The Administrative Law Judge shall preside over the issues conference. The participants shall be (i) Board Staff; (ii) the Applicant; and (iii) any person who has filed a petition to intervene, or has been granted intervener status. Upon completion of the issues conference, but no later than ____ days after the conference, the Administrative Law Judge shall issue an entry which contains the Administrative Law Judge's ruling or other disposition of each matter discussed at the issues conference.

The current subsections (B) and (C) of OAC 4906-7-10 would be re-numbered as subsections (C) and (D) respectively.

12. Proposed OAC 4906-7-17(D) – Decision by the board.

The Board Staff propose to change the language of OAC 4906-7-17(D) to allow "any affected person, firm, or corporation" to file an application for rehearing of a Board order. To

the extent that this proposed change would allow a non-party to request rehearing of a Board Order, the proposed change renders the status of a party to a Board proceeding meaningless, and opens Board Orders to collateral attack from any person, firm or corporation who, in some indeterminate manner, claims to be "affected" by a Board Order. This proposed rule change, aside from its procedural due process infirmities, introduces a whole new level of unpredictability and uncertainty to Board proceedings. The proposed language is also inconsistent with Section 4903.10 of the Revised Code. FirstEnergy therefore respectfully recommends that the phrase "...or any affected person, firm or corporation..." be deleted from the proposed language changes in this rule, and the rule redrafted to conform to the requirements of Section 4903.10 of the Revised Code.

13. Proposed OAC 4906-7-19 --- General Provisions.

The Board Staff would propose to insert a new provision allowing the Board, apparently for any reason, or for good cause shown, to waive any requirement, standard, or rule set forth in this Chapter, or prescribe different practices or procedures to be followed in a case. This broad language conveys the suggestion that there are no fixed rules of procedure before the Board. In fact, the proposed language would even suggest that any substantive requirement of the Board's rules may be waived --- and may be waived without prior notice to the parties. For these and other reasons, FirstEnergy respectfully recommends that, if this new provision is to be retained, the following language should be inserted in proposed OAC 4906-7-19(B):

> The Board may, upon its own motion or for good cause shown, and after reasonable prior notice to all parties to a proceeding and an opportunity to comment, waive any procedural requirement, standard, or rule set forth in this Chapter, or prescribe different practices or procedures to be followed in a case.

14. Proposed OAC 4906-11-01(B)(7) and 4906-11-02(B)(8) --- Instructions for the Preparation of Electric, Gas and Natural Gas Letters of Notification and Construction Notices.

Board Staff propose to add an additional requirement that an Applicant for a LON or CN "...obtain all properties, easements, options and/or land use agreements necessary to construct and operate the facility" before applying for a LON or CN. As detailed in the following paragraphs, FirstEnergy respectfully submits that this new change could lead to unexpected or unintended outcomes.

First, the proposed change requires the company to incur the expense of acquiring property rights for a project prior to its acceptance by the Board. This process, in essence, either assumes Board acceptance of the project or, worse, requires the company to incur stranded costs for a project the Board does not accept. The issue of stranded costs is particularly important as FirstEnergy and the rest of the utility industry prepare for what most industry experts acknowledge is the need for significant new investment in transmission and distribution infrastructure. Simply put, this new language exposes FirstEnergy and other transmission utilities to the potential for utility regulators to disallow recovery of costs that were expended to acquire lands for a facility but where, for any number of reasons, that facility either is not constructed or is constructed on a modified or even entirely different route. Moreover, this language would permit a disgruntled landowner to delay or even halt a utility project by refusing to grant an easement or other property right to the utility.

Second, this proposed change also would require that agreements for highway crossings, railroad crossings and similar access rights be obtained prior to submitting the LON or CN. It is FirstEnergy's experience that these access rights can often be obtained, but only after lengthy

negotiations or other procedures, and potentially after the utility demonstrates that it has all other required authorizations (including the LON or CN) in hand. Thus, FirstEnergy's current practice is to pursue the necessary agreements in parallel with the filing or after a LON or CN has been approved. Unfortunately, the proposed rule change would require that these activities be completed sequentially and would likely extend a project duration by several months.

Third, when the project is intended to serve an end-use customer, the proposed rule change would require that the land easements or other access agreements with the customer be in place before a LON or CN is completed. This serves no practical purpose, since these agreements can be negotiated at any time with the end-user.

Fourth, property rights for some projects initiated by third parties may be acquired by those third parties, and not by First Energy. This new requirement may be impossible to fulfill, or may significantly impact a third party's development plans or approach to a project. For example, for a recent project filed under a CN involving the relocation of a transmission line at the request of the Ohio Department of Transportation, FirstEnergy was unable to negotiate for the necessary property rights, and in order to pursue the relocation project, the Ohio Department of Transportation obtained the necessary property rights. The Board's proposed rule, therefore, would impose an obligation upon third parties, including other state agencies, which might interfere with the timing of that third party project.

As the preceding discussion illustrates, changing Rules OAC 4906-11-01(B)(7) and 4906-11-02(B)(8) as proposed could lead to delay and other unintended consequences. Moreover, to date there is no compelling argument for why these changes are necessary or why these changes would lead to reduced burdens or costs for utilities --- or even regulatory flexibility and balance --- as directed by Governor Strickland in Executive Order 2008-04S.

The proposed requirement insures significant delay in seeking and obtaining permission to move forward with many projects, and increases the regulatory burden to applicants who wish to file LONs and CNs. No public purpose is served by such a requirement. For these and other reasons, FirstEnergy respectfully recommends that these proposed changes be deleted or dropped.

15. Proposed 4906-13-01(C) --- Project Summary and General Instructions.

The changes to this Rule would require that, where an Applicant utilizes any computerized geographic information system capabilities, the Applicant must submit to Board Staff all hard copy information submitted "...on CDs in shapefile format concurrent with submission of the Application." FirstEnergy respectfully suggests that this change could lead to unintended and potentially burdensome outcomes, and therefore should be dropped.

First, this proposal potentially requires the submittal of confidential, licensed or other sensitive date that is not intended to be available in the public domain. For example, this proposal could require the submittal of known archaeological sites obtained from the Ohio State Historic Preservation Office. This data would be available on an unrestricted basis to interveners, and also the general public through a public records request made pursuant to Chapter 149 of the Revised Code.

Second, this proposal would effectively allow information submitted in the application to be intentionally or unintentionally manipulated by persons who are not familiar with the nature, accuracy and limitations of the data or data modeling which an Applicant utilized in preparing in application. Moreover, because the data would also be available to interveners or the general public through a public records request , the affected Applicant and its consultants would face

serious intellectual property and other electronic information issues which may not have been fully examined or discussed. For example, while an Applicant and OPSB Staff may hold licenses to use certain data sets or software models, release of this information to an intervener or a member of the general public could (and probably would) result in a violation of the terms of the license agreement.

Third, the proposal creates a potential conflict between the data submitted in a proceeding, and potential alterations to that data. Simply put, unscrupulous interveners or others who oppose a given project would, after having acquired the data, have free reign to alter the data, and thereby confuse the record and delay the proceeding. Additional potential for confusion is possible in that this change to the rule could raise questions as to which data constitutes the official submission and data for the proposed project --- e.g. the paper maps submitted in response to various rule requirements or the electronic database.

For these and other reasons, FirstEnergy respectfully proposes that the proposed new language be struck from Rule OAC 4906-13-01(C), at least until all stakeholders have an opportunity to examine fully the implications of such a significant regulatory change.

16. **Proposed OAC 4906-13-01(D) --- Project Summary and General Instructions.**

The following new language is proposed for this rule:

> Further, the Applicant shall provide in its application *all* relevant *technological, financial, environmental, social and ecological* information that is known to be of *potential concern* for the particular type of facility proposed.
>
> (Emphasis added)

There are many problems with this language. First, the language adds no clarity, transparency or predictability to the regulatory process, and gives an Applicant no guidance as to what specific

information is required for an application. It appears to be some sort of "catch all" language --- the meaning of which is unknown and subject to conflicting interpretations. For example, an Applicant and other parties could have different interpretations of what sorts of information are required to address "information that is known to be of potential concern" for a particular type of project. An Applicant could ask: what types of information --- other than the information already required by the Board's rules, is intended? What additional issues or information are of concern to whom? If the Applicant thinks it is of no concern, but OPSB Staff or another party does, must the information be filed? This kind of language not only holds the potential for significant problems, but also is contrary to the directive in Executive Order 2008-04S, Paragraph 4.c., which provides that:

> All proposed rules should be drafted so that they promote transparency and predictability regarding regulatory activity, consistency of business regulation within the State, appropriate flexibility, and a reasonable balance between the underlying regulatory objectives and burdens imposed by the regulatory activity.

This language also is inconsistent with Paragraph 5.d. of the Executive Order, which directs that:

> Agencies should require submission of *the minimum amount of information* necessary to administer their rules.
>
> (emphasis added).

FirstEnergy strongly urges that this proposed language be deleted.

17. Proposed OAC 4906-15-01(C) --- Instructions For the Preparation of Certificate Applications For Electric Power, Gas and Natural Gas Transmission Facilities.

For the reasons described in FirstEnergy's comments regarding proposed OAC 4906-13-01(C), FirstEnergy respectfully suggests that this change could lead to unintended and potentially burdensome outcomes, and therefore should be dropped.

18. Proposed OAC 4906-15-04(A) – Technical Data

The proposed rule change to OAC 4906-15-04(A) would require that, if an Applicant submits topographic, geologic, hydrologic or other data regarding the location and major features of a site/route alternative which is derived from reference materials, the information shall be derived from the "best available and most current reference materials." This new qualifying language creates a potential conflict, since the most current reference materials may not have the best available information. It is unclear what other significance is to be accorded to this proposed language change. FirstEnergy respectfully suggests that this proposed language by deleted.

19. Proposed OAC 4906-15-04(D) --- Technical Data

The title of this subsection is inaccurate, because environmental data is already required in other sections of the Board's rules. Moreover, the rule seems to be written in a confusing manner. For example proposed OAC 4906-15-04(D)(5) now requires an applicant to submit the following: "For construction activities within the vicinity of airports or landing strips, provide the maximum possible height of construction equipment as well as installed above ground structures". Why is the maximum height of structures or construction equipment relevant to the

Board's review of an application? Federal Aviation Administration rule and associated permitting requirements would apply to the structures as well as to the construction equipment that will be only temporarily at a site, in the unlikely event it is tall enough to be an aviation clearance issue (the only issue which FirstEnergy can foresee with such equipment). We suggest that this proposed rule be redrafted, or deleted.

Regarding proposed rule OAC 4906-15-04(D)(6), FirstEnergy respectfully submits that the following amendment would simplify and clarify the intended change:

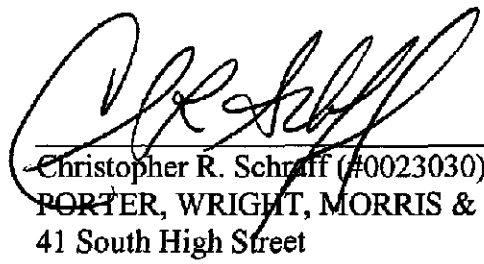
> A description of the plans for ~~construction during excessively dusty or excessively muddy conditions~~. dust control and control of mud deposition on roads or sensitive areas.[1]

20. Proposed OAC 15-06(C)(1) --- Socioeconomic and land use analysis.

In the proposed language change to subsection (C)(1), FirstEnergy proposes to insert the work "approximate" before "number of residential structures" in this subsection.

[1] It should be noted that this type of information must already be developed as part of a Storm water Pollution Prevention Plan (SWPP) to comply with Ohio EPA's Storm water Discharge requirements. This language simply duplicates that requirement.

Respectfully submitted,



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Certificate of Service

I hereby certify that a copy of the foregoing "Comments of FirstEnergy Service Company Regarding the Proposed Rule Changes" was served by causing a copy to mailed, by U.S. Mail, first class, postage prepaid, on June 24, 2008, addressed to the following:

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