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BEFORE
THE OHIO POWER SITING BOARD

2008 JUL 15 PM 3:56

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)
)

PUCO

Case No. 08-581-GE-ORD

**Reply Comments of FirstEnergy Service Company Regarding Proposed Changes to Rules
OAC 4906-1-01 et seq.**

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 comments submitted by other interested parties regarding 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.

FirstEnergy first would note that there is a considerable degree of consistency between the comments received on the proposed rules from FirstEnergy, Duke, Columbia Gas, Columbus Southern Power Company and Ohio Power Company. FirstEnergy will confine its reply comments to those comments from other parties which were not specifically covered by FirstEnergy's comments.

A. Comments by Columbia Gas

1. **Proposed OAC 4906-5-02(A)(4) and (B)(4).** Columbia Gas proposed to change the phrase "continuous course of construction" to "construction." FirstEnergy disagrees with

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this comment, and would ask that this change not be made. Section 4906.01(C) of the Ohio Revised Code provides:

“Commence to construct” means any clearing of land, excavation or other action that would adversely affect the environment of the site or route of a major utility facility, but does not include surveying changes needed for temporary use of sites or routes for nonutility purposes, or uses in securing geological data, including necessary borings to ascertain foundation conditions.

FirstEnergy is concerned that changing the phrase from “continuous course of construction” to only “construction” could be interpreted to mean that the physical act of commencing to construct the facility must be occurring, rather than some other activities necessary to construction, such as clearing of land. This type of interpretation of the term “construction” also would exclude activities necessary to construct the facility that are being actively pursued or which are delayed due to delays in receiving necessary equipment or materials, or where third party actions (such as delays in obtaining necessary easements or property interests), might delay commencement of construction, or might interrupt construction.

B. Comments by Duke Energy Ohio

1. **Proposed OAC 4906-5-08(C)(3).** Duke Energy Ohio (“Duke”) expressed concerns similar to those of FirstEnergy with respect to the proposed use of the term “contiguous.” FirstEnergy would support Duke’s suggestion that the term “contiguous” be deleted from this proposed rule change. Duke Energy also proposed, as a clarification that the phrase “each residence within and contiguous to...” be changed to “each residence within or contiguous to...” First Energy would also support this clarification, although it would prefer that the concept of which properties require notification pursuant to this rule be further clarified.

2. **Proposed OAC 4906-5-11(I).** FirstEnergy is opposed to the concept of adding an additional \$2,000 “expediting charge,” which is not rationally related to any costs which the Board would incur for processing an expedited letter of notification. If, however, the Board adopts such a provision, FirstEnergy would support Duke’s suggestion that the \$2,000 expediting fee be paid together with, and at the same time as, any other fees due for processing the letter of notification.

3. **Proposed OAC 15-02(A).** FirstEnergy is generally in agreement with Duke’s suggestion for a more simple and concise wording of this rule to provide data supporting the need for a electric transmission project. FirstEnergy in particular supports Duke’s suggestion of the deletion of OAC 4906-15-02(A)(4) as the proposed language could be interpreted to mean that projects are only needed where “...the transmission system fails to meet the mandatory reliability standards for the bulk electric power system....” This type of rigid interpretation could be inappropriately referenced as a reason to exclude the OPSB’s review of projects that are needed to expand the bulk transmission system to serve new or increased loads that have no direct relationship to the mandatory reliability standards for the bulk electric power system.

4. **Proposed OAC 15-06(B)(1).** FirstEnergy supports Duke’s proposal that the word “approximate” be added before centerline in this rule.

C. Comments from Columbus Southern Power Company and Ohio Power Company (“AEP Ohio”)

1. **OAC 4906-1-11.** AEP proposes a general reduction in the number of copies of the certificate application to be filed with the Board, and further suggests supplementing this reduction with a requirement for filing an electronic copy of the application (e.g. in .pdf format). FirstEnergy would support this proposal.

2. **Proposed OAC 4906-5-02.** FirstEnergy supports AEP Ohio's proposal to add a time limit on the length of time that a letter of notification can be suspended by unilateral action of the Board's Executive Director. Currently, the Board's Executive Director does not have this power of suspension, and if the Board desires to expand the rule to give the Executive Director such a power, then AEP OHIO's suggestion to limit such a suspension to 90 days for letters of notification (and 60 days for construction notices) is appropriate to insure due process. The language proposed by AEP, however, requires some clarification, since it references a 60-day suspension period for letters of notification, rather than the 90-day period referenced in its comments. Also, First Energy would suggest, in addition to AEP Ohio's proposed change, that the following proposed sentence be deleted: "THE BOARD, ITS EXECUTIVE DIRECTOR, OR THE ADMINISTRATIVE LAW JUDGE MAY SPECIFY THE TIME FOR WHICH THE APPLICATION IS SUSPENDED." This language would be superfluous, and potentially contradictory to the idea for a fixed period of suspension, as proposed by AEP. Alternatively, the language of this sentence could be amended by adding the following phrase after the word "SUSPENDED": "...IF A LETTER OF NOTIFICATION IS SUSPENDED FOR A PERIOD OF LESS THAN NINETY DAYS."

3. **Proposed OAC 4906-5-08(A)(3).** AEP Ohio proposes the addition of the word "anticipated" before "waivers" in proposed OAC 4906-5-08(A)(3). FirstEnergy supports this suggestion.

4. **Proposed OAC 4906-5-08(C)(3).** AEP has suggested changes to clarify the term contiguous, including a helpful hypothetical with diagram on page 8 of its comments. FirstEnergy agrees that the term "contiguous" must be clarified or omitted from the rules. FirstEnergy also agrees that, if a property is located at some distance from the proposed facility

due to the size of the parcel on which the facility is located, it is unnecessary to require the additional step of giving letter notification to that property owner. FirstEnergy is uncertain whether the 500 foot limitation, as suggested by AEP, is the appropriate distance for defining when a property is contiguous to a major utility facility, but would agree that some distance limitation be placed on what constitutes a “contiguous” property.

5. **Proposed OAC 4906-11-02.** FirstEnergy would support the suggestion that expedited applications for construction notices be served expeditiously, but would suggest that the expedited application be served either by hand delivery “...or overnight courier service.”

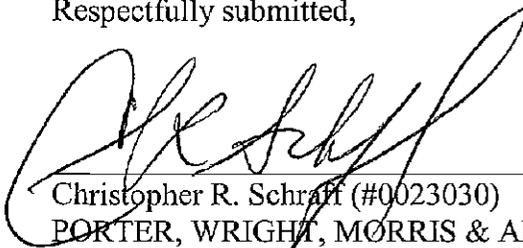
6. **Proposed OAC 4906-13-01.** FirstEnergy would generally support the comments and suggestions made by AEP Ohio on this proposed rule. Adoption of AEP’s suggested language would assist in addressing the concerns raised in FirstEnergy’s comments regarding provision of data in certain data formats, and without any confidentiality protection.

7. **Proposed OAC 4906-15-02.** FirstEnergy would support the change advocated by AEP Ohio to this rule, for the reasons expressed in AEP Ohio’s comments.

8. **Proposed OAC 4906-15-04(D).** While FirstEnergy would suggest that this section be redrafted or deleted, at a minimum, it would be helpful to add the words “A GENERAL DESCRIPTION, QUANTIFICATION AND CHARACTERIZATION ...” to the beginning of this subdivision.

9. **Proposed Rule OAC 15-07(B)(4).** AEP Ohio suggests deletion of information requirements for soil associations in the corridor. FirstEnergy would suggest, in the alternative, limiting this information requirement to “published information regarding soil associations in the Corridor. Alternatively, this requirement could be limited to areas outside urban and suburban areas, such as “unincorporated areas.”

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'C. Schraff', written over a horizontal line.

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Certificate of Service

I hereby certify that a copy of the foregoing "Reply Comments of FirstEnergy Service Company Regarding Proposed Rule Changes to OAC 4906-1-01 et seq." was served by causing a copy to be mailed, by U.S. Mail, first class, postage prepaid, on July 15, 2008, addressed to the following:

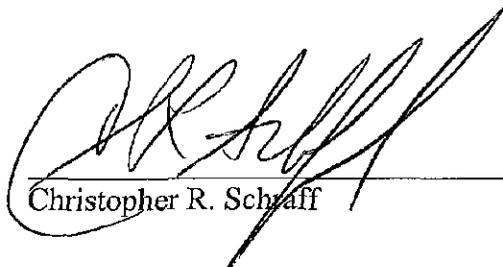
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