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BEFORE THE OHIO POWER SITING BOARD

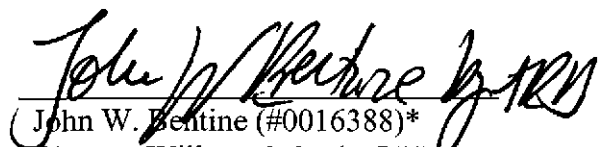
In the Matter of City of Hamilton :  
and American Municipal Power, Inc. :  
for a Certificate of Environmental :  
Compatibility and Public Need for a : Case No. 10-2440-EL-BTX  
138 kV Transmission Line : Case No. 10-2439-EL-BSB  
and Substation Project in :  
Franklin and Washington Townships, :  
Clermont County, Ohio :

MOTION FOR WAIVER

Pursuant to O.A.C. 4906-1-03 and O.A.C. 4906-5-04(B), the City of Hamilton ("Hamilton") and American Municipal Power, Inc. ("AMP") (collectively "Applicants") move the Ohio Power Siting Board for a waiver of certain requirements of O.A.C. 4906-15. Specifically, while Applicants have provided fully developed information for its preferred and alternate transmission route and substation as well as its secondary preferred substation location, Applicants request a waiver of certain limited O.A.C. 4906-15-06 and 4906-15-07 requirements for the secondary alternate substation location. For the reasons set forth in the attached Memorandum in Support, good cause exists to grant the requested waiver.

Respectfully submitted on behalf of the Applicants,

  
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\* Per electronic authorization

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## **MEMORANDUM IN SUPPORT**

### **I. BACKGROUND**

The Applicants are developing a new hydroelectric power generating facility on the Ohio River at the existing Meldahl Locks and Dam (“Meldahl Project”) near Augusta, Kentucky. As currently licensed, the Project will have a nameplate capacity of approximately 105 MW. The Federal Energy Regulatory Commission issued a license for the development, construction and operation of the Meldahl Project in 2008 (FERC Project No. 12667). The project license is now held jointly by the Applicants, and the project is currently under construction near Augusta, Kentucky.

Applicants have submitted an application to construct a 138 kV electric transmission line from the Meldahl Project, across the Ohio River just upstream of the existing Meldahl Locks and Dam at Ohio River Mile 436.2, to an existing 345 kV Zimmer-Spurlock transmission line in Clermont County, Ohio, approximately two miles inland from the Ohio-side landing of the river crossing. Applicants also submitted an application to construct an accompanying substation to interconnect the new 138 kV transmission line with the existing 345 kV Zimmer-Spurlock transmission line (collectively “OPSB Applications”).

Upon consultation with OPSB staff, Applicants have submitted an Addendum to the Substation Application contemporaneous with this Motion for Waiver. The Addendum includes new potential secondary substation locations for both the preferred substation site and the alternate substation site. *See*, Attachment A (Application Addendum).

## **II. REQUEST FOR WAIVER**

The Applicants engaged EA Engineering, Science and Technology, Inc. (“EA”) to perform the studies and analyses required by O.A.C. Chapter 4906-15. Applicants seek two specific waivers with respect to the alternate substation site secondary location, as set forth below. O.A.C. 4906-1-03 and 4906-5-04(B) allow the Board or the Administrative Law Judge to waive the requirement of fully developed information for good cause shown. As explained, there is good cause to support Applicants’ waiver request.

### **A. O.A.C. 4906-15-06(F) Waiver for the Secondary Alternate Substation Location**

O.A.C. 4906-15-06(F) requires Applicants to perform cultural resource studies for both the preferred and alternative routes and substations. The Applicants retained Ohio Valley Archaeology, Inc. (“OVAI”) to perform these studies, and OVAI performed field investigations and Phase I testing on the routes and substations in October 2010. The Applicants met with Dr. Dave Snyder, Ohio Historic Preservation Office (“SHPO”), prior to any field work to finalize the study approach with SHPO’s concurrence.

On November 10, 2010, Dr. Snyder sent an electronic correspondence to EA expressing SHPO’s opinion that OVAI should not conduct any additional archaeological testing on the alternative route. *See*, Attachment B (Boltz Affidavit and Snyder E-Mail). Dr. Snyder noted that he was concerned that additional ground disturbance could result in the unnecessary destruction of archaeological materials. *Id.* In that regard, Dr. Snyder stated: “If there is a viable route, I would prefer not to conduct archaeological investigations that could destroy portions of sites only to show that the shorter, viable route is in fact viable.” *Id.* In concert with Dr. Snyder’s determination, Applicants seek to avoid any unnecessary ground disturbance.

Applicants respectfully request a limited waiver of O.A.C. 4906-15-06(F) for the secondary alternate substation location for any additional ground disturbance or shovel testing unless or until the proposed alternate substation location is eliminated as a viable option. All studies and conclusions developed to date by OVAI have been submitted to support the OPSB Applications.

**B. O.A.C. 4906-15-07 Partial Waiver for the Secondary Alternate Substation Location**

O.A.C. 4906-15-07 requires Applicants to perform ecological impact analyses associated with threatened and endangered species, including the Indiana Bat. In August 2010, Jackson Environmental, on behalf of the Applicants, performed a Bat Species inventory (including a mist net survey) after obtaining approval from the U.S. Fish and Wildlife Service and the Ohio DNR, Division of Wildlife.

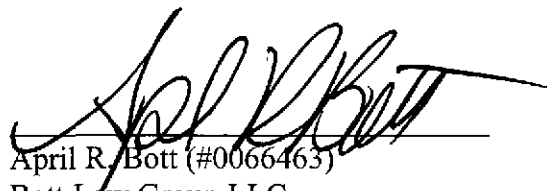
On November 10, 2010, after review of Jackson's report, the U.S. Fish and Wildlife Service confirmed that "no Indiana Bats were captured during the survey. Therefore, no further action regarding the Indiana Bat is required for this proposed project." See, Attachment C. Based on the Jackson study and concurrence from U.S. Fish and Wildlife, Applicants request a waiver for additional bat surveys associated with the secondary alternate substation location.

**III. CONCLUSION**

Performing additional ground disturbing cultural investigations and bat studies will add time, expense, and burden for the Applicants as well as property owners near the secondary alternate substation location. Given the close proximity of the secondary location to the currently proposed location at the alternate site, it is highly unlikely that any data collected from environmental and ecological studies conducted on the secondary location would differ substantially from the data collected on the currently proposed location. As such, pursuant to

O.A.C. 4906-1-03 and 4906-5-04(B), good cause exists for a waiver to be granted for certain specific requirements of O.A.C. 4906-15-06 and O.A.C. 4906-15-07.

Respectfully submitted on behalf of the Applicants,

A handwritten signature in black ink, appearing to read 'April R. Bott', is written over a horizontal line.

April R. Bott (#0066463)  
Bott Law Group LLC  
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E-mail: [jbentine@cwslaw.com](mailto:jbentine@cwslaw.com)

\* Per electronic authorization

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing pleading was served upon the following persons via hand delivery on September 26, 2011:

Ohio Attorney General  
Public Utilities Section  
180 E. Broad Street  
Columbus, Ohio 43215  
Attention: Steven Beeler

With a courtesy copy to:

Ohio Power Siting Board  
180 E. Broad Street  
Columbus, Ohio 43215  
Attention: Jon Pawley

Ohio Power Siting Board  
180 E. Broad Street  
Columbus, Ohio 43215  
Attention: Klaus Lambeck

I hereby certify that a copy of the foregoing pleading was served upon the following persons via regular U.S. Mail on September 26, 2011:

Thomas J. Ruwe  
Attorney for Lee R. Eubanks  
211 Columbia Wooster Bldg.  
5710 Wooster Road  
Cincinnati, Ohio 45227

  
*Counsel for Applicants*

**BEFORE THE OHIO POWER SITING BOARD**

<b>In the Matter of City of Hamilton</b>	:	
<b>and American Municipal Power, Inc.</b>	:	
<b>for a Certificate of Environmental</b>	:	
<b>Compatibility and Public Need for a</b>	:	<b>Case No. 10-2440-EL-BTX</b>
<b>138 kV Transmission Line</b>	:	<b>Case No. 10-2439-EL-BSB</b>
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<b>Franklin and Washington Townships,</b>	:	
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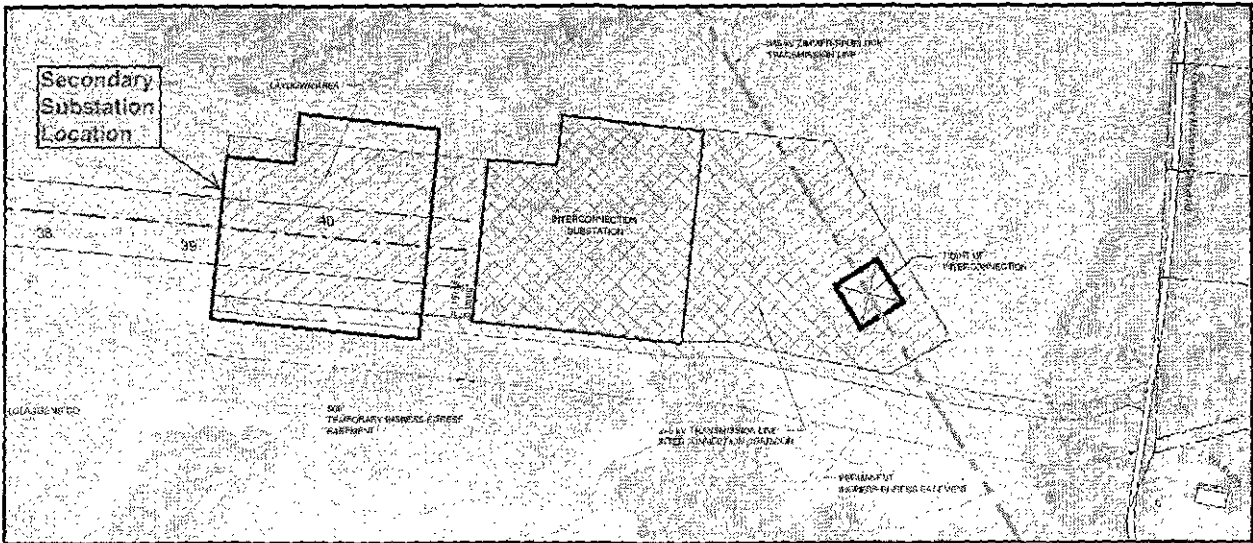
**ADDENDUM TO SUBSTATION APPLICATION**

This Addendum to the pending Substation Application for OPSB Case No. 10-2439-EL-BSB includes additional information for secondary substation locations at both the preferred and alternate substation sites and includes, as incorporated fully by reference, all of the information provided and studies conducted as part of the Transmission Line and Substation Applications filed with OPSB on May 4, 2011.

**Preferred Substation Site-Secondary Location**

Figure 1, below, shows the location of the current proposed preferred substation location along with the proposed secondary substation location. The secondary location is located in the laydown area for the current preferred location. Because the laydown area was already subject to extensive study as part of the submission of the Transmission Line and/or Substation Applications, all of the information and studies detailed in the Transmission Line and/or Substation Applications are applicable to the secondary location and satisfy the application requirements found in Ohio law.

**Figure 1 – Proposed Location of Secondary Substation for the Preferred Route**

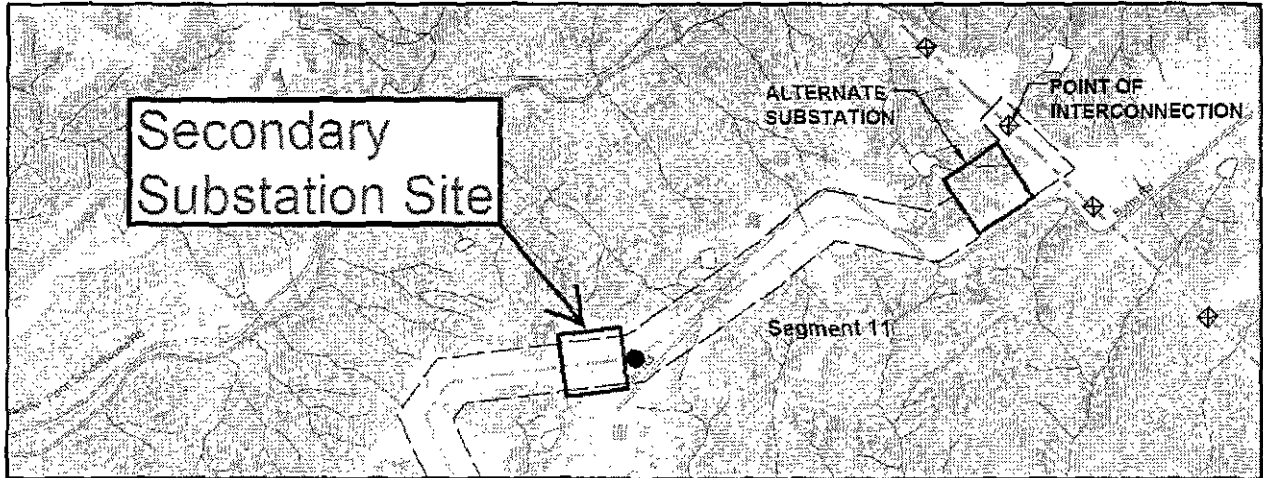


**Alternate Substation Site-Secondary Location**

Figure 2, below, shows the location of the current proposed alternate substation location along with the proposed secondary location. The secondary location avoids additional impacts to streams in the area and was largely studied as a part of the Transmission Line and/or Substation Applications. Specifically, the Stream Assessment (QHEI/HHEI); Wetland; Rare, Threatened, and Endangered Plants; and Phase I Cultural Resource Desktop Survey included in the Transmission Line and/or Substation Applications all include study of the secondary location. The Substation Application did not include coverage of the secondary location for the Indiana Bat studies that were conducted or for cultural resource field studies. Applicants are submitting a Motion for Waiver contemporaneous with this Addendum for very limited study waivers.



**Figure 2 – Proposed Location of Secondary Substation for the Alternate Route**



Respectfully submitted on behalf of the Applicants,

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<b>and American Municipal Power, Inc.</b>	:	
<b>for a Certificate of Environmental</b>	:	
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<b>and Substation Project in</b>	:	
<b>Franklin and Washington Townships,</b>	:	
<b>Clermont County, Ohio</b>	:	

**AFFIDAVIT OF JEFFREY M. BOLTZ, PH.D., IN SUPPORT OF  
MOTION FOR WAIVER**

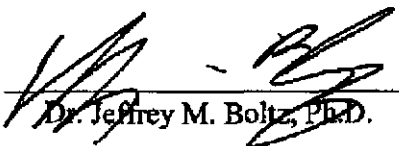
STATE OF MARYLAND :  
 : SS  
COUNTY OF BALTIMORE:

**1. Jeffrey M. Boltz, Ph.D., being first duly sworn under oath, depose and state as follows:**

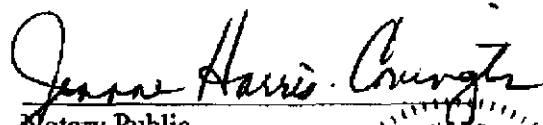
1. I am a Vice President at EA Engineering, Science and Technology, Inc. ("EA").
2. I am competent to attest to the matters set forth herein based upon my personal knowledge.
3. EA has been engaged by the City of Hamilton and American Municipal Power, Inc. (collectively "Applicants") to perform and/or oversee the performance of certain studies and analysis required by Ohio law to support applications to the Ohio Power Siting Board for approval to construct a transmission line, Case No. 10-2440-EL-BTX, and a substation, Case No. 10-2439-EL-BSB, associated with the Applicants' Meldahl Hydroelectric Project.
4. As part of the O.A.C. 4906-15-06 requirement to perform cultural resource studies for both a preferred and alternative route, EA retained OVAI as a subcontractor to perform certain field investigations and Phase I testing on the preferred and alternative transmission routes and substations in October 2010.

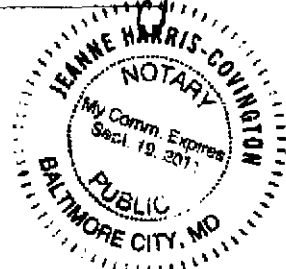
5. On November 10, 2010, Dave Snyder of the Ohio Historic Preservation Office ("SHPO") sent an electronic correspondence, attached, to EA expressing SHPO's opinion that OVAI should not conduct any additional archaeological testing on the alternative transmission route and substation.
6. Mr. Snyder's correspondence noted that he was concerned that additional ground disturbance could result in the unnecessary destruction of archaeological materials, and that he agreed that preferred Route 7 and the associated SS-4 substation site are superior from a historic preservation perspective. Mr. Snyder stated: "If there is a viable route, I would prefer not to conduct archaeological investigations that could destroy portions of sites only to show that the shorter, viable route is in fact viable."
7. In my professional opinion, based on the field study results that I have worked on or reviewed, the work performed by EA and OVAI support the conclusion that preferred Route 7 and SS-4 are both viable and superior to alternative Route 3 and associated SS-2.

FURTHER AFFIANT SAYETH NAUGHT.

By:   
Dr. Jeffrey M. Boltz, Ph.D.

Sworn to before me and subscribed in my presence this 12<sup>th</sup> day of January 2011.

  
Notary Public



**From:** Dave Snyder [mailto:dsnyder@ohiohistory.org]  
**Sent:** Wednesday, November 10, 2010 2:29 PM  
**To:** Boltz, Jeff  
**Subject:** RE: Meldahl Transmission Line

Hello Jeff.

As you correctly note, I am not in favor of conducting additional Phase I archaeological testing for the alternate route provided that the survey along the preferred route doesn't result in the identification of a significant resource. The alternate route extends along the floodplain before extending up to the connection with the aerial transmission line while the preferred route, which is shorter, cuts across the floodplain and then climbs up to the interconnect. You have succinctly captured the argument for limiting the extent of archaeological survey. Provided that the cultural resources investigation and other environmental investigations along the preferred route show a viable route, then I would like to avoid archaeological investigations that involve ground disturbance. Shovel testing and deep testing are necessary at times to identify archaeological sites, but these survey techniques also result in the destruction of a portion of the archaeological site. If there is a viable route, I would prefer not to conduct archaeological investigations that could destroy portions of sites only to show that the shorter, viable route is in fact viable. In addition, in my opinion, there is a greater likelihood of identifying archaeological sites along the alternate route as compared to the preferred route. If the surveys and data collection along the preferred route show that the route is viable, then it isn't in the best interests of preservation to conduct investigations along the alternate route. The data collection along the preferred route identifies an important archaeological site or other significant resources, then it may become important to extend the survey along the alternate route to enable the selection of the route that will result in the least impacts.

David Snyder, Ph.D., RPA, Archaeology Reviews Manager  
Ohio Historic Preservation Office  
1982 Velma Avenue  
Columbus, OH 43211-2497  
Phone: (614) 298-2000  
FAX: (614) 298-2037  
Email: [dsnyder@ohiohistory.org](mailto:dsnyder@ohiohistory.org)

November 10, 2010

-----Original Message-----

**From:** Boltz, Jeff [mailto:jboltz@eaest.com]  
**Sent:** Wednesday, November 10, 2010 12:07 PM  
**To:** Dave Snyder  
**Subject:** Meldahl Transmission Line

David

I wanted to follow up to our meeting last week regarding moving the transmission line for the Meldahl Hydroelectric Project from Kentucky to Ohio. In that meeting we discussed a path forward for the Phase 1 study on the preferred transmission route and agreed to conduct shovel testing as well as putting 2 trenches on the floodplain where the main river crossing tower and deadend structure would be located. We then discussed if we would need to do more testing on the floodplain for the alternative route that travels downstream along the floodplain for a distance prior to turning to connect into 345 kv line. My records indicate that you were not in favor of additional Phase 1 testing on the alternative route (floodplain or upland) because there was enough existing information from a cultural perspective to believe, based on current data, that the preferred route was indeed better from a cultural resource perspective. We want to approach the OPSB for a waiver on the alternative route that would include

no additional cultural resources investigation on the alternative route. I believe you were in favor of that approach but I just want to confirm that prior to contacting the OPSB to discuss the potential for no further cultural work on the alternate route.

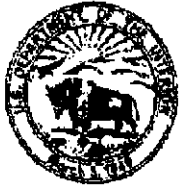
Can you please confirm the above discussion or provide clarification

Thanks for your time and let me know if you need more information from me.

Jeff

Jeffrey M. Boltz, Ph.D.  
Vice President  
EA Engineering, Science, and Technology, Inc.  
15 Loveton Circle  
Sparks, Maryland 21152  
Phone: 410-329-5179  
Fax: 410-771-4204  
Cell: 410-804-9230

Attachment C



United States Department of the Interior  
FISH AND WILDLIFE SERVICE

Ecological Services  
4625 Morse Road, Suite 104  
Columbus, Ohio 43230  
(614) 416-8993 / FAX (614) 416-8994

November 10, 2010

Daniel Cox  
Jackson Environmental Consulting Services, LLC  
1586 Boonesborough Road  
Richmond, KY 40475

Dear Mr. Cox:

TAILS #: 31420-2011-TA-0092

This is in response to your October 29, 2010 submission and request for comments on the report: *Bat Species Inventory of the Meldhal Hydroelectric Project, Clermont County, Ohio*. The project site is located approximately 1.3 miles west of Chilo, Ohio.

We understand that Jackson Environmental Consulting Services, LLC performed a mist net survey of the project area on August 10-11, 2010. The survey protocol and level of effort was pre-approved by this office on August 10, 2010. No Indiana bats (*Myotis sodalis*) were captured during the survey. Therefore, no further action regarding the Indiana bat is required for this proposed project. Should, during the term of this project, additional information on the Indiana bat become available, or if new information reveals effects of the action that were not previously considered, consultation with the Service should be initiated to assess any potential impacts to the Indiana bat.

These comments have been prepared under the authority of the Fish and Wildlife Coordination Act (48 Stat. 401, as amended; 16 U.S.C. 661 et seq.), the Endangered Species Act of 1973 (ESA), as amended, and are consistent with the intent of the National Environmental Policy Act of 1969 and the U. S. Fish and Wildlife Service's Mitigation Policy.

If you have questions, or if we may be of further assistance in this matter, please contact Angela Boyer at extension 22 in this office.

Sincerely,

  
Mary M. Knapp, Ph.D.  
Field Supervisor

cc: ODNr, DOW, SCEA Unit, Columbus, Ohio  
Dr. Jeffrey Boltz ([jboltz@eaest.com](mailto:jboltz@eaest.com))  
Jeffrey Elseroad ([jelseroad@eaest.com](mailto:jelseroad@eaest.com))