

FILE

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 )  
138 kV Transmission Line )  
and Substation Project in )  
Franklin and Washington Townships, )  
Clermont County, Ohio )

Case No. 10-2440-EL-BTX

Case No. 10-2439-EL-BSB

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JOINT STIPULATION AND RECOMMENDATION

I. INTRODUCTION

The City of Hamilton, Ohio, and American Municipal Power, Inc. ("Applicants") and the Staff of the Ohio Power Siting Board ("OPSB Staff"), (at times, collectively referred to as "the parties") submit and recommend this Joint Stipulation and Recommendation ("Joint Stipulation" or "Stipulation") for adoption by the Ohio Power Siting Board ("Board"). This Joint Stipulation is intended by the parties to resolve all matters pertinent to Applicants' proposed Meldahl Hydroelectric Project 138 kV Transmission Line and Substation.

Applicants are presently constructing a 105 MW hydroelectric power generating facility on the Ohio River at the existing Meldahl Locks and Dam. A 138 kV electric transmission line from the new hydroelectric facility to the existing 345 kV Zimmer-Spurlock Transmission Line, approximately two miles inland from the Ohio-side landing of the river crossing, is proposed in case number 10-2440-EL-BTX. There is also an application for a substation to interconnect the new proposed 138 kV transmission line with the existing 345 kV transmission line (case number 10-2439-EL-BSB) (collectively "Applications").

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This Stipulation is the product of serious bargaining among capable and knowledgeable parties. The Applicants, OPSB Staff, and Intervenor Mr. Eubanks have each participated, to varying degrees, in negotiations. This Stipulation and Recommendation filed in this case has been signed by the Applicants and OPSB Staff (“Signatory Parties”).<sup>1</sup> Each of the Signatory Parties was represented by counsel who have experience practicing before the Board. There have been numerous negotiation sessions held and numerous proposals and counter-proposals were exchanged by the Signatory Parties.

The Stipulation will benefit customers and the public interest. In the Stipulation, Applicants have made commitments (as more fully described below) to comply with OPSB Staff conditions in order for the project to achieve minimum adverse impact. The Stipulation does not violate any important regulatory principle or criteria.

The project is fully described in the Applications, which were filed with the Board on May 4, 2011. This Joint Stipulation and Recommendation results from discussions between the parties, who agree that it is supported by the record, and is therefore entitled to careful consideration by the Board. Accordingly, the parties recommend that the Board issue a Certificate of Environmental Compatibility and Public Need for the Preferred Route, as identified in the Applications filed with the Board on May 4, 2011, and subject to the conditions described in this Joint Stipulation and Recommendation.

## **II. STIPULATIONS**

### **A. Recommended Findings of Fact**

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<sup>1</sup> Mr. Eubanks’ counsel has communicated to Applicants that Mr. Eubanks intends to withdraw as intervenor prior to the hearing.

The parties agree that the record in these cases, which consists of the Applications and Staff Report of Investigation, contains sufficient probative evidence for the Board to find and determine, as findings of fact, that:

- (1) The City of Hamilton, Ohio, and American Municipal Power, Inc., individually and as agent for Meldahl, LLC, are the joint Applicants for the proposed Meldahl Hydroelectric Project 138 kV Transmission Line and Substation. Applicant American Municipal Power, Inc. was founded in 1971 by forming a group of municipally-owned electric systems. These strategic partnerships joined forces to provide the generation, transmission, and distribution of electric power to its members at lower costs. Applicant City of Hamilton is a founding member of American Municipal Power, Inc.
- (2) The proposed Meldahl project is a “major utility facility,” as defined in Section 4906.01(B)(2) of the Ohio Revised Code.
- (3) On January 18, 2011, the Applicants filed a motion for waiver of certain information pertaining to the Alternate Transmission Line Route.
- (4) On January 26, 2011, the Applicants held a public information meeting regarding the proposed electric transmission line and substation.
- (5) On February 1, 2011, the Applicants filed to withdraw their waiver request.
- (6) On May 4, 2011, the Applicants filed both the transmission line and substation Applications.
- (7) On July 1, 2011, the Applicants were issued a letter of compliance regarding the Applications from the Chairman of the PUCO.

- (8) On July 1, 2011, the Applicants filed clarifying information regarding the substation, and also filed a memorandum in support to consolidate proceedings.
- (9) On July 7, 2011, Staff filed correspondence stating that they did not object to the Applicants' request to consolidate the transmission line and substation proceedings.
- (10) On July 27, 2011, an Entry was issued ordering that the motion to consolidate the proceedings be granted and scheduled the Public Hearing in this case for October 13, 2011.
- (11) On September 2, 2011, the Applicants filed responses to Staff's questions and correspondence from the Ohio Historic Preservation Office.
- (12) On September 7, 2011, Lee R. Eubanks filed a petition for leave to intervene.
- (13) On September 16, 2011, the Applicants filed correspondence serving as notice that the City of Hamilton and American Municipal Power, Inc. served notification letters to property owners and public officials as required.
- (14) On September 26, 2011, the Applicants filed a motion for waiver of certain limited O.A.C. 4906-15-06 and 4906-15-07 requirements for the secondary alternate substation location.
- (15) On September 27, 2011, OPSB Staff filed a letter stating that it did not object to the for waiver of certain limited O.A.C. 4906-15-06 and 4906-15-07 requirements for the secondary alternate substation location.
- (16) On September 28, 2011, OPSB Staff filed its Report of Investigation ("Staff Report of Investigation").

- (17) On October 3, 2011, Applicants filed their list of issues with the Staff Report.
- (18) On October 4, 2011, an entry was issued granting Mr. Eubanks intervention.
- (19) On October 6, 2011, Applicants filed their Direct Testimony in support of the Applications.
- (20) On October 13, 2011, an Entry was issued continuing the adjudicatory hearing until October 25, 2011 and extending the deadline to file OPSB Staff Testimony until October 20, 2011.
- (21) On October 13, 2011 a local public hearing was held at the Franklin Township Community Building, 2003 Main Street, Felicity, Ohio 45120.
- (22) On October 17, 2011, an Entry was issued granting Applicants' motion for waiver of certain limited O.A.C. 4906-15-06 and 4906-15-07 requirements for the secondary alternate substation location.
- (23) On October 18, 2011, Applicants and Staff filed a Joint Motion to Continue the adjudicatory hearing until November 3, 2011 and extend the deadline to file OPSB Staff Testimony until October 31, 2011.
- (24) On October 20, 2011, an Entry was issued continuing the adjudicatory hearing until November 3, 2011 and extending the deadline to file OPSB Staff Testimony until October 31, 2011.
- (25) Adequate data on the proposed Meldahl substation and transmission line project has been provided to the Board and OPSB Staff to determine the basis of the need for the proposed facility, as required by Section 4906.10(A)(1) of the Ohio Revised Code.
- (26) Adequate data on the proposed Meldahl substation and transmission line project has been provided to the Board and OPSB Staff to determine the nature of the

probable environmental impact of the proposed facility, as required by Section 4906.10(A)(2) of the Ohio Revised Code.

- (27) Adequate data on the proposed Meldahl substation and transmission line project has been provided to the Board and OPSB Staff to determine that the Preferred Route contained in the Applications, as filed by the Applicants on May 4, 2011, represents the minimum adverse environmental impact, considering the available technology and nature and economics of the various alternatives, and other pertinent considerations, as required by Section 4906.10(A)(3) of the Ohio Revised Code.
- (28) Adequate data on the proposed Meldahl substation and transmission line project has been provided to the Board and its Staff to determine that construction of the proposed substation and transmission line along Applicants' Preferred Route, as modified, will have no adverse impact upon the electric grid.
- (29) Adequate data on the proposed Meldahl substation and transmission line project has been provided to the Board and OPSB Staff to determine that the proposed facility will comply with Chapters 3704, 3734 and 6111 of the Ohio Revised Code, Sections 1501.33 and 1501.34 and 4561.32 of the Ohio Revised Code, and all regulations adopted thereunder, all as required by Section 4906.10(A)(5) of the Ohio Revised Code.
- (30) Adequate data on the proposed Meldahl substation and transmission line project has been provided to the Board and OPSB Staff to determine that the proposed facility will serve the public interest, convenience and necessity, as required by Section 4906.10(A)(6) of the Ohio Revised Code.

- (31) Adequate data on the proposed Meldahl substation and transmission line project has been provided to the Board and OPSB Staff to determine the proposed facility's impact on the viability as agricultural land of any land in an existing agricultural district established under Chapter 929 of the Ohio Revised Code that is located within the Preferred Route and Alternate Route of the proposed project, as required by Section 4906.10(A)(7) of the Ohio Revised Code.
- (32) Consideration of water conservation practices considering available technology and the nature and economics of the various alternatives under Section 4906.10(A)(8) of the Ohio Revised Code is not applicable to certification of the proposed project.
- (33) The information, data and evidence in the record of this proceeding provide substantial and adequate evidence and information to enable the Board to make an informed decision on the Applications for the proposed Meldahl substation and transmission line project.

**B. Recommended Conclusions of Law**

The parties further agree that the record in this case contains sufficient probative evidence for the Board to find and determine, as conclusions of law, that:

- (1) Applicants, the City of Hamilton, Ohio American Municipal Power, Inc. are each a "person" under Section 4906.01(A) of the Ohio Revised Code.
- (2) The proposed Meldahl substation and transmission line project is a "major utility facility" as defined by Section 4906.01(A)(2) of the Ohio Revised Code.
- (3) Applicants' Applications filed on May 4, 2011 comply with the requirements of OAC §4906-15-01 *et seq.*

(4) The record establishes the need for the proposed Meldahl substation and transmission line, as required by Section 4906.10(A)(1) of the Ohio Revised Code.

(5) The record establishes the nature of the probable environmental impact from construction, operation and maintenance of the proposed Meldahl substation and transmission line, as required by Section 4906.10(A)(2) of the Ohio Revised Code.

(6) The record establishes that the proposed Meldahl substation and Preferred Route for the transmission line represents the minimum adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives, and other pertinent considerations, as required by Section 4906.10(A)(3) of the Ohio Revised Code.

(7) The record establishes that the proposed Meldahl substation and Preferred Route for the transmission line, if conditioned in the certificate as recommended by the parties, will comply with Chapters 3704, 3734 and 6111 of the Ohio Revised Code, and all rules and regulations adopted under those chapters, and under Sections 1501.33, 1501.34 and 4561.32 of the Revised Code, all as required by Section 4906.10(A)(5) of the Ohio Revised Code.

(8) The record establishes that the proposed Meldahl substation and transmission line project will serve the public interest, convenience and necessity, as required by Section 4906.10(A)(6) of the Ohio Revised Code.

(9) The record establishes that the impact of the proposed Meldahl substation and transmission line project on the viability as agricultural land of any land in an existing agricultural district established under Chapter 929 of the Ohio Revised Code that is located within the Preferred Route and Alternate Route of the proposed project has been determined, as required by Section 4906.10(A)(7) of the Ohio Revised Code.

**C. Recommended Conditions of the Certificate of Environmental Compatibility and Public Need.**



The parties recommend that the Board issue a Certificate of Environmental Compatibility and Public Need, as requested by the Applicants, the proposed Meldahl Preferred Substation Site and Preferred Route for the transmission line, as described in the Applications and subject to all of the following conditions:

### **RECOMMENDED CONDITIONS OF CERTIFICATE**

- (1) That the facility be installed at the Applicants' Preferred Transmission Line Route and Preferred Substation Site as presented in the application filed on May 4, 2011, and as modified and/or clarified by the Applicants' supplemental filings and further clarified by recommendations in the *Staff Report of Investigation* as amended by this *Joint Stipulation and Recommendation*.
- (2) That the Applicants shall utilize the equipment and construction practices as described in the application and as modified and/or clarified in supplemental filings, replies to data requests, and recommendations in this *Staff Report of Investigation* as amended by this *Joint Stipulation and Recommendation*.
- (3) That the Applicants shall implement the mitigation measures as described in the application and as modified and/or clarified in supplemental filings, replies to data requests, and recommendations in the *Staff Report of Investigation* as amended by this *Joint Stipulation and Recommendation*.
- (4) That prior to the commencement of construction, the Applicants shall obtain and comply with all applicable permits and authorizations as required by federal and state laws and regulations for any activities where such permit or authorization is required. Copies of permits and authorizations, including all supporting documentation, shall be provided to OPSB Staff within seven (7) days of issuance or receipt by the Applicants.
- (5) That the Applicants shall conduct a pre-construction conference prior to the start of any construction activities. The pre-construction conference shall be attended by OPSB Staff, the Applicants, and representatives from the prime contractor and all sub-contractors for the project. The conference shall include a presentation of the measures to be taken by the Applicants and contractors to ensure compliance with all conditions of the certificate, and discussion of the procedures for on-site investigations by OPSB Staff during construction. Prior to the conference, the Applicants shall provide a proposed conference agenda for OPSB Staff review.
- (6) That at least thirty (30) days prior to the pre-construction conference and subject to OPSB Staff review and approval, the Applicants shall have in place a complaint resolution procedure in order to address potential operational concerns experienced by the public. The Applicants shall work to resolve any issues with those who file a complaint. Any complaint submitted must be immediately forwarded to OPSB Staff.

- (7) That the Applicants shall not commence construction of the facility until it has a signed Interconnection Service Agreement with PJM, which includes construction, operation, and maintenance of system upgrades necessary to reliably and safely integrate the proposed generating facility into the regional transmission system. The Applicants shall provide a letter stating that the Agreement has been signed or a copy of the signed Interconnection Service Agreement to OPSB Staff.
- (8) That if the Alternate Transmission Line Route or Alternate Substation Site is chosen, prior to construction, the Applicants shall prepare a Phase I cultural resources survey program for archaeological work within the construction disturbance area, acceptable to OPSB Staff. If the resulting survey work discloses a find of cultural or archaeological significance, or a site that could be eligible for inclusion in the National Register of Historic Places, then the Applicants shall submit an amendment, modification, or mitigation plan for OPSB Staff's acceptance. Any such mitigation effort shall be developed in coordination with the Ohio Historic Preservation Office and submitted to OPSB Staff for review and acceptance.
- (9) That the Applicants shall avoid, where possible, or minimize to the maximum extent practicable, any damage to field tile drainage systems and soils resulting from construction, operation, and/or maintenance of the facility in agricultural areas. Damaged field tile systems shall be promptly repaired to, at least, original conditions at the Applicants' expense. If applicable, excavated topsoil shall be segregated and restored in accordance with the Applicants' lease agreement with the landowner. Severely compacted soils shall be plowed or otherwise de-compacted, if necessary, to restore them to original conditions unless otherwise agreed to by the landowner.
- (10) That at least seven (7) days before the pre-construction conference, the Applicants shall submit to OPSB Staff a copy of all NPDES permits including its approved SWPPP, approved SPCC procedures, and its erosion and sediment control plan for review and acceptance. Any soil issues must be addressed through proper design and adherence to the Ohio EPA BMPs related to erosion and sedimentation control.
- (11) That the Applicants shall employ the following erosion and sedimentation control measures, construction methods, and BMPs when working near environmentally-sensitive areas and/or when in close proximity to any watercourses, in accordance with the Ohio NPDES permit(s) and SWPPP obtained for the project:
  - (a) During construction of the facility, seed all disturbed soil, except within actively cultivated agricultural fields, within seven (7) days of final grading with a seed mixture acceptable to the appropriate County Cooperative Extension Service. Denuded areas, including spoils piles, shall be seeded and stabilized within seven (7) days, if they will be undisturbed for more than twenty-one (21) days. Re-seeding shall be done within seven (7) days of emergence of seedlings as necessary until sufficient vegetation in all areas has been established.
  - (b) Inspect and repair all erosion control measures after each rainfall event of one-half of an inch or greater over a twenty-four (24) hour period, and maintain controls until permanent vegetative cover has been established on disturbed areas.

- (c) Delineate all watercourses, including wetlands, by fencing, flagging, or other prominent means.
  - (d) Avoid entry of construction equipment into watercourses, including wetlands, except at specific locations where construction has been approved.
  - (e) Prohibit storage, stockpiling, and/or disposal of equipment and materials in these sensitive areas.
  - (f) Locate structures outside of identified watercourses, including wetlands, except at specific locations where construction has been approved.
  - (g) Divert all storm water runoff away from fill slopes and other exposed surfaces to the greatest extent possible, and direct instead to appropriate catchment structures, sediment ponds, etc., using diversion berms, temporary ditches, check dams, or similar measures.
- (12) That the Applicants shall remove all temporary gravel and other construction staging area and access road materials after completion of construction activities, as weather permits, unless otherwise directed by the landowner. Impacted areas shall be restored to pre-construction conditions in compliance with the NPDES permit(s) obtained for the project and the approved SWPPP created for this project.
  - (13) That the Applicants shall not dispose of gravel or any other construction material during or following construction of the facility by spreading such material on agricultural land. All construction debris and all contaminated soil shall be promptly removed and properly disposed of in accordance with Ohio EPA regulations.
  - (14) That the Applicants shall assure compliance with fugitive dust rules by the use of water spray or other appropriate dust suppressant measures whenever necessary.
  - (15) That the Applicants shall have an OPSB Staff-approved environmental specialist on site during construction activities that may affect sensitive areas as mutually agreed upon between the Applicants and OPSB Staff, and as shown on the Applicants' final approved construction plan, including vegetation clearing, areas such as a designated wetland or stream, and threatened or endangered species or their identified habitat. The environmental specialist shall be familiar with water quality protection issues and potential threatened or endangered species of plants and animals that may be encountered during project construction.
  - (16) That thirty (30) days prior to the pre-construction conference, the Applicants shall provide OPSB Staff with appropriate data forms for the remainder of stream reaches that would be impacted by the final approved transmission line route and substation site.
  - (17) That the Applicants shall not work in the types of streams listed below during fish spawning restricted periods (April 15 to June 30), unless a waiver is sought from and issued by the ODNR and approved by OPSB Staff releasing the Applicants from a portion of, or the entire restriction period.
    - (a) Class 3 primary headwater streams (watershed < one mi<sup>2</sup>)

- (b) Exceptional Warmwater Habitat
  - (c) Coldwater Habitat
  - (d) Warmwater Habitat
  - (e) Streams supporting threatened or endangered species
- (18) That the Applicants shall adhere to seasonal cutting dates of September 30 through April 1 for removal of suitable Indiana bat habitat trees, if avoidance measures cannot be achieved. If suitable Indiana bat habitat trees must be cut during the summer season of April 2 through September 29, a mist-netting survey must be conducted in May or June prior to cutting. Net surveys shall incorporate either two net sites per square kilometer of project area with each net site containing a minimum of two nets used for two consecutive nights, or one net site per kilometer of stream within the project limits with each net site containing a minimum of two nets used for two consecutive nights. OPSB Staff and the ODNR shall be contacted to discuss methodologies prior to commencement of any mist-netting surveys proposed by the Applicants. All mist-netting results shall be reviewed and approved by OPSB Staff and the ODNR prior to the cutting of any Indiana bat habitat trees during the summer season.
  - (19) That the Applicants shall cease all construction activities in or adjacent to suitable habitat for the loggerhead shrike during the species' nesting period of April 1 to August 1.
  - (20) That OPSB Staff, the Division of Wildlife ("DOW"), and the U.S. Fish and Wildlife Service ("USFWS") shall be immediately contacted if state or federal threatened or endangered species are encountered during construction activities. Construction activities that could adversely impact the identified plants or animals shall be halted until an appropriate course of action has been agreed upon by the Applicants, OPSB Staff, and the DOW in coordination with the USFWS. Nothing in this provision shall preclude agencies having jurisdiction over the facility with respect to threatened or endangered species from exercising their legal authority over the facility consistent with law.
  - (21) That, for both construction and future r-o-w maintenance, the Applicants shall limit to the greatest extent possible the use of herbicides in proximity to surface waters, including wetlands along the r-o-w. Individual treatment of tall-growing woody plant species is preferred, while general, widespread use of herbicides during initial clearing or future r-o-w maintenance should only be used where no other options exist, and with prior approval from the Ohio EPA. The Applicants shall submit a plan describing the planned herbicide use for all areas in or near any water of the State during initial project construction and/or future r-o-w maintenance for review and approval by OPSB Staff prior to initiation of construction.
  - (22) That Applicants will install four taller structures than originally planned and delete three structures to eliminate, or at least mitigate, the need to clear or top trees at stream crossing BC 4 (Bear Creek). Specifically, structure 29 will increase from 52-ft to approximately 70-ft above the ground, structure 30 will change from a wood to a steel H-frame structure and the height will increase from 88-ft to about 135-ft above the ground, structure 34 will change from a wood to a steel H-frame structure and its height will increase from 61-ft to

approximately 120-ft above the ground, and the height of structure 35 will increase from 65.5-ft to roughly 74.5-ft. Structures 31-33 will be deleted from the line design, creating a new, much higher span of approximately 1,400 feet from structure 30 to structure 34. This change will also require a slight realignment of a portion of that section of the line approximately 100 feet east. In addition, the riparian area and hillside woodland in this area shall be clearly marked so as to prevent construction vehicle access and unapproved tree clearing.

- (23) That the Applicants shall decrease the right-of-way to 100 feet between structures 12 and 17 during and after completion of construction and contingent on the removal of any tree that could present a dangerous condition to the line except for the installation of guy wires during construction with the approval of OPSB Staff prior to construction. The Applicants shall remove only the tall-growing tree species and only allow for a very limited track for equipment movement within the r-o-w, with all stumps left in place, and shall limit the number of culverts necessary to cross streams. In addition, Applicants will agree to conserve a five acre area on one or more adjacent parcels to be purchased by Applicants to be held and managed by an appropriate third-party entity (i.e., a conservation oriented or 501(3)(C) designated organization) or, failing to secure a willing third party entity, by appropriate legal instrument.
- (24) That the Applicants shall permanently limit clearing in all riparian areas between structures 12 and 17, 24-25 and at 30 and 34, and specifically within at least 25 feet from the top of the bank on each side of all streams in such areas. Vegetation clearing in these areas shall be selective hand clearing of taller-growing trees only, leaving all low-growing plant species, particularly woody ones (including other trees), undisturbed unless otherwise directed by OPSB Staff. All stumps shall be left in place.
- (25) That the Applicants shall conform to any drinking water source protection plan for any part of the facility that is located within drinking water source protection areas of the local villages and cities.
- (26) That the Applicants shall restrict public access to the site with appropriately placed warning signs or other necessary measures.
- (27) That the Applicants shall obtain all required county and township transportation permits and all necessary permits from ODOT. Any temporary or permanent road closures necessary for construction and operation of the proposed facility shall be coordinated with the appropriate entities including, but not limited to, the Clermont County Engineer, ODOT, local law enforcement, and health and safety officials.
- (28) That the Applicants shall provide a final traffic plan prior to the pre-construction conference, for OPSB Staff review and acceptance.
- (29) That the Applicants shall provide a noise study prior to the pre-construction conference which conforms to the parameters outlined within data requests forwarded to the Applicants on September 12, 2011. Any concerns raised by OPSB Staff in regard to low-frequency noise shall be sufficiently addressed and/or mitigated to the satisfaction of OPSB Staff, the affected resident(s), and the Applicants prior to construction.

- (30) That if pre-construction acoustic modeling indicates a facility contribution that exceeds the ambient  $L_{EQ}$  by greater than five dBA at the exterior of any residences within one mile of the facility, the facility shall be subject to further study of the potential impact and possible mitigation prior to construction. Mitigation, if required, shall consist of either reducing the impact so that the facility contribution does not exceed the ambient  $L_{EQ}$  by greater than five dBA, or other means of mitigation approved by OPSB Staff in conjunction with the affected receptor(s).
- (31) That after commencement of commercial operation, the Applicants shall conduct further review of the impact and possible mitigation of all project noise complaints. Mitigation shall be required if the project contribution at the exterior of any residence within one mile of the project boundary exceeds the validly measured ambient  $L_{EQ}$  plus five dBA at the location of the complaint and during the same time of day or night as that identified in the complaint. Mitigation, if required, shall consist of either reducing the impact so that the project contribution does not exceed the validly measured ambient  $L_{EQ}$  plus five dBA, or other means of mitigation approved by OPSB Staff in coordination with the affected receptor(s).
- (32) That general construction activities shall be limited to the hours of 7:00 a.m. to 7:00 p.m., or until dusk when sunset occurs after 7:00 pm. Impact pile driving, helicopter use, rock drilling, and blasting operations, if required, shall be limited to the hours between 10:00 a.m. to 5:00 p.m., Monday through Friday. Construction activities that do not involve noise increases above ambient levels at sensitive receptors are permitted outside of daylight hours when necessary. The Applicants shall notify property owners or affected tenants within the meaning of O.A.C. 4906-5-08(C)(3), of upcoming construction activities including potential for nighttime construction activities.
- (33) That at least thirty (30) days prior to the pre-construction conference, the Applicants shall complete a baseline television reception and signal strength study and provide the results to OPSB Staff for review and acceptance.
- (34) That the Applicants must meet all Federal Communications Commission and other federal agency requirements to construct an object that may affect communications and, subject to OPSB Staff approval, mitigate any effects or degradation caused by transmission line operation or placement. For any residence that is shown to experience a degradation of TV reception or interference of wired telephone service due to facility operation the Applicants shall provide, at its own expense, cable or direct broadcast satellite TV service or other mitigation acceptable to the affected resident(s), the Applicants, and OPSB Staff.
- (35) That at least thirty (30) days prior to the pre-construction conference, the Applicants shall conduct a telephone noise survey in coordination with the local service provider(s) and provide the results to OPSB Staff for review and acceptance.
- (36) That at least thirty (30) days prior to the pre-construction conference, the Applicants shall conduct a microwave path study which should identify all existing microwave paths which intersect the project area, and a worst-case Fresnel zone analysis for each path. A copy of this study shall be provided to the path licensee(s), for review, and to OPSB Staff for review and acceptance. The assessment shall conform to the following requirements:

- (a) An independent and registered surveyor, licensed to survey within the State of Ohio, shall determine the exact location and worst-case Fresnel zone dimensions of the above-referenced paths, the center point and boundaries of the proposed transmission line routes and substation sites within 1,000 feet of the worst-case Fresnel zone of each path, using the same survey equipment.
  - (b) Provide the distance (feet) between the surveyed center point of each route and boundary identified within section (a) above and the surveyed worst-case Fresnel zone of each microwave path.
  - (c) Provide a map of the surveyed microwave paths, center points, and boundaries at a legible scale.
  - (d) Describe the specific, expected impacts of the project on all paths and systems considered in the assessment.
- (37) That all existing licensed microwave paths and communication systems shall be subject to avoidance or mitigation. The Applicants shall complete avoidance or mitigation measures prior to construction for impacts that can be predicted in sufficient detail to implement appropriate and reasonable avoidance and mitigation measures. After construction, the Applicants shall mitigate all observed impacts of the project to existing microwave paths and systems within seven (7) days or within a longer time period approved by OPSB Staff. Avoidance and mitigation measures for any known point-to-point microwave paths shall consist of either shifting the location of the transmission line, substation, or associated structures so as to not affect any known microwave paths, or other measures acceptable to OPSB Staff, the Applicants, and the affected path owner, operator, or licensee(s). If interference with an omni-directional or multi-point system is observed after construction, mitigation would be required only for the affected receptor(s).
- (38) That, should site-specific conditions warrant blasting, the Applicants shall submit a blasting plan, at least sixty (60) days prior to blasting, to OPSB Staff for review and acceptance. The Applicants shall submit the following information as part of its blasting plan:
- (a) The name, address, and telephone number of the drilling and blasting company.
  - (b) A detailed blasting plan for dry and/or wet holes for a typical shot. The blasting plan shall address blasting times, blasting signs, warnings, access control, control of adverse effects, and blast records.
  - (c) A plan for liability protection and complaint resolution.
- (39) That prior to the use of explosives, the Applicants or explosive contractor shall obtain any required license or temporary permit from the local county authority or county sheriff. The Applicants shall submit a copy of the license or permit to OPSB Staff within seven days of obtaining it from the local authority.
- (40) That the blasting contractor shall utilize two blasting seismographs that measure ground vibration and air blast for each blast. One seismograph should be placed at the nearest dwelling and the other placed at the discretion of the blasting contractor.

- (41) That at least thirty (30) days prior to the initiation of blasting operations, the Applicants must notify, in writing, all residents or owners of dwellings or other structures within 1,000 feet of the blasting site. The Applicants or explosive contractor shall offer and conduct a pre-blast survey of each dwelling or structure within 1,000 feet of each blasting site, unless waived by the resident or property owner. The survey must be completed and submitted to OPSB Staff at least ten (10) days before blasting begins.
- (42) That the Applicants must meet all recommended and prescribed FAA and ODOT Office of Aviation requirements to construct an object that may affect navigable airspace. This includes submitting coordinates and heights for all towers exceeding 200 feet AGL for ODOT Office of Aviation and FAA review prior to construction, and the non-penetration of any FAA *Part 77* surfaces.
- (43) That at least thirty (30) days prior to construction, the Applicants shall provide to OPSB Staff all FAA 7460-1 "Determination Letters" for review and acceptance.
- (44) That thirty (30) days prior to any construction, the Applicants notify, in writing, any owner of an airport located within 20 miles of the project boundary, whether public or private, whose operations, operating thresholds/minimums, landing/approach procedures and/or vectors are expected to be altered by the siting, operation, maintenance, or decommissioning of the facility.
- (45) That all applicable structures, including construction equipment, be lit in accordance with FAA circular 70/7460-1 K Change 2, *Obstruction Marking and Lighting*; or as otherwise prescribed by the FAA. This includes all cranes and construction equipment.
- (46) That at least thirty (30) days before the pre-construction conference, the Applicants shall submit to OPSB Staff, for review and acceptance, the following documents:
  - (a) One set of detailed engineering drawings of the final project design, including all electric tower and pole locations, access roads, any crane routes, substations, construction staging areas, and any other associated facilities and access points, so that OPSB Staff can determine that the final project design is in compliance with the terms of the certificate. The final project layout shall be provided in hard copy and as geographically-referenced electronic data. The final design shall include both temporary and permanent access routes, as well as the measures to be used for restoring the area around all temporary sections, and a description of any long-term stabilization required along permanent access routes.
  - (b) A separate construction and maintenance access plan, based on final plans for the access roads, transmission line, substation facilities, and types of equipment to be used, shall be provided for OPSB Staff review and approval prior to construction. The plan shall consider the location of streams, wetlands, wooded areas, and sensitive plant species (as identified by the DOW), and explain how impacts to all sensitive resources will be avoided or minimized during construction, operation, and maintenance. The plan shall provide specific details on all wetlands, streams, and/or ditches to be crossed by the transmission line, including those where construction or maintenance vehicles and/or facility components such as access roads cannot avoid crossing the waterbody. In such cases, specific discussion of proposed crossing methodology for each wetland



and stream crossing (such as culverts), and post-construction site restoration, must be included. Any final access plans the Applicants develop that attempts to use the entire length of r-o-w for construction, maintenance, or equipment movement is prohibited.

- (c) In addition, the Applicants shall provide, for OPSB Staff review and approval, a Vegetation Management Plan identifying all areas of proposed vegetation clearing for the project, specifying the extent of the clearing, and describing how trees and shrubs around structures, along access routes, in the transmission line corridor, at construction staging areas, at the substation, during maintenance operations, and in proximity to any other project facilities will be protected from damage, and, where clearing cannot be avoided, how such clearing work will be done so as to minimize removal of woody vegetation. Priority should be given to protecting mature trees throughout the project area, and all woody vegetation in wetlands and riparian areas, both during construction and during subsequent operation and maintenance of all facilities; low-growing trees and shrubs in particular should be protected wherever possible within the proposed r-o-w. The Vegetation Management Plan should also explore various options for disposing of downed trees, brush, and other vegetation during initial clearing for the project, and recommend methods that minimize the movement of heavy equipment and other vehicles within the r-o-w that would otherwise be required for removing all trees and other woody debris off site.
- (47) That if any changes are made to the project layout after the submission of final engineering drawings, all changes shall be provided to OPSB Staff in hard copy and as geographically-referenced electronic data. All changes outside the environmental survey areas and any changes within environmentally-sensitive areas will be subject to OPSB Staff review and approval prior to construction.
- (48) That within sixty (60) days after the commencement of commercial operation, the Applicants shall submit to OPSB Staff a copy of the as-built specifications for the entire facility. If the Applicants demonstrate that good cause prevents it from submitting a copy of the as-built specifications for the entire facility within 60 days after commencement of commercial operation, it may request an extension of time for the filing of such as-built specifications. The Applicants shall use reasonable efforts to provide as-built drawings in both hard copy and as geographically-referenced electronic data.
- (49) That the certificate shall become invalid if the Applicants have not commenced a continuous course of construction of the proposed facility within five (5) years of the date of journalization of the certificate.
- (50) That the Applicants shall provide to OPSB Staff the following information as it becomes known:
  - (a) The date on which construction will begin;
  - (b) The date on which construction was completed;
  - (c) The date on which the facility began commercial operation.

### **III. EXHIBITS**

The Applicants and Staff agree and stipulate that the following Exhibits are among those exhibits in the docket to be marked and admitted into the record of this proceeding, and that cross-examination is waived thereon:

Applicant Exhibit No. 1: The Applications filed on May 4, 2011 and certified as complete by the Board on July 1, 2011.

Applicant Exhibit No. 2: Certificates of Publication of the first and second notices required by O.A.C. 4906-5-08 in local newspapers, as filed with the Board on August 12, 2011 and October 11, 2011.

Staff Exhibit No. 1: Staff Report of Investigation, issued and filed on September 28, 2011.

Joint Exhibit No. 1: This Joint Stipulation and Recommendation, signed by counsel for Applicants and Staff.

In deliberating the merits of the Applications and reasonableness of this Joint Stipulation, the parties encourage the Board to review and consider all evidence and exhibits submitted and admitted in these cases.

### **IV. OTHER STIPULATIONS**

(1) This Joint Stipulation is expressly conditioned upon its acceptance by the Board without material modification. In the event the Board rejects or materially modifies all or part of this Stipulation, or imposes additional conditions or requirements upon the parties, each party shall have the right, within thirty (30) days of the Board's order, to file an application for rehearing with the Board. Upon a grant of rehearing by the Board, each party shall have the

right, within ten (10) days of the Board's order granting rehearing, to file a notice of termination and withdrawal of the Stipulation. Upon notice of termination and withdrawal of the Stipulation by any party, pursuant to the above provisions, the Stipulation shall immediately become null and void, and any party to the Stipulation shall be free to petition the Board or the Attorney Examiner for such additional process as may be necessary to address any of the remaining issues in this case. In such an event, a hearing shall go forward, and the parties shall be afforded the opportunity to present evidence through witnesses, to cross-examine all witnesses, to present rebuttal testimony, and to file briefs on all issues.

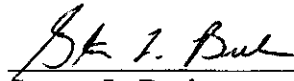
(2) The parties agree and recognize that this Stipulation has been entered into only for the purpose of this proceeding. Each party agrees not to assert against another party in any proceeding before the Board or any court, other than in a proceeding to enforce the terms of this Stipulation, that party's participation in this Stipulation as support for any particular position on any issue. Each party further agrees that it will not use this Stipulation as factual or legal precedent on any issue, except as may be necessary to support enforcement of this Stipulation. The parties request that the Board recognize that its use of this Stipulation in any proceeding other than this proceeding is contrary to the intentions of the parties in entering into this Stipulation.

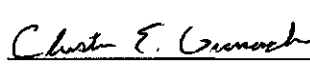
WHEREFORE, based upon the record, and the information and data contained therein, the parties recommend that the Board issue a Certificate of Environmental Compatibility and Public Need for construction, operation and maintenance of the proposed Meldahl substation, at the Preferred Substation Site, and transmission line project, on the Preferred Route, as described in the Applications, and as modified by the Supplements to the Applications filed with the Board on January 25 and 26, 2005, and as conditioned herein.

The undersigned stipulate and represent that they are authorized to enter into this Joint Stipulation and Recommendation on the 1<sup>st</sup> day of November, 2011.


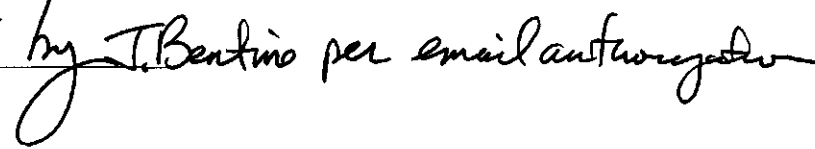
Respectfully submitted on behalf of:

**STAFF OF THE OHIO POWER  
SITING BOARD**

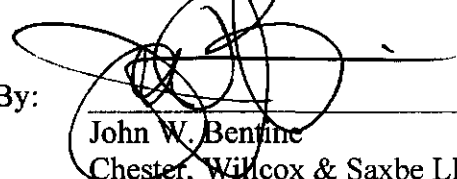
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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing pleading was served by regular U.S. mail, postage prepaid, or hand-delivered; and/or sent via electronic mail to the following parties of record, this 1<sup>st</sup> day of November, 2011.

Thomas J. Ruwe  
Attorney for Intervener Eubanks  
[tjruwe@fuse.net](mailto:tjruwe@fuse.net)

and a courtesy copy to:

Mandy Willey  
Administrative Law Judge  
[mandy.willey@puc.state.oh.us](mailto:mandy.willey@puc.state.oh.us)

  
\_\_\_\_\_  
Steven L. Beeler  
Assistant Attorney General