

BEFORE

THE OHIO POWER SITING BOARD

In the Matter of the Application of AEP)
Transmission Company for a Certificate)
of Environmental Compatibility and) Case No. 11-4505-EL-BTX
Public Need for 138 kV Elk North)
138kV Extension and Elk South 138kV)
Extension Transmission Project.)

OPINION, ORDER, AND CERTIFICATE

The Ohio Power Siting Board (Board), coming now to consider the above-entitled matter; having appointed an administrative law judge (ALJ) to conduct a public hearing, having reviewed the exhibits introduced into evidence, including the Joint Stipulation and Recommendation (Stipulation), and being otherwise fully advised, hereby waives the necessity for an ALJ report and issues its opinion, order, and certificates in this case, as required by Section 4906.10, Revised Code.

APPEARANCES:

Matthew J. Satterwhite, and Erin C. Miller, 1 Riverside Plaza, Columbus, Ohio 43215, on behalf of AEP Transmission Company.

Mike DeWine, Ohio Attorney General, by John Jones and Steven Beeler, Assistant Attorneys General, Public Utilities Section, 180 East Broad Street, 6th Floor, Columbus, Ohio 43215-3793, and by Clint R. White and Sarah Bloom Anderson, Assistant Attorneys General, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215, on behalf of the Board's Staff.

OPINION:

I. Summary of the Proceeding

All proceedings before the Board are conducted according to the provisions of Chapter 4906, Revised Code, and Chapter 4906, Ohio Administrative Code (O.A.C.).

On August 3, 2011, AEP Transmission Company (AEP Transco) filed a preapplication notification that it would be filing an application for a certificate of environmental compatibility and public need (certificate) to construct a 138 kilovolt (kV) transmission line (Elk line project). On August 3, 2011, AEP Transco also filed a motion for a waiver of certain limited requirements of Section 4906.06(A)(6), Revised

Code, regarding the one-year notice period, and Rule 4906-5-04, O.A.C., regarding the requirement that the alternative routes have less than 20 percent in common. On December 16, 2011, Staff filed correspondence indicating that it did not object to the motion. The motion was granted on December 21, 2011.

On August 17, 2011, AEP Transco held a public informational meeting at the Vinton County Community Center in McArthur, Ohio, regarding the application that AEP Transco intended to file.

On January 3, 2012, the AEP Transco filed an application for a certificate to construct the Elk line project (AEP Transco Ex. 1).

By letter dated March 2, 2012, the Board notified AEP Transco that its application for the Elk transmission line project had been certified as complete pursuant to Rule 4906-5-05, O.A.C. By entry issued April 19, 2012, the ALJ, *inter alia*, scheduled a local public hearing and directed AEP Transco to publish notice of the application and hearings.

On June 13, 2012, AEP Transco filed a motion for a 60-day extension of the procedural schedule, in order to explore options to relocate the proposed preferred transmission line route. On June 25, 2012, the ALJ granted AEP Transco's motion and ordered AEP Transco to publish notice cancelling the local public hearing and adjudicatory hearing.

On September 5, 2012, AEP Transco filed supplemental adjustments to the original application. The supplemental adjustments included three substantive route alterations to the common portion of the preferred and alternate routes. By letter dated October 3, 2012, the Board notified AEP Transco that its application for the Elk line project had been certified as complete pursuant to Rule 4906-5-05, O.A.C.

By entry issued October 24, 2012, the ALJ rescheduled the local public hearing for December 6, 2012, at the Vinton County Community Center in McArthur, Ohio, and the adjudicatory hearing for December 13, 2012, at the offices of the Board, in Columbus, Ohio. Further, the October 24, 2012, entry directed AEP Transco to publish notice of the application and hearings, as required by Rule 4906-5-08, O.A.C., and ordered that petitions to intervene by interested persons be filed within 30 days following publication of the notice required by Rule 4906-5-08, O.A.C.

On October 17, 2012, and December 5, 2012, AEP Transco filed proof of service of its accepted and complete application in accordance with Rules 4906-5-06 and 4906-5-07 O.A.C. On December 12, 2012, AEP Transco filed proof of publication of newspaper notice, as required by Rule 4906-5-08(C)(2), O.A.C.

On November 20, 2012, Staff filed its report of investigation of the application (Staff Report).

The local public hearing was held, as rescheduled, on December 6, 2012. At the local public hearing, 8 people offered testimony on the Elk line project (Public Hearing Tr. at 7-21).

On December 7, 2012, the AEP Transco and Staff filed a Joint Stipulation and Recommendation (Stipulation) resolving all issues in these cases. The adjudicatory hearing commenced as rescheduled on December 13, 2012.

II. Proposed Facility and Siting

According to the application, the purpose of the Elk line project is to improve and maintain the quality of electric service and reliability to southeastern Ohio and the Athens, Ohio area. Specifically, AEP Transco proposes to install a 138 kV transmission line loop in Vinton and Jackson Counties, which would replace a poor performing Floodwood-Berlin 69 kV transmission line (Floodwood line) that was originally constructed in the 1920s. The application provides that the proposed 138 kV transmission line will allow for sufficient capacity to both prevent overloads of critical facilities and for future growth in the area. (AEP Transco Ex. 1 at 01-1.)

The application indicates that the project will consist of a mostly single-circuit line and tap the existing Poston-Lick 138 kV transmission line (Poston line) and run to the existing Elk substation. A second, mostly single-circuit 138 kV transmission line will be constructed back to the Poston line to complete the loop. The existing Floodwood line will be removed and taken out of service. (AEP Transco Ex. 1 at 01-1.)

AEP Transco conducted a route selection process to identify and evaluate potential routes for the transmission line. According to AEP Transco, the objective of the route selection study was to identify viable routes that not only comply with siting criteria, but also avoid and limit impacts to sensitive land uses, ecological resources, and cultural features in the project vicinity. AEP Transco notes that the Vinton Furnace Experimental Forest (VFEF), an Ohio Department of Natural Resources (ODNR) managed forest, makes up a significant portion of the route selection study area. The application explains that the existing Poston line that the project will tap crosses VFEF. The application explains that ODNR notified AEP Transco of an existing deed restriction currently in place which prohibits new electric transmission line right-of-ways within VFEF. In light of these deed restrictions, the application provides that AEP Transco decided not to pursue routes that cross through VFEF. (AEP Transco at 01-2.)

Both the preferred route and the alternate route share a common route that is approximately 13.5 miles long. According to the application, the route commences at the tap of the Poston line, and runs parallel to U.S. Route 50 and Prattsville road to a point just east of McArthur, Ohio. A double circuit 138 kV line would be constructed to the Elk Substation, and then will continue south along the Floodwood line, which would be taken out of service. The common route continues through the Floodwood line right-of-way, and then the preferred and alternate routes split into separate corridors. (AEP Transco at Supplemental Filing at 1-3).

According to the application, the preferred route continues along the Floodwood line to the Poston line for 3.7 miles. The preferred route would allow for 13.3 miles of the Poston line that runs through VFEF to be taken out of service. The total route length for the preferred route is 17.2 miles. (AEP Transco at Supplemental Filing at 1-3.)

The alternate route runs 2.8 miles east to the Poston line. The alternate route would run through active mining land and would require a new right-of way. Approximately 8.6 miles of the Poston line would be taken out of service through VFEF if the alternate route is selected. The total route length for the alternate route is 16.4 miles. (AEP Transco at Supplemental Filing at 1-3.)

III. Certification Criteria

Pursuant to Section 4906.10(A), Revised Code, the Board shall not grant a certificate for the construction, operation, and maintenance of a major utility facility, either as proposed or as modified by the Board, unless it finds and determines all of the following:

- (1) The basis of the need for the facility if the facility is an electric transmission line or natural gas transmission line.
- (2) The nature of the probable environmental impact.
- (3) The facility 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.
- (4) In case of an electric transmission line or generating facility, such facility is consistent with regional plans for expansion of the electric power grid of the electric systems serving this state and interconnected utility systems, and

that such facilities will serve the interests of electric system economy and reliability.

- (5) The facility will comply with Chapters 3704, 3734, and 6111, Revised Code, and all rules and standards adopted under those chapters and under Sections 1501.33, 1501.34, and 4561.32, Revised Code.
- (6) The facility will serve the public interest, convenience, and necessity.
- (7) The impact of the facility on the viability as agricultural land of any land in an existing agricultural district established under Chapter 929, Revised Code, that is located within the site and alternative site of the proposed major facility.
- (8) The facility incorporates maximum feasible water conservation practices as determined by the Board, considering available technology and the nature and economics of various alternatives.

IV. Summary of the Evidence

A. Local Public Hearing

At the local public hearing, eight witnesses testified in opposition to the proposed transmission line project, and at the adjudicatory hearing, two witnesses, who were unable to attend the local public hearing, testified in opposition to the project. Several witnesses explain that, although they were not opposed to replacing the current transmission lines with new 138 kV transmission lines, they would prefer another route that cuts through VFEF as opposed to private land. Witnesses expressed concern that the project would have a negative effect on property values, and make future sales of their property difficult. One witness testified that the proposed project will negatively impact his business. (Local Hearing Tr. at 7-21.)

B. Basis of Need (Section 4906.10(A)(1), Revised Code)

AEP Transco states that the Elk line project is necessary to improve and maintain the quality of electric service and reliability to southeast Ohio and the Athens, Ohio area. The proposed project would replace the current 69 kV line, which is over 90 years old and has poor circuit outage history. AEP Transco maintains that

the project will allow for sufficient capacity and future growth. (AEP Transco Ex. 1 at 2-3; Staff Report at 17.)

Staff notes that PJM Interconnection, LLC (PJM), a regional transmission organization, issues an annual regional transmission expansion plan (RTEP) providing details of transmission upgrades necessary to maintain reliability. Staff provides that while the proposed project was not identified in the most recent PJM RTEP, PJM has modeled the Elk project system improvements and found no system violations with the proposed project. (Staff Report at 17.)

Therefore, due to the documented reliability problems in the Athens area, Staff recommends that the Board find the basis of need for the project has been demonstrated, as required by Section 4906.10(A)(1), Revised Code. (Staff Report at 18.)

C. Nature of Probable Environmental Impact and Minimum Adverse Environmental Impact (Sections 4906.10(A)(2) and (3), Revised Code)

The Staff Report contains a review of the environmental information contained within the record and included the nature of the probable impact to the environment. The following is a summary of Staff's findings:

- (1) The project area is sparsely populated and located within a predominately rural region that contains agricultural tracts, large forested areas, scattered residences, and mining operations. The project is not expected to impact the demographics of Vinton and Jackson counties, both of which have experienced small population declines between 2010 and 2011.
- (9) There are 107 residences located within 1,000 feet of the preferred route, and a total of 89 residences are within 1,000 feet of the alternate route. Three residences are within 100 feet of both the preferred and alternate routes, including one residence within 40 feet from the proposed project but outside the current right-of-way. Two of the residences are already located near the existing transmission line right-of-way. No residential buildings would be removed during construction, however, the project would permanently alter residential land within the project right-of-way along U.S. Route 50. Following construction, installation of new structures within the

project right-of-way will be prohibited and vegetation that is not in compliance with North American Electric Reliability Corporation (NERC) regulations will be removed. AEP Transco will negotiate with individual property owners to mitigate vegetative clearing.

- (10) No commercial or institutional land uses are within 1,000 feet of the preferred or alternate routes, however, one industrial land use is within 1,000 feet of both routes. An active mining operation is crossed by both routes, including the entire section of the alternate route that is not in common with the preferred route, making it difficult to access and maneuver equipment. In addition, two recreational land uses are within 1,000 feet of both routes, including Zaleski State Forest and VFEF, however, no negative impact to recreational land use is expected from construction, operation, or maintenance of the project.
- (11) AEP Transco indicated that there are 18 previously-recorded archaeological sites within 1,000 feet of the preferred route, two of which are within 100 feet. There are five Ohio Historic Inventory (OHI) structures within 1,000 feet of the preferred route, none of which are within 100 feet of the preferred route. The alternate route has 21 previously-recorded archaeological sites within 1,000 feet, and two are within 100 feet of the route. Three OHI structures are within 1,000 feet of the alternate route, but none are located within 100 feet of the route. No National Register of Historic Places (NRHP) is within the project area.
- (12) AEP Transco hired a consultant to conduct a Phase One Cultural Resources Survey along both routes, which identified 36 previously unrecorded archaeological sites, and relocated the Electric Mound Site. The survey noted that four of the sites are significant and may be eligible for the NRHP, including a prehistoric mound. The consultant recommended the mound be marked to establish a clear buffer when work is conducted in the vicinity. Staff recommends avoidance or an archaeological assessment for the four sites.

- (13) Permanent visual impacts will result from vegetative clearing and the removal of trees from the line right-of-way. New vegetative clearing will be limited because the majority of both the preferred and alternate routes follow the existing Floodwood line right-of-way. The aesthetic impact will vary and depend on the degree of contrast between the proposed project and the existing landscape which, because of the rural character and hilly topography, limit the extent to which aesthetic impacts can be avoided.
- (14) The estimate for intangible and capital costs for the preferred route is \$29.32 million. The estimate for the alternate route is \$27.96 million. AEP Transco indicates that AEP would pay property taxes on utility facilities in each jurisdiction within the project territory, with approximate annual property tax estimates of \$998,000 for the preferred route, and \$1,014,000 for the alternate route.
- (15) The preferred route would cross 60 stream channels with a total of 1,450 linear feet within the proposed construction right-of-way. There are no additional streams within the alternate route that are not shared with the preferred route. The stream crossings were assessed by a qualified biologist, concluding that AEP Transco may need to place temporary culverts or bridges in or over streams during construction. The Staff Report indicates that best management practices would be outlined in the storm water pollution prevention plan.
- (16) The centerline of the preferred route would cross 29 wetlands and one vernal pool, with 8.36 acres within the right-of-way. The centerline of the alternate route crosses 23 wetlands, with 3.64 acres within the right-of-way. The Staff Report indicates that AEP Transco would minimize or avoid wetland filling and sedimentation, and will not conduct mechanized clearing within 25 feet of any stream channel. Two structures would be placed in wetlands along the preferred route, as engineering constraints in the area eliminate the ability to avoid placing poles in the wetland without a reroute that would require a new right-of-way. The Staff Report recommends that AEP Transco provide a construction access plan prior to the preconstruction conference, in order to minimize impacts

to surface waters. Staff also recommends that poles be placed on adjacent upland areas, which would reduce impacts to wetlands and avoid the need to enter wetland areas with heavy machinery. Further, four ponds are within 100 feet of both the preferred and alternate route, however, AEP Transco does not anticipate any impacts. There are no lakes or reservoirs along either the preferred or alternate route.

- (17) The preferred and alternate routes cross through several vegetative communities, including: oak-mixed mesophytic, scrub-shrub, old field, pasture, residential grasses, and bottomland hardwoods. Potential impacts on each vegetative type would be limited as the majority of the proposed routes are located in the existing right-of-way.
- (18) The Staff Report indicates that most protected, threatened, or endangered species with a known range within the proposed project area are not expected to be negatively impacted, with the exception of the Indiana bat. Limiting tree removal in areas identified as potential Indiana bat habitat would reduce impacts on the species.
- (19) The preferred and alternate routes cross U.S. Route 50 and State Routes 160, 324, and 677, and a railroad in two locations. The proposed project would be accessed from State Route 93 and U.S. Route 50, with a staging area to be implemented along State Route 93, central to the entire project area. The Staff Report indicates that AEP Transco would coordinate all traffic issues with the local jurisdictional entities prior to construction. Temporary access roads would be required at each proposed pole location, and will be planned following the selection of a final route.

(Staff Report at 19-27).

Staff explains that AEP Transco considered routes following the corridor of the existing Poston line, which crosses through the VFEF. The Staff Report points out that the VFEW was purchased by the state of Ohio in 2010. ODNR provided AEP Transco with the deed of the property transfer, however, the transfer included a restriction prohibiting new power lines in the VFEF. Based on the deed restriction, AEP Transco

decided to end consideration of routes crossing through the VFEF, reducing the number of alternatives to eight routes. (Staff Report at 26-27).

AEP Transco conducted a quantitative scoring approach of the eight routes, which focused on land use constraints. The routes were scored on a scale of zero to 100, with zero being the best possible score. The preferred route received a score of 8.2, and the alternate route received a score of 7.75. The third highest scoring route was 52.3. While the alternate route received a slightly higher score than the preferred route, it would require approximately 2.8 miles of new right-of-way across active mining land, as opposed to the preferred route which follows the existing transmission line corridor. Due to the nature of the active mining operations, Staff believes the alternate route could limit any future mining activity that might occur. Further, Staff notes that the preferred route allows for the removal of 4.7 miles of the existing transmission line, while the alternate route would allow for the removal of 3.7 miles. (Staff Report at 26-27.)

Staff finds that the project will result in temporary and permanent impacts to the project area, however, the preferred route includes significant route length within the previously cleared right-of-way, and would allow for a greater portion of the existing line through the VFEF to be taken out of service. Staff adds that the preferred route would avoid any interference with active mining operations. Therefore, Staff believes that the preferred route represents the minimal adverse impacts. (Staff Report at 27.)

Staff concludes that the nature of the probable environmental impact has been determined for the proposed facility and complies with the requirements set forth in Section 4906.10(A)(2), Revised Code, and that the preferred transmission line route, represents the minimal adverse environmental impact, and complies with the requirements specified in Section 4906.10(A)(3), Revised Code, provided that any certificate issued by the Board include the conditions as set forth in the Staff Report. (Staff Report at 27.)

D. Electric Power Grid (Section 4906.10(A)(4), Revised Code)

The proposed project would be located in the PJM control area. Staff explains that the project would reinforce the transmission system in the Athens area, and serve the interests of the electric system economy and reliability. The existing transmission line system is approximately 90 years old and has had 79 outages since 2009, as well as repeated lockouts during lightning storms due to a lack of shield wire. The Staff Report indicates that, without the project, AEP would not be able to maintain reliability. (Staff Report at 28).

AEP Transco performed a summer peak load flow on the current 69 kV transmission line system. The load flow study indicated that voltage percentages were 90.40 percent at the Berlin station, and 91.9 percent at the Elk station, both below the 95 percent threshold for steady state conditions. Further, both readings were below the 92 percent threshold, indicating that equipment damage may occur. PJM modeled the Elk system improvements, and did not find any system violations with the proposed project. (Staff Report at 28.)

Upon review of the load flow details, Staff believes that, without the proposed project, AEP Transco would continue to experience circuit outages and would be unable to provide safe and reliable electric service. Therefore, Staff recommends the Board find that the proposed facility is consistent with Section 4906.10(A)(4), Revised Code, as well as with regional plans for expansion of the electric power grid of the electric systems serving this state and its interconnected utility systems, and that the facility would serve the interests of electric system economy and reliability. (Staff Report at 28.)

E. Air and Water Permits and Solid Waste Disposal (Section 4906.10(A)(5), Revised Code)

In its report, Staff notes that air quality permits are not required for construction of the proposed facility. However, fugitive dust rules adopted pursuant to Chapter 3704, Revised Code, may be applicable to the proposed facility. Further, Staff states that fugitive dust would be controlled, where necessary, through dust suppression techniques such as irrigation, mulching, or application of tackifier resins. Staff contends that these methods of dust control should be sufficient to comply with fugitive dust rules. (Staff Report at 29.)

Staff asserts that neither construction nor operation of the proposed facility would require the use of significant amounts of water, so requirements under Sections 1501.33 and 1501.34, Revised Code, are not applicable to this project. (Staff Report at 29.)

The Staff Report provides that all construction-related debris will be disposed of in Ohio Environmental Protection Agency approved landfills or other appropriately licensed and operated facilities. AEP Transco plans to have a spill prevention plan in place and will follow manufacturer's recommendations for any clean up. Further, vegetation waste from clearing activities will be removed or wind-rowed along the edge of the right-of-way, and all marketable timber will be cut into appropriate lengths for sale by the landowner. Staff believes that the AEP Transco's solid waste disposal plans comply with solid waste disposal requirements in Chapter 3734, Revised Code, and all regulations adopted thereunder. (Staff Report at 29.)

According to Staff, the application provides that there are seven airports, landing strips, or heliports located in Jackson County, and one airport in Vinton County. The closest facility is a heliport located in Jackson County, approximately two miles from the preferred route. Staff notes that pole locations have not yet been finalized, but, upon AEP Transco's finalization of the pole locations, AEP Transco will submit the locations to the Ohio Department of Transportation (ODOT) and the Federal Aviation Administration (FAA) for review and approval. Staff notes that it is unlikely the preferred or alternate route will have an impact on aviation. (Staff Report at 29-30.)

Staff, therefore, contends that the facility will comply with the requirements contained in Section 4906.10(A)(5), Revised Code, provided the proposed facility includes the conditions provided in the Staff Report. (Staff Report at 30.)

F. Public Interest, Convenience, and Necessity (Section 4906.10(A)(6), Revised Code)

The Staff Report indicates that the proposed project serves the public interest by preventing overloads of critical transmission facilities and providing sufficient capacity for growth that may occur in the area. AEP Transco will comply with safety standards set by the Occupational Safety and Health Administration, NERC Mandatory Reliability Standards, and equipment specifications. Further, AEP Transco will design the facility to comply with the latest requirements of the National Electric Safety Code. In addition, radio or television interference is unlikely to occur along either the preferred or alternate routes, and any source of interference would be a localized effect that should be easily detected and fixed. (Staff Report at 31.)

Staff provides that AEP Transco computed the electromagnetic fields (EMF) associated with the new circuits, based on the maximum loadings of the lines. The magnetic fields were estimated along the existing right-of-way to be less than 67 milligauss. Staff explains that the magnetic field output is comparable to that of common household appliances. Staff states that three residences located within 100 feet of the transmission line route may be exposed to elevated magnetic fields and, therefore, recommends that AEP Transco measure the EMF at these residences before and after construction of the line. (Staff Report at 31-32.)

Staff recommends that the Board find that the proposed facility would serve the public interest, convenience, and necessity, and complies with the requirements set forth in Section 4906.10(A)(6), Revised Code. (Staff Report at 32.)

G. Agricultural Districts and Agricultural Lands (Section 4906.10(A)(7), Revised Code)

Classification as agricultural district land is achieved through an application and approval process that is administered through local county auditor offices. Eight agricultural district parcels are within 1,000 feet of the preferred and alternate routes, with six of the parcels to be crossed by the proposed project's right-of-way. Approximately 23 percent of the preferred route and 22 percent of the alternate route cross agricultural land. The Staff Report notes that the majority of the land is already being crossed by the existing right-of-way. AEP Transco proposes to compensate individual land owners for damage to agricultural land as specified in the easement for the right-of way. (Staff Report at 33.)

Staff recommends that the impact of the proposed facility on the viability of existing agricultural land in an agricultural district has been determined, and, therefore, complies with the requirements specified in Section 4906.10(A)(7), Revised Code, subject to the conditions set forth in the Staff Report. (Staff Report at 33.)

H. Water Conservation Practice (Section 4906.10(A)(8), Revised Code)

Staff states that the proposed transmission line will not require the use of water for operation and that, consequently, water conservation practice as specified in Section 4906.10(A)(8), Revised Code, is not applicable to the project. Staff recommends the Board find that the requirements contained within Section 4906.10(A)(8), Revised Code, are inapplicable to this project. (Staff Report at 33.)

V. Stipulation

In the Stipulation, the parties stipulate and recommend to the Board that adequate evidence has been provided to demonstrate that construction of the proposed Elk line project meets the statutory criteria of Sections 4906.10(A)(1) through (8), Revised Code (Joint Ex. 1 at 7-9). As part of the Stipulation, the parties recommend the Board issue certificates for the preferred transmission line route, as described in the application, subject to the 24 conditions set forth in the Stipulation (Joint Ex. at 9-17). The following is a summary of the conditions agreed to by the stipulating parties and does not replace or supersede the Stipulation. The stipulating parties agree that:

- (20) The facility shall be installed at AEP Transco's preferred route, including the common route, as presented in the application and modified and/or clarified in the

supplemental filings and the recommendations in the Staff Report.

- (2) AEP Transco 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 the Staff Report, as amended by the Stipulation.
- (3) AEP Transco 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, as amended by the Stipulation.
- (4) AEP Transco shall conduct a preconstruction conference prior to the start of any construction activities for each discrete stage of the project. The preconstruction conference shall be attended by Staff, AEP Transco, and representatives from the prime contractor and all subcontractors for the projects. The conference shall include a presentation of the measures to be taken by AEP Transco and the contractors to ensure compliance with all conditions of the certificate, and discussion of the procedures for on-site investigations by Staff during construction.
- (5) At least 30 days before the preconstruction conference, AEP Transco shall submit to Staff, for review and acceptance, one set of detailed engineering drawings of the final project design, including the transmission line, electric tower and pole locations, temporary and permanent access roads, any crane routes, construction staging areas, and any other associated facilities and access points, so that 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 all conditions of the certificate and references at the locations where AEP Transco and/or its contractors must adhere to a specific condition in order to comply with the certificate.

- (6) At least 30 days prior to the preconstruction conference, AEP Transco shall have in place a complaint resolution procedure to address potential public grievances resulting from project construction and operation. The resolution procedure must provide that AEP Transco will work to mitigate or resolve any issues with those who submit either a formal or informal complaint and that AEP Transco will immediately forward all complaints to Staff. AEP Transco shall provide the complaint resolution procedure to Staff, for review and confirmation that it complies with this condition, prior to the preconstruction conference.
- (7) If any changes are made to the project layout after the submission of final engineering drawings, all changes shall be provided to 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 Staff review and acceptance, to ensure compliance with all conditions of the certificate, prior to construction in those areas.
- (8) Within 60 days after the commencement of commercial operation, AEP Transco shall submit to Staff a copy of the as-built specifications for the entire facility. AEP Transco shall provide as-built drawings in both hard copy and as geographically-referenced electronic data.
- (9) AEP Transco shall submit a construction access plan to Staff prior to the commencement of each stage of project construction. The plan should consider how impacts to any streams or wetlands may be avoided or minimized during construction, as well as provide specific details on all wetlands, streams, and ditches to be crossed by the transmission lines. AEP Transco shall include specific discussion of the proposed crossing methodology for each wetland and stream crossing, as well as post-construction site restoration. The plan should also include the measures to be used for restoring the area around all temporary access points, as well as a description of any long-term stabilization required along permanent access routes.

- (10) The certificate shall become invalid if AEP Transco has not commenced a continuous course of construction of the proposed facility within five years of the date of journalization of the certificate.
- (11) Prior to commencement of construction, AEP Transco shall develop a cultural resource avoidance plan in consultation with Staff and the Ohio Historical Preservation Office, detailing procedures for flagging and avoiding all potentially NRHP-eligible archeological sites in the project area. The avoidance plan shall also contain measures to be taken should previously-unidentified archeological deposits or artifacts be discovered during construction of the project.
- (12) AEP Transco shall notify property owners or affected tenants within the meaning of Rule 4906-5-08, O.A.C., of upcoming construction activities including potential for nighttime construction activities.
- (13) AEP Transco shall have a construction and maintenance access plan based on final plans for the access roads, transmission line, and types of equipment to be used. Prior to commencement of construction, AEP Transco shall submit the plan to Staff, for review and confirmation that it complies with this condition.
- (14) AEP Transco shall have a vegetation management plan. Prior to commencement of construction, AEP Transco shall submit this plan to Staff, for review and confirmation that it complies with this condition.
- (15) AEP Transco shall have a Staff-approved environmental specialist on site during construction activities that may affect sensitive areas, as mutually agreed upon between AEP Transco and Staff, and as shown on AEP Transco's final approved construction plan. Sensitive areas include, but are not limited to, areas of vegetation clearing, designated wetlands and streams, and locations of 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) AEP Transco shall contact Staff, ODNR, and the U.S. Fish and Wildlife Service (USFWS) within 24 hours 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 AEP Transco, Staff, and ODNR in coordination with the USFWS. Nothing in this condition 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.
- (17) AEP Transco 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.
- (18) AEP Transco shall utilize pole placement options on upland areas adjacent to wetland w-skb 10/12/2011-1 that would result in spanning the wetland, eliminate the need for entry of construction equipment into the wetland, and help minimize the number of trees that have to be removed within the wetland setting.
- (19) Prior to commencement of construction activities that require transportation permits, AEP Transco shall obtain all such permits. AEP Transco shall coordinate with the appropriate authority regarding any temporary or permanent road closures, lane closures, road access restrictions, and traffic control necessary for construction and operation of the proposed facility. Coordination shall include, but not be limited to, the county engineer, ODOT, local law enforcement, and health and safety officials. This coordination shall be detailed as part of a final traffic plan submitted to Staff prior to the preconstruction conference, for review and confirmation that it complies with this condition.

- (20) AEP Transco shall measure the EMF levels before construction of the transmission line and no more than 30 days after the line is operational at the nearest exterior wall of any current residences within 100 feet of the centerline, to determine if mitigation is necessary. AEP Transco shall provide readings to Staff for review within 60 days of operation.
- (21) 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 p.m. Impact pile driving and hoe ram 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.
- (22) AEP Transco is prohibited, under all circumstances, from blasting during the construction of the proposed facility.
- (23) Prior to the commencement of construction activities that require permits or authorizations by federal or state laws and regulations, AEP Transco shall obtain and comply with such permits or authorizations. AEP Transco shall provide copies of permits and authorizations, including all supporting documentation, to Staff within seven days of issuance or receipt by AEP Transco. AEP Transco shall provide a schedule of construction activities and acquisition of corresponding permits for each activity at the preconstruction conference.
- (24) Because engineering of the pole locations has not been finalized, AEP Transco shall provide final pole coordinates and heights to the ODOT Office of Aviation, the FAA, and Staff for authorization at least 60 days prior to the commencement of construction.

(Joint Ex. 1 at 9-17.)

VI. Conclusion

In the Stipulation, the parties recommend that, based upon the record and the information and data contained therein, the Board issue a certificate of environmental

compatibility and public need for the construction, operation, and maintenance of the transmission line project, on the preferred route, including the common route, as described in the application and supplemental application materials, subject to all conditions enumerated in the Stipulation. (Joint Ex. 1 at 14). Although not binding on the Board, stipulations are given careful scrutiny and consideration, particularly where no party objects to the stipulation.

According to the Stipulation and the testimony of AEP Transco witness Shawn Malone, the Stipulation is the product of serious bargaining among capable and knowledgeable counsel, and the parties who participated in settlement discussions. During the settlement discussions, several versions of the Stipulation were traded among the parties and each was provided an opportunity to join the agreement. The Stipulation will benefit customers and the public interest by preventing overloads of critical facilities and allowing for sufficient capacity for future growth and development of the area. (AEP Transco Ex. 3 at 2-3.) Mr. Malone testified that there is a direct tax benefit of \$980,000 in the first year to local communities (Adjudicatory Hearing Tr. at 11). Further, the witness states that the Stipulation complies with the requirements contained within Section 4906.10, Revised Code, and does not violate any important regulatory principle or practice. (AEP Transco Ex. 3 at 3).

We note that, as previously mentioned, witnesses appeared at both the local and adjudicatory hearings raising various concerns about the preferred and alternate routes. However, upon review of the record and the evidence submitted at the adjudicatory hearing, the Board finds that these issues were considered throughout the course of this proceeding. Specifically, while many witnesses believed it would be less burdensome to develop a transmission line route through the VFEF, the record reflects that this is not a viable option due to recently imposed deed restrictions on the development of any electric transmission lines (Staff Report at 5, 26; Adjudicatory Hearing Tr. at 23-25). The Board is mindful of the concerns raised by the witnesses, and we believe the numerous conditions contained in the Stipulation will minimize the impact of the proposed facility on neighboring property owners. Therefore, we find that the Staff Report and Stipulation adequately address concerns raised at both the local and adjudicatory hearings.

The Ohio Supreme Court has recognized that the statutes governing this case vest the Board with the authority to issue certificates upon such conditions as the Board considers appropriate; thus acknowledging that the construction of these projects necessitates a dynamic process that does not end with the issuance of a certificate. The Court concluded that the Board has the authority to allow Staff to monitor compliance with the conditions the Board has set. *In re Application of Buckeye Wind, L.L.C. for a Certificate to Construct Wind-Powered Electric Generation Facilities in Champaign County, Ohio*, 2012-Ohio-878, ¶16-17, 30 (Buckeye). Such monitoring

includes the convening of preconstruction conferences and the submission of follow-up studies and plans by AEP Transco. As recognized in *Buckeye*, any need to deviate from the certificate issued would require AEP Transco to file an amendment. If an amendment is filed, in accordance with Section 4906.07, Revised Code, and if such amendment involves any material increase in any environmental impact or substantial change in the location of all or a portion of the facility, the Board would be required to hold a hearing.

Accordingly, based upon all of the above, the Board finds that the Stipulation is the product of serious bargaining among knowledgeable parties, will promote the public interest, convenience and necessity, and does not violate any important regulatory principle or practice. Therefore, the Board approves and adopts the Stipulation and hereby issues a certificate to AEP Transco for the construction, operation, and maintenance of the proposed transmission line, on the preferred route, as described in the application and subject to the 24 conditions set forth in the Stipulation and this order.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

- (1) The transmission line project is a major utility facility as defined in Section 4906.01(B)(2), Revised Code.
- (2) AEP Transco is a person under Section 4906.01(A), Revised Code.
- (3) On August 3, 2011, AEP Transco filed a motion for waiver of certain limited requirements of Section 4906.06(A)(6), Revised Code, regarding the one-year notice period, and Rule 4906-5-04, O.A.C., regarding the requirement that the alternative routes have less than 20 percent in common. By entry issued December 21, 2011, the ALJ granted AEP Transco's motion for waiver.
- (4) On August 17, 2011, AEP Transco held a public information meeting in McArthur, Ohio.
- (5) On January 3, 2012, AEP Transco filed its application for a certificate for a transmission line project.
- (6) On March 2, 2012, the Board notified AEP Transco that its application was complete.

- (7) By entry issued April 19, 2012, the ALJ scheduled a local public hearing for July 12, 2012, at the Vinton County Community Building, McArthur, Ohio, and an adjudicatory hearing for July 26, 2012, at the offices of the Board, in Columbus, Ohio.
- (8) On June 6, 2012, AEP Transco filed its proof of service of the application to the appropriate government officials and public agencies pursuant to Rule 4906-5-06, O.A.C.
- (9) On June 13, 2012, AEP Transco filed a motion to extend the procedural schedule by 60 days, pursuant to Rule 4906-7-13(A), O.A.C.
- (10) By entry issued June 25, 2012, the ALJ: granted AEP Transco's motion to extend the procedural schedule; directed AEP Transco to publish public notice canceling the July 12, 2012, public hearing and the July 27, 2012, adjudicatory hearing; and ordered that the procedural schedule and effective date be reset by subsequent entry upon AEP Transco's submission of a supplemental application.
- (11) On September 5, 2012, AEP Transco filed supplemental adjustments to the original application.
- (12) On October 3, 2012, the Chairman of the Board notified AEP Transco that its application filed January 3, 2012, as supplemented on September 5, 2012, was complete and accepted pursuant to Rule 4906-5-05(A)(1), O.A.C.
- (13) On October 17, 2012, and December 5, 2012, AEP Transco filed proof of service of its accepted and complete application in accordance with Rules 4906-5-06 and 4906-5-07 O.A.C.
- (14) By entry issued October 24, 2012, the ALJ scheduled a local public hearing for December 6, 2012, at the Vinton County Community Building, McArthur, Ohio, and an adjudicatory hearing for December 13, 2012, at the offices of the Board, in Columbus, Ohio.

- (15) On December 12, 2012, AEP Transco filed proof of publication of newspaper notice, as required by Rule 4906-5-08(C)(2), O.A.C.
- (16) On November 20, 2012, Staff filed its report of investigation of the application.
- (17) A local public hearing was held, as rescheduled, on December 6, 2012. At the local public hearing, eight individuals offered testimony on the proposed transmission line project.
- (18) On December 7, 2012, the AEP Transco and Staff filed a joint Stipulation resolving all issues raised in this proceeding.
- (19) On December 13, 2012, the adjudicatory hearing was held.
- (20) The record establishes the need for the project as required by Section 4906.10(A)(1), Revised Code.
- (21) The record establishes the nature of the probable environmental impact from construction, operation, and maintenance of the projects as required by Section 4906.10(A)(2), Revised Code.
- (22) The record establishes that the preferred transmission line route, subject to the conditions set forth in this order, 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), Revised Code.
- (23) The record establishes that the preferred transmission line route, subject to the conditions set forth in this order, is consistent with regional plans for expansion of the electric grid for the electric systems in this state, will have no adverse impact upon the grid, and will serve the interests of electric system economy and reliability as required by Section 4906.10(A)(4), Revised Code.
- (24) The record establishes that the preferred transmission line route, subject to the conditions set forth in this order, will

comply with Chapters 3704, 3734, and 6111, Revised Code, and Sections 1501.33, 1501.34, and 4561.32, Revised Code, and all rules and regulations thereunder, to the extent applicable, as required by Section 4906.10(A)(5), Revised Code.

- (25) The record establishes that the project, subject to the conditions set forth in this order, will serve the public interest, convenience, and necessity, as required by Section 4906.10(A)(6), Revised Code.
- (26) The record establishes that the project, subject to the conditions set forth in this order, has been assessed as to viability of agricultural land in an existing agricultural district as required by Section 4906.10(A)(7), Revised Code.
- (27) Inasmuch as water conservation practices are not involved with these projects, Section 4906.10(A)(8), Revised Code, does not apply in this circumstance.
- (28) The record evidence of this proceeding provides sufficient factual data to enable the Board to make an informed decision.
- (29) Based on the record, the Board should issue a certificate of environmental compatibility and public need pursuant to Chapter 4906, Revised Code, for construction, operation, and maintenance of transmission line project, subject to the conditions set forth in the Stipulation and this order.

ORDER:

It is, therefore,

ORDERED, That the Stipulation filed by the parties is approved and adopted.
It is, further,


ORDERED, That a certificate be issued to AEP Transco for the construction, operation, and maintenance of the project at the preferred transmission line route. It is, further,

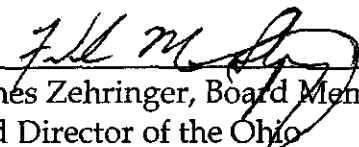
ORDERED, That the certificate contain the 24 conditions set forth in Section V of this order. It is, further,


ORDERED, That a copy of this opinion, order, and certificate, be served upon each party of record and any other interested person of record.

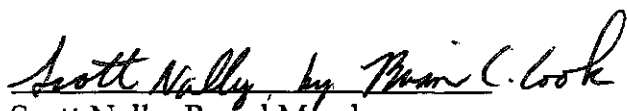
THE OHIO POWER SITING BOARD

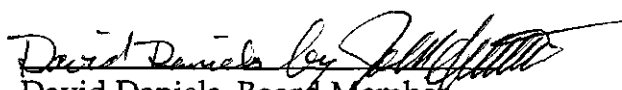

Todd A. Snitchler, Chairman
Public Utilities Commission of Ohio

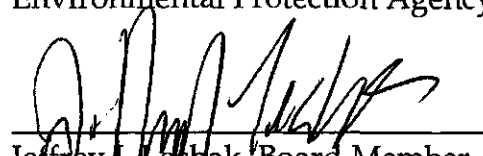

Christiane Schmenk, Board
Member and Director of the Ohio
Development Services Agency


James Zehringer, Board Member
and Director of the Ohio
Department of Natural Resources


Theodore Wymyslo, Board
Member and Director of the
Ohio Department of Health

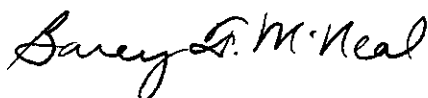

Scott Nally, Board Member
and Director of the Ohio
Environmental Protection Agency


David Daniels, Board Member
and Director of the Ohio
Department of Agriculture


Jeffrey J. Lethak, Board Member
and Public Member

JJT/sc
Entered in the Journal

MAR 11 2013



Barcy F. McNeal
Secretary