

BEFORE THE
OHIO POWER SITING BOARD

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| In The Matter Of: |) | |
| The Ohio Power Siting Board's Review of |) | Case No. 12-1981-GE-BRO |
| Chapters 4906-1/4906-5/4906-7/4906-9/4906-11/ |) | |
| 4906-13/4906-15 and 4906-17 of the |) | |
| Ohio Administrative Code |) | |

**REPLY OF FIRSTENERGY TO COMMENTS FILED
ON DRAFT OHIO POWER SITING BOARD RULES
PROPOSED MAY 1, 2013**

FirstEnergy Service Company, on behalf of FirstEnergy Corp. and its subsidiaries and affiliates, including American Transmission Systems, Incorporated ("ATSI"), The Cleveland Electric Illuminating Company, The Toledo Edison Company, and Ohio Edison Company, and its generation subsidiary FirstEnergy Solutions Corp. ("FES") (collectively referred to as "FirstEnergy"), provides the following reply to the initial comments filed on the draft Ohio Power Siting Board rules. These reply comments supplement the original comments filed by FirstEnergy on June 3, 2013 in this docket.

Initially, FirstEnergy notes that many of the comments submitted on June 3, 2013 from various interested parties mirror the primary comments made by FirstEnergy, and that on the whole, the comments are in general agreement with FirstEnergy on three major issues: (1) that the public participation requirements for Standard Certificate Applications need improvement; (2) that the Board needs to include a process to challenge the imposition of conditions on automatically approved Accelerated Certificate Applications; and, (3) that the proposed rules will not reduce the costs of the regulatory program. Given the comments submitted by the other parties in this action, FirstEnergy renews its request that the Board re-evaluate the timing and

procedures of the public information process, develop a more appropriate and legally justifiable process for conditioning the automatic approval of Accelerated Review Applications, and undertake a more detailed analysis of the costs of the proposed rules.

In addition to these general observations, the following specific comments are submitted in reply to the comments filed in this docket. FirstEnergy appreciates the opportunity to comment on the proposed rules and remains willing to provide further information or to otherwise discuss appropriate responses to its comments with the Board.

Proposal for Conditional Approval of Accelerated Review Applications

FirstEnergy has had an opportunity to review the comments submitted by other parties in these proceedings and discuss with the Board's Staff concerns regarding the current proposal in Admin. Code Rule 4906-6-10 for the automatic approval of Accelerated Review Applications. In particular, FirstEnergy believes that the process as provided in the proposed rules, including the automatic adoption of conditions included in a Staff Report into automatic approvals, is unlawful. At a minimum, the rules must reflect that any conditions imposed on a certificate, whether approved automatically or not, are approved by the Board.

FirstEnergy, in considering alternatives to the proposed rules, believes that a reasonable approach to addressing conditions on automatically approved Accelerated Review Certificate applications is requiring the Board to formally adopt conditions that an applicant objects to that are proposed by the Board's Staff in the staff report. FirstEnergy, therefore, would propose that the following language be included in proposed Admin. Code Rule 4906-6-10(C):

(C) Any conditions included in a staff report that are not objected to by an applicant prior to the automatic approval date established in paragraphs (A) and (B) of this rule, shall be deemed automatically adopted by the Board as conditions on the certificate of environmental compatibility and public need. If an applicant files a written objection with the Board at least three days prior to the automatic approval date to any condition proposed in a staff report, such condition shall only be effective if specifically adopted by

the Board within the time permitted for consideration of the application provided in Section 4906.03(F) of the Revised Code. No condition timely objected to by an applicant proposed in the staff report shall become effective unless the Board specifically adopts such condition by order.

In order to ensure that the applicant has the opportunity to review and comment on proposed conditions from the Board's Staff, FirstEnergy would also propose the addition of the following at proposed Admin. Code Rule 4906-6-06(B)(3):

(B)(3) If the staff report will contain proposed conditions on a certificate of environmental compatibility and public need, staff shall provide to the applicant at the earliest date practicable, and in no event less than ten business days before the automatic approval date, copies of the proposed conditions.

Inclusion of these proposed rules will encourage meaningful discussion of conditions, meet the Board's statutory obligation to establish a process for automatic approval of certain types of applications, and meet basic constitutional requirements.

FirstEnergy Reply Comments on Comments of AEP Ohio Transmission Company

FirstEnergy notes that the initial comments of AEP Ohio Transmission Company ("AEP Transco") in many respects mirror the initial comments filed by FirstEnergy in this matter. To the extent the comments of AEP Transco agree with the comments filed by FirstEnergy, FirstEnergy believes that these comments should be carefully reviewed and considered by the Board as FirstEnergy and AEP Transco are two of the utilities that have the most experience with the siting process and are most likely to endure the increased costs and uncertainty created by the proposed rules.

FirstEnergy has the following specific observations on AEP Transco's comments:

Admin. Code Rule 4906-2-04(C)(1)

FirstEnergy agrees that proposed Admin. Code Rule 4906-2-04(C)(1) is too broad and vague, and as a result may have unintended consequences. As proposed, the requirement for certificate

applications to quantify the costs and benefits of the direct and indirect effects of siting decisions is simply too vague to be practically implemented. Outside of a discussion of the need for a project, and an evaluation of the alternatives to a proposed project, which will include an evaluation of the economic reasonableness of a proposal, the rule as proposed appears to require an additional evaluation and quantification of indirect costs, which is undefined. FirstEnergy agrees with AEP Transco in that this rule is redundant to the extent it requires the quantification of the cost of alternatives for a proposed project, and vague to the extent it seeks quantification of costs of siting decisions outside of the economic evaluation of project alternatives. FirstEnergy recommends that this requirement be removed from the rules.

Admin. Code Rules 4906-2-04(C)(6).

FirstEnergy agrees with AEP Transco with respect to the submittal of the digital geographic data to the Board. This information, which is used in the preparation of maps submitted as part of an application, is generally unnecessary for a review of an application. At the most basic level, FirstEnergy believes that applicants should be required to provide adequate and legible maps to allow for the review and consideration of siting decisions. In general, applicants for major utilities, and in particular, transmission lines, understand and value the need for legible maps to be provided as part of the application. The preparation of legible maps in an application is sufficient for both staff review and public information. The submittal of the underlying electronic data used by applicants to prepare the maps in an application, is unnecessary and introduces the possibility of significant confusion and complexity into siting matters. Electronic data submittal should be limited only to that information necessary to assist the Board in the review of the physical location of a proposed project, and FirstEnergy joins with AEP Transco in objecting to the required submittal of any electronic data that could be edited or

reproduced in different formats or that would require FirstEnergy to respond to questions regarding the use, interpretation or misuse of the data.

Admin. Code Rule 4906-2-04(C)(7)

FirstEnergy agrees with AEP Transco that attempting to prescribe requirements for map scale, format, and content limits the ability of applicants to provide information in the most useful and informative forms. FirstEnergy believes generally that applications should be prepared in accordance with a general requirement to provide legible maps but that specifics regarding the maps should be left to the discretion of the applicant. Applicants should also be afforded the ability to consolidate mapping requirements, if appropriate, in an application. In those unusual circumstances where applicants have not provided sufficiently legible or informative maps, the Board could request additional information during the review process.

Admin. Code Rule 4906-3-03(B)(2)(a)

FirstEnergy agrees with AEP Transco's suggestion that the description of route options during the public information meeting process should not be limited to "preferred and alternate routes." As discussed extensively in FirstEnergy's Comments, at the time of the public information meeting, FirstEnergy has not made a final decision regarding the best routing or siting options. Thus, at the time of the public information meeting, FirstEnergy believes it is appropriate to only identify the routing options preliminarily identified for review. FirstEnergy, however, does not believe that it is necessary to define the terms used to describe routing options considered during the public information meeting. Public information meetings should be based upon the general understanding of the project configuration and as much specific information as is available and appropriate to provide the public with an opportunity to meaningfully participate in the review of siting options early in the process.

After discussing the timing of the public information meeting with the Board's staff, FirstEnergy remains concerned with the proposed rules related to the timing for public information meetings. To address comments from members of the community at recent public hearings that they were unaware of the project or earlier public information meetings, FirstEnergy agrees that a revision to the Board's requirements for public information meetings is appropriate, however the proposed rules fall short of fostering meaningful public involvement in future projects. The proposed rules add both a written notification of the public information meeting to property owners along potential routes of a transmission line project and require the public information meeting to be held no more 60 days before submittal of the project application to the Board. FirstEnergy believes the proposed written notice to property owners of the public information meeting in a process that is notably similar to the written notice currently provided to property owners of public hearings fully addresses this concern. FirstEnergy believes the requirement to hold the public information meeting no more 60 days before submittal of the project application to the Board will decrease the opportunity for public involvement on future transmission line projects and should be deleted or the time frame substantially lengthened.

FirstEnergy notes that there are substantial, and significant, differences between major electric and gas transmission line utility projects and generation facilities such as a wind farm or combustion turbine generating facility and the requirements for public information meetings should not limit the usefulness of the public information meeting in the siting process for major transmission line projects. FirstEnergy encourages the Board to avoid adopting a one-size fits all on this critical issue of public participation in siting projects if it intends to significantly change the current process and rules, as is apparently the intention of its Staff. Of critical importance for

the Board's consideration is the fact that generation facilities are typically constructed in response to market opportunities, and they have limited footprints, as compared to transmission facilities, and often are proposed to the Board after the property rights are obtained through negotiations with property owners. In comparison, electric and gas transmission line projects are typically proposed in response to a critical need to enhance or maintain reliability or to serve growing load, and include at least a preferred and alternate route when proposed to the Board. Due to the mandate to provide the Board with routing options for its consideration, property rights along the routes are generally obtained after the Board issues a certificate, and although those property rights are ideally obtained through negotiation, as a public utility those property rights may be obtained through eminent domain proceedings. This significant difference between generation and transmission projects highlights the different value the public information meeting process may serve in the different types of projects, and it is FirstEnergy's opinion that the current proposal will reduce or completely eliminate the value of the public information meeting process to transmission projects.

From FirstEnergy's perspective, it appears the practical effect of requiring public information meetings to be held no more than 60 days before submittal of an application, is that the Board will reduce and perhaps eliminate the ability of the public to comment on proposed transmission line routing options before the final routes or sites of a major utility are submitted to the Board in a Standard Certificate Application. Presentations at the public information meetings required under the proposed rules are likely to follow an "announce and defend" format that "announces" the preferred and alternate route of transmission facilities or sites of generation facilities, and then "defends" the decision process. Although this process may be similar to what has occurred on recent proposed generation facilities, it represents a substantial departure from

how FirstEnergy utilizes the flexibility in the current rules to schedule and conduct a public information program on transmission line projects early in the siting process that engages the community in an open dialog about a project well before a final route or routes is proposed to the Board. Of course, the proposed rules do not preclude applicants from hosting more than one public information meeting and there are likely projects where multiple meetings are beneficial, however it must also be recognized that multiple meetings require duplication of costs including public notice costs, meeting location rentals, meeting preparation and attendance of both the applicant's staff and the staff of its consultants – these costs can be substantial, and for recent projects undertaken by FirstEnergy have exceeded \$40,000 in direct costs and the dedication of hundreds of hours of FirstEnergy employee time. From FirstEnergy's perspective, it appears the unintended consequence of this aspect of the proposed rules is to either force applicants to conduct extremely expensive and duplicative meetings or limit the public participation process to a single public information meeting late in the process which eliminates meaningful public participation before routing options are submitted in a Standard Certificate Application. FirstEnergy believes Ohio citizens are better served by rules that will allow public utility applicants to provide a reasonable opportunity to describe the project alternatives as part of the public information meeting process early in the siting process to encourage public participation in the siting process. The proposed rules do not support this form of early participation in the siting process and will likely result in less opportunity for the public to participate in the process.

Admin. Code Rule 4906-3-13(E)

FirstEnergy joins AEP Transco in its comment on proposed Admin. Code Rule 4906-3-13(E). "Environmentally sensitive areas" is an undefined and vague term in the proposed rules, and FirstEnergy agrees that the term should be specifically defined in the rules. FirstEnergy

requests that “environmentally sensitive areas” be defined and limited to those areas that are otherwise subject to regulatory program or are recognized public areas, such as surface waters of Ohio, wetlands, public parks and recreation facilities, and formally identified cultural resources. The term should not include non-public resources or areas or resources that are not otherwise subject to regulation.

Admin. Code Rule 4906-5-08(D)

FirstEnergy agrees with AEP Transco’s comment that the submittal of soil boring information to the Board as part of an application is unnecessary and unduly burdensome. Soil boring information is generally not relevant to the selection of transmission line routes or locations of major utility facilities, and for typical projects is obtained once final routes and/or sites have been selected and approved. There is no reasonable justification for requiring the collection of soil boring data on multiple routes prior to approval of a major utility route or site as the information is primarily, if not exclusively, related to construction, not siting criteria. Since soil boring information is used for structural construction, it is unlikely that the information will be relevant to the application review or the consideration of the application by the Board. To simplify the rules and ensure that the rules do not require the gathering and submittal of unnecessary information, this section should be eliminated.

AEP Transco’s General Comment on Mapping

FirstEnergy agrees with and fully supports the comments made by AEP Transco with respect to the numerous mapping requirements found in the rules. In general, FirstEnergy believes that applicants should have the discretion to provide the maps necessary for the review and consideration of a major utility project without the need to prepare and submit redundant, overlapping or confusing maps. In general, therefore, the rules should provide for the submittal

of mapping necessary to meet this goal, but they should provide the applicant with sufficient flexibility to submit only those maps that are most appropriate for the particular project. Granting to applicants the flexibility to provide reasonable, legible maps in an application will improve the accessibility of applications to the public, provide useful and meaningful information in a format most readably useable to the public, and will significantly reduce the cost and size of applications. To the extent the Board does not reduce the mapping requirements in the rules and provide for further simplification, FirstEnergy agrees with the proposal from AEP Transco to include in the proposed rules a chart outlining the type and scale of maps to be used for each mapping requirement in an application.

FirstEnergy Reply to Comments of the Ohio Gas Association

FirstEnergy generally concurs with the comments of the Ohio Gas Association, and in particular, the recommendation of the Ohio Gas Association that the time period for initiating construction of an approved letter of notification or construction notice application under the accelerated review provisions of the new rules should be expanded. FirstEnergy notes that comments provided by Everpower Wind Holdings, Inc. suggest the expansion of the period of time for commencing construction of an approved project should be 5 years regardless of the approval process.

FirstEnergy agrees with both comments and believes that given the provision of Rev. Code § 4906.06, the appropriate period of time to commence construction for all projects regardless of the approval process is five years. Given the myriad issues faced during the planning process for the construction of major utility facilities, FirstEnergy believes that a five year period to commence construction after the approval of any certificate application is appropriate and consistent with the mandates in the statute. FirstEnergy believes that, in general,

absent a specific justification, the Board should adopt a rule that is consistent with the statute and provide that all certificates are valid for at least five years from the date of approval.

FirstEnergy Reply to Comments of Leipsic Wind, LLC

In general, FirstEnergy agrees with the comments provided by Leipsic Wind, LLC. In particular, the comment made regarding proposed OAC 4906-1-01 (Definitions), -2-02 (Filing of pleadings and other documents), -2-08 (Signing of pleadings), -2-09 and -2-13 (Role of Participants in public hearings), -3-10 (Proof of Publication) identify practical problems presented by the language of the proposed rules, and identify problems which Applicants other than Leipsic Wind, LLC have also encountered. We ask that the Board give these comments serious consideration before adoption of proposed changes to the Board's rules.

FirstEnergy Reply to Comments of the Environmental Law and Policy Center

The Environmental Law and Policy Center's ("ELPC") comments raise one issue. ELPC claims that the accelerated application process does "not require applicants seeking accelerated approval of electric transmission lines and associated facilities to provide the Board and the public with sufficient information to evaluate the need for the proposals." ELPC insists that the accelerated application process should require the "same load flow and contingency information required for Standard Certificate Applications under the proposed revised Ohio Admin. Code 4906-5-03." This concern is misplaced and generally misconstrues the mandated accelerated review process for the types of transmission projects that qualify for accelerated review. The specific and detailed information that ELPC suggests is required to establish the need for a project is not mandated by statute. In fact, it is within the sound discretion of the Board to rely on whatever information it considers relevant to whether or not a project is needed. Requiring

the submittal of load flow analysis and other highly technical, confidential and critical energy infrastructure information to support a determination of need is not required.

It is not clear whether ELPC comment regarding the need for more information in applications is complaining that the Board cannot make an informed judgment regarding the need for a transmission line facility or whether the public is deprived of this information if it is not included in an accelerated application filing --- or both. ELPC points to the ATSI Bruce Mansfield-Glenwillow 345 kV Transmission Line application (OPSB Case No. 12-1726-EL-BIN) as an example of the shortcomings of the accelerated application process and the failure to supply the load flow information which ELPC insists is necessary for the Board's consideration of the need for this transmission line project. ELPC mischaracterizes the proceedings in the Bruce Mansfield- Glenwillow 345 kV Transmission Line Application proceedings, however, in two key respects.

ELPC grossly exaggerates the paucity of information provided by ATSI in the Letter of Notification filed for the Bruce Mansfield-Glenwillow Transmission Line Project by stating that: "ATSI provided only generalizations about the need for the Mansfield Line, with no opportunity for interested parties to obtain access to specific details about this need." This statement is materially misleading for two reasons: first, the Letter of Notification for the Bruce Mansfield – Glenwillow Transmission line contained a detailed explanation of the need for this project (Letter of Notification at pp. 13-17); and second, Exhibit 2 to the Letter of Notification included a 23-page report entitled "PJM Transmission Expansion Advisory Committee (TEAC) Recommendations to the PJM Board." Which included a recommendation from PJM to move forward with the Bruce Mansfield-Glenwillow Transmission Line Project --- i.e. PJM determined that the project was needed. As the one of the transmission system operators for this

region, PJM's determinations are entitled to considerable weight. And, as noted in the Letter of Notification for this project, load flow information was used to evaluate the Bruce Mansfield-Glenwillow Transmission Line Project utilizing PJM Interconnection load forecasts – a process which includes analysis of multiple contingency conditions (i.e. loss of two or more facilities). *See* Letter of Notification at pp. 16-17; (2).

In the experience of FirstEnergy, "interested parties" (e.g. members of the public) have no access to the computer software necessary to perform load flow analyses, and are not willing to invest the money to obtain such software. Providing raw data to an interested party would be meaningless if that interested party has no access to the necessary computer software to perform the computer modeling necessary to replicate the load flow studies performed by the Applicant and PJM. In the past, Board Staff have been provided load flow data, in the event they wished to confer with PJM or perform their own load flow studies. If the Board deemed the information in an accelerated application to be insufficient to establish the need for the line, pursuant to the proposed rules, it is within the Board's prerogative to require additional information as part of the accelerated review process. *See* Proposed Rule OAC 4906-6-06 and 4906-6-09. Finally, nothing prevents ECLC from approaching PJM if it wishes to learn more regarding the load flow studies performed for a specific project. Therefore, ELPC's concerns can be fully addressed by the Board Staff in the case of a specific transmission line project where a legitimate question arises regarding the need for the line.¹

¹ Although ECLC uses the Bruce Mansfield-Glenwillow Transmission Line Project as its example of a lack of load flow study information which was critical to establish need, ECLC did not directly contest the need for the project in its comments to the Board, when it had an opportunity to do so; nor did it claim that load flow studies had not been performed properly – but rather that every detail of these studies was not provided in the Letter of Notification. *See* Comments of the Environmental Law and Policy Center, OPSB Case No. 12-1981-GE-BRO at p. 6 and Comments submitted in OPSB Case No. 12-1726-EL-BGN.

Conclusion

FirstEnergy appreciates the opportunity to comment on the draft rules and the Company hopes that the Board will carefully evaluate the comments in its effort to adopt the most efficient rules governing the power siting process.

Respectfully submitted,

s/ Robert J. Schmidt

Christopher R. Schraff (0023030)
Robert J. Schmidt, Jr. (0062261)
Porter, Wright, Morris & Arthur LLP
41 South High Street
Columbus, OH 43215
Phone: (614) 227-2097
Fax: (614) 227-2100

Anne M. Juterbock (0079637)
FirstEnergy Service Company
76 South Main Street
Akron, OH 44308
Email: ajuterbock@firstenergycorp.com

Counsel for FirstEnergy

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing "Comments of FirstEnergy" was served upon the following person(s) by electronic filing and mailing a copy, postage prepaid, on June 18th, 2013, addressed to:

Bill Wright
Section Chief
Office of the Attorney General of Ohio
Public Utilities Section
180 East Broad Street
Columbus, OH 43215

Service on all other commenters was provided via electronic filing and email on June 18, 2013.

s/ Robert J. Schmidt

Robert J. Schmidt

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Summary: Reply Comments of FirstEnergy on Ohio Power Siting Board Draft Rule Proposal
electronically filed by Mr. Robert J Schmidt on behalf of FirstEnergy Service Company