

**BEFORE
THE OHIO POWER SITING BOARD**

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

REPLY COMMENTS OF THE ENVIRONMENTAL LAW AND POLICY CENTER

I. INTRODUCTION

In a May 1, 2013 Entry in this case, the Ohio Power Siting Board (“Board”) issued amendments to portions of the Ohio Administrative Code for comment by interested stakeholders. The Environmental Law and Policy Center (“ELPC”) filed comments on June 3. The following reply comments respond to one issue raised by AEP Ohio Transmission Company (“AEP”), one by FirstEnergy, and one by Leipsic Wind LLC (“Leipsic”). ELPC requests that the Board deny AEP’s proposal to require Board staff to provide applicants with an advanced copy of conditions with an offer to meet with applicants prior to issuing the report.¹ ELPC also requests that the Board deny FirstEnergy’s proposal to eliminate the requirement of Proposed Admin. Code Rule 4906-5-03(D) that applicants seeking approval to build new transmission lines must provide an analysis and evaluation of alternatives, including non-transmission alternatives.² Finally, ELPC requests that the Board deny Leipsic’s request to modify Proposed

¹ See Ohio Power Siting Board Case No. 12-1981-GE-BRO, Initial Comments of AEP Ohio Transmission Company, at page 9-10 (June 3, 2013).

² See Ohio Power Siting Board Case No. 12-1981-GE-BRO, Attachment and Detailed Comments of FirstEnergy on Draft Ohio Power Siting Board Rules as Proposed May 1, 2013, at page 43 (June 3, 2013).

Admin. Code Rule 4906-6-09 to limit the amount of time the Board has to determine whether or not to suspend an accelerated application.³

II. COMMENTS

A. **The Board should not allow staff to engage in closed-door discussions with applicants about potential modifications to accelerated applications.**

In its Initial Comments, AEP argues that it is unfair for the Board to grant staff the opportunity to place conditions on approval of accelerated applications without first giving applicants an opportunity to refute staff's conditions.⁴ AEP proposes that the Board should require staff "provide the Applicant an advance copy of the conditions with an offer to meet with the Applicant on any potential conditions prior to issuing a staff report."⁵ AEP argues that this is necessary because there is no opportunity to contest conditions once the staff issues its report.⁶ The Board should accept AEP's recommendation only if the proposal is circulated to all parties who have intervened in the relevant docket and if the discussions are held with all parties. While AEP is correct that applicants have no opportunity to contest the staff report, the same is true for intervenors. In order to keep a level playing field between all parties in an accelerated application case, the Board should give all parties the same opportunities to share information with staff and the Board. Preferential treatment over the outcome should not be given to the applicant, who already has the burden of proof to demonstrate the need for a project.

³ See Ohio Power Siting Board Case No. 12-1981-GE-BRO, Leipsic Wind LLC's Comments to Proposed Rules, at page 15 (June 3, 2013).

⁴ Ohio Power Siting Board Case No. 12-1981-GE-BRO, Initial Comments of AEP Ohio Transmission Company, at page 9 (June 3, 2013).

⁵ *Id.*

⁶ *Id.*

The Board should accept AEP's proposal only if it provides all parties in an accelerated application docket the same opportunities to review draft staff conditions and meet with staff about those draft conditions.

B. The Board should retain the requirement in Proposed Admin. Code Rule 4906-5-03(D) that applicants seeking to construct transmission lines include in their applications an analysis of alternatives, including non-transmission alternatives.

In its Attachment and Detailed Comments, FirstEnergy argues that the Board should eliminate the requirement in Proposed Admin. Code Rule 4906-5-03(D) that applicants must include an analysis and evaluation of non-transmission alternatives.⁷ The Board should reject this request and continue to require applications to include analyses of non-transmission alternatives.

Ohio Revised Code § 4906.10 requires that the Board approve an application only if it determines the need for the project and that the project serves the public interest, convenience, and necessity. This is especially true for large transmission lines, which can stretch hundreds of miles, cost hundreds of millions of dollars to construct, and impact thousands of Ohio citizens and important natural resources. In today's complex energy mix, non-transmission alternatives can sometimes solve reliability problems at much less cost and with fewer impacts on Ohio citizens than large transmission projects. Non-transmission alternatives include new generation from wind and solar and new demand-side resources such as demand response or energy efficiency resources. It is impossible for the Board to properly evaluate the need for a project without exploring non-transmission alternatives. Therefore, the Board should reject FirstEnergy's proposal to eliminate consideration of non-transmission alternatives from applications for transmission lines.

⁷ Ohio Power Siting Board Case No. 12-1981-GE-BRO, Attachment and Detailed Comments of FirstEnergy on Draft Ohio Power Siting Board Rules as Proposed May 1, 2013, at page 43 (June 3, 2013).

C. The Board should not specify a time within which the Board must issue a suspension of an accelerated application.

In its comments, Leipsic argues that the Board should change Proposed Admin. Code Rule 4906-6-09 by specifying a 10-day time limit in which the Board can suspend an accelerated application by up to 90 days.⁸ Leipsic claims that the current proposed rules are unfair because they allow the Board to wait 89 days before issuing a suspension.⁹ Leipsic does not provide an explanation of why it would be unfair for the Board to make its decision to suspend on the 89th day following the filing of an accelerated application.

The Board should reject Leipsic's proposed changes. Am. Sub. S.B. 315 expanded the scope of accelerated applications to include transmission lines that are necessary to alleviate reliability problems caused by retiring generation. This expansion means that very large, expensive lines like FirstEnergy's Bruce Mansfield-Glenwillow 345 kV Transmission Line 115 mile, \$130 million project are now eligible for accelerated review. Ohio lawmakers, recognizing that 90 days might not be enough time to properly evaluate complicated transmission projects, gave the Board the ability to take an additional 90 days to evaluate accelerated applications. Leipsic's proposal for a 10-day time limit to determine whether suspension is needed unreasonably constrains the Board. For example, it might take more than 10 days for the Board or third parties to discover whether or not additional information is needed in order to determine the need or public interest impacts of an application, especially where large reliability projects are concerned. If the Board determines on the 89th day that more time is needed to gather information to properly evaluate an application, then it should have the ability to suspend that application.

⁸ See Ohio Power Siting Board Case No. 12-1981-GE-BRO, Leipsic Wind LLC's Comments to Proposed Rules, at page 15 (June 3, 2013).

⁹ *Id.*

The Board should reject Leipsic's proposal for a 10-day timeframe in which the Board must determine whether or not a 90-day suspension is necessary.

III. CONCLUSION

The Board should deny AEP's proposal to allow applicants special access to staff's draft conditions on an accelerated application. The Board should also deny FirstEnergy's proposal to eliminate the requirement in Proposed Admin. Code Rule 4906-5-03(D) that applications for transmission lines must include analyses of non-transmission alternatives. Finally, the Board should deny Leipsic's proposal to impose a time limit in which the Board can suspend an accelerated application for up to an additional 90 days. All of these changes will make it difficult for the Board to properly evaluate the need for projects and the impact on the public interest, convenience, and necessity. ELPC appreciates the opportunity to submit these reply comments and looks forward to participating further in the Board's rulemaking process.

Respectfully submitted,

/s/ Nicholas McDaniel
Nicholas McDaniel
Environmental Law & Policy Center
1207 Grandview Avenue, Suite 201
Columbus, OH 43212
P: 614-488-3301
F: 614-487-7510
NMcDaniel@elpc.org

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing *Reply Comments*, submitted on behalf of the Environmental Law & Policy Center, was served by electronic mail, upon the following Parties of Record, this 18th day of June, 2013.

/s/ Nicholas McDaniel

Nicholas McDaniel

Bill Wright
Section Chief
Office of the Attorney General of Ohio
Public Utilities Section
180 East Broad Street
Columbus, OH 43215
william.wright@puc.state.oh.us

Robert J Schmidt
Porter Wright Morris & Arthur
41 South High St.
Columbus OH 43215
Phone: (614) 227-2028
Fax: (614) 227-2100
rschmidt@porterwright.com

Michael J. Settineri
Miranda R Leppla
Vorys, Sater, Seymour & Pease LLP
52 East Gay Street
Columbus OH 43215
Phone: 614-464-8335
Fax: 614-719-4647
mrleppla@vorys.com
mjsettineri@vorys.com

Teresa Orahood
Bricker & Eckler LLP
100 South Third Street
Columbus OH 43215-4291
Phone: (614) 227-4821
Fax: (614) 227-2390
torahood@bricker.com

Erin C. Miller
Matthew J. Satterwhite
American Electric Power Service Corporation
1 Riverside Plaza
Columbus OH 43215
Phone: 614-716-1637
Fax: 614-716-2950
ecmiller1@aep.com
mjsatterwhite@aep.com

Carys Cochern
Duke Energy
155 East Broad St 21st Floor
Columbus OH 43215
Phone: 614-222-1330
Fax: 614-222-1337
carys.cochern@duke-energy.com

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

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

6/18/2013 4:56:34 PM

in

Case No(s). 12-1981-GE-BRO

Summary: Reply Comments of the Environmental Law and Policy Center electronically filed by Mr. Nicholas A. McDaniel on behalf of Environmental Law and Policy Center