

**BEFORE THE OHIO POWER SITING BOARD**

**In the Matter of the Application of )  
AEP Ohio Transmission Company, Inc. )  
for a Certificate of Environmental )  
Compatibility and Public Need for )  
Construction of the Ross-Ginger Switch )  
138 kV Transmission Line Project. )**

**Case No. 17-637-EL-BTX**

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**AEP OHIO TRANSMISSION COMPANY, INC.'S MOTION FOR WAIVER**

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Pursuant to Rules 4906-2-01(B) and 4906-2-27 of the Ohio Administrative Code, AEP Ohio Transmission Company, Inc. respectfully moves for a waiver of the public notice requirement set forth in Ohio Adm.Code 4906-3-09(A)(1)(h). The grounds for this motion are set forth more fully in the accompanying memorandum in support.

Respectfully submitted,

/s/ Christen M. Blend

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**AEP Ohio Transmission Company, Inc.**

## **MEMORANDUM IN SUPPORT**

Rule 4906-2-01(B) of the Ohio Administrative Code authorizes the Ohio Power Siting Board (“Board”) to waive any requirement of that chapter other than a requirement mandated by statute. AEP Ohio Transmission Company, Inc. (“AEP Ohio Transco”) respectfully requests a waiver of Ohio Adm.Code 4906-3-09(A)(1)(h), which requires an applicant for a certificate of environmental compatibility and public need to include the deadline for filing a notice of intervention or petition for leave to intervene in the initial notice required by Ohio Adm. Code 4906-3-09(A)(1) after an accepted, complete application has been filed with the Board.

Although AEP Ohio Transco otherwise complied with all requirements of Rule 4906-3-09(A)(1), AEP Ohio Transco inadvertently omitted the information regarding the deadline for intervention required by subpart (h) of the Rule, which was also set forth in the Administrative Law Judge’s May 18, 2018 Entry in this proceeding, from its initial notice letter. *See* Entry at ¶ 11 (March 8, 2018).

Ohio Adm.Code 4906-3-09(B) provides that “inadvertent failure to notify the persons or publish the notice described in [Rule 4906-3-09] shall not constitute a failure to give public notice, provided substantial compliance with these requirements is met.” Waiver of the requirements of Rule 4906-3-09(A)(1)(h) is appropriate in this case, as AEP Ohio Transco has substantially complied with its public notice obligations set forth in Rule 4906-3-09(A)(1), as noted above. Consistent with the rules, interested landowners and tenants have received several notices of the proposed Project by mail and in the newspaper over the course of this case. Ample time has passed while this matter was pending during which interested landowners and tenants could have participated in the process, if they desired – and some have. A local public hearing was held on June 4, 2018, at which members of the public provided comments. Information

regarding intervention was provided at the local public hearing and was included in the Administrative Law Judge's March 8, 2018 Entry. AEP Ohio Transco and Board Staff filed a Stipulation and Recommendation on June 11, 2018, and an adjudicatory hearing was held on June 19, 2018. No landowner or tenant voiced opposition to the Stipulation and Recommendation or appeared at the adjudicatory hearing. No one has sought to intervene in the proceeding.

The Board's refusal to grant the requested waiver would be prejudicial to AEP Ohio Transco and the public. This matter has been pending for more than seven months, and if a waiver is not granted, AEP Ohio Transco and the Board's Staff would face significant time and expense duplicating efforts that have already been undertaken once. Moreover, AEP Ohio Transco has no reason to believe that any landowner or tenant was prevented from seeking intervention in this proceeding. As noted above, no motions to intervene – whether timely or after the deadline that was inadvertently omitted from AEP Ohio Transco's notice letter – were filed in this case. Nor does AEP Ohio Transco have reason to believe that any landowner or tenant was confused or misinformed about their ability to intervene due to the inadvertent omission of the intervention deadline in one letter. To the contrary, however, landowners and tenants could be confused if the requested waiver were not granted and AEP Ohio Transco was required to refile its Application, as they will receive additional notices and information regarding a Project about which they have already been informed and voiced their concerns, if any.

For the foregoing reasons, good cause exists to support the finding that AEP Ohio Transco has substantially complied with the notice requirements of Ohio Adm.Code Chapter 4906-3 and the Board's waiver of the requirements of Rule 4906-3-09(A)(1)(h) here.

Accordingly, AEP Ohio Transco respectfully requests that the Board waive the requirements of Ohio Adm.Code 4906-3-09(A)(1)(h) in this case.

Respectfully submitted,

/s/ Christen M. Blend

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**Counsel for Applicant**

**AEP Ohio Transmission Company, Inc.**

**CERTIFICATE OF SERVICE**

Pursuant to Ohio Adm. Code 4906-2-05, the OPSB's e-filing system will electronically serve notice of the filing of this document upon the following parties. In addition, I hereby certify that a service copy of the foregoing *Motion for Waiver* was sent by, or on behalf of, the undersigned counsel to the following individuals via e-mail on this 30th day of July, 2018.

/s/ Christen M. Blend

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**This foregoing document was electronically filed with the Public Utilities**

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**Case No(s). 17-0637-EL-BTX**

Summary: Motion - AEP Ohio Transmission Company's Inc.'s Motion for Waiver electronically filed by Ms. Christen M. Blend on behalf of AEP Ohio Transmission Power Company, Inc.