

## BEFORE THE OHIO POWER SITING BOARD

<b>In the Matter of the Application of</b>	)	
<b>AEP Ohio Transmission Company, Inc.</b>	)	
<b>For a Certificate of Environmental</b>	)	<b>Case No. 18-31-EL-BTX</b>
<b>Compatibility and Public Need for the</b>	)	
<b>Pine Ridge Switch-Heppner 138 kV</b>	)	
<b>Transmission Line Project.</b>	)	

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### STIPULATION AND RECOMMENDATION

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#### I. INTRODUCTION

AEP Ohio Transmission Company, Inc. (“AEP Ohio Transco” or the “Applicant”), and the Staff of the Ohio Power Siting Board (“OPSB Staff”) (at times, collectively referred to as the “Parties”) submit and recommend this Stipulation and Recommendation (“Stipulation”) for adoption by the Ohio Power Siting Board (“Board”). This Stipulation is intended by the Parties to resolve all matters pertinent to Applicant’s proposed Pine Ridge Switch-Heppner 138 kV Transmission Line Project (“Project”).

AEP Ohio Transco plans to rebuild approximately 3.60 miles of the existing Berlin-Ross 69 kilovolt (kV) transmission line in Coal and Liberty Townships, Jackson County, Ohio to 138 kV standards. Once completed, the new transmission line would replace the existing Berlin-Ross 69 kV transmission line, which has been in service since 1926 and serves areas within Ross and Jackson Counties. The 69 kV transmission line, consisting of wood H-frame structures, would be taken out of service. The new 138 kV transmission line would operate at 69 kV until 138 kV standards would be needed to serve customer load. The goal of the Project is to modernize and improve the reliability of the Applicant’s transmission system in Ross and Jackson Counties. This Project will enhance service for customers, decrease power interruptions, and speed recovery of service when outages occur. Additional

details can be found in the March 29, 2018 Application's ("Application") Review of Need and Schedule, in Section 4906-5-03, which the Parties incorporate by reference herein.

The proposed Project will be located in Coal and Liberty Townships in Jackson County, Ohio. The Project will extend from the existing Pine Ridge Switch to the proposed Heppner Switch Station. A combination of steel structures is proposed for the Project, and the majority of the Project will be composed of tangent, H-Frame structures. Structures are anticipated to average 100 feet tall. Figure 2-1 in the Application shows the Project vicinity, substation interconnection points, and the Preferred and Alternate Routes identified by AEP Ohio Transco.

This Stipulation is the product of serious bargaining among capable and knowledgeable parties. The Parties have each participated in negotiations. This Stipulation has been signed by the Applicant and OPSB Staff (collectively, "Signatory Parties"). Each of the Signatory Parties was represented by experienced counsel who regularly practice and participate in proceedings before the Board.

The Stipulation will benefit customers and the public interest. In the Stipulation, the Applicant has made commitments (as more fully described below) to comply with OPSB Staff conditions to minimize adverse impacts associated with the Project. The Stipulation does not violate any important regulatory principle or practice. The Project is more fully described in the Application. This Stipulation results from discussions between the Parties, who agree that it is supported by adequate data and information and is therefore entitled to careful consideration by the Board.

Accordingly, the Parties recommend that the Board issue a Certificate of Environmental Compatibility and Public Need (“Certificate”) for construction and operation of the Pine Ridge Switch-Heppner 138 kV Transmission Line Project, as identified in the Application, and subject to the conditions set forth in this Stipulation.

## **II. STIPULATIONS**

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

The Signatory Parties agree that the record in this case, which consists of the Application, any supplemental or related information, and the Staff Report of Investigation, contains sufficient probative evidence for the Board to find and determine, as findings of fact, that:

- (1) AEP Ohio Transco is an Ohio corporation and a wholly-owned subsidiary of AEP Transmission Company, LLC, which is a Delaware limited liability company.
- (2) The proposed Pine Ridge Switch-Heppner 138 kV Transmission Line Project is a “major utility facility,” as defined in Section 4906.01(B)(1) of the Ohio Revised Code.
- (3) On January 4, 2018, the Applicant filed a pre-application notification letter for the Project pursuant to O.A.C. 4906-3-03(A).
- (4) On January 9 and 11, 2018, the Applicant filed its proof of publication of public notice to property owners and affected tenants of the date of a public informational meeting held pursuant to O.A.C. 4906-3-03(B)(2).
- (5) On January 25, 2018, the Applicant held a public informational meeting regarding the Project.

- (6) On March 29, 2018, the Applicant filed the Pine Ridge Switch-Heppner 138 kV Transmission Line Project Application.
- (7) On May 29, 2018, the Director of Rates and Analysis for the Public Utilities Commission of Ohio issued a letter of compliance regarding the Application to the Applicant. On June 29, 2018, the Applicant filed proof of service of the certified application pursuant to O.A.C. 4906-3-07.
- (8) On July 25, 2018, the Administrative Law Judge issued an Entry setting the effective date for the Application to July 18, 2018, scheduling local public and adjudicatory hearings in this matter, ordering AEP Ohio Transco to notice the hearings, and establishing a procedural schedule for the filing of lists of issues and testimony.
- (9) On August 16, 2018, the Applicant filed proof of notice regarding the date, time, and location of the public hearing and adjudicatory hearing, including proof of notice of the public hearing and adjudicatory hearing to affected property owners and elected officials, in compliance with O.A.C. 4906-3-09(A).
- (10) On September 25, 2018, OPSB Staff filed its Report of Investigation (“Staff Report”).
- (11) On September 25, 2018, the Applicant filed proof of publication and second notice regarding the date, time, and location of the public hearing and adjudicatory hearing, including proof of notice of the public hearing and adjudicatory hearing to affected property owners and elected officials, in compliance with O.A.C. 4906-3-09(A).

- (12) On October 10, 2018, a local public hearing was held at the Northview Elementary School in Jackson, Ohio.
- (13) Adequate data on the proposed Pine Ridge Switch-Heppner 138 kV Transmission Line Project has been provided to the Board and OPSB Staff to determine the basis of the need for the proposed facility, as required by Section 4906.10(A)(1) of the Ohio Revised Code.
- (14) Adequate data on the proposed Pine Ridge Switch-Heppner 138 kV Transmission Line Project has been provided to the Board and OPSB Staff to determine the nature of the probable environmental impact of the proposed facility, as required by Section 4906.10(A)(2) of the Ohio Revised Code.
- (15) Adequate data on the proposed Pine Ridge Switch-Heppner 138 kV Transmission Line Project has been provided to the Board and OPSB Staff to determine that the Preferred Route contained in the Application, as filed by the Applicant on March 29, 2018, if conditioned in the Certificate as recommended by the Parties, represents the minimum adverse environmental impact, considering the available technology and nature and economics of the various alternatives, and other pertinent considerations, as required by Section 4906.10(A)(3) of the Ohio Revised Code.

- (16) Adequate data on the proposed Pine Ridge Switch-Heppner 138 kV Transmission Line Project has been provided to the Board and its Staff to determine that construction of the Project located on Applicant's Preferred route is consistent with plans for expansion of the regional power grid and that it will serve the interests of electric system economy and reliability, as required by Section 4906.10(A)(4) of the Ohio Revised Code.
- (17) Adequate data on the proposed Pine Ridge Switch-Heppner 138 kV Transmission Line Project has been provided to the Board and OPSB Staff to determine that the Project will comply with Chapters 3704, 3734, and 6111, of the Ohio Revised Code and all rules and standards adopted under Sections 1501.33, 1501.34 and 4561.32 of the Ohio Revised Code, as required by Section 4906.10(A)(5) of the Ohio Revised Code.
- (18) Adequate data on the proposed Pine Ridge Switch-Heppner 138 kV Transmission Line Project has been provided to the Board and OPSB Staff to determine that the proposed facility will serve the public interest, convenience and necessity, as required by Section 4906.10(A)(6) of the Ohio Revised Code.
- (19) Adequate data on the proposed Pine Ridge Switch-Heppner 138 kV Transmission Line Project has been provided to the Board and OPSB Staff to determine the proposed facility's impact on the viability as agricultural land of any land in an existing agricultural district established under Chapter 929 of the Ohio Revised Code that is located within the Preferred Route of the proposed Project, as required by Section 4906.10(A)(7) of the Ohio Revised Code.

- (20) Adequate data on the proposed Pine Ridge Switch-Heppner 138 kV Transmission Line Project has been provided to the Board and OPSB Staff to determine that the facility incorporates maximum feasible water conservation practices, considering available technology and the nature and economics of the various alternatives, under Section 4906.10(A)(8) of the Ohio Revised Code. Due to the fact that the facility will not require the use of water for operation, Section 4906.10(A)(8) of the Ohio Revised Code is not applicable to certification of the Project.
- (21) The information, data and evidence in the record of this proceeding provide substantial and adequate evidence and information to enable the Board to make an informed decision on the proposed Pine Ridge Switch-Heppner 138 kV Transmission Line Project.

**B. Recommended Conclusions of Law**

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

- (1) Applicant, AEP Ohio Transco, is a “person” pursuant to Section 4906.01(A) of the Ohio Revised Code.
- (2) The proposed Pine Ridge Switch-Heppner 138 kV Transmission Line Project is a “major utility facility” as defined by Section 4906.01(B)(2) of the Ohio Revised Code. Applicant’s Application, filed on March 29, 2018, complies with the requirements of Ohio Adm. Code 4906-5-01, *et seq.*

- (3) The record establishes the need for the proposed Pine Ridge Switch-Heppner 138 kV Transmission Line Project as required by Section 4906.10(A)(1) of the Ohio Revised Code.
- (4) The record establishes the nature of the probable environmental impact from construction, operation and maintenance of the proposed Pine Ridge Switch-Heppner 138 kV Transmission Line Project as required by Section 4906.10(A)(2) of the Ohio Revised Code.
- (5) The record establishes that the proposed Pine Ridge Switch-Heppner 138 kV Transmission Line Project, if conditioned in the Certificate as recommended by the Parties, represents the minimum adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives, and other pertinent considerations, as required by Section 4906.10(A)(3) of the Ohio Revised Code.
- (6) The record establishes that the proposed Preferred Route for the Pine Ridge Switch-Heppner 138 kV Transmission Line Project is consistent with plans for expansion of the regional power system, and serves the interests of electric system economy and reliability, as required by Section 4906.10(A)(4) of the Ohio Revised Code.



- (7) The record establishes that the proposed Pine Ridge Switch-Heppner 138 kV Transmission Line Project, if conditioned in the Certificate as recommended by the Parties, will comply with Chapters 3704, 3734 and 6111 of the Ohio Revised Code, and all rules and regulations adopted under those chapters, and under Sections 1501.33, 1501.34 and 4561.32 of the Revised Code, all as required by Section 4906.10(A)(5) of the Ohio Revised Code.
- (8) The record establishes that the proposed Pine Ridge Switch-Heppner 138 kV Transmission Line Project, if conditioned in the Certificate as recommended by the Parties, will serve the public interest, convenience and necessity, as required by Section 4906.10(A)(6) of the Ohio Revised Code.
- (9) The record establishes the impact of the proposed Pine Ridge Switch-Heppner 138 kV Transmission Line Project on the viability as agricultural land of any land in an existing agricultural district established under Chapter 929 of the Ohio Revised Code that is located within the Preferred Route of the proposed Project as required by Section 4906.10(A)(7) of the Ohio Revised Code.
- (10) The record establishes that the proposed Pine Ridge Switch-Heppner 138 kV Transmission Line Project incorporates maximum feasible water conservation practices as determined by the board, considering available technology and the nature and economics of the various alternatives required by Section 4906.10(A)(8) of the Ohio Revised Code.

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

- (1) The facility shall be installed on the Applicant's Preferred Route, utilizing the equipment, construction practices, and mitigation measures as presented in the application filed on March 29, 2018, and further clarified by recommendations in the Staff Report.
- (2) The Applicant shall conduct a preconstruction conference prior to the start of any construction activities. Staff, the Applicant, and representatives of the prime contractor and/or subcontractors for the project shall attend the preconstruction conference. The conference shall include a presentation of the measures to be taken by the Applicant and contractors to ensure compliance with all conditions of the Certificate, and discussion of the procedures for on-site investigations by Staff during construction. Prior to the conference, the Applicant shall provide a proposed conference agenda for Staff review to ensure compliance with this condition. The Applicant may conduct separate preconstruction conferences for each stage of construction.

- (3) At least 30 days before the preconstruction conference, the Applicant shall submit to Staff one set of detailed engineering drawings of the final project design, including the facility, temporary and permanent access roads, 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 design 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 the Applicant and/or its contractors must adhere to a specific condition in order to comply with the Certificate.
- (4) Within 60 days after the commencement of commercial operation, the Applicant shall submit to Staff a copy of the as-built specifications for the entire facility. The Applicant shall provide as-built drawings in both hard copy and as geographically referenced electronic data.
- (5) The Certificate shall become invalid if the Applicant has not commenced a continuous course of construction of the proposed facility within five years of the date of journalization of the Certificate.
- (6) As the information becomes known, the Applicant shall provide to Staff the date on which construction will begin, the date on which construction was completed, and the date on which the facility begins commercial operation.

- (7) Prior to the commencement of construction activities in areas that require permits or authorizations by federal or state laws and regulations, the Applicant shall obtain and comply with such permits or authorizations, including any permits necessary for aviation clearance. The Applicant shall provide copies of permits and authorizations, including all supporting documentation, to Staff within seven days of issuance or receipt by the Applicant. The Applicant shall provide a schedule of construction activities and acquisition of corresponding permits for each activity at the preconstruction conference.
- (8) The Applicant shall repair or replace agricultural field tiles damaged from this project, and the Applicant shall segregate excavated topsoil in agricultural fields and restore in its proper position upon backfilling.
- (9) At least 30 days prior to the preconstruction conference, the Applicant shall provide to Staff a complaint resolution procedure to address potential public grievances resulting from project construction and operation. The resolution procedure must provide that the Applicant will work to mitigate or resolve any issues with those who submit either a formal or informal complaint and that the Applicant will immediately forward all complaints to Staff.

- (10) At least 30 days prior to the preconstruction conference, the Applicant shall provide to Staff a copy of its public information program that informs affected property owners and tenants of the nature of the project, specific contact information of Applicant personnel who are familiar with the project, the proposed timeframe for project construction, and a schedule for restoration activities. The Applicant shall give notification to property owners and tenants at least 7 days prior to work on the affected property.
- (11) Prior to construction, the Applicant shall provide a copy of any floodplain permit required for construction of this project, or a copy of correspondence with the floodplain administrator showing that no permit is required.
- (12) The Applicant shall adhere to seasonal cutting dates of October 1 through March 31 for removal of any trees greater than or equal to three inches in diameter, unless coordination efforts with the Ohio Department of Natural Resources (ODNR) and the U.S. Fish and Wildlife Service (USFWS) allow a different course of action.
- (13) The Applicant shall contact Staff, the ODNR, and the USFWS within 24 hours if state or federal threatened or endangered species are encountered during construction activities. Construction activities that could adversely impact such plants or animals shall be halted until an appropriate course of action has been agreed upon by the Applicant, Staff, and the 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.

- (14) The Applicant shall provide a construction access plan for review prior to the preconstruction conference. The plan shall consider the location of streams, wetlands, wooded areas, and sensitive plant species, as identified by the ODNR Division of Wildlife (DOW), and explain how impacts to all sensitive resources will be avoided or minimized during construction, operation, and maintenance. The plan shall include the measures to be used for restoring the area around all temporary access points, and a description of any long-term stabilization required along permanent access routes.
- (15) Prior to construction, the Applicant shall retain an ODNR DOW approved herpetologist to determine if suitable habitat for the timber rattlesnake (*Crotalus horridus horridus*) is present along the project route. If suitable habitat is found to be present then a presence/absence survey shall be conducted, or an avoidance/minimization plan shall be developed by an ODNR DOW approved herpetologist.
- (16) Prior to construction, the Applicant shall conduct a presence/absence survey for the running buffalo clover (*Trifolium stoloniferum*) between May and June when the plant is in flower and coordinate the findings with the USFWS. The USFWS shall determine if an avoidance/minimization plan shall be developed in order to minimize impacts to this species.

- (17) Prior to commencement of construction activities that require transportation permits, the Applicant shall obtain all such permits. The Applicant 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.
- (18) 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, hoe ram, and blasting operations, if required, shall be limited to the hours between 10:00 a.m. to 5:00 p.m., Monday through Friday. Construction activities that do not involve noise increases above ambient levels at sensitive receptors are permitted outside of daylight hours when necessary. The Applicant shall notify property owners or affected tenants within the meaning of Ohio Adm.Code 4906-5-08(C)(3), of upcoming construction activities including potential for nighttime construction activities.
- (19) The Applicant shall remove all construction staging area and access road materials after completion of construction activities, as weather permits, unless otherwise directed by the landowner. Impacted areas shall be restored to preconstruction conditions in compliance with the Ohio Environmental Protection Agency (Ohio EPA) General National Pollutant Discharge Elimination System (NPDES) permit(s) obtained for the project and the approved Stormwater Pollution Prevention Plan (SWPPP) created for this project.

- (20) The Applicant shall not dispose construction material, during or following construction of the facility by depositing such material on agricultural land. All construction debris and all contaminated soil shall be promptly removed and properly disposed of in accordance with Ohio EPA regulations.
- (21) At least seven days before the preconstruction conference, the Applicant shall submit to Staff, for review, a copy of all NPDES permits including its approved SWPPP, approved Spill Prevention, Control, and Countermeasure procedures, and its erosion and sediment control plan. The Applicant must address any erosion related issues through proper design and adherence to Ohio EPA best management practices related to erosion and sedimentation control.

### **III. EXHIBITS**

The Parties agree and stipulate that the following information has been filed in the docket and is to be marked and admitted into the record as exhibits of this proceeding and that cross- examination is waived thereon:

- AEP Ohio Transco Exhibit No. 1: Pre-Application Notification Letter filed on January 4, 2018
- AEP Ohio Transco Exhibit No. 2: Proofs of Publication filed January 9 and 11, 2018
- AEP Ohio Transco Exhibit No. 5: Application filed March 29, 2018, and certified as completed by the Board on May 29, 2018
- AEP Ohio Transco Exhibit No. 6: Notice of Compliance filed on June 29, 2018
- AEP Ohio Transco Exhibit No. 7: Proof of Notification filed on August 16, 2018
- AEP Ohio Transco Exhibit No. 8: Proof of Publication and Notification filed on September 25, 2018



- AEP Ohio Transco Exhibit No. 9: Direct Testimony of Alicia M. Cross
- Staff Exhibit No. 1: Staff Report of Investigation filed on September 25, 2018.
- Staff Exhibit No. 2: Prefiled Testimony of Jonathan Pawley.
- Joint Exhibit No. 1: This Stipulation.

In deliberating the merits of the Application and reasonableness of this Stipulation, the Signatory Parties encourage the Board to review and consider all evidence and exhibits submitted and admitted in this case.

#### **IV. OTHER STIPULATIONS**

- (1) This Stipulation is expressly conditioned upon its acceptance by the Board without material modification. In the event the Board rejects or materially modifies all or part of this Stipulation, or imposes additional conditions or requirements upon the Parties, each Party shall have the right, within thirty (30) days after the Board's order, to file an application for rehearing with the Board. Upon a grant of rehearing by the Board, each party shall have the right, within ten (10) days after the Board's order granting rehearing, to file a notice of termination and withdrawal of the Stipulation. Upon notice of termination and withdrawal of the Stipulation by any party, pursuant to the above provisions, the Stipulation shall immediately become null and void, and any party to the Stipulation shall be free to petition the Board or the Administrative Law Judge for such additional process as may be necessary to address any of the remaining issues in this case. In such an event, a hearing shall go forward, and the Parties shall be afforded the opportunity to present evidence through witnesses, to cross-examine all witnesses, to present rebuttal testimony, and to file briefs on all

issues.

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

**WHEREFORE**, based upon the record and the information and data contained therein, the Signatory Parties recommend that the Board issue a Certificate of Environmental Compatibility and Public Need for construction, operation and maintenance of the proposed Pine Ridge Switch-Heppner 138kV Transmission Line Project as described in the Application filed with the Board on March 29, 2018.

Respectfully submitted on behalf of:

**STAFF OF THE OHIO POWER SITING BOARD**

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## **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing has been served upon the individuals listed via electronic mail, this 15th day of October, 2018.

/s/ Christen M. Blend

Christen M. Blend

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Summary: Stipulation and Recommendation electronically filed by Ms. Christen M. Blend on behalf of AEP Ohio Transmission Power Company, Inc.