

BEFORE THE OHIO POWER SITING BOARD

In the Matter of The Dayton Power and Light Company For a Certificate of Environmental Compatibility and Public Need for the West Milton-Eldean 138 kV Line Project)
Case No. 18-1259-EL-BTX

STIPULATION AND RECOMMENDATION

I. INTRODUCTION

The Dayton Power and Light Company (“DP&L” 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 West Milton-Eldean 138 kV Line Project (“Project”).

DP&L plans to construct a new 16.7-mile, 138 kilovolt (kV) transmission line from the existing West Milton Substation to the existing Eldean Substation located northwest of Troy, Ohio. The goal of the Project is to allow for adequate transmission system voltages to be maintained in the northwest area of the DP&L transmission system under various outage conditions, as required under North American Electric Reliability Corporation (“NERC”) reliability standards.

Details can be found in the February 1, 2019 Application as supplemented in a filing made on May 10, 2019, (the two filings together hereinafter, the “Application”). The Application includes a detailed discussion of the Review of Need and Schedule, in Ohio Administrative Code (“O.A.C.”) Section 4906-5-03, which the Parties incorporate by

reference herein.

The proposed Project is located partially within the Village of West Milton and City of Troy, and unincorporated Union and Concord Townships, Miami County, Ohio. DP&L proposes to install the 138 kV transmission line primarily on wood tangent structures (steel structures at select locations) supported on horizontal pole insulators. Some sections of the proposed Project will include distribution lines underbuild. The typical height of the structures will be 70 feet with some structures of 90 feet. Figure 2-1 in the Application shows the Project vicinity, substation interconnection points, and the Preferred and Alternate Routes identified by DP&L.

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 West Milton-Eldean 138 kV 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) DP&L is an Ohio corporation and a wholly-owned subsidiary of DPL Inc., which through other intermediate holding companies is owned by the ultimate parent company, The AES Corporation, which is a Delaware corporation.
- (2) The proposed West Milton-Eldean 138 kV Line Project is a “major utility facility,” as defined in Section 4906.01(B)(1) of the Ohio Revised Code.
- (3) On October 3, 2018, the Applicant filed a pre-application notification letter for the Project pursuant to O.A.C. 4906-3-03(A).
- (4) On October 30, 2018, 2019, 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 November 7, 2018, the Applicant held a public informational meeting regarding the Project.

- (6) On February 1, 2019, supplemented in a filing made on May 10, 2019, the Applicant filed the West Milton-Eldean 138 kV Line Project Application.
- (7) On June 3, 2019, 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 28, 2019, the Applicant filed proof of service of the certified application pursuant to O.A.C. 4906-3-07.
- (8) On July 17, 2019, the Administrative Law Judge issued an Entry setting the effective date for the Application to July 10, 2019, scheduling local public and adjudicatory hearings in this matter, ordering DP&L to notice the hearings, and establishing a procedural schedule for the filing of lists of issues and testimony.
- (9) On July 29, 2019, 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 August 30, 2019, OPSB Staff filed its Report of Investigation (“Staff Report”).
- (11) On September 11, 2019, 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 September 17, 2018, a local public hearing was held at the Hobart Arena in Troy, Ohio.

- (13) Adequate data on the proposed West Milton-Eldean 138 kV 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 West Milton-Eldean 138 kV 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 West Milton-Eldean 138 kV 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 February 1, 2019 and supplemented May 10, 2019, 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 West Milton-Eldean 138 kV 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 West Milton-Eldean 138 kV 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 West Milton-Eldean 138 kV 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 West Milton-Eldean 138 kV 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 West Milton-Eldean 138 kV 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 West Milton-Eldean 138 kV 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, DP&L, is a “person” pursuant to Section 4906.01(A) of the Ohio Revised Code.
- (2) The proposed West Milton-Eldean 138 kV 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 February 1, 2019 as supplemented May 10, 2019, complies with the requirements of Ohio Adm. Code 4906-5-01, *et seq.* The record establishes the need for the proposed West Milton-Eldean 138 kV Line Project as required by Section 4906.10(A)(1) of the Ohio Revised Code.
- (3) The record establishes the nature of the probable environmental impact from construction, operation and maintenance of the proposed West Milton-Eldean 138 kV Line Project as required by Section 4906.10(A)(2) of the Ohio Revised Code.
- (4) The record establishes that the proposed West Milton-Eldean 138 kV 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.

- (5) The record establishes that the proposed Preferred Route for the West Milton-Eldean 138 kV 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.
- (6) The record establishes that the proposed West Milton-Eldean 138 kV 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.
- (7) The record establishes that the proposed West Milton-Eldean 138 kV 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.
- (8) The record establishes the impact of the proposed West Milton-Eldean 138 kV 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.
- (9) The record establishes that the proposed West Milton-Eldean 138 kV 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 February 01, 2019, as supplemented May 10, 2019, 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 file on the docket of this case and 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 to Staff 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 file on the docket of this case a copy of the as-built specifications for the entire facility. The Applicant shall provide to Staff 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 file on the docket of this case 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) At least 30 days prior to the preconstruction conference the Applicant shall provide to Staff for review to assure it complies with this condition, 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. Upon review and approval

by Staff, the Applicant shall file the complaint resolution procedure on the docket of this case.

- (8) At least 30 days prior to the preconstruction conference, the Applicant shall provide to Staff, for review to assure it complies with this condition, 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. Upon review and approval by Staff, the Applicant shall file the public information program on the docket of this case.
- (9) 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 file on the docket of this case copies of permits and authorizations, including all supporting documentation, 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.
- (10) Prior to the commencement of construction, the Applicant shall finalize coordination of the assessment of potential effects of the proposed facility on cultural resources, if any, with Staff and the Ohio Historic Preservation Office (OHPO). If the resulting coordination discloses a find of cultural or

archaeological significance, or a site that could be eligible for inclusion in the National Register of Historic Places, then the Applicant shall submit a modification or mitigation plan to Staff. Any such mitigation effort, if needed, shall be developed in coordination with the OHPO and submitted to Staff for review to assure it complies with the conditions of the certificate. Upon review and approval by Staff, the Applicant shall file the mitigation plan on the docket of this case.

- (11) Prior to the commencement of construction, the Applicant shall file on the docket of this case 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 minimize impacts to the Stillwater Scenic River. To assure that impacts are minimized, the Applicant shall install structures 25 feet outside of the riparian area of the Stillwater River, to the extent possible. The Applicant shall also plant and maintain low growing trees or shrubs within 25 feet of the river to maintain a wooded riparian area and minimize erosion. The Applicant shall coordinate with the Ohio Department of Natural Resources Scenic Rivers Program to determine which species would be most appropriate for planting. Prior to commencement of construction, the Applicant shall provide its proposed structure locations to Staff for review to assure that they comply with this condition. Upon review and approval by Staff, the Applicant shall include the approved structure locations in its detailed engineering drawings to be filed on the docket of this case pursuant to condition 3.

- (13) 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 ODNR and the U.S. Fish and Wildlife Service (USFWS) allows a different course of action.
- (14) The Applicant shall coordinate with the USFWS regarding potential disturbance to Indiana bat hibernacula such as caves or abandoned mines to determine if fall or spring portal surveys are warranted. If portal surveys are recommended, the Applicant shall continue coordination to minimize impacts to bat hibernacula.
- (15) The Applicant shall contact Staff, ODNR, and the USFWS within 24 hours if state or federal listed species are encountered during construction, operation, or monitoring activities. Activities that could adversely impact the identified plants or animals shall be immediately halted until an appropriate course of action has been agreed upon by the Applicant, Staff and the appropriate agencies. The Applicant shall not conduct mechanized clearing and shall not remove any stumps within 25 feet of any stream channel or within wetlands.
- (16) The Applicant shall not conduct mechanized clearing and shall not remove any stumps within 25 feet of any stream channel or within wetlands.
- (17) Following construction, disturbed topsoil shall be returned to original conditions unless otherwise specified by the affected landowners.
- (18) The Applicant shall submit detailed construction plans to Staff prior to the preconstruction conference, for review to assure it complies with the conditions of the certificate. The construction plans shall include, but not be

limited to, plans for construction access, with consideration of the location and avoidance or crossing of streams, wetlands, and wooded areas. The plan shall explain how impacts to all sensitive resources will be avoided or minimized during construction, operation, and maintenance. The plan shall include projected construction timelines and measures to be used for restoring the areas around all temporary access locations, and a description of any long-term stabilization required along permanent access routes. Upon review and approval by Staff, the Applicant shall file the construction plans on the docket of this case.

- (19) 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. The Applicant shall file on the docket of this case any transportation permits and approved traffic control plans when they are obtained or approved.
- (20) 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 of upcoming construction activities

including potential for nighttime construction activities.

- (21) 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 permit(s) obtained for the project and the approved Stormwater Pollution Prevention Plan created for this project.
- (22) The Applicant shall not dispose of gravel, or any other construction material, during or following construction of the facility by placing such material on agricultural land. All construction debris and all contaminated soil shall promptly be removed and properly disposed of in accordance with Ohio EPA regulations.
- (23) The Applicant shall restore all disturbed drainage systems, water wells, and septic systems to previous or better condition unless otherwise specified by the affected parties.

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:

- DP&L Exhibit No. 1: Pre-Application Notification Letter filed on October 3, 2018
- DP&L Exhibit No. 2: Proof of Publication filed October 30, 2018

- DP&L Exhibit No. 3: Application filed February 1, 2019, as supplemented May 10, 2019, and certified as completed by the Board on June 3, 2019
- DP&L Exhibit No. 4: Notice of Compliance filed on June 28, 2019
- DP&L Exhibit No. 5: Proof of Notification filed on July 29, 2019
- DP&L Exhibit No. 6: Proof of Publication and 2nd Notification filed on September 11, 2019
- DP&L Exhibit No. 7: Direct Testimony of Jessica E Kellie
- Staff Exhibit No. 1: Staff Report of Investigation filed on August 30, 2019.
- 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 West Milton-Eldean 138kV Transmission Project as described in the Application filed with the Board on February 1, 2019, as supplemented May 10, 2019.

Respectfully submitted on behalf of:

THE 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 below-named counsel via electronic mail, this 23rd day of September, 2019.

/s/ *Steven L. Beeler*

Steven L. Beeler

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Summary: Stipulation electronically filed by Mrs. Tonnetta Y Scott on behalf of PUCO