

THE OHIO POWER SITING BOARD

IN THE MATTER OF DAYTON POWER AND
LIGHT COMPANY FOR A CERTIFICATE OF
ENVIRONMENTAL COMPATIBILITY AND
PUBLIC NEED FOR THE WEST MILTON TO
ELDEAN 138 KV TRANSMISSION LINE
PROJECT.

CASE NO. 18-1259-EL-BTX

OPINION, ORDER, AND CERTIFICATE

Entered in the Journal on January 16, 2020

I. SUMMARY

{¶ 1} The Ohio Power Siting Board approves and adopts the stipulation and recommendation between The Dayton Power and Light Company and Staff and directs that a certificate be issued to The Dayton Power and Light Company for the construction, operation, and maintenance of a transmission line.

II. PROCEDURAL BACKGROUND

{¶ 2} All proceedings before the Ohio Power Siting Board (Board) are conducted according to the provisions of R.C. Chapter 4906 and Ohio Adm.Code Chapter 4906.

{¶ 3} The Dayton Power and Light Company (DP&L or Applicant) is a person as defined in R.C. 4906.01.

{¶ 4} Pursuant to R.C. 4906.04, no person shall construct a major utility facility without first having obtained a certificate from the Board. In seeking a certificate, applicants must comply with the filing requirements outlined in R.C. 4909.06, as well as Ohio Adm.Code 4906-5-01 and 4906-2-01.

{¶ 5} Prior to submitting the pre-application notification letter, on August 20, 2018, DP&L filed a letter notifying the Board of its intent to seek approval of a transmission line and requesting waivers from Ohio Adm.Code 4906-3-05 regarding preferred and alternate routes sharing 20 percent in common, Ohio Adm.Code 4906-5-05(B)(2)(a)(i)-(ii)

concerning access roads, and Ohio Adm.Code 4906-5-07(E) regarding cultural and archaeological resources.

{¶ 6} On September 4, 2018, the Board Staff (Staff) filed a letter indicating that it has no objection to the request for waiver of Ohio Adm.Code 4906-3-05 but reserves the right to require information from DP&L in the areas covered by the requested waiver. However, Staff objected to the requests for waiver from Ohio Adm.Code 4906-5-05(B)(2)(a)(i)-(ii) and Ohio Adm.Code 4906-5-07(E).

{¶ 7} On September 7, 2018, DP&L filed a letter stating that it does not oppose Staff's proposal in opposition to waivers from Ohio Adm.Code 4906-5-05(B)(2)(a)(i)-(ii) and Ohio Adm.Code 4906-3-07(E).

{¶ 8} Pursuant to an Entry issued on September 20, 2018, the administrative law judge (ALJ) granted DP&L's request for waiver of the requirement set forth in Ohio Adm.Code 4906-3-05, and denied DP&L's request for waivers of the requirements set forth in Ohio Adm.Code 4906-5-05(B)(2)(a)(i)-(ii) and Ohio Adm.Code 4906-5-07(E).

{¶ 9} On October 3, 2018, DP&L filed its pre-application notification letter in this case for the construction of a new 138 kilovolt (kV) transmission line in Miami County, Ohio (Project). According to the letter, the new Project will provide a connection from the existing West Milton Substation to the existing Eldean Substation located northwest of Troy in Miami County, Ohio. (Applicant Ex. 1.)

{¶ 10} On October 30, 2018, DP&L submitted two filings to the record in this proceeding. First, Applicant filed proof of notification to affected property owners and tenants in accordance with Ohio Adm.Code 4906-3-03(B)(2). Second, Applicant filed proof of publication of public notice concerning the proposed major utility facility pursuant to Ohio Adm.Code 4906-3-03(B)(1). As proof of proper notification, DP&L provided a copy of the letter distributed by first class mail to all affected landowners, as well as proof of publication reflecting that legal notice of the public information meeting was published in

the *Dayton Daily News* and the *Miami Valley Sunday News* on October 21, 2018 (Applicant Ex. 2).

{¶ 11} On February 1, 2019, DP&L submitted two filings to the record in this proceeding. First, DP&L filed an application with the Board for the proposed Project. Specifically, DP&L states that the Project involves the construction and operation of a single-circuit, 138 kV transmission line connecting the West Milton Substation located just south of the Village of West Milton in Union Township, and the existing Eldean Substation located on Experiment Farm Road northwest of Troy, Ohio. The entirety of the Project is in Miami County, Ohio. Both the preferred and alternate routes are 16.7 miles in length. DP&L states that the general purpose 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 to comply with relevant reliability standards. (Applicant Ex. 3 at 1.)

{¶ 12} Second, DP&L filed a motion for protective treatment pursuant to Ohio Adm.Code 4906-2-21(D). The motion is unopposed and is addressed in the next section of this Order.

{¶ 13} On April 1, 2019, DP&L filed a letter in this proceeding requesting a 60-day suspension of the compliance review schedule to enable DP&L to submit an addendum to the original application.

{¶ 14} On April 2, 2019, Staff filed a letter stating that it does not oppose DP&L's request to suspend the schedule, and the ALJ granted the request by Entry on the same date.

{¶ 15} On May 10, 2019, DP&L filed supplemental material to the application following discussions with Staff. Specifically, DP&L states that it conducted additional environmental field study work in order to ensure the application is complete.

{¶ 16} By letter filed on June 3, 2019, the Board notified the Applicant that its application was sufficiently complete to permit Staff to commence its review and investigation. The letter directed the Applicant to serve appropriate government officials

and public agencies with copies of the complete, certified application and file proof of service with the Board. The letter further instructed DP&L to submit its application fee pursuant to R.C. 4906.06(F) and Ohio Adm.Code 4906-3-12.

{¶ 17} On June 28, 2019, DP&L filed notice regarding proof of service of its accepted and complete application in accordance with the requirements of Ohio Adm.Code 4906-3-07. DP&L also submitted the application fee to the Board, pursuant to Ohio Adm.Code 4906-3-12 (DP&L Ex. 4).

{¶ 18} Pursuant to the July 17, 2019 Entry, a local public hearing was scheduled for September 17, 2019, at the Hobart Arena in Troy, Ohio. An evidentiary hearing was scheduled for October 1, 2019, at the offices of the Public Utilities Commission of Ohio (Commission) in Columbus, Ohio. The July 17, 2019 Entry also directed the Applicant to issue public notice of the hearings in accordance with Ohio Adm.Code 4906-3-09.

{¶ 19} On July 29, 2019, DP&L filed its initial proof of notification of both hearings pursuant to Ohio Adm.Code 4906-3-09(A)(1). As proof of notification, DP&L provided copies of the letters that it distributed by first class mail to all affected landowners. (DP&L Ex. 5.)

{¶ 20} On August 30, 2019, pursuant to R.C. 4906.07(C), Staff filed the report of its investigation (Staff Report).

{¶ 21} On September 11, 2019, DP&L filed proof of publication reflecting that legal notice of both the local public hearing and the evidentiary hearing had been published pursuant to Ohio Adm.Code 4906-3-09(A)(2) in the *Dayton Daily News* and the *Miami Valley Sunday News* on September 7, 2019, and September 8, 2019, respectively. DP&L also provided proof of second public notification to all affected landowners in the same filing. (DP&L Ex. 6.)

{¶ 22} The local public hearing was held on September 17, 2019, where 22 public witnesses testified. In addition to the comments made at the public hearing, two concerned

landowners near the Project filed letters on October 1, 2019, in this matter requesting that the Board reconsider the proposed route.

{¶ 23} Three filings were submitted to the record on September 23, 2019. First, DP&L and Staff filed a Joint Stipulation and Recommendation (Stipulation) in this matter. Second, DP&L filed the direct testimony of Jessica Kellie in support of the Stipulation. Third, Staff filed the direct testimony of Eric Morrison in support of both the Staff Report and Stipulation.

{¶ 24} The ALJ presided over an evidentiary hearing on October 1, 2019. At the hearing, two additional public witnesses testified, stating that there was insufficient information available to the public regarding details of the Project and the process of selecting the preferred route over the alternate route. DP&L witnesses Greg Tokar and Jessica Kellie and Staff witness Eric Morrison presented testimony in support of the Stipulation.

III. MOTION FOR PROTECTIVE ORDER

{¶ 25} As stated above, DP&L filed an unopposed motion for protective order on February 1, 2019, seeking protective treatment for information involving the identification of historic sites, including burial grounds and other sites of historical significance within the Project area. The redacted information is in Appendix 7-2 to the application.

{¶ 26} In support of the requested protective order, DP&L avers that providing such information in a public filing creates an increased potential for disturbances from individuals seeking to collect material from historic sites.

{¶ 27} The Board has reviewed the information filed under seal and upon review, the Board finds that the motion should be granted. Specifically, the Board finds that information involving the identification of historic sites, including burial grounds and other sites of historical significance within the Project area, should be afforded protective treatment consistent with Ohio Adm.Code 4906-2-21(D).

{¶ 28} Ohio Adm.Code 4906-2-21(F) provides that, “[u]nless otherwise ordered, any order prohibiting public disclosure pursuant to this rule shall automatically expire twenty-four months after the date of its issuance, and such information may then be included in the public record of the proceeding.” The information protected by this Order shall remain under seal for a period ending 24 months from the date of this Order.

{¶ 29} Ohio Adm.Code 4906-2-21(F) requires a party wishing to extend a protective order to file an appropriate motion at least 45 days in advance of the expiration date. If no such motion to extend confidential treatment is filed, the Docketing Division may release the information without prior notice to the Applicant.

IV. PROJECT DESCRIPTION

{¶ 30} This Project involves the construction and operation of a new 138 kV overhead electric transmission line connecting the West Milton Substation located south of the Village of West Milton in Union Township, and the Eldean Substation located on Experiment Farm Road northwest of Troy, Ohio. The transmission line would be a single-circuit line that would be supported by wood and steel poles along a 75-foot right-of-way. The transmission line is needed to mitigate a potential violation of the mandatory North American Electric Reliability Corporation (NERC) reliability standards and meet the requirements of the National Electric Safety Code. (DP& L Ex. 3 at 1; Staff Ex. 1 at 6, 17.)

{¶ 31} The preferred route is approximately 16.7 miles long. It begins at the West Milton Substation and travels northwest for approximately 2.25 miles to Davis Road before turning north, travelling parallel to Davis Road for approximately two miles. The preferred route then turns northwest through a quarry and agricultural fields until it reaches and follows State Route 55 for 2.5 miles, crossing the Stillwater State Scenic River before turning north along Harter Road. From there, the preferred route uses right-of-way through agricultural fields and South Forest Hill Road to travel northwest, arriving at the Eldean Substation. (Staff Ex. 1 at 6.)

{¶ 32} The alternate route is also approximately 16.7 miles long and follows the same general direction as the preferred route. The main variances from the preferred route occur when a section may be placed cross-country as opposed to along a road or vice versa, or where there is an existing alternate easement. Toward the north end of the Project, the alternate route has a second cross-country option to connect the transmission line to Eldean Substation. Approximately 37 percent of the alternate route is in common with the preferred route. (Staff Ex. 2 at 6-7.)

V. CERTIFICATION CRITERIA

{¶ 33} Pursuant to R.C. 4906.10(A), the Board shall not grant a certificate for the construction, operation, and maintenance of a major utility facility, either as proposed or as modified by the Board, unless it finds and determines all of the following:

- (1) The basis of the need for the facility if the facility is an electric transmission line or a gas pipeline;
- (2) The nature of the probable environmental impact;
- (3) That the facility 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;
- (4) In the case of an electric transmission line or generating facility, that the facility is consistent with regional plans for expansion of the electric power grid of the electric systems serving this state and interconnected utility systems and that the facility will serve the interests of electric system economy and reliability;
- (5) The facility will comply with R.C. Chapters 3704, 3734, and 6111, as well as all rules and standards adopted under those chapters and under R.C. 4561.32;

- (6) That the facility will serve the public interest, convenience, and necessity;
- (7) The impact of the facility on the viability as agricultural land of any land in an existing agricultural district established under R.C. Chapter 929 that is located within the site and alternate site of any proposed major facility; and
- (8) That the facility incorporates maximum feasible water conservation practices as determined by the Board, considering available technology and the nature and economics of the various alternatives.

VI. SUMMARY OF THE EVIDENCE

{¶ 34} The Board will review the evidence presented with regard to each of the eight criteria by which we are required to evaluate these applications. Any evidence not specifically addressed herein has nevertheless been considered and weighed by the Board in reaching its final determination.

A. Local Public Hearing

{¶ 35} At the local public hearing held on September 17, 2019, there were 22 members of the public in attendance who wished to testify. Areas of concern for those who testified include: areas within the Project having a new set of poles in addition to existing poles associated with another transmission line; the preferred route impacting more property owners than the alternate route along certain segments; the Project's impact on aesthetics and property values; vague maps provided by the Applicant and a lack of detail on information available, including size, material, and location of support poles and the size and general ramifications of easements; the Project's potential negative impact on farmers' ability to utilize their entire lots; difficulty in obtaining information from the Applicant; the alternate route potentially being an advantageous route when different land uses are considered; property owners that already have transmission lines adjacent to their property; safety concerns regarding local air traffic; potential damage to agricultural land lasting beyond the construction period; potential drainage issues resulting from installation of

poles; potential damage to local roadways from construction equipment; and concerns regarding additional noise from the Project once it is operational. Representatives from DP&L were present to answer questions from those in attendance.

B. Staff Report

{¶ 36} Pursuant to R.C. 4906.07(C), Staff completed an investigation into the application, which included recommended findings regarding R.C. 4906.10(A). The following is a summary of Staff's findings.

1. BASIS OF NEED

{¶ 37} R.C. 4906.10(A)(1) specifies that, if the proposed facility is an electric transmission line or a gas pipeline, the need for the proposed project must be demonstrated.

{¶ 38} Staff notes that the proposed transmission line is the Applicant's proposal to mitigate a potential violation of the North American Electric Reliability Corporation's (NERC) reliability criteria identified during the PJM Interconnection, LLC (PJM) Regional Transmission Expansion Planning process. According to Staff, the Project would improve the reliability of DP&L's northwest area transmission system by resolving voltage issues during contingency scenarios. Further, Staff specifies that in 2010, DP&L and PJM identified potential reliability problems associated with then current grid topology. Based on subsequent reevaluation showing lower load projections than the original projection in 2010, the required in-service date for the Project was extended to June 1, 2022. Staff also emphasizes that the proposed transmission line was included in DP&L's 2018 and 2019 Long-Term Electric Forecast Reports to the Commission. Therefore, Staff recommends that the Board find that the basis of need for the Project has been demonstrated and, therefore, complies with the requirements specified in R.C. 4906.10(A)(1), provided that any certificate issued by the Board for the proposed facility include the conditions specified in the respective Staff Report. (Staff Ex. 1 at 17.)

2. NATURE OF PROBABLE ENVIRONMENTAL IMPACT

{¶ 39} R.C. 4906.10(A)(2) requires that the Board determine the nature of the probable environmental impact of the proposed facility. As a part of the investigation, Staff reviewed the nature of the probable environmental impact of the proposed Project.

{¶ 40} The following is a summary of the findings of the Staff Report regarding the nature of the probable environmental impacts of the proposed transmission line:

a. Socioeconomic Impacts

{¶ 41} The proposed right-of-way width for the transmission line is 75 feet, except where the transmission line parallels existing roadways, which would require the Applicant to obtain a 30-foot wide permanent easement outside of the road right of way. There are 64 single-family residences within 200 feet of the preferred route right-of-way, with 18 of those residences within 100 feet of the preferred route right-of-way. There are 98 residences within 200 feet of the alternate route right-of-way. It is not expected that any of these residences would need to be removed to construct and operate the transmission line. The preferred route crosses 111 parcels and the alternate route crosses 94 parcels. (Staff Ex. 1 at 6, 19.)

{¶ 42} Approximately 90 percent of both the preferred and alternate routes cross agricultural land and pasture, with the preferred route crossing 16 parcels designated as agricultural district and the alternate route crossing 18 parcels designated as such. By placing structures at the edge of agricultural lands, where feasible, Staff states that the viability of agricultural district land is not expected to suffer any significant impacts.

{¶ 43} There are three commercial facilities within 200 feet of the preferred route right-of-way and two commercial facilities within 200 feet of the alternate route right-of-way. There are no industrial facilities within 200 feet of either route's proposed right-of-way. No negative impacts to these land uses are anticipated as a result of the Project. No schools, hospitals, churches, or civic buildings were identified within 200 feet of the

preferred or alternate routes. Therefore, Staff concludes that no negative impacts to institutional and recreational land uses are expected from the construction, operation, or maintenance of either the preferred or alternate routes. (Staff Ex. 1 at 19.)

{¶ 44} The Applicant's cultural resources consultant performed a literature review and an evaluation of cultural resource surveys previously performed in the area. The consultant found that four prior cultural resources were performed within the study area, revealing that several prehistoric sites and historic structures are located near the project area. However, the consultant determined that there are no resources listed on the National Register of Historic Places nor designated National Historic Landmarks within the project area. The Applicant's consultant identified several Ohio Archaeological Inventory recorded sites within 1,000 feet of both the preferred and alternate routes and concluded that the Project poses no anticipated direct physical impacts to previously recorded cultural resources. However, Staff states that a Phase I cultural resource survey should be performed to identify any potential for indirect visual impacts to cultural resources within the study area and to verify that the selected route does not contain unknown cultural resources. (Staff Ex. 1 at 20.)

{¶ 45} Permanent visual impacts would result from the introduction of a new manmade element to the landscape. Aesthetic impacts would vary with the viewer and setting, depending on the degree of contrast between the proposed transmission line and the existing landscape. Because the new transmission line would be constructed parallel to existing aboveground utilities, the aesthetic impact would be lessened. In areas where existing screening trees would need to be removed, the degree of aesthetic impact would be greater. (Staff Ex. 1 at 20.)

b. Economics

{¶ 46} DP&L states that it would own all of the assets that would comprise the Project or that it would construct, own, and operate the Project regardless of which route is selected. DP&L intends to acquire rights-of-way and easements through negotiations with

property owners. Because the proposed transmission line would coincide with overhead distribution lines and communication cables owned by DP&L and others, DP&L would transfer existing distribution lines and cables onto new pole structures to be installed for the Project. However, DP&L has not yet made arrangements with all other entities that own distribution circuits and cables it intends to transfer. The Applicant states that total estimated capital and intangible costs are expected to be nearly \$13 million for either the alternate route or the preferred route which include costs associated with land and land rights, substation equipment, poles and fixtures, overhead conductors and insulation, and right-of-way clearing. The Applicant states that it would maintain excess commercial general liability insurance covering indemnity to at least \$5 million. Finally, DP&L estimates local property tax revenues generated by either route to total approximately \$1 million in its first year to taxing districts located within Union and Concord townships. (Staff Ex. 1 at 20-21.)

c. Ecological Impacts

{¶ 47} According to the Staff Report, the soils in the proposed project area consist of a heterogenous mixture of all sizes of soil transitioning in a typical soil profile from silt loam, clay loam, loam, silt loam silty clay, and gravelly clay loam. Based on Ohio Department of Natural Resources (ODNR) records, there is no known seismic activity reports in Miami County and no known mapped active oil or gas operations. There are three industrial mineral mining operations in the Project study area, two of which are active, and one mining operation that the preferred route skirts near the town of Ludlow Falls. DP&L notes that 0.19 miles of the preferred route and 0.25 miles of the alternate route occur along slopes exceeding 12 percent, and the preliminary soil analysis for drainage classifies the soil along the routes as very poorly drained to well drained soils. The Applicant intends to perform additional soil testing along the transmission line at locations where angle structures would require foundations for the new steel pole structures. The geotechnical representative for the Applicant would provide the Applicant and OPSB a final report prior to construction that documents the findings of the geotechnical investigation and laboratory

testing, along with recommendations on construction methods and foundation designs. Staff concludes that the geology does not pose any known geological hazards or features that would adversely impact or prevent the design and construction of the proposed transmission line. (Staff Ex. 1 at 22.)

{¶ 48} The preferred route right-of-way contains eight streams, including two perennial streams, four intermittent streams, and two ephemeral streams, totaling approximately 417 linear feet of streams. The alternate route right-of-way contains five streams, including two perennial streams and three ephemeral streams, totaling approximately 253 linear feet of streams. The transmission line will aerially span all streams, and no in-water work is expected. DP&L has committed to not conduct mechanized clearing within 25 feet of any stream and would only clear trees tall enough to potentially interfere with safe construction and operation of the line. DP&L has proposed temporary culvert and temporary bridge crossing methods to minimize impacts of construction vehicles crossing streams. Both the preferred and alternate route would cross the Stillwater State Scenic River. To comply with ODNR's request regarding aesthetics, Staff recommends that the Applicant install structures as far as possible from the banks of the Stillwater River. ODNR also requested that DP&L plant low growing native shrubs and trees to provide a riparian forest buffer at the river crossing location, with ODNR assisting DP&L in determining appropriate species. (Staff Ex. 1 at 22-23.)

{¶ 49} The preferred route right-of-way contains three wetlands totaling 1.2 acres of wetland. The alternate route right-of-way contains one wetland totaling 0.1 acres. The Applicant anticipates that new structures along the preferred route would be placed within one wetland, which has been previously impacted by an existing transmission line in the area of the proposed Project. Several structures would be removed and replaced within the wetland, however, the existing right-of-way would not be expanded. Staff recommends that the Applicant coordinate with the appropriate agencies and obtain the necessary wetland fill permit prior to construction. Impacts would be covered under the Army Corps of Engineers Nationwide 12 Permit. (Staff Ex. 1 at 23.)

{¶ 50} The Applicant would obtain coverage under the Ohio EPA General National Pollutant Discharge Elimination System (NPDES) Permit. Sedimentation that may occur as a result of construction activities would be minimized through best management practices, which would be outlined in the Applicant's Stormwater Pollution Prevention Plan. Staff recommends that the Applicant coordinate with the Miami County floodplain administrator to obtain any necessary floodplain development permit. (Staff Ex. 1 at 23.)

{¶ 51} DP&L requested information from ODNR and the U.S. Fish and Wildlife Service (USFWS) regarding state- and federally-listed threatened and endangered plant and animal species. Staff gathered additional information through field assessments and review of published ecological information. (Staff Ex. 1 at 23.)

{¶ 52} The Project area is within the range of the state and federal endangered Indiana bat and the federal threatened northern long-eared bat. In order to avoid potential impacts to these species, Staff recommends restricting tree clearing to the seasonal clearing period of October 1 through March 31 for all trees over three inches in diameter so as to avoid interference with tree roosting during the summer months, unless coordination with ODNR and USFWS allows a different course of action. USFWS also stated that if caves or abandoned mines may be disturbed by construction or operation of the transmission line, further coordination with their office is requested in order to avoid disruption of both bat species' hibernating habitats. (Staff Ex. 1 at 24.)

{¶ 53} Impacts on vegetation along both routes would be limited to the initial clearing within the 75-foot right-of-way and along access roads and for operational maintenance. Trees adjacent to the proposed transmission line right-of-way that significantly encroach or are prone to failure may require clearing to allow for safe operation of the transmission line. Vegetative wastes resulting from construction will be windrowed or chipped and disposed of appropriately depending on landowner requests. The Applicant does not anticipate the use of herbicides during construction or operation. (Staff Ex. 1 at 24.)

{¶ 54} In the unexpected event that DP&L encounters a listed plant or animal species during construction, Staff recommends that DP&L notify Staff, ODNR, and the USFWS, as applicable. Staff also recommends that if DP&L encounters any listed plant or animal species prior to construction, it should include the location and how impacts would be avoided in the final access plan to be provided to Staff. (Staff Ex. 1 at 24.)

d. Public Services, Facilities, and Safety

{¶ 55} Staff notes that the principal impact on public roadways would be temporary increases in traffic in the Project area during construction of the transmission line. Once the proposed facility is operational, related traffic would be minimal and is not expected to significantly impact local roadways. (Staff Ex. 1 at 25.)

{¶ 56} Most construction traffic would travel via McMillan Road, State Route 48, and State Route 571. Access to the proposed right-of-way would be located off of Fredrick Garland Road, Jay Road, Davis Road, State Route 48, Calumet Road, State Route 55, Harter Road, Fenner Road, Forrest Hill Road, Thomas Road, State Route 41, Eldean Road, and Experiment Farm Road. (Staff Ex. 1 at 25.)

{¶ 57} The majority of noise impacts associated with the Project would be confined to the construction period. The Applicant intends to mitigate noise impacts using standard construction techniques and limiting construction activity to daylight hours, to the extent feasible. Occasional, short-term noise impacts associated with maintenance and repair activities would also occur throughout the life of the facility. (Staff Ex. 1 at 25.)

{¶ 58} The Applicant states that it will comply with safety standards set by the Occupational Safety and Health Administration, the Commission, and North American Electric Reliability Corporation's reliability standards. Further, DP&L intends to design the facility in accordance with the requirements set by the National Electric Safety Code. (Staff Ex. 1 at 25.)

{¶ 59} DP&L does not expect radio or television interference to occur from the operation of the proposed transmission line along either route. Any such interference would likely be a localized effect primarily caused by defective hardware that could easily be detected and repaired by DP&L. (Staff Ex. 1 at 25.)

{¶ 60} Based on its investigation in this case, Staff recommends that the Board find that DP&L has determined the nature of probable environmental impact for the proposed facility and, therefore, complies with the requirements specified in R.C. 4906.10(A)(2), provided that any certificate issued by the Board for the proposed facility include the conditions specified in the Staff Report (Staff Ex. 1 at 25).

3. MINIMUM ADVERSE ENVIRONMENTAL IMPACT

{¶ 61} Pursuant to R.C. 4906.10(A)(3), the proposed facility must represent the minimum adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives, along with other pertinent considerations.

{¶ 62} DP&L conducted a route selection study to identify potential electric transmission line routes that would avoid or limit impacts to sensitive land uses, ecological resources, and cultural features, while acknowledging the engineering and construction needs of the Project. Out of several study segments to connect the two substations, the Applicant selected two routes for consideration. Both routes traverse around the village of West Milton, between the villages of Ludlow Falls and West Milton, and to the west and north sides of the city of Troy. As permitted by a waiver of Ohio Adm.Code 4906-6-05, the Applicant's preferred and alternate routes have 37 percent in common. (Staff Ex. 1 at 26.)

{¶ 63} In the interest of minimizing impacts, existing utility right-of-way is planned to be used as much as possible, with an intention to move existing circuits along the planned route to the structures to be installed in this project. Staff has analyzed both the preferred route and the alternate route and concluded that potential impacts are expected to be less for the preferred route. While both routes are similar regarding the number of properties

crossed, agricultural impacts, potential wetland and stream crossings, and constructability, the preferred route would affect fewer residences with road frontage. Further, the preferred route is estimated to cost less than the alternate route. (Staff Ex. 1 at 26.)

{¶ 64} Based on these conclusions, Staff recommends that the Board find that the preferred route represents the minimum adverse environmental impact, and therefore complies with the requirements specified in R.C. 4906.10(A)(3), provided that any certificate issued by the Board for the proposed facility include the conditions specified in the Staff Report (Staff Ex. 1 at 26).

4. ELECTRIC GRID

{¶ 65} Pursuant to R.C.10(A)(4), the Board must determine that the proposed electric facility is consistent with the regional plans for expansion of the electric power grid of the electric systems serving this state and interconnected utility systems, and that the facility will serve the interests of electric system economy and reliability.

{¶ 66} As referenced above, DP&L and PJM identified a violation of mandatory NERC reliability criteria in the northwest area of DP&L's transmission system during the 2010 PJM Regional Transmission Expansion Planning process. Based on projected conditions for 2015, a contingency analysis showed that a double contingency of two of DP&L's circuits would cause voltages to fall below the minimum acceptable level according to NERC reliability standards at eight transmission buses operated by DP&L. (Staff Ex. 1 at 27.)

{¶ 67} Staff reports that the proposed transmission line would increase reliability and allow adequate voltages to be maintained under outage conditions elsewhere in DP&L's transmission system. Additionally, the proposed Project would provide another reliable source of electricity during a double contingency scenario. DP&L is subject to compliance with NERC reliability standards, including those related to transmission planning for contingency events. The Project was designed by the Applicant to comply with NERC's reliability standards and align with PJM's planning and operating manuals for the

bulk electric system. PJM determined the in-service date for the Project to be June 1, 2022, after a reevaluation of the project timeline. (Staff Ex. 1 at 27-28.)

{¶ 68} Accordingly, Staff recommends that the Board find that the proposed facility is consistent with regional plans for expansion of the electric power grid of the electric systems serving this state and the interconnected utility systems, and that the facility would serve the interests of the electric system economy and reliability. Therefore, Staff recommends that the Board find that the facility complies with the requirements specified in R.C. 4906.10(A)(4), provided that any certificate issued by the Board for the proposed facility include the conditions specified in the respective Staff Report. (Staff Ex. 1 at 28.)

5. AIR, WATER, SOLID WASTE, AND AVIATION

{¶ 69} Pursuant to R.C. 4906.10(A)(5), the facility must comply with Ohio law regarding air and water pollution control, withdrawal of waters of the state, solid and hazardous wastes, and air navigation.

{¶ 70} Staff notes that air quality permits are not required for the construction of the proposed facility. However, fugitive dust rules adopted under R.C. Chapter 3704 may be applicable to the construction of the proposed facility. The Applicant would implement control suppression techniques such as irrigation, mulching, or application of tackifier resins. Staff considers these methods to be sufficient to comply with fugitive dust rules. (Staff Ex. 1 at 29.)

{¶ 71} Staff reports that neither construction nor operation of the proposed facility would require the use of significant amounts of water. Therefore, the requirements under R.C. 1501.33 and 1501.34 are not applicable to this Project. DP&L will seek coverage, if needed, under the U.S. Army Corps of Engineers Nationwide Permit 12 for Utility Line Activities for surface water impacts associated with the proposed transmission line. (Staff Ex. 1 at 28.)

{¶ 72} Per Staff, DP&L, if required by the Ohio EPA, would submit an application for authorization under the Clean Water Act section 401 upon final design and selection of the route and final waterbody evaluation. DP&L does not anticipate that it will place permanent fill in streams or wetlands for the Project. The Applicant does intend to submit a Notice of Intent for coverage under the Ohio EPA's NPDES general permit for stormwater discharges associated with construction activities. DP&L would submit a Storm Water Pollution Prevention Plan (SWPPP) as part of the NPDES permit. The SWPPP would include a detailed construction access plan and indicate best management practices for construction activities that minimize erosion-related impacts to streams and wetlands. The Applicant intends to clearly identify wetlands, streams, and other environmentally sensitive areas before commencement of clearing or construction. With these provisions, Staff believes that construction of the facility will comply with the requirements set forth under R.C. Chapter 6111. (Staff Ex. 1 at 29.)

{¶ 73} Solid waste generated during construction will include items such as conductor scrap; construction material packaging including cartons, boxes, insulator crates, conductor reels, and wrapping; and used storm water erosion control materials. All construction-related debris will be disposed of in accordance with state and federal requirements. Any contaminated soils discovered or generated during construction will be handled in accordance with applicable regulations. Staff considers DP&L's solid waste plan in this case to comply with the solid waste disposal requirements set forth in R.C. Chapter 3734. (Staff Ex. 1 at 29-30.)

{¶ 74} The height of the tallest structure of the Project would be approximately 90 feet, with the height of the typical transmission structure at approximately 70 feet. The Applicant plans to use cranes 125 feet tall to install steel poles. According to the Federal Aviation Administration, the closest public-use airports are Dayton-Phillipsburg and Waco Field airports, between three and four miles from the proposed transmission line. The closest heliport is the Dayton Transportation Center Heliport, which is approximately 19 miles from the Project. As these public use airports and heliport are at least three miles from

the proposed transmission line, DP&L does not anticipate that the Project will affect operations. Staff contacted the Ohio Department of Transportation (ODOT) Office of Aviation during review of the application, pursuant to R.C. 4906.10(A)(5). No concerns regarding potential impacts of the Project on local airports have been identified. (Staff Ex. 1 at 30.)

{¶ 75} Staff recommends that the Board find that the proposed facility complies with the requirements specified in R.C. 4906.10(A)(5), provided the certificate include the conditions specified in the Staff Report (Staff Ex. 1 at 30).

6. PUBLIC INTEREST, CONVENIENCE, AND NECESSITY

{¶ 76} Pursuant to R.C. 4906.10(A)(6), the Board must determine that the facility will serve the public interest, convenience, and necessity.

{¶ 77} DP&L hosted a public informational meeting and served copies of the complete applications pursuant to applicable statutes and regulations. DP&L maintains a website¹ regarding the Project and members of the public may contact DP&L's project outreach specialist with questions or concerns during any phase of the Project. DP&L has committed to log all comments provided through its public interaction program and to share them with Staff. It has also committed to notify affected property owners and tenants, as well as anyone who requests Project updates, at least seven days before the start of construction. Staff recommends conditions requiring DP&L to develop and provide to Staff a public information program that informs affected property owners and tenants of the nature of the Project and a complaint resolution procedure to address potential public grievances resulting from Project construction and operation. (Staff Ex.1 at 31.)

{¶ 78} Staff states that electric transmission lines, when energized, generate electromagnetic fields (EMF). While laboratory studies have failed to establish a strong correlation between exposure to EMF and effects on human health, there are concerns that

¹ <https://www.dpandl.com/about-dpl/who-weare/systemimprovements/west-milton/>

EMF may have impacts on human health. Because these concerns exist, DP&L has computed the EMF associated with the new circuits based on the maximum loadings of the lines, which would lead to the highest EMF values that might exist along the proposed transmission line. Staff clarifies that daily current load levels normally operate below the maximum load conditions, thereby further reducing nominal EMF values. Staff reports that the electric field for this transmission line would be 0.44 kV/meter or less. Staff explains that electric fields are easily shielded by physical structures such as the walls of a house, foliage, etc. Staff next reports that the magnetic fields for the Project are estimated at the right-of-way edge to be less than 96 milligauss, which is comparable to that of common household appliances. Finally, Staff states that DP&L will design the transmission facilities per NESC requirements.

{¶ 79} Overall, Staff recommends that the Board find that the proposed facility would serve the public interest, convenience, and necessity and, therefore, complies with the enumerated requirements of R.C. 4906.10(A)(6), provided that any certificate issued by the Board includes the conditions specified in the Staff Report (Staff Ex. 1 at 31-32).

7. AGRICULTURAL DISTRICTS

{¶ 80} Pursuant to R.C. 4906.10(A)(7), the Board must determine the facility's impact on the agricultural viability of any land in an existing agricultural district within the project area of the proposed utility facility.

{¶ 81} The preferred and alternate routes cross 16 and 18 acres of agricultural land, respectively. The total cultivated acreage impacted by the preferred route would be approximately 94 acres, with 31 acres of agricultural district land affected. The total cultivated acreage impacted by the alternate route would be approximately 99 acres, with 29 acres of agricultural district land affected. Additionally, both routes impact three to four acres of pasture land. (Staff Ex. 1 at 33.)

{¶ 82} The Applicant intends to take measures to minimize impacts to field agricultural activities and structures in the Project area. Construction would only interrupt

field operations for a relatively short duration. The Applicant states that it will coordinate with landowners to mitigate any impact on irrigation systems, and that compensation for unavoidable impacts are to be negotiated with affected landowners. Where feasible, structures would be located at the edge of fields, and excavated top soil would be segregated and stockpiled. According to DP&L, no agricultural structures are expected to be impacted by the Project, and the viability of agricultural district land as agricultural land is not expected to suffer any significant impacts. (Staff Ex. 1 at 33.)

{¶ 83} Staff recommends that the Board find that the impact of the proposed facility on the viability of existing agricultural land in an agricultural district has been determined, and that the Project therefore complies with the requirements specified in R.C. 4906.10(A)(7), provided the certificate include the conditions specified in the Staff Report. (Staff Ex. 1 at 33).

8. WATER CONSERVATION PRACTICE

{¶ 84} Pursuant to R.C. 4906.10(A)(8), the proposed facility must incorporate maximum feasible water conservation practices, considering the available technology and the nature and economics of the various alternatives.

{¶ 85} According to the Staff Report, the facility may require the use of minimal amounts of water for dust control and for concrete foundations during construction. However, the transmission line would not require the use of any water during operation. Accordingly, the facility will comply with water conservation practices as defined under R.C. 4906.10(A)(8). Staff recommends that the Board find that the proposed facility would incorporate maximum feasible water conservation practices, and therefore complies with R.C. 4906.10(A)(8). (Staff Ex. 2 at 33.)

VI. EVIDENTIARY HEARING

{¶ 86} At the October 1, 2019 evidentiary hearing, prior to presentation of the Stipulation and examination of DP&L and Staff witnesses, two public witnesses, Ed Conley and Chris Journell, testified. Both public witnesses generally asserted that there was a lack

of responsiveness from DP&L regarding questions from the public about specifics of the Project (Tr. at 7, 23-24). The public witnesses also stated that there was insufficient information on why the preferred route was chosen over routes not submitted or considered by DP&L, specifically, a route along Calumet Road (Tr. at 11). Mr. Conley stated that he was aware that the route along Calumet Road contained a nature preserve and that the preferred route already has transmission equipment installed along it (Tr. at 18-19).

{¶ 87} DP&L witness Greg Tokar, an engineer for DP&L, testified that DP&L has been continuing to investigate and assess the feasibility of adjusting the Project to travel Calumet Road, and that doing so would require an amendment to the application (Tr. at 29-30). Mr. Tokar proceeded to state that Calumet Road not being considered as a possible route for the transmission line was an oversight (Tr. at 32).

{¶ 88} At the hearing, counsel for DP&L presented a Stipulation entered into by Staff and the Applicant and filed in this proceeding on September 23, 2019 (Joint Ex. 1). DP&L witness Jessica Kellie offered testimony in support of the Stipulation, stating that in addition to the 22 recommendations contained in the Staff Report, one condition regarding drainage systems in the Project was added in response to concerns voiced at the public hearing (Tr. at 36-38). Ms. Kellie also testified that DP&L had addressed questions from the public hearing, as well as those concerning the Project received via phone and email (Tr. at 41). Further, Ms. Kellie stated that DP&L would commit to process improvements in answering questions from the public in similar cases in the future (Tr. at 42). Finally, Ms. Kellie asserted that DP&L received comments submitted by people on the alternate route who were in favor of the preferred route (Tr. at 45). Mr. Tokar clarified that property owners with concerns regarding placement of poles along the route of the transmission line are able to contact DP&L via phone or email to receive approximate placement locations (Tr. at 47-48).

{¶ 89} Next, Staff witness Eric Morrison testified in support of both the Staff Report and the Stipulation (Tr. at 53; Staff Ex. 2). Mr. Morrison further testified that one of the

conditions included in the Staff Report gives an overview of the complaint resolution procedure (Tr. at 57).

VII. STIPULATION AND CONDITIONS

{¶ 90} As stated above, the Stipulation between Staff and DP&L was presented at the October 1, 2019 evidentiary hearing. As part of the Stipulation, the signatory parties agree and recommend that the Board issue the certificate requested by DP&L, subject to certain conditions. The following is a summary of the conditions agreed to by the stipulating parties and is not intended to replace or supersede the Stipulation.

{¶ 91} Conditions related to the Project:

- (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 1, 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 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 onsite 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 to allow Staff to determine that the final project design complies 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 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 hard copy and 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 the certificate's issuance.
- (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 is 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 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 seven days prior to work on affected property. Upon review and approval by Staff, the Applicant shall file the public information program.
- (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 in this proceeding 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 mitigation effort 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 in this proceeding.

- (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.
- (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. 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 impact.

- (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.
- (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 to assure it complies with the conditions of the certificate. The construction plans shall include 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.
- (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 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 EPA NPDES permits obtained for the Project and the approved SWPPP 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, at its expense, all disturbed drainage systems, water wells, and septic systems to previous or better condition unless otherwise specified by the affected parties.

(Jt. Ex. 1 at 9-15.)

VIII. CONCLUSION

{¶ 92} Ohio Adm.Code 4906-2-24 authorizes parties to Board proceedings to enter into stipulations concerning issues of fact, the authenticity of documents, or the proposed resolution of some or all of the issues in a proceeding. Although not binding on the Board, pursuant to Ohio Adm.Code 4906-2-24(D), the terms of such an agreement are accorded substantial weight. The standard of review for considering the reasonableness of a stipulation has been discussed in a number of prior Board decisions. *See, e.g., In re Northwest Ohio Wind Energy, LLC*, Case No. 13-197-EL-BGN (Dec. 16, 2013); *In re American Transm. Systems Inc.*, Case No. 12-1727-EL-BSB (Mar. 11, 2013); *In re Rolling Hills Generating, LLC*, Case No. 12-1669-EL-BGA (May 1, 2013); *In re AEP Transm. Co. Inc.*, Case No. 12-1361-EL-BSB (Sept. 13, 2013); *In re Hardin Wind LLC*, Case No. 13-1177-EL-BGN (Mar. 17, 2014); *In re Harrison Power Transmission, LLC*, Case No. 17-2084-EL-BTX (Nov. 15, 2018). The ultimate issue for the Board's consideration is whether the agreement, which embodies considerable time and effort by the signatory parties, is reasonable and should be adopted. In considering the reasonableness of a stipulation, the Board has used the following criteria:

- (9) Is the settlement a product of serious bargaining among capable, knowledgeable parties?
- (10) Does the settlement, as a package, benefit ratepayers and the public interest?
- (11) Does the settlement package violate any important regulatory principle or practice?

{¶ 93} DP&L witness Jessica Kellie testified that the Stipulation meets the criteria for Board approval of stipulations, as both the Board and DP&L were represented by experienced and knowledgeable counsel on the subject matter (DP&L Ex. 7 at 4-5). Ms. Kellie noted that all signatory parties are knowledgeable in regulatory matters and represent a broad range of interests (DP&L Ex. 7 at 5). Further, Staff witness Eric Morrison offered testimony in support of the Stipulation (Staff Ex. 2 at 3, Tr. at 53).

{¶ 94} The Board finds that the Stipulation appears to be the product of serious bargaining among capable, knowledgeable parties. Consequently, we find that, based upon the record, the first prong is satisfied.

{¶ 95} Upon review, the Board finds that, as a package, the Stipulation benefits the public interest by resolving the issues raised in this matter without resulting in litigation. The Board recognizes that the Stipulation includes Staff's recommendations as set forth in the Staff Report. We find that, based on the evidence of record, the proposed transmission line is needed to improve reliability in the northwest area of the DP&L transmission system. Specifically, the proposed transmission line will connect the West Milton Substation and the Eldean Substation, improving reliability in outage conditions and bringing the area within compliance of NERC reliability standards (Staff Ex. 1 at 17). DP&L witness Kellie also testified that the Project will help ensure that increased demands for electricity are met in the future (DP&L Ex. 7 at 5).

{¶ 96} Further, many of the concerns raised during the public hearing and the two witnesses at the evidentiary hearing have been addressed by the Applicant. We note that DP&L intends to transfer existing distribution lines and cables onto the new pole structures to be installed for the Project, which mitigates the need for two sets of poles in the existing right-of-way (Staff Ex. 1 at 20-21). Property owners with concerns regarding pole placements can directly contact DP&L via phone or email to receive approximate pole locations (Tr. at 47-48). Mr. Tokar testified that DP&L is investigating whether it is feasible to route the Project along Calumet Road to minimize potential impact to property owners (Tr. at 29-30). With regard to concerns about the Applicant's lack of communication with

the public, Ms. Kellie represented that the DP&L was making internal process improvements to address this issue. She also testified that DP&L had addressed questions about the Project from the public hearing, as well as those received via email and phone (Tr. at 42). Based on these reasons, the Board finds that the Stipulation meets the second criterion of the three-part test for settlements.

{¶ 97} Finally, with regard to the third criterion, the Board finds that the Stipulation does not violate any important regulatory principle or practice. Based upon the record in these proceedings, the Board finds that all of the criteria established in accordance with R.C. Chapter 4906 are satisfied for the construction, operation, and maintenance of the facility as described in the application filed in this case, subject to the conditions set forth in the Stipulation and this Order. Accordingly, based upon all of the above, the Board approves and adopts the Stipulation and hereby issues a certificate to DP&L in accordance with R.C. Chapter 4906.

IX. FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶ 98} DP&L is a person under R.C. 4906.01(A) and is licensed to do business in the state of Ohio.

{¶ 99} The proposed electric transmission line is a major utility facility, as defined in R.C. 4906.01(B)(2).

{¶ 100} On August 20, 2018, DP&L requested waivers from Ohio Adm.Code 4903-05, Ohio Adm.Code 4906-5-05(B)(2)(a)(i)-(ii), and Ohio Adm.Code 4906-5-07(E).

{¶ 101} On September 20, 2018, the ALJ granted DP&L's request for waiver of Ohio Adm.Code 4906-3-05, and denied DP&L's requests for waiver from Ohio Adm.Code 4906-5-05(B)(2)(a)(i)-(ii) and Ohio Adm.Code 4906-5-07(E).

{¶ 102} On October 3, 2018, DP&L filed a pre-application notice of a public informational meeting for its proposed Project.

{¶ 103} On October 30, 2018, DP&L filed proof that legal notice had been published in the *Dayton Daily News* and the *Miami Valley Sunday News* regarding the public information meeting on its application in this case in accordance with Ohio Adm.Code 4906-3-03(B)(1).

{¶ 104} On November 7, 2018, DP&L held the public informational meeting for the proposed Project in this case.

{¶ 105} On February 1, 2019, DP&L filed an application in this case, as well as a motion for protective order.

{¶ 106} On April 1, 2019, DP&L requested a 60-day suspension of the compliance review schedule.

{¶ 107} On April 2, 2019, the ALJ suspended the compliance review schedule for 60 days.

{¶ 108} On May 10, 2019, DP&L filed supplemental material to incorporate into the application filed on February 1, 2019.

{¶ 109} By letter filed on June 3, 2019, the Board notified DP&L that its application had been found to be sufficiently complete pursuant to Ohio Adm.Code 4906-1, et seq.

{¶ 110} On June 28, 2019, DP&L filed notice that it served copies of the application upon government officials and libraries and filed its certificate of service of the accepted and complete applications, in accordance with Ohio Adm.Code 4906-3-07.

{¶ 111} On July 29, 2019, in compliance with Ohio Adm.Code 4906-3-09, DP&L filed proof of notification showing that written notice of the hearings was mailed to affected property owners.

{¶ 112} The Staff Report for the application was filed on August 30, 2019.

{¶ 113} On September 11, 2019, in compliance with Ohio Adm.Code 4906-3-09, DP&L filed proof that legal notice had been published in the *Dayton Daily News* and the *Miami Valley Sunday News* regarding the scheduled public and adjudicatory hearings.

{¶ 114} A local public hearing was held on September 17, 2019, in Troy, Ohio. Twenty-two members of the public were present to offer testimony on the proposed Project.

{¶ 115} On September 23, 2019, DP&L and Staff filed a Stipulation and Recommendation.

{¶ 116} An adjudicatory hearing was held on October 1, 2019. Witnesses for Staff and DP&L offered testimony in support of the Stipulation. Two members of the public testified, requesting more information on the Project.

{¶ 117} Adequate data on the proposed transmission line has been provided to make the applicable determinations required by R.C. 4906.10(A).

{¶ 118} The Stipulation satisfies the criteria established by the Board for review and consideration of stipulations.

{¶ 119} Based on the record, the Board finds that DP&L's application should be approved, and a certificate should be issued, pursuant to R.C. Chapter 4906, for the construction, operation, and maintenance of the transmission facility along the preferred route, subject to the conditions set forth in the Stipulation and this Order.

X. ORDER

{¶ 120} It is, therefore,

{¶ 121} ORDERED, That the Stipulation be approved and adopted. It is, further,

{¶ 122} ORDERED, That a certificate be issued to DP&L for the construction, operation, and maintenance of the transmission facility along the preferred route, subject to the conditions set forth in the Stipulation and this Order. It is, further,

{¶ 123} ORDERED, That the motion for a protective order be granted consistent with Paragraphs 27-29. It is, further,

{¶ 124} ORDERED, That the docketing division maintain the proprietary information under seal for a period of 24 months from the date of this Order. It is, further,

{¶ 125} ORDERED, That a copy of this Opinion, Order, and Certificate be served upon all interested persons and parties of record.

BOARD MEMBERS:

Approving:

Sam Randazzo, Chairman
Public Utilities Commission of Ohio

Rachel Near, Designee for Lydia Mihalik, Director
Ohio Development Services Agency

Mary Mertz, Director
Ohio Department of Natural Resources

Gene Phillips, Designee for Amy Acton, M.D., MPH, Director
Ohio Department of Health

Drew Bergman, Designee for Laurie Stevenson, Director
Ohio Environmental Protection Agency

George McNab, Designee for Dorothy Peland, Director
Ohio Department of Agriculture

Greg Murphy, Public Member

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Case No(s). 18-1259-EL-BTX

Summary: Opinion & Order that the Ohio Power Siting Board approves and adopts the stipulation and recommendation between The Dayton Power and Light Company and Staff and directs that a certificate be issued to The Dayton Power and Light Company for the construction, operation, and maintenance of a transmission line electronically filed by Docketing Staff on behalf of Docketing