

THE OHIO POWER SITING BOARD

IN THE MATTER OF THE APPLICATION OF
THE DAYTON POWER AND LIGHT
COMPANY D/B/A AES OHIO FOR AN
AMENDMENT TO THE WEST MILTON-
ELDEAN 138 KV TRANSMISSION LINE
PROJECT.

CASE NO. 21-897-EL-BTA

ORDER ON CERTIFICATE

Entered into the Journal on February 17, 2022

I. SUMMARY

{¶ 1} The Ohio Power Siting Board grants the application filed by The Dayton Power and Light Company d/b/a AES Ohio to amend its certificate.

II. DISCUSSION

A. *Procedural History*

{¶ 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 Chapters 4906-1 et seq.

{¶ 3} On January 16, 2020, the Board granted the application filed by The Dayton Power and Light Company d/b/a AES Ohio (AES Ohio or Applicant) for a certificate to construct and operate a 138 kilovolt (kV) overhead electric transmission line (the West Milton-Eldean transmission line, or the Project) 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. *In re The Dayton Power and Light Company d/b/a AES Ohio*, Case No. 18-1259-EL-BTX (*Certificate Case*), Opinion, Order, and Certificate (Jan. 16, 2020). The Board granted AES Ohio's application in the *Certificate Case*, pursuant to a joint stipulation filed by AES Ohio and the Board's Staff (Staff), subject to 23 conditions.

{¶ 4} On October 7, 2021, AES Ohio filed an application in the above-captioned case

(*Amendment Application*) proposing certain changes to the route approved by the Board in the *Certificate Case*. Thus, the purpose of the *Amendment Application* is to document proposed changes to the route since the Board's approval in the *Certificate Case*, and to seek Board approval of the proposed reroutes. The changes proposed in the *Amendment Application* are not expected to affect the Project's overall impacts.

{¶ 5} On December 30, 2021, AES Ohio filed proof of service of the *Amendment Application*, pursuant to Ohio Adm.Code 4906-3-11(B)(2).

{¶ 6} On January 5, 2022, Staff filed a report evaluating the *Amendment Application*.

{¶ 7} On January 13, 2022, AES Ohio filed, pursuant Ohio Adm.Code 4906-2-21(D) a motion for protective order which seeks to keep confidential, and exempt from public disclosure, three appendices to the *Amendment Application*. Each of the three was filed under seal, pursuant to Ohio Adm.Code 4906-2-21(D)(2), at the same time that all other portions of the *Amended Application* were publicly filed. The three are identified within the index to the *Amendment Application*, as: (1) Appendix 7-3, *Phase 1 Archeology Report*; (2) Appendix 7-4, *Historic Architecture Report*; and (3) Appendix 7-5 *Supplemental Historic Architecture Report*. AES Ohio considers each such appendix, in its entirety, to be confidential, and states that each contains information that is culturally sensitive. According to the Applicant, the information at issue involves the identification of the location of historic sites, including burial grounds and other sites of archeological significance. In support of its motion, AES Ohio submits that revealing this culturally sensitive and confidential information in a publicly filed document creates an increased potential for disturbance from interlopers, such as hobbyists who may have illegitimate or unwarranted interest in collecting material from some sites. Additionally, AES Ohio asserts that the nondisclosure of this information will not impair the purposes of Title 49, as the Board and its Staff have full access to the information in order to fulfill the Board's statutory obligations, while public disclosure would not serve any public policy.

{¶ 8} The Board has reviewed the involved three appendices that AES Ohio filed

under seal. Applying the requirements that the information must: (1) have independent economic value, actual or potential, from not being generally known to persons who might, through improper means, gain economic value from its use; (2) be the subject of reasonable efforts to maintain its secrecy pursuant to R.C. 1333.61(D), and (3) adhere to the criteria set forth by the Ohio Supreme Court in *State ex rel. The Plain Dealer v. Ohio Dept. of Ins.*, 80 Ohio St.3d 513, 524-525, 687 N.E.2d 661 (1997), the Board finds that the motion for protective order should be granted.

B. *Applicable Law*

{¶ 9} R.C. 4906.04 provides that the Board’s authority applies to major utility facilities and requires any proposed facility to be certified by the Board before the start of construction. In accordance with R.C. Chapter 4906, the Board promulgated the rules set forth in Ohio Adm.Code Chapter 4906-3 regarding the procedural requirements for filing applications for major utility facilities and amendments to certificates.

{¶ 10} Pursuant to R.C. 4906.07, when considering an application for an amendment of a certificate, the Board “shall hold a hearing * * * if the proposed change in the facility would result in any material increase in any environmental impact of the facility or a substantial change in the location of all or a portion of such facility * * *.” R.C. 4906.06(B) and (C), as well as Ohio Adm.Code 4906-3-11, require the applicant to provide notice of its application for amendment to interested parties and potentially affected members of the public.

{¶ 11} AES Ohio is a corporation and, therefore, a person under R.C. 4906.01(A). Additionally, pursuant to the Board’s Order in the *Certificate Case*, AES Ohio is certificated to construct, operate, and maintain a major utility facility under R.C. 4906.10. As indicated above, the Applicant provided the Board with proof of service of the *Amendment Application*.

C. *Summary of Staff Report*

{¶ 12} As an initial matter, Staff observes that the Applicant began construction of

the Project in December 2021, with an expected in-service date of June 1, 2022 (Staff Report at 2).

1. REASONS FOR THE PROPOSED REROUTES

{¶ 13} In the *Amendment Application*, the Applicant proposes an amendment to the Project as it was originally approved in the *Certificate Case*. The Project was originally approved as a new line involving 16.7 miles of transmission line to connect the West Milton and Eldean substations. Detailed engineering of the transmission line, which has progressed since Board approval of the original preferred route in the *Certificate Case*, now presents a need for four alignment changes. The *Amendment Application* entails route adjustments that would total 3.67 miles in length, yet which would not effectively change the overall length of the Project. (Staff Report at 1.)

2. CHARACTERISTICS OF THE PROJECT THAT ARE LEFT UNCHANGED BY THE PROPOSED AMENDMENT TO THE CERTIFICATE

{¶ 14} In the *Certificate Case*, the Board determined that the addition of the Project to the grid, as originally proposed, would improve electric service reliability for area customers. The need for the facility and grid impacts associated with the facility remain the same as was approved in the *Certificate Case* (Staff Report at 1.)

3. DESCRIPTION OF THE FOUR PROPOSED ADJUSTMENTS TO THE PREVIOUSLY APPROVED PREFERRED ROUTE

{¶ 15} The *Amendment Application* entails adjustments that are the result of advanced detailed engineering, all concerned with changes to the preferred route, categorized by the Applicant as reroutes of the alignment previously approved in the *Certificate Case* (Staff Report at 2). All four of the proposed adjustments to the preferred route were made due to right-of-way negotiations with landowners. What follows is a brief description of each reroute.

- (1) *Davis Road Reroute*: This change moves the proposed line approximately 50 feet to the opposite side of the road as it parallels Davis Road between

Milton Potsdam Road and Emerick Road and is approximately 0.5 miles in length.

- (2) *Quarry Reroute*: This change moves the proposed line from the south and east sides of the quarry approximately 1,400 feet to the west and north sides. Additionally, the line is proposed to be moved approximately 50 feet to the opposite side of Davis Road between Markley Road and the southwestern end of the quarry and is approximately 1.25 miles in length.
- (3) *Forrest Hill Road Reroute*: This change moves the proposed line out of an agricultural field and will parallel the south side of Horseshoe Bend Road for approximately 2,700 feet and traverse a mile along the west side of Forrest Hill Road. The proposed change rejoins the original preferred route at the intersection of Forrest Hill Road and Fenner Road and is approximately 1.22 miles in length.
- (4) *Eldean Road Reroute*: This change moves the proposed line out of the middle of an agricultural field to the property line due east of the current location. The line would run parallel to the north side of Eldean Road for approximately 1,300 feet and follow the property line to where it meets up again with the current route for approximately 2,300 feet. The total adjustment is approximately 0.7 miles in length.

(Staff Report at 2.)

4. SOCIAL IMPACTS

{¶ 16} In Staff's opinion, the proposed adjustments are not expected to significantly alter existing land uses, including agricultural and residential land. With the proposed adjustments, 16 additional residential structures would be located within 200 feet of the right-of-way (Staff Report at 2.)

{¶ 17} The Project has previously been studied for the presence of archaeological resources and historic impacts and no significant adverse impacts on cultural resources are expected. The State Historic Preservation Office concurs that the Project would not be expected to impact cultural resources. Staff agrees with this conclusion. (Staff Report at 3.)

5. SURFACE WATERS

{¶ 18} The proposed adjustments would not result in any new stream crossings. Total linear feet of stream within the right-of-way would decrease from 453 to 320 linear feet. No new wetlands would be crossed by the proposed reroute. The total acreage of wetlands within the right-of-way would remain approximately the same. All delineated wetlands are category 1 and category 2 wetlands. Adherence to the conditions of the original certificate as well as implementation of the storm water pollution prevention plan would minimize impacts to surface water resources that could occur as a result of the proposed adjustments. (Staff Report at 3.)

6. THREATENED AND ENDANGERED SPECIES

{¶ 19} According to Staff, the proposed adjustments would not result in increased impacts to listed wildlife species. Adherence to the conditions of the original certificate would minimize impacts to listed species. (Staff Report at 3.)

7. STAFF RECOMMENDATION

{¶ 20} Staff recommends approval of this amendment provided that the following Staff-proposed conditions are satisfied. Staff notes that its recommendation for approval of this amendment should not be construed as a recommendation for approval of cost recovery in any ratemaking proceeding. (Staff Report at 3.)

8. STAFF-PROPOSED CONDITIONS

{¶ 21} In the above captioned case, while Staff recommends that the Board approve the certificate amendment proposed, it recommends that such approval should be made subject to the following new conditions:

- (1) The applicant shall continue to adhere to all conditions of the Opinion, Order, and Certificate issued in the *Certificate Case*, following the route as amended as through the *Amendment Application*.
- (2) The certificate authority provided in this case shall not exempt the facility from any other applicable and lawful local, state, or federal rules or regulations nor be used to affect the exercise of discretion of any other local, state, or federal permitting or licensing authority with regard to areas subject to their supervision or control.
- (3) 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. The Applicant shall provide copies of permits and authorizations, including all supporting documentation, on the case docket prior to commencement of construction.

(Staff Report at 3.)

{¶ 22} Thus, upon its review, overall, Staff recommends that the Board approve the proposed amendment to the certificate, provided that the Applicant shall continue to adhere to all conditions of the Opinion, Order, and Certificate issued in the *Certificate Case* and those additional conditions adopted by the Board in the *Amendment Application*, over the route as amended in the above-captioned case (Staff Report at 3).

D. Board's Conclusion

{¶ 23} After considering the application and the Staff Report, the Board finds that the route changes proposed in the *Amendment Application* do not result in any material increase in any environmental impact or a substantial change in the location of all or a portion of the facility approved in the *Certificate Case*. Therefore, pursuant to R.C. 4906.07, the Board finds that a hearing on the *Amendment Application* is not necessary under the circumstances

presented in this case. Further, the Board finds that the proposed changes do not affect our conclusion from the *Certificate Case* that the project satisfies the criteria set forth in R.C. Chapter 4906, promotes the public interest, and does not violate any important regulatory principle or practice. Therefore, the Board concludes that the *Amendment Application* should be approved, subject to the conditions set forth in the Opinion, Order, and Certificate in the *Certificate Case*, as well as the additional conditions adopted by the Board in the *Amended Application* case, which Staff had recommended in its report in the above-captioned case.

E. Findings of Fact and Conclusions of Law

{¶ 24} AES Ohio is a corporation and a person under R.C. 4906.01(A).

{¶ 25} On October 7, 2021, AES Ohio filed an application seeking an amendment to the certificate issued in the *Certificate Case*.

{¶ 26} On January 5, 2022, Staff filed its Report of Investigation containing its evaluation of the *Amendment Application*.

{¶ 27} The proposed amendment to the certificated facility does not result in a substantial change in the location of the facility or any material increase in any environmental impact; therefore, in accordance with R.C. 4906.07, an evidentiary hearing is not necessary.

{¶ 28} Based on the record, and in accordance with R.C. Chapter 4906, the *Amendment Application* should be approved, subject to the conditions set forth in the Opinion, Order, and Certificate in the *Certificate Case* as well as the additional conditions adopted by the Board in the *Amendment Application* case, which Staff had recommended in its report in the *Amendment Application* case, following the route as amended in the above-captioned case.

III. ORDER

{¶ 29} It is, therefore,

{¶ 30} ORDERED, That, in accordance with the above findings, AES Ohio's *Amendment Application* be approved, subject to the conditions set forth in the Opinion, Order, and Certificate in the *Certificate Case* as well as the additional conditions Staff recommended in its report in the *Amendment Application* case, following the route as amended in the above-captioned case. It is, further,

{¶ 31} ORDERED, That AES Ohio's request for protective order be granted as further described in Paragraphs 7 and 8. It is, further,

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

BOARD MEMBERS:

Approving:

Jenifer French, Chair
Public Utilities Commission of Ohio

Jack Christopher, Designee for Lydia Mihalik, Director
Ohio Department of Development

Brittney Colvin, Designee for Mary Mertz, Director
Ohio Department of Natural Resources

W. Gene Phillips, Designee for Bruce T. Vanderhoff, M.D., Director
Ohio Department of Health

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

Sarah Huffman, Designee for Dorothy Pelanda, Director
Ohio Department of Agriculture

DEF/kck

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Case No(s). 21-0897-EL-BTA

Summary: Opinion & Order on Certificate granting the application filed by The Dayton Power and Light Company d/b/a AES Ohio to amend its certificate.
electronically filed by Ms. Mary E. Fischer on behalf of Ohio Power Siting Board