

**BEFORE THE
OHIO POWER SITING BOARD**

In the Matter of the Letter of Notification of)	
The Dayton Power and Light Company)	
For a Certificate of Environmental Compatibility)	Case No. 21-972-EL-BLN
and Public Need for the West Milton to Airport)	
138 kV Expansion)	

In the Matter of the Letter of Notification of)	
The Dayton Power and Light Company)	
For a Certificate of Environmental Compatibility)	Case No. 21-973-EL-BLN
and Public Need for the Miami to Airport)	
138 kV Expansion)	(unconsolidated)

**Reply Comments of
The Dayton Power and Light Company dba AES Ohio**

The Dayton Power and Light Company dba AES Ohio (“AES Ohio”), pursuant to the procedural schedule established by the Administrative Law Judge in an Entry issued February 24, 2022 (the “Entry”),¹ hereby submits its reply comments in support of the Letter of Notification (“LON”) Applications filed before the Ohio Power Siting Board (“OPSB” or the “Board”) on December 2, 2021, in the unconsolidated Case Nos. 21-972-EL-BLN and 21-973-EL-BLN.²

¹ *In the Matter of the Notification of The Dayton Power and Light Company for a Certificate of Environmental Compatibility and Public Need for the West Milton to Airport 138kV Expansion*, Case Nos. 21-972-EL-BLN and *In the Matter of the Notification of The Dayton Power and Light Company for a Certificate of Environmental Compatibility and Public Need for the Miami to Airport 138kV Expansion* 21-973-EL-BLN (unconsolidated), Entry, Feb. 24, 2022.

² Case No. 21-972-EL-BLN involves a LON Application to construct a 138 kV transmission line from a tap point off an existing 138 kV transmission line and extending south on Bard Road and then east on Ginghamburg-Frederick Road a total of approximately 1.1 miles, terminating in a non-jurisdictional 138/12 kV distribution substation (the “Airport” substation). Case No. 21-973-EL-BLN involves a LON Application to construct a 138 kV transmission line from a tap point off an existing 138 kV transmission line and extending south on Peters Road and then west on Ginghamburg-Frederick Road a total of approximately 1.3 miles, terminating at the same substation.

REPLY COMMENTS IN SUPPORT OF APPLICATIONS

These reply comments are submitted in response to the initial comments filed by the Board of Monroe Township Board of Trustees (“Monroe Township”), which were identical in both cases; and to the initial comments filed by counsel on behalf of Raymmond and Angela Davis (the “Davises”) in Case No. 21-972-EL-BLN.

I. The Proposed Routes of the Two Transmission Lines Are the Most Economical and Least Disruptive Routes that Could Have Been Selected to Bring Additional Power to Area.

A. Due Diligence Was Exercised.

In its two page letter, previously filed as part of its intervention and resubmitted as its Initial Comments, Monroe Township makes the unsupported assertion on page 1 that AES Ohio failed to exercise due diligence as required in Ohio Revised Code (“ORC”) 4906(A)(4) in “the selection of the proposed locations” and failed to adequately justify under ORC 4906(A)(10) that the proposed facility represents the minimum adverse environmental effects”³ These assertions are intertwined with the subsequent Monroe Township statements on page 2 and a data dump of e-mails collected in App. #4 that there is a City of Dayton alternative site available for the substation and that the transmission lines should have connected to a substation on that site.

This focus on the siting of the substation is perplexing because the Trustees have been informed that the substation is not jurisdictional to the OPSB and, therefore, is not part of either of these cases. Because the substation is non-jurisdictional, AES Ohio’s LONs did not address the two-year struggle it had to find any useable site for the substation. For informational purposes only, AES Ohio states that the City of Dayton site was indeed looked at, but it ultimately was not feasible. In order to get to the site, private easements would have been

³ Monroe Township Initial Comments p. 1.

required across open farmland and one landowner was a hard “no,” indicating that he was not going to execute an easement across his land. The site is also directly north across Lightner Road from the Dayton Airport and its main north-south runway. An FAA consultant identified several height-related problems for electric facilities placed along the approaches to the runway. Additionally, AES Ohio learned that there was a possibility that the Dayton Airport might execute on long-existing plans to extend that runway to the north, which would have required AES Ohio to move its facilities.⁴ The City of Dayton site was, and remains, infeasible.

In short, it was not a failure of due diligence to locate the substation on Ginghamburg-Frederick Road as AES Ohio plans. That site was eventually identified and acquired after a long and arduous search.

Assertions made in the Monroe Township Initial Comments at p. 2 and Att. # 2 that the proposed transmission lines should be undergrounded are also flawed. These assertions appear to be made in connection with the City of Dayton site. As such they fail because that site is not viable as discussed above. To the extent made in connection with the transmission lines before the Board in these two proceedings, they are made with an inadequate understanding of the level of disruption created by underground transmission lines along a road with existing driveways and mature trees. Undergrounding lower voltage distribution lines in an as-yet undeveloped newly created subdivision is often a terrific idea; but the same cannot be said for undergrounding

⁴ The need to import additional power into this area north and west of the Dayton Airport and the two-year struggle to identify any property where a willing landowner could be found to sell property on which the non-jurisdictional substation could be built is described in more detail in AES Ohio’s Motion for Leave to File Comments and Comments in Response to Public Comments and Comments of Board of Monroe Township Trustee, Miami County (filed Dec. 27, 2021) at 2-3. The infeasibility of the City of Dayton site was further addressed in detail, along with supporting attachments, in a filing made in these proceedings by AES Ohio on December 20, 2021, in a memorandum contra filed in opposition to motions made by Mr. and Mrs. Davis. AES Ohio Memorandum Contra at 17-20 (Dec. 20, 2021).

higher voltage transmission lines in an already developed area with already installed driveways and mature trees whose root systems would be damaged. In that circumstance, the amount of disruption from undergrounding far exceeds what occurs with an overhead pole line.

B. No Viable Alternative Routes for the Transmission Lines Exist.

Neither the Monroe Township nor the Davises Initial Comments assert that any viable alternative routes exist for the routes down Bard and Ginghamburg-Frederick Roads in Case No. 21-972-EL-BLN or down Peters and Ginghamburg-Frederick Roads in Case No. 21-973-EL-BLN. As noted above, Monroe Township focuses on running transmission lines to a site that is infeasible. The Davises do not suggest that a feasible alternative route exists, but instead allege that because AES Ohio did not propose alternatives, the filing is technically deficient.⁵

AES Ohio submits that there are different standards applied for full certificate applications versus LON applications. For “[a]ll standard certificate application . . . [the Applicant is required to provide] fully developed information on two sites/routes.” OAC 4906-3-05. And for transmission routes to be considered alternatives, they must share less than 20 percent of the routes in common.⁶ In contrast, pursuant to OAC 4906-6-05 (B)(4), the accelerated process under an LON requires only a minimal showing of:

“the alternatives considered and reasons why the proposed location or route is best suited for the proposed facility. The discussion shall include, but not be limited to, impacts associated with socioeconomic, ecological, construction, or engineering aspects of the project.”

The LONs submitted by AES Ohio adequately explain, in compliance with the requirements of OAC 4906-6-05(B)(4), that there were no alternatives that warranted

⁵ Davises Initial Comments at 5-6.

⁶ For completeness, AES Ohio notes that waivers have been granted of this 20% requirement. The standard application process also includes requirements for a detailed “Route Alternatives Analysis” (OAC 4906-5-04), and capital cost estimates for the various alternatives (4906-5-06(B)).

consideration because the route to the substation site was “the most suitable, and least-impactful alternative.”⁷ That explanation included a cross-reference to the more elaborate discussion within other sections of the LON Applications that comply with 4906-6-05(B)(10). There, in each filing, a detailed description of the sociological, ecologic, and land use conditions relating to the project was presented.

As made clear by even a cursory review of where the existing transmission lines are in relation to the substation site and the existing 138 kV transmission line, the two lines take the shortest routes possible down the two streets that are on either side of the substation site. Any other potential route would be considerably longer and/or would likely run down the interior of active farm land rather than run down streets along the edge of farmland or residences. And of ironic note – any other route for the West Milton-Airport line (Case No. 21-972-EL-BLN) from further west would have run along or across the street from the Davises property. And any other route for the Miami-Airport line (Case No. 21-973-EL-BLN) from further east, including the route through the City of Dayton properties, would have been longer and terminated in exactly the same place more than 1000 feet from the Davises property.

II. Consistent with Past Practices the Two LON Applications Are Separate Proceedings and Were Correctly Filed Under the Accelerated Review Procedures.

A. Introduction.

Both the Monroe Township Initial Comments at 1 and the Davises Initial Comments at 7-8 allege that these two LON Applications should be treated as one application. The Davises go so far as to renew their motion to consolidate despite the fact that their earlier consolidation motion was fully argued in pleadings and responsive pleadings before the Administration Law

⁷ Case No. 21-972-EL-BLN, Letter of Notification at 3 and 7-13; Case No. 21-973-EL-BLN, Letter of Notification at 3, 7-13.

Judge (“ALJ”). The attempt to resurrect that motion via Initial Comments should be rejected: the Entry did not set that issue for further comments here and the Entry clearly treated the two LONs separately in that the ALJ granted the Davises party status in one case and denied party status in the other.⁸

AES Ohio respectfully submits that the primary reason the intervening parties are seeking consolidation is because they perceive that, if consolidated, the next step in the process would be to add the lengths of the two transmission lines so that the total mileage would exceed two miles and take this proceeding out of the accelerated LON process. In other words, the consolidation motion is primarily a delaying tactic – seeking a process that they believe would prevent these facilities from being placed in service in time to meet the 6 MW of new electric demand from the Amazon fulfillment center that is planned to be in service by the end of this year or the increasing demands from other planned commercial projects in this rapidly growing area as described in more detail in prior pleadings.⁹ AES Ohio strongly opposes any such consolidation or approach to remove the transmission lines from the LON process.

⁸ Entry at ¶ 14.

⁹ The needs of the Amazon fulfillment center and multiple other significant new or expanded corporate projects that need additional power brought into the area and the projected needs estimated by the interconnected rural electric cooperative that also serves load in the area are documented in greater detail at AES Ohio Memorandum Contra at 2-4 and Attachments 1-2 therein (hereinafter “*AES Memorandum Contra*”) attached to AES Ohio Objection to Raymond and Angela Davis’ Petition to Intervene and Answer in Opposition to Motions to Consolidate and Remove from the Accelerated Application Process (“*AES Ohio Objection*”), Case Nos. 21-972-EL-BLN and 21-973-EL-BLN (unconsolidated) (filed Dec. 20, 2022). *See also* AES Ohio Objection at 1-2. *See also* AES Ohio Initial Comments at 2 and ft. 4, identifying several major corporate projects in the area, including a major project by Sierra Nevada Corporation that has only recently been announced.

B. The Cases Are Properly Treated as Separate_LON Proceedings that Should Not Be Consolidated.

To the extent the Board determines that Initial Comments of the Davises constitute a renewal of their previously filed motion to consolidate, AES Ohio would urge careful consideration of the arguments presented in detail in the AES Ohio filing of December 20, 2021, explaining why the two LON Applications were filed separately, how that is consistent with past practice before the Board, and why consolidation would provide few or no benefits and could create conflict among the two different groups of landowners affected by the two different transmission lines.¹⁰

As a brief recap of that December 20, 2021 filing, AES Ohio notes that each of the proposed facilities will be interconnected at a different location on an existing 138 kV transmission system and will travel down different streets affecting different landowners. The only point, physically, that they have in common are interconnections with the non-jurisdictional 138kV-12kV Airport substation. The landowners along Bard Road have no particular interest in the Miami-Airport line that goes along Peters Road, and the landowners along Peters Road have no particular interest in the West Milton-Airport line that goes along Bard Road.

Whether due to informal guidance provided by OPSB staff or just consistency by most applicants with past practices, AES submits that it is common for applicants to file separately and for the Board to docket separately two or more cases even when the projects have some common elements such as the factors supporting need or the necessary coordination of

¹⁰ The Dayton Power and Light Company dba AES Ohio Objection to Raymond and Angela Davis' Petition to Intervene and Answer in Opposition to Motions to Consolidate and Remove from the Accelerated Application Process, Case Nos. 21-972-EL-BLN and 21-973-EL-BLN (filed Dec. 20, 2021).

construction schedules.¹¹ In contrast to this apparently standard, AES Ohio is unaware of any instance – and neither Monroe Township nor the Davises have submitted an instance -- where the Board has subsequently consolidated two cases over the objection of the applicant.

C. If Constructed as a Single Project, the Accelerated LON Process Would Still Have Applied.

Davises Initial Comments at 7 allege that AES Ohio statements at page 14 of its Memorandum Contra filed December 20, 2021, make clear that “a single line would be insufficient to meet reliability requirements” and therefore, support a conclusion set forth at 8 that these “two lines are clearly one project where neither line can adequately, safely, or reliably provide the service required without the other.” These are vastly misleading allegations.

Three pages earlier in the same Memorandum Contra from which the Davises Initial Comments quote, AES stated that:

“If this were truly one project, the most efficient way to construct it would have been to design and build a larger single pole line down only one street affecting only one set of landowners and put double-circuit 138 kV conductors on those poles. But that construction would also mean that the end-users served by the substation that will be distributing power throughout the area would be subject to interruption any time work were to be done on that single pole/double circuit line for maintenance, storm, car, or other work requiring outages on that line. Significantly such a pole line would be approximately 1 mile in length and would still fall below the 2

¹¹ See e.g., *In the Matter of the Construction Notice Application of The Dayton Power and Light Company for the West Milton Substation Expansion Project*, Case No. 19-1346-EL-BNR, Staff Report at 1-2 and Conclusion (Dec. 3, 2019), providing accelerated review and recommending automatic approvals of a project filed as a Construction Notice to add transformers at a substation and noting that the purpose and need for the project was “to help facilitate the West Milton-Eldean 138kV transmission line, that is the subject of a current proceeding before the Ohio Power Siting Board, in Case No. 18-1259-EL-BTX.” In other words, in a separate docket and via the accelerated processes established in OAC Chapter 4906-6, the Staff recommended, and the Board allowed to make final, an approval of this project even while the need was tied to the closely related transmission line project, which was in the midst of a standard application process that was not final until an order was issued January 2021.

mile threshold used as the break-point below which accelerated proceedings under a LON are eligible.”¹²

To summarize: when AES Ohio stated at page 14 of that Memorandum Contra that each of the two proposed lines are needed for the area, it was in the context of two separate projects, each of which should be approved and where neither is superfluous. But that was after it had been thoroughly explained that a one project design would have looked very different and would have still been below the 2 mile LON threshold.

The selective AES Ohio quotations made in the Davises Initial Comments that allegedly support the “one-project” claim also conveniently overlook the argument put forth by AES Ohio in that same pleading that consolidation could cause the following harm: “To the extent some as-yet unknown barrier arises that requires additional engineering or studies to allow construction to move forward with one of the lines, that should not cause a delay in the construction of the other.”¹³ In short, while not ideal and not as proposed by AES Ohio, if necessary these projects could be separately built and go into service at different times. AES Ohio would go forward with construction of one project even if the other project were delayed.

III. Davises Initial Comments Seeking Rejection of the Filings Are Unpersuasive.

It is also alleged that the LON Applications are deficient and do not meet the criteria for accelerated review because AES Ohio “failed to identify any specific customers that it is seeking to attract or service with this extension line.” Davises Initial Comments at 2.

In the first instance, the basis for accelerated review under the LON process is that the transmission line for each project is less than two miles long, which is an independently sufficient criterion under Ohio Revised Code (ORC) 4906.03(F)(1)(a) and the Matrix developed

¹² AES Memorandum Contra at 11 (December 20, 2021).

¹³ AES Memorandum Contra at 14 (December 20, 2021).

by the Board and published with the Board's Rules under OAC Chapter 4906. And secondly, even if the "specific customer" requirement were to form the basis for accelerated procedures, that requirement would be met. In all of AES Ohio's subsequent pleadings, including supporting attachments, AES Ohio has identified the need for these two projects to meet the expected new load of the Amazon fulfillment center and several other planned projects of identified commercial customers in the area.

The Davises Initial Comments at 2-3 allege that there has been inadequate notice of the projects provided to landowners that are near to the transmission lines. First, it is abundantly clear that neither the Davises nor any other resident in the area has suffered from any lack of notice. Pursuant to the Board's rules, AES Ohio filed a Pre-Application Notice in October 28, 2021. One day later, Dr. Angela Davis filed public comments. Even prior to the December 2, 2021, date the LONs were filed, more than 50 Form Letters from residents in the region, some along the routes of the lines and other more geographically distant, were submitted.

The reason that the Davises and other residents were aware of the projects even prior to the LONs being filed is that AES Ohio had been engaged in an outreach activity for months in the area – as documented by the Davises in Attachment 2 of their petition to intervene, they received a letter from AES Ohio on June 23, 2021, notifying them of the potential that access to their land might be needed either for a transmission line or for field surveys. A second letter was sent on September 7, 2021, to the Davises.¹⁴

Additionally all landowners along the routes of the transmission lines are residents of Monroe Township, who, according to its petition/notice of intervention is authorized to represent

¹⁴ The AES Ohio Letters were submitted as Attachments 2 and 3 to the Davises Petition to intervene, filed December 13, 2021 in these proceedings.

their interests.¹⁵ AES Ohio met with Township officials prior to the filing of the LONs and, Monroe Township was served notice of the filing of the LONs.¹⁶

AES Ohio and the Davises are in disagreement with respect to the interpretation of one aspect of OAC 4906-6-08. AES Ohio has provided to the Board its proof of publication in newspapers, public entities, public libraries, and the property owners who are “along the route of each of the proposed transmission lines.”¹⁷ Those landowners are on the side of the roads on which the lines will be constructed. In its Initial Comments, the Davises assert that notice should have been given to landowners with property that abuts the properties on which the lines are being built. As AES Ohio understands the Davises Initial Comments, this would include properties that are across the public street and also interior properties away from the street that share a property line with the landowner on whose property the transmission line will cross.

AES Ohio believes that the “contiguous to the planned site” language that the Davises Initial Comments appears to rely on is applicable for the planned site of a jurisdictional electric generation station or substation, and that a more narrow reading of “along the route” is applicable for LONs for transmission lines. But AES Ohio will appreciate and adopt whatever guidance the Board may provide for the proper interpretation of this requirement. Irrespective of whether there is a broad or more narrow reading of this notice rule, AES Ohio respectfully submits that the record demonstrates that there has been adequate notice to nearby residents, in the form of actual notices prior to the filing of the LONs and actual notices to those along the route afterwards, and in the form of constructive notice provided to all nearby landowners via

¹⁵ Petition/Notice of Intervention as a Party by the Board of Monroe Township Trustees, Miami County, Ohio, at ¶ 1 (filed Dec. 10, 2021).

¹⁶ See AES Ohio Proof of Compliance, Enclosure 6, Case Nos. 21-972-EL-BLN and 21-973-EL-BLN (filed Dec. 8, 2021).

¹⁷ *Id.* and all Enclosures therein.

other means to ensure that all members of the nearby public have had the opportunity to bring any concerns they may have to the Board's attention.

IV. Miscellaneous Concerns Raised by Monroe Township Have Been Addressed .

The Monroe Township Initial Comments at 1 and Attachment #3 note with little explanation or discussion concerns about the potential adverse health effects of electromagnetic fields ("EMF"). EMF has been studied extensively for decades and standards have been developed to determine safe levels. In compliance with the Board's requirements, AES Ohio provided a detailed EMF study and it showed that:

"All calculated electric field values for all cross sections are well below maximum permissible exposure limits of 5kV/m for general public exposure as per Table 4 in IEEE Standard C95.6-2002 for 60Hz AC. Similarly, all calculated magnetic field values for all cross sections across the area of study are well below maximum permissible exposure limits of 0.904mT (9,040mG) for general public exposure as per Table 2 in IEEE Standard C95.6-2002 for 60Hz AC." ¹⁸

Monroe Township Initial Comments at 1 voiced concerns about impacts of the substation on floodplains and noted the existence of a live stream. From a purely legal perspective, the siting of the substation is not before the Board and such concerns could not legitimately be part of these cases. More substantively, it is not alleged, nor could it be, that either of the transmission lines that are before the Board is on a flood plain or cross a stream. For informational purposes only, AES Ohio states that the construction of the substation and the transmission lines are on a different portion of the site and will not affect a designated floodplain or stream. As Monroe Township is well aware from meetings AES Ohio has had with the

¹⁸ See Case No. 21-972-EL-BLN, LON Application at 5-7; and EMF Study at LON, Attachment B. Case No. 21-973, LON Application at 5-7; and EMF Study at LON Application, Attachment B.

Trustees, AES Ohio has completed all environmental studies and obtained all permits required for the work being done on the substation site.

With a substation located at Ginghamburg-Frederick Road east of Bard Road and west of Peters Road, the most economic, shortest routes to the substation with the least environmental impact are down Bard and Peters Roads as identified and discussed in the LONs. The routes are either within the public road right-of-way or along it on private land for which easements are being obtained. No streams, or wetlands are crossed; there are no sites of archeological or historical significance that will be disturbed. Each of the LONs provides several pages of information in full compliance with the requirements of ORC 4906(A)(10).¹⁹

As part of its mistaken belief that the City of Dayton site was a viable alternative for the substation and transmission lines and that AES Ohio instead chose to pay more per acre to acquire a site that affects more residents, Monroe Township makes the truly offensive accusation on page 2 of its Initial Comments that “It is possible that AES Ohio made a business decision that would put more value on financial gain over the welfare of the community it is being entrusted to serve.” This is untrue with respect to any and all actions taken by AES Ohio with respect to these projects.

AES Ohio has the lowest transmission rates among any of the investor-owned utilities in Ohio and its employees take pride in working for a utility that provides reliable service in a cost-effective way. The forward projections of growth in power demands in the area north and west of the Dayton Airport launched a two-year effort to find a suitable site at a reasonable price. The site acquired after that arduous search was the result of negotiations with a landowner who knew the value of this site in an area with growing light industrial and warehousing development.

¹⁹ See LON Applications at Section “4906-6-05(B)(10) Social and Ecological Impacts”, subparts (a) through (g).

There is no cheaper, available, alternative site for the substation in this area north and west of the Airport and there are no alternative routes to that site for the transmission lines that are cheaper, shorter, or have fewer environmental effects.

V. AES Ohio Would Not Object to Consolidation
If Done Solely for Administrative Convenience.

As discussed above, AES Ohio does not treat these two projects as a single project and opposes consolidation if done for the purpose of removing the projects from the accelerated review process. AES Ohio does not object to consolidation if done merely for administrative convenience and where the consolidated cases moved forward under the LON process.

VI. Conclusion.

For the reasons set forth above and in its Initial Comments, AES Ohio respectfully urges the Board to approve the planned projects as expeditiously as possible.

The projects meet the criteria for accelerated process review, and expeditious review and approval is necessary to allow construction to begin when needed to meet the pressing electric needs of a strongly growing area.

Respectfully submitted,
The Dayton Power and Light Company
dba AES Ohio

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CERTIFICATE OF SERVICE

I hereby certify that I have on this day, March 11, 2022, served via e-mail, a copy of the foregoing on each Party of Record listed in the most recent Service Notice filed in these proceedings.

On behalf of The Dayton Power and Light Company
dba AES Ohio

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Summary: Comments Reply Comments of The Dayton Power and Light Company
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behalf of The Dayton Power and Light Company