

THE OHIO POWER SITING BOARD

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 NO. 21-972-EL-BLN

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.

CASE NO. 21-973-EL-BLN

OPINION, ORDER, AND CERTIFICATE

Entered in the Journal on April 21, 2022

I. SUMMARY

{¶ 1} The Ohio Power Siting Board issues certificates of environmental compatibility and public need to the Dayton Power and Light Company for the construction, operation, and maintenance of 138-kilovolt transmission lines subject to the conditions set forth with this Opinion, Order, and Certificate.

II. BACKGROUND

{¶ 2} The Dayton Power and Light Company d/b/a AES Ohio (Applicant or AES) is a person as defined in R.C. 4906.01.

{¶ 3} R.C. 4906.04 provides that no person shall construct a major utility facility in the state without first obtaining a certificate for the facility from the Ohio Power Siting Board (Board).

{¶ 4} R.C. 4906.03(F) instructs the Board to adopt rules that provide for an accelerated review and automatic certification of electric transmission lines under certain circumstances. In accordance with R.C. 4906.03(F), the Board has adopted Ohio Adm.Code Chapter 4906-6 addressing accelerated certificate applications. Further, Ohio Adm.Code

4906-6-02 identifies the types of accelerated applications as either letters of notification or construction notice applications. Accelerated applications are subject to a 90-day automatic approval process.

{¶ 5} On December 2, 2021, AES filed two letter-of-notification applications to construct new 138 kilovolt (kV) transmission line extensions in Monroe Township, Miami County, Ohio. The West Milton line, in Case No. 21-972-EL-BLN, is proposed to tap into the existing West Milton to Miami 138kV line and would be 0.9 miles long. The Miami line, in Case No. 21-973-EL-BLN, would tap into the same line and is proposed to be 1.3 miles long. Both proposed lines would connect to a new substation, the Airport Substation.

{¶ 6} On December 17, 2021, the Board of Monroe Township Trustees (Monroe Township or Township) filed petitions to intervene/notices of intervention in both cases. Monroe Township included a resolution authorizing intervention in these proceedings. On December 13, 2021, Raymond and Angela Davis filed a motion to intervene in both proceedings. Memoranda contra the Davises' motions to intervene were filed by AES on December 20, 2021. The Davises filed replies on December 27, 2021.

{¶ 7} By Entry on February 24, 2022, the administrative law judge (ALJ) granted the motions to intervene/notices of intervention of Monroe Township in both proceedings, granted the Davises' motion to intervene in Case No. 21-972-EL-BLN and denied their motion in Case No. 21-973-EL-BLN.

{¶ 8} In that same Entry, the ALJ suspended the automatic approval of the applications and solicited comments and reply comments from the parties. Additionally, the ALJ directed Staff to submit a report and recommendation.

{¶ 9} On March 1, 2022, the Davises filed an interlocutory appeal regarding the ALJ's denial of their intervention in Case No. 21-973-EL-BLN. On March 4, 2022, AES filed

a memorandum contra the interlocutory appeal, with a corrected version filed on March 7, 2022.

{¶ 10} Timely initial comments were filed by AES and Monroe Township in both proceedings and by the Davises in Case No. 21-972-EL-BLN. Similarly, each party also filed reply comments.

{¶ 11} On March 18, 2022, Staff filed its report of investigation.

{¶ 12} Additionally, since the cases were originated, numerous public comments have been filed on the docket. Several dozen of the comments, which represent a large majority of the comments received, are signed letters from local residents in opposition to the projects. State Representative Jena Powell also submitted a letter in opposition. Letters in support of the projects were submitted by the City of Union and local electric cooperatives.

III. DISCUSSION

A. *Procedural issues*

{¶ 13} Initially, the Board will address several procedural issues brought forth by intervenors.

{¶ 14} The first is the issue of consolidation, and whether these two proceedings are properly considered as separate projects. The Davises initially filed a motion to consolidate on December 13, 2021, and reiterated their arguments in their initial comments. As described by the Davises, these two projects should be considered a single project. The Davises point out that both lines would be connected at the same substation and are both on the same construction timelines. Further, the projects are described on AES's website using identical language. The Davises allege that AES is splitting up the projects in order to avoid the standard application process. As accelerated applications are, essentially, only applicable to transmission line projects under two miles in length, the Davises aver that AES

is wrongfully describing the lines as two separate projects in order to avoid a longer and more thorough standard application process. They point out that the projects both pull from the same transmission line, end at the same substation, operate on the same timelines, and serve the same growing capacity needs. Monroe Township supports the Davises' arguments on this issue.

{¶ 15} As described by AES, each of these projects on its own meets the criteria for review as a letter-of-notification accelerated application. AES states that each of these projects has separate paths down separate roads, affecting separate landowners. AES thus submits it would be inappropriate to consolidate these cases, outside of for administrative purposes. According to AES, intervenors seek a fuller application process in order to further delay the project. AES submits that is not uncommon for projects to share construction timelines or other common elements, and that these similarities do not mean it is a singular project.

{¶ 16} The Board determines that these applications are properly considered as separate projects. The projects would be interconnected at separate locations on the transmission system and have separate routes. While the projects will both connect to the same substation and serve similar purposes, this does not necessitate consolidation or appear to be an attempt to avoid more extensive Board review. Similar construction schedules and mailings appear to be a matter of economic efficiency and are not proof of a singular project. However, given the similar timelines and the overlapping filings in both proceedings, for administrative purposes, the Board will consider these projects together.

{¶ 17} Because the Board is considering the projects separately, we will next resolve the Davises' interlocutory appeal regarding the denial of their intervention in Case No. 21-973-EL-BLN. The Davises assert that the February 24, 2022 Entry by the ALJ was in error, alleging that the ALJ's decision was contrary to Board rules and past precedent. As explained by the Davises, they were denied intervention for not having a real interest in the

proceeding, as their property is over 1,000 feet away from the project. The Davises point out that the Board has previously granted intervention to property owners 3,000 feet away from the project and to property owners with property that directly abuts a project site, citing *In re Black Fork Wind, LLC*, Case No. 09-546-EL-BGN, Entry (Mar. 2, 2010). According to the Davises, the ALJ's decision creates a new standard for intervention. The Davises aver that their property is adjacent to where the substation will be built and where the Miami line ends. Further, the Davises note that they will have to consistently drive by the Miami line to leave their property.

{¶ 18} In response, AES submits that the ALJ's decision should be affirmed. According to AES, the Davises were still granted intervention in Case No. 21-972-EL-BLN, the West Milton line, and were also to submit public comments in both proceedings. AES contends the Davises have no separate or distinct interest in the Miami line that could not be represented by any other nearby resident or Monroe Township. As to the case law cited by the Davises, AES asserts that case centered on a large wind turbine farm, which is wholly different from the current proceeding regarding a transmission line and that it is logical for intervention to be handled differently.

{¶ 19} Upon review, the Board affirms the ALJ's February 24, 2022 decision to deny intervention. We determine that the Davises, consistent with Ohio Adm.Code 4906-2-12, have not demonstrated good cause for intervention as they do not have a real interest in the proceeding. In noting that the Davises are over 1,000 feet from the project, the ALJ did not create a new precedent, as alleged by the Davises, but rather emphasized the distance between the Davises and the project's endpoint. Motions for intervention are considered on a case-by-case basis and consider the relevant factors described in the rule as well as how they pertain to each unique project and application. As noted by AES, the case cited by the Davises involved a large electric generation project involving wind turbines, as opposed to a transmission line. Additionally, while the Davises assert that no other party can represent

their interests, we observe that Monroe Township, an intervenor in these proceedings, has literally adopted the Davises statements as its own.

{¶ 20} The Davises additionally raise issues of notice and contend that AES has failed to comply with Ohio Adm.Code 4906-6-08(B). The Davises contend that AES only provided notice to property owners along the route, while the rule requires that property owners contiguous to the route also be served. AES replies that concerns about notice are not a relevant issue for the Davises. AES notes that the Davises filed a public comment the day after the initial filings in these proceedings. Further, AES notes that over 50 comments were submitted before AES's applications were filed. AES asserts it has complied with the rules, including publishing notice in newspapers and local libraries. Additionally, AES states it was engaged in outreach activity months prior to the formal filing of the application. The Board finds that any issues regarding notice are moot. It is evident that the Davises were very aware of the proceedings from the start and were able to timely file motions to intervene. The high volume of public comments submitted in both cases far exceeds what the Board typically encounters with accelerated applications. Further, the Davises, as local residents, were able to intervene and present arguments as to the West Milton line application, and Monroe Township, which purports to represent the residents of Monroe Township, intervened and presented arguments in oppositions in both proceedings.

B. Staff Report

{¶ 21} On March 18, 2022, Staff issued a report of investigation for each proposed line. In its report, Staff investigated the nature of the impact for each proposed project. Below is a summary of Staff's findings, which were largely similar for both projects.

{¶ 22} Regarding socioeconomic impacts, Staff explained that the lines will be located on land owned by AES, on private easements, and on public road right-of-ways. The land is a mix of residential and agricultural land, and no structures would need to be removed. The West Milton line would cross 3.4 acres of agricultural district land and impact 1.5 acres

agricultural land and the Miami line would cross 3 acres agricultural district land and impact 1.34 acres of agricultural land; post-construction, no impacts are expected. A literature review determined that no cultural resources would be impacted by either project. Additionally, Staff assessed that no streams or wetlands are present within the project areas. According to Staff, the project areas are within range of multiple endangered bat species. As tree clearing may be necessary for the project, seasonal tree clearing dates are recommended. Regarding aviation impacts, the Federal Aviation Administration (FAA) performed studies for each project and determined the proposed structures would not be a hazard to air navigation as long as specific conditions were satisfied. Staff asserts that additional FAA determinations may be needed for certain cranes intended for use during construction.

{¶ 23} Overall, Staff determines that the applications meet the requirements of R.C. 4906.10 for a certificate, subject to five conditions summarized below:

- 1) The certificate shall not exempt the facilities from any other applicable rules or regulations.
- 2) Prior to commencement of construction, AES shall obtain and comply with all permits required by state or federal laws and regulations. Copies of such permits and authorizations should be provided on the case dockets prior to commencement of construction.
- 3) AES shall adhere to seasonal cutting dates of October 1 through March 31 for the removal of trees three inches or greater in diameter to avoid impacts to endangered bats, unless coordination with the Ohio Department of Natural Resources and the U.S. Fish and Wildlife Service allows a different course of action. If alternative clearing dates are permitted, proof of coordination should be docketed.

- 4) At least seven days prior to the commencement of construction, AES shall file copies of the FAA Determination of No Hazard letters for the transmission structures for the final route, as well as for cranes used during construction.
- 5) At least seven days prior to the commencement of construction, AES shall notify the Dayton International Airport and provide detail regarding the height, operating conditions, and duration of the crane work.

C. Arguments of the parties

{¶ 24} Monroe Township asks that the applications be denied. According to the Township, over 70 local residents will be affected by the transmission lines. The Township expresses concern over the potential negative effects of high voltage transmission lines. According to Monroe Township, alternative routes are available that effect less residents. Additionally, as discussed, many local residents filed letters in opposition to the projects. The letters describe concerns regarding negative health effects potentially caused by transmission lines as well as decreased property values. The Davises also assert that viable alternative routes are available. According to the Davises, AES has failed to consider any alternative routes, as required by Ohio Adm.Code 4906-6-05(B)(4). The Davises ask that AES's application be found deficient.

{¶ 25} In support of the project, AES asserts the applications meet all statutory criteria. First, AES emphasizes that there is a great need for the projects. AES explains that a 3.1 million square foot fulfillment center is being built that will require an additional six megawatts of load in the area, which is already stressed. AES notes that no party or commenter has denied the need for the project. According to AES, any effects on landowners will be minimized. AES contends both routes are the shortest and most economic routes and will be constructed on public road right-of-ways or on obtained easements. Further, AES explains that the structures are single poles, as opposed to large towers, and the conductors carrying the load are on the street-side of the pole, away from

any residences. AES avers it has been proactively working with affected landowners and that the letters filed in the dockets are not indicative of the overall support for the projects. Regarding alternative routes, AES states that it explored additional sites near the Dayton Airport but for various logistical reasons, it was infeasible. As described by AES, alternative routes would have been longer, would not have been able to run along streets, and would have likely instead cut through farmland. Further, AES contends buried lines are problematic in already-developed areas, where construction would involve disrupting driveways and mature tree root systems. Finally, AES maintains it complied with Ohio Adm.Code 4906-6-05(B)(4). AES states the proper rule only requires a demonstration of “the alternatives considered and reasons why the proposed locations or route is best suited for the proposed facility.” AES asserts that while a full certificate application requires an alternative route to be presented, here, with the accelerated applications, AES showed that the presented routes were the most suitable and least-impactful options.

D. Board Conclusion

{¶ 26} Upon review, the Board finds that certificates should be granted for the construction, operation, and maintenance of both the Miami transmission line and the West Milton transmission line. In doing so, we affirm Staff’s findings pertaining to each of the factors of R.C. 4906.10 regarding the impact of the projects, and adopts each of the conditions. Due to the high volume of comments filed in these proceedings, and the filings made by intervenors, the Board appreciates the additional time to consider these applications. However, the Board finds that the applications were properly filed as accelerated applications and, as determined by Staff, contained the necessary information to make the findings required by R.C. 4906.10. We further acknowledge that no party disputed the need for the transmission lines or the environmental impacts of the lines. Many of the concerns appear to be alleged procedural defects with the applications or aesthetic issues and associated effects. As partly described above, the Board finds that the applications complied with the Board’s rules. We further find that the routes are the best

suiting routes, consistent with Ohio Adm.Code 4906-6-05, as they are the shortest, least-obtrusive options. The Board notes that each route mainly follows the respective roads, using right-of-ways, and takes the most direct path to the substation. Given the need for the projects, and the minimal impact of the projects, as found by Staff, the Board finds that the projects satisfy the necessary criteria of R.C. 4906.10 for granting a certificate.

IV. ORDER

{¶ 27} It is, therefore,

{¶ 28} ORDERED, That the interlocutory appeal filed by the Davises in Case No. 21-973-EL-BLN be denied. It is, further,

{¶ 29} ORDERED, That certificates be issued to AES for the construction, operation, and maintenance of the facilities subject to the conditions set forth in this Opinion, Order, and Certificate and in the Staff Reports. It is, further,

{¶ 30} ORDERED, That a copy of this Opinion, Order, and 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

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Case No(s). 21-0972-EL-BLN, 21-0973-EL-BLN

Summary: Opinion & Order issuing certificates of environmental compatibility and public need to the Dayton Power and Light Company for the construction, operation, and maintenance of 138-kilovolt transmission lines subject to the conditions set forth with this Opinion, Order, and Certificate electronically filed by Ms. Mary E. Fischer on behalf of Ohio Power Siting Board