

BEFORE THE OHIO POWER SITING BOARD

IN THE MATTER OF THE OHIO POWER)	
SITING BOARD’S REVIEW OF OHIO)	Case No. 21-902-GE-BRO
ADM.CODE CHAPTERS 4906-1, 4906-2,)	
4906-3, 4906-4, 4906-5, 4906-6, AND 4906-7)	

**INITIAL COMMENTS OF
THE DAYTON POWER AND LIGHT COMPANY
dba AES OHIO**

The Dayton Power and Light Company dba AES Ohio (“AES Ohio”) hereby submits its initial comments with respect to the proposed amendments to the regulations of the Ohio Power Siting Board (“OPSB” or the “Board”) pertaining to applications seeking approval for siting and construction of major utility facilities under Ohio Administrative Code (“OAC”) sections 4906-1 through 4906-7.

AES Ohio, is the owner and operator of approximately 682 miles of transmission facilities operating at voltages above 100kV and 11 transformers in six substations stepping down voltages from 345 kV – 138 kV that are considered major transmission facilities requiring OPSB approvals to site. These transmission facilities are located in central and south-western Ohio and are essential to the AES Ohio’s ability to provide safe and reliable electric service to approximately 525,000 customers of Ohio in 24 counties in and around central and south-western Ohio including the Dayton Ohio area.

AES Ohio regularly submits applications to the OPSB. In some instances, a Standard Application is filed, but more commonly, perhaps a half dozen or more times per year, AES Ohio files with respect to projects that are eligible for accelerated treatment as a Construction Notice (“CN”) or a Letter of Notification (“LON”). With this background, AES Ohio brings

substantial experience to this process of commenting on proposed amendments and urges the Board to consider these comments fully.

I. Modifications to Rule 4901-1

A. The Expansion of Jurisdiction to Include Smaller Transformers and Substations Not Previously Subject to Jurisdiction Should Be Rejected.

This is among AES Ohio's most significant concern regarding the entire package of proposed changes.

Proposed OAC 4906-1-01(F)(2)(b) changes the size of electric utility transformers and substations containing such substations that would be subject to the requirements to file an application before the Board. The current rule applies only to major electric facilities that transform voltage from one transmission level to another, e.g., from 345 kV to 138 kV. Substations with those types of transformers have been considered and regulated as "transmission substations." Utilities have not been forced to file and the Board has not been forced to review applications for "distribution substations" that have transformers stepping down voltages from a transmission level to a level below the Board's jurisdiction. Thus, the Board has previously not reviewed applications for substations with transformers that step-down voltage levels from 138 kV to 69 kV or from 138 kV to voltages as low as 12 kV in order to tie into distribution lines operating at 12 kV.

Under the proposed rule, however, a filing requirement could be triggered by a distribution substation expansion to meet the needs of by a localized, small economic development project. The end-result of a requirement to apply for approvals to site each minor substation expansion at the distribution level could harm the ability for our local communities to compete for business development projects if the change introduces schedule delays and project risk.

In 2017, House Bill 49 (“HB 49”) was enacted into law and the Board became subject to a requirement to review the siting and construction of major electric transmission facilities operating at or above 100 kV, rather than the 125 kV level that had previously been in place. But the proposed definitional change in the OAC is not consistent with the change in HB 49. The OAC definitional change would sweep into the application and review process the distribution transformers that operate to step down voltages from 138 kV to 69 kV or even to 12 kV. This is an overreach. If, for example, there were proposed substations with transformer operated to step down power from 345 kV to 100 kV, it would be clear that the legislative change from HB 49 would correctly bring that substation into the application and review process. But if a substation with transformers operating at 138 kV to 12 kV was not previously defined as a transmission substation, there is no basis to redefine that substation as a result of HB 49.

Thus, the definitional change is without legislative support and should be rejected on those grounds.

The definitional change is also unsupported by any rationale within the order issuing the proposed amendments. It is unclear why the Board would seek to increase its workload and the workload of the utilities for minor distribution substation expansions that would have to comply with the new regulations to include these smaller transformers and substations. In this context, AES Ohio notes that it believes the Board is currently reviewing and has pending more cases than at anytime in its history, primarily due to a huge increase in applications filed by solar and wind developers. Given this circumstance and the general consensus within Ohio to continue to focus efforts to expand solar and wind development, it is unclear why there would also be a

proposal to add to the workload, increase costs, and raise an additional potential barrier for new distribution customers looking to develop facilities in Ohio.

AES Ohio has reviewed its plant records. If this definitional change had been in place historically, AES Ohio would not have had 6 substations containing transformers of a size that required OPSB review – it would have had more than eight times as many, 52 substations . In other words, AES Ohio would have been required to file and the Board would have had to review 46 additional applications. The OPSB's workload would undoubtedly see similar increases from the other electric utilities in Ohio. And the workload increase does not even end there. Under both the existing and proposed rules, a Letter of Notification application requirement is triggered anytime there is an expansion in the fenced area of an existing substation that exceeds 20%. That is not a significant driver of the OPSB's workload when there are relatively few existing substations that are jurisdictional (in AES Ohio's case, only 6). But workload will invariably increase if the number of jurisdictional substations is increased by 8 or more times by including substations with transformers that change voltage from 138 kV to levels as low as 12 kV that tie into the distribution system. This definitional change also creates a potential regulatory hurdle for new small, medium, and large industrial customers who might seek to locate in Ohio. These customers frequently request service at 69 kV and if a 138kv to 69 kV substation requires an application to and approval by the OPSB, that is simply one additional regulatory risk that the industrial customer would take into account in evaluating whether or not to build in Ohio.

In summary, AES Ohio respectfully submits that this definitional change is not compelled by any recent statutory change, would increase the workload for both utilities and the

OPSB, and potentially adversely affects economic development. The definitional change should be rejected.

B. Definition of “Sensitive Receptor”

At various points within the proposed rules, references are made to “sensitive receptors”. Not until Rule 4906-4-09(E)(1), is a definition of this term provided, i.e., that it is referring to any occupied building. It would be useful to move that definition to Rule 4906-1.

C. Definition of “Route”

AES Ohio supports the inclusion of a definition of “Route.” AES Ohio reads the new definition as a significant step towards resolving a long-standing ambiguity in the rules regarding when a very minor shift in a proposed transmission line is treated as consistent with the original application or triggers a requirement to file as a modification. That is, AES Ohio reads this new definition as saying that if the path of the proposed transmission line is moved slightly from the as-filed centerline, but stays within the bounds of the “proposed distance from the centerline,” then there is no change in the Route and there is no modification being made that would trigger the need for a filing.

As discussed below, AES Ohio would recommend a conforming amendment to Rule 4906-3-11.

D. 4906-1-05 Site Visit

This rule should continue to require that visits to a job site be preceded by adequate notice. Absent notice, there may be insufficient personnel available to provide personal protective equipment or necessary safety training. It is possible, in fact, that on any given day, there may be no one working on-site or those that are working would be unable to break away

from their job-related duties to accompany a visitor. Adequate notice, as required by the current rule, ensures that someone will be available to ensure safety and to respond to questions.

II. Modifications to Rule 4901-2

AES Ohio has no comments currently with respect to the proposed amendments to OAC section 4901-2.

III. Modifications to Rule 4906-3

A. 4906-3-03(B) Additional Public Meetings.

Rule 4906-3-03(B) requires two informational meetings to be held within 90 days prior to filing a standard application, and perhaps additional public meetings for large wind and solar farms. Previously, only one pre-application informational meeting was required.

AES Ohio questions the need for multiple informational meetings to be held prior to the filing. However, if two meetings are to be held, the requirements for such meetings should be more clearly differentiated and the timing of the meetings should be more flexible.

The proposed rule indicates that the purpose of the first meeting is merely to notify the public and “to solicit input on the scope of the project.” If that meeting is to have any value at all, it probably needs to happen significantly earlier than within 90 days of the planned filing. The process of preparing an application with all of its attached studies for potential ecological, historical, and wildlife impacts means that at a point of being 90 days from filing, the applicant has already made many of the key decisions on proposed routes and facilities. Public input that might suggest an entirely different approach or route could not reasonably be factored into the application. AES Ohio, therefore, suggests that the proposed rule instead require that the first meeting be held no earlier than one year ahead of the application date. That would allow the public input received to be considered in the applicant’s planning process.

The second meeting then could reasonably be held within the 90 day period. Its purpose is to provide information to the public consistent with what will be in the application.

B. 4906-3-03(B)(3) Informational Requirements Should More Closely Track the Purpose and the Information that Will Be Available at Each Public Meeting.

Proposed Rule 4906-3-03(B)(3) requires the Applicant to post information on its website prior to each informational meeting, and include the detailed information listed in 4906-3-03(B)(1) and (2). But some of those details are far beyond the scope of the initial meeting, which is to obtain input from the public regarding the scope of the project. The information to be posted on the website prior to the initial meeting should align with the information available early in the project that is to be presented at the initial meeting. What should be posted would be the need for and scope of the project and only preliminary details about the general route to be taken.

C. 4906-3-03(B)(5) Redactions Should Be Allowed with Respect to Filing Written Comments.

Proposed Rule 4906-3-03(B)(5) requires the applicant to include as part of its application “all written comments.” It should be clear that the applicant may redact those comments as necessary to remove names, addresses, and other identifying personal information and to remove any scatological or otherwise inappropriate and offensive comments.

D. 4906-3-03(B)(5) Clarification is Needed Regarding the Presentation of Mapping Software.

Proposed Rule 4906-3-03(B)(5) indicates that at each of the informational meetings, the applicant is to present mapping software with search capabilities and aerial imagery showing facility components and sensitive receptors. It is unclear whether that requirement is to be met by an actual presentation by the Applicant before the assembled members of the public or is to

be met by having such capabilities available so that individual members of the public can ask questions of a company representative who will be at the meeting.

E. 4906-3-09(A)(1) Some Distance Limitation Should Be Placed on the Requirement for Notice to “Adjacent” Landowners and Residents.

Proposed Rule 4906-3-09(A)(1), in some circumstances, could inadvertently sweep in hundreds of owners and residents who are adjacent to a very large tract of land that may be crossed or the site of a facility. If, for example, the south-east corner of a large State park was crossed by a transmission line, the Proposed Rule, literally read, would require notice to residents on the north-west side of the park perhaps two or more miles away.

AES Ohio recommends that 4906-3-09(A)(1) be modified so that it covers owners and residents of property that meet the requirement of being both adjacent to a directly affected property and within 1,000 feet of a proposed transmission line or electric substation.¹ AES Ohio also notes that Proposed Rule 4906-3-13(D) restricts notices to adjacent landowners within 40 feet of modifications to a certificated facility. While not recommending a 40-foot rule for 4906-3-09(A)(1), AES Ohio would not oppose that.

F. New Proposed Rule 4906-3-11(C)
Minor Changes in a Transmission Line Path from the Centerline that
Remains Within the “Route” Should Be More Clearly Defined
as Not a Modification to an Application.

As discussed above, the Proposed Rule sets forth a new definition for “Route” that appears to be designed to ensure that a minor shift in a planned transmission path that stays

¹ The 1,000-foot recommendation is based in part on the use of that distance on either side of the center line for purposes of a study corridor. See proposed rule 4906-4-03(A)(3)(a). AES Ohio takes no position with respect to the appropriate distance that should apply to gas pipelines or to large solar or wind generation, but notes that the same rule sets out study corridor widths and radii for gas pipelines and generation stations.

within the defined Route is not a modification to the Application. To enhance clarity, AES Ohio recommends the inclusion of a new Rule 4906-3-11(C) be added stating:

“(C) No amendment is required to be filed because no modification is deemed to have been made if, subsequent to the filing of an application, the path of an electric transmission line or natural gas pipeline is shifted from the centerline of the path identified in the application but remains within the route specified in the application.”

IV. Modifications to Rule 4906-4

A. Many of the Requirements in 4906-4 Have Not Previously Applied to Transmission Lines and Substations and It Makes No Sense to Apply Them Now.

AES Ohio is deeply concerned about and opposes strongly certain provisions, primarily in Proposed Rules 4906-4-06, -07 and -08 that were developed for application to generation facilities but are inappropriately being applied to transmission line applications.

The Proposed Rules merge what used to be two separate rules, 4906-4 applicable to generation facilities and 4906-5 applicable to electric transmission line facilities and associated substations and natural gas pipelines. While successful in part in eliminating some redundancies where identical provisions were set forth in two sections, there are also instances where the merger is unsuccessful and results in requirements that may be appropriate to generation facilities being inappropriately applied to electric and natural gas facilities.

Of note, Proposed Rules 4906-4-03 through 4906-4-05 largely avoid the problem by separating their requirements into groups including “(A) For all applications” and “(B) For a proposed electric generation station” and “(C) For a proposed electric power transmission line or natural gas pipeline.”

However, that solution has not been uniformly applied throughout. For example, proposed 4906-4-06(C)(3) and (E)(2) requests economic information including estimates of O&M costs and ongoing payroll and employment during operations. These clearly have some

bearing when applied to a generation plant that is the worksite for employees who have daily tasks to maintain and operate the generation equipment. They are inapplicable to a transmission line that is built, left unattended, and would see O&M costs incurred only to repair storm damage or on a regular multi-year cycle.

In another example, 4906-4-06(F) requests plans on decommissioning the project, including “requisite financial resources.” Clearly this language applies to generation projects. As an extreme example, 4906-4-07(B)(1) appears to apply to all certificate applicants and, thus, would require the applicant for an electric transmission line to submit information concerning ambient air quality of the proposed project and the air pollution control equipment for the proposed facility, including stack gas parameters, etc. The applicant is also required to provide the locations of Ohio EPA air monitoring stations and mobile vans used to collect data. These are requirements that came out of current Rule 4906-4 applicable only to generation facilities and should not be applied more broadly.

Other examples of this can be found throughout the new Proposed Rule 4906-4. Of particular concern are the generation requirements lifted from current Rule 4906-4-08(D)(4) that require an evaluation of visual impacts for a five- or ten-mile radius from the project area. The 10-mile radius requirement is now apparently to be applied to a transmission line. AES Ohio does not believe that the Board truly seeks to require the applicant for a 20-mile transmission line to prepare an evaluation of visual impacts across for 200 square miles (10 miles around the 20-mile length). The only “visibility” requirements currently applicable to electric transmission lines are collected in current rule 4906-4-07(E)(5) and those are what should continue to apply.

AES Ohio recommends that the Board direct its Staff to re-examine this Rule, particularly Proposed Rules 4906-4-06, -07 and -08 and, as was done for Proposed Rules 4906-4-

03 through -05, clearly delineate when a requirement applies to all applicants and when it applies to only certain types of applicants.

B. 4906-4-03(A)(4)(b)(a)(b): Exact Pole Locations
Cannot Be Provided in the Application.

Proposed Rule 4906-4-03(A)(4)(b)(in)(b) brings over language from the existing rules that should be modified. Literally read, it suggests that the filed application should identify the location of all poles and transmission line structures. As a practical matter, what is typically filed for a transmission line are maps showing approximate pole locations based on a more or less standard spacing. Often, after meeting with individual landowners in the context of obtaining right-of-way, or just to accommodate those landowners, minor modifications need to be made. A small shift in position can save a tree that otherwise could be a problem or can avoid a drainage area that was not identified in the land records. AES Ohio would recommend that the language be slightly modified to read:

“Proposed location of major structures including buildings, and approximate locations for pole and transmission line structures.”

C. Rule 4906-4-04 Redundancies Should Be Eliminated. Proposed Rule 4906-4-04 correctly segregates requirements into categories of applicable to all, applicable to generation, and applicable to electric transmission and gas pipe lines. AES Ohio notes, however, that there are some redundancies that could be cleared up with minor, non-substantive changes. In particular, Proposed Rule 4906-4-04(A)(1) – (4) are applicable to all applicants. But substantially similar requirements are then republished in 4906-4-04(C)(1)(a)-(e) applicable only to electric transmission lines and gas pipelines. AES Ohio urges the Board to direct its Staff to review this Proposed Rule to eliminate those redundancies. As a general touchstone principle – where the current rules have identical language in the generation and the transmission line

sections, that language should be grouped into the “applies to all” category. But where the wording of the current rules is different, even when only slightly different, each set should be separately moved into the corresponding generation or the transmission line category.

D. 4906-4-07(E)(2): Some Compliance Activities Are Best
Done in Compliance with a Certificate Condition, Not Required Prior to Filing.

Proposed Rule 4906-4-07(E)(2) appears to suggest that even before the certificate application is filed, the Applicant will be coordinating with the Federal Aviation Administration. Currently, such coordination typically occurs during the certification process or as a certificate condition that must be met prior to construction. There is no reason to require or even imply to be requiring such coordination to take place prior to filing so that the coordination effort can be described in the filing.

E. 4906-4-08(B)(1): Vague New Standards Regarding the
Identification of Ecological Effects Should Be Clarified or Deleted.

Proposed Rule 4906-4-08(B)(1) lifts several requirements previously applicable only to generation facilities and makes them applicable to applications for an electric transmission line. As discussed above, the Rules should delineate carefully which requirements apply to all applicants, which apply only to generation applicants, and which apply to electric transmission applicants.

But beyond that, Proposed Rule 4906-4-08(B)(1)(a) appears to add new requirements not previously applicable to any type of applicant. 4-08(B)(1)(a)(viii) for example, requires identification of “sensitive habitat” or “young rearing areas of species identified as potentially impacted by the project by . . . Ohio department of natural resources and the United States fish and wildlife service.” Neither term is defined in the Board’s rules and AES Ohio is unaware of any specific definitions of these terms by ODNR or US FWS. The latter term – young rearing

area” could encompass multiple square miles for cougars, bears and other predators. The only similar requirement in the current rule applicable to transmission lines is at 4906-5-08(C) and requires identification of “nesting areas,” which is a much more focused requirement.

AES Ohio recommends first that 4906-4-08 be reorganized to clarify which rules apply to which type of applicant, and, with respect to electric transmission applications, that the proposed 4906-4-08(b)(1)(a)(viii) be deleted and the applicable language from existing Rule 4906-5-08(C) be inserted in lieu thereof.

F. Add a New 4906-4-11 to Provide for Sealed Filings as Appropriate.

The existing and proposed rules at 4906-2-21 set forth a process by which certain information can be filed under seal and with a motion for a protective order. That provision, however, is focused on cases where there is already administrative litigation and discovery requests. AES Ohio notes that Proposed Rule 4906-4 requires information to be included in the original application that, in some circumstances, may be Critical Energy Infrastructure Information (“CEII”) or otherwise highly sensitive. This concern was initially triggered by AES Ohio’s review of 4906-4-03(D), which requires submission of single-lines, load flow studies, and effects on all interconnected utility systems. In most instances, this information will not be CEII or highly sensitive, but in some instances it may be.

There may be other filing requirements elsewhere within 4906-4 that raise similar concerns in rare cases.

AES Ohio therefore recommends that a new Proposed Rule 4906-4-11 be added that states:

“(11) With respect to any filing requirement set forth in this Rule 4906-4, if applicant has a good faith belief that the document filed to meet such requirement should be accorded confidential treatment, applicants may file such document under seal with a motion for a protective order

following the procedures set forth in Rule 4906-2-26. The board or administrative law judge assigned to the case shall issue an order with respect to such document pursuant to Rule 4906-2-26.”

V. Modifications to Rule 4906-6: Add a New 4906-6-12(C) to Provide Explicitly for an Amendment Process.

An explicit amendment process should be added to the Accelerated Application procedures set forth in Rule 4906-6. There is a detailed process spelled out in Rule 4906-3-11 for Amendments of Applications that arguably is applicable, but it cross-references back to Rule 4906-3-06 which applies only to standard applications. There is also Rule 4906-6-12 that governs amendments to an already issued certificate. But currently there is no clear guidance regarding an amendment to a still-pending accelerated LON or CN.

AES Ohio urges the Board to create such clear guidance by adding a new subsection 4906-6-12(C) that states as follows:

“(C) An applicant may amend a letter of notification or construction notice that has not yet been approved. Such amendment may incorporate by reference all unchanged portions of the application, shall set forth each difference between the original application and the amended, and shall comply with service and public notice requirements of this Rule 4906-6. Time periods set forth in this Rule 4906-6 shall be reset and calculated based on the date of the filed amendment. No amendment shall be allowed that would cause the amended application to no longer be eligible as an accelerated application.”

VI. Modifications to Rule 4906-7

A. 4906-7-06: Self-Reporting.

Clarification is appropriate with respect to the new provisions of 4906-7-06, “Self-Reporting of Incidents.” Based on the overall structure of 4906-7, it appears that this self-reporting obligation is intended to apply to generation facilities. However, it is not explicitly so limited and by its words applies to “any certificated facility” where there is an injury or property damage.

Read broadly, this rule could require AES Ohio to call the Board's executive director, local law enforcement, and first responders within 30 minutes after any storm that did more than \$50,000 worth of damage to a transmission line. Such a requirement would cause needless delays and be contrary to the public interest in restoring power as quickly as possible.

AES Ohio suggests that this language in Rule 4906-7-06 be clarified to apply only to certificated generation facilities.

B. 4906-7-07: Compliance Site Review.

Similar to the comments above relating to Proposed Rule 4906-1-05 involving site visits, any requirement under Proposed Rule 4906-7-07 that inspections be made by the Board or its Staff, should be after reasonable notice is given. Notice gives the site operator time to ensure that visitors are equipped with appropriate personal protective equipment and have any necessary safety training.

VII. Conclusion.

AES Ohio, for the reasons set forth above, respectfully requests that the Ohio Power Siting Board modify the Proposed Rules as proposed herein.

Respectfully submitted,
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dba AES OHIO

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