

BEFORE THE POWER SITING BOARD OF THE STATE OF OHIO

**In the Matter of the Expedited Construction Notice)
Application of Duke Energy Ohio for the Muddy Creek) Case No. 22-0746-EL-BNR
Transmission Line Replacement Project)**

Members of the Board:

Chair, Public Utilities Commission	Ohio House of Representatives
Director, Department of Development	Ohio Senate
Director, Department of Health	
Director, Department of Agriculture	
Director, Environmental Protection Agency	
Director, Department of Natural Resources	
Public Member	

To the Honorable Power Siting Board:

Please review the attached Staff Report of Investigation, which has been filed in accordance with Ohio Power Siting Board (Board) rules. The accelerated certificate application in this case is subject to an automatic approval process as required by Ohio Revised Code (R.C.) 4906.03 and Ohio Administrative Code 4906-6.

Staff recommends the application for automatic approval August 25, 2022, unless suspended by the Board, an administrative law judge, or the chairperson or executive director of the Board for good cause shown. If suspended, the Board must render a decision on the application within 90 days from the date of suspension.

Please present any objections you or your designee may have with this case to my office at least four business days prior to August 25, 2022, which is the recommended automatic approval date.

Sincerely,

Theresa White

Theresa White
Executive Director
Ohio Power Siting Board

OPSB STAFF REPORT OF INVESTIGATION

Case Number: 22-0746-EL-BNR
Project Name: Muddy Creek Transmission Line Replacement Project
Project Location: Hamilton County
Applicant: Duke Energy Ohio
Application Filing Date: August 12, 2022
Filing Type: Expedited Construction Notice
Inspection Date: August 15, 2022
Report Date: August 18, 2022
Recommended Automatic Approval Date: August 25, 2022
Applicant's Waiver Requests: None
Staff Assigned: A. Holderbaum, J. Cross

Summary of Staff Recommendations (see discussion below):

Application: ☐ Approval ☐ Disapproval ☒ Approval with Conditions
Waiver: ☐ Approval ☐ Disapproval ☒ Not Applicable

Project Description and Need

Duke Energy Ohio (Applicant) proposes to replace seven wood pole structures with new steel poles. The seven wood pole structures to be replaced are made up of five wooden single pole structures and two wooden 3-pole structures. The five wooden single pole structures would be replaced with steel single pole structures and the two wooden 3-pole structures would be replaced with steel H-frame structures. One of the steel H-frame structures would be relocated 75-feet to the southeast and one of the steel single structures would be relocated 108 feet to the northwest. The Applicant states 2,200 feet of the existing 138 kilovolt (kV) transmission line would be added and reconducted to support the pole replacement work to cross Muddy Creek. The project is in Green Township, Hamilton County.

The Applicant states the project is of an emergency nature due to woodpecker damage on the 3-pole wooden structures responsible for supporting the existing line crossing of Muddy Creek, as well as damage from a residential developer conducting earthwork around a single wooden structure causing the foundation to erode. Staff confirmed the emergency nature of the project during a field inspection on August 15, 2022.

The proposed project was not included in the PJM Interconnection, LLC's (PJM) Regional Transmission Expansion Planning (RTEP) process or the most recent Long-Term Forecast

Report (LTFR) due to the emergency nature of the project.¹ The capital and total costs of this proposed transmission line relocation project are estimated to be \$2,378,831.²

Nature of Impacts

Land Use

The proposed project would occur entirely within the Applicant's existing easements. The surrounding land use is a mix of residential properties, utility infrastructure, and forested area. No temporary easements would be required from adjacent property owners for access roads or laydown areas.

Agricultural Land

The proposed project is not located within the limits of an agricultural district or land being utilized for agricultural purposes.

Cultural Resources

The Applicant completed a cultural resources literature review for the area of potential effects. The investigation identified seven Ohio Historic Inventory buildings and one Determination of Eligibility within 0.5 mile of the project. None of these facilities were identified on the National Register of Historic Places (NRHP), however the Determination of Eligibility site, the Warsaw Cleves Bridge, is related to a historic bridge and identified as eligible on the NRHP. The bridge was previously replaced by the Ohio Department of Transportation, however. The Applicant submitted the results of the literature review to the Ohio Historic Preservation Office (OHPO) and received concurrence from the OHPO on August 11, 2022. The OHPO concluded that no further coordination is required. Staff concurs with OHPO's conclusion.

Surface Waters³

The project area contains one perennial stream, Muddy Creek. No wetlands or ponds exist within the project area. The transmission line would aerially span Muddy Creek, no impacts are

1. PJM is the regional transmission organization charged with planning for upgrades to the regional transmission system in Ohio. Significant alterations to the transmission system located in the PJM control area are required to submit planned projects for review of system impacts.

2. Applicant indicates that the entire cost, approximately \$2,378,831 will be included in the Applicant's formula rate (PJM Open Access Transmission Tariff, Attachment H-22) and would be assessed on all transmission customers within the Duke Energy Transmission Zone.

3. The Ohio EPA website states: "The Division of Surface Water ensures compliance with the federal Clean Water Act and works to increase the number of water bodies that can be safely used for swimming and fishing. The division issues permits to regulate wastewater treatment plants, factories and storm water runoff; develops comprehensive watershed plans aimed at improving polluted streams; and samples streams, lakes and wetlands — including fish, aquatic insects and plants — to determine the health of Ohio's water bodies." (Ohio EPA, About Us: Surface Water, <https://www.epa.ohio.gov/About#127147228-surface-water>); The U.S. Army Corps of Engineers website states: "The U.S. Army Corps of Engineers (USACE) Regulatory Program involves the regulating of discharges of dredged or fill material into waters of the United States and structures or work in navigable waters of the United States, under section 404 of the Clean Water Act and section 10 of the Rivers and Harbors Act of 1899." (USACE, Obtain a Permit, <https://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/Obtain-a-Permit/>); The Ohio Department of Natural Resources (ODNR) website states: "The Division of Water Resources manages statewide oversight of dams & levees, floodplains, and the collection and management of data related to the state's water resources." (ODNR, Division of Water Resources, <https://ohiodnr.gov/wps/portal/gov/odnr/discover-and-learn/safety-conservation/about-odnr/water-resources/water-resources>).

anticipated for the stream as no construction equipment would cross the stream and no replacement structures would be placed within the stream or surrounding buffer. Staff recommends that no mechanized clearing occur within 25 feet of any stream, and that trees in this area be cleared only if they are tall enough to have the potential to interfere with safe construction and operation of the line.

The Applicant would submit a Notice of Intent for coverage under the Ohio Environmental Protection Agency General National Pollutant Discharge Elimination System Permit.

This project does not overlap with any FEMA 100-year floodplains.

Threatened and Endangered Species⁴

The project is within range of the federal and state endangered Indiana bat (*Myotis sodalis*), the federal threatened and state endangered northern long-eared bat (*Myotis septentrionalis*), the state endangered little brown bat (*Myotis lucifugus*), and the state endangered tricolored bat (*Perimyotis subflavus*). As tree roosting species in the summer months, the habitat of these species would be impacted by the project. In order to avoid impacts to these listed bat species, the Ohio Department of Natural Resources (ODNR) and the U.S. Fish and Wildlife Service (USFWS) recommend seasonal tree cutting dates of October 1 through March 31 for all trees that are three inches or greater in diameter. During the winter months, bats hibernate in caves and abandoned mines, also known as hibernacula. The consultant identified one karst feature approximately 600 feet west of the northernmost pole to be replaced. The Applicant states in data request responses to Staff that vegetation clearing would not be required for this project.

The Applicant is currently coordinating with the ODNR for any additional state-listed species and/or suitable habitat that may be found in the project area. The Applicant stated that it would provide Staff with any comments from the ODNR review of the project and continue coordination with the ODNR and Staff to assure compliance on the ODNR comments.

Conclusion

Staff's review of the application included consideration of the requirements listed in R.C. 4906.10. Based on Staff's review, the application meets the necessary criteria for granting a certificate. Staff recommends approval of this application on August 25, 2022, subject to the following conditions.

4. Based on agency coordination with the USFWS and ODNR, identified species of concern are, in general, defined as those species that are protected under the federal Endangered Species Act of 1973, as amended (16 U.S.C. §§ 1531-1544) and/or according to the Conservation of Natural Resources within R.C. 1518.01-1518.99; 1531.25; and 1531.99. *See also e.g.*, R.C. 1531.08 states, in part: "In conformity with Section 36 of Article II, Ohio Constitution, providing for the passage of laws for the conservation of the natural resources of the state, including streams, lakes, submerged lands, and swamplands, and in conformity with this chapter and Chapter 1533. of the Revised Code, the chief of the division of wildlife has authority and control in all matters pertaining to the protection, preservation, propagation, possession, and management of wild animals and may adopt rules under section 1531.10 of the Revised Code for the management of wild animals."

One of the missions of the ODNR is to "conserve and improve the fish and wildlife resources and their habitats and promote their use and appreciation by the public so that these resources continue to enhance the quality of life for all Ohioans." In carrying out this mission, the ODNR considers the "status of native wildlife species [to be] very important" and therefore lists wildlife species needing protection. (ODNR, State Listed Species, <https://ohiodnr.gov/wps/portal/gov/odnr/discover-and-learn/safety-conservation/about-ODNR/wildlife/state-listed-species>).

Staff notes that its recommendation for approval of this application should not be construed as a recommendation for approval of cost recovery in any ratemaking proceeding.

Conditions

- (1) 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.
- (2) 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. Any permit violation received by the Applicant from the permitting agency shall be provided on the case docket within seven days of receipt.
- (3) Prior to the commencement of construction, the Applicant shall obtain a coordination letter from the ODNR regarding impacts to state listed species and/or their suitable habitat and shall coordinate with the ODNR and with Staff regarding compliance with the letter. The Applicant shall not conduct mechanized clearing or stump removal within 25 feet of any stream channel.

**This foregoing document was electronically filed with the Public Utilities
Commission of Ohio Docketing Information System on**

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in

Case No(s). 22-0746-EL-BNR

Summary: Staff Report of Investigation electronically filed by Mr. Matt Butler on
behalf of Staff of OPSB