

BEFORE

THE OHIO POWER SITING BOARD

In the Matter of the Ohio Power Siting       )  
Board's Review of Ohio Adm. Code       ) Case No. 21-902-GE-BRO  
Chapters 4906-1, 4906-2, 4906-3, 4906-4,   )  
4906-5, 4906-6, and 4906-7

**REPLY COMMENTS OF BUCKEYE POWER, INC.**

On August 5, 2022, Buckeye Power, Inc. ("Buckeye") submitted its Initial Comments in response to the Ohio Power Siting Board's ("Board" and "OPSB") June 16, 2022, Entry, which invited interested parties to file comments and reply comments related to the Board's review of Ohio Administrative Code (O.A.C.) Chapters 4906-1, 4906-2, 4906-3, 4906-4, 4906-5, 4906-6, and 4906-7. Buckeye appreciates this opportunity to provide its reply pursuant to the June 16 Entry.

**I. COMMENTS**

Buckeye files this reply to respond to the following concerns raised in the comments filed by other parties in this docket: (1) Buckeye agrees with the concerns raised by numerous parties relating to the expansion of the "associated facilities" definition and highlights the jurisdictional arguments raised by several commentors; (2) the Ohio Farm Bureau Federation's comments asking the OPSB to expand its jurisdiction to 69 kV facilities exceeds its statutory authority and has been previously rejected by this Board; (3) the Ohio Manufacturers' Association Energy Group's ("OMAEG") and the Ohio Consumers' Counsel's ("OCC") comments regarding supplemental projects should be rejected and these parties should address these issues at the federal level in active Federal Energy Regulatory Commission ("FERC") dockets; (4) Buckeye agrees with other commentors that the expansion of the "incident reporting rule" in O.A.C. 4906-07-06 to apply to transmission facilities may have significant adverse impacts and should be

rejected; and (5) Buckeye generally agrees with other commentors regarding the increased burdens of certain proposed rules and the negative impacts on customers obtaining delivery points.

*A. The Proposed Definition of “Associated Facilities” Improperly Expands OPSB Jurisdiction*

Numerous commentors in this docket have raised concerns with OPSB’s proposed revision to the definition of “Associated facility” or “associated facilities” in O.A.C. 4906-1-01(F)(2)(b) to include distribution substations. These commentors have raised concerns that this expansion both exceeds OPSB’s statutory authority and has negative practical impacts for utilities, customers, and the OPSB. Buckeye agrees with these points.

In addition to the practical effects Buckeye addressed in its initial comments, the Dayton Power & Light Company (“DP&L”) also raised the concern that this rule could have the impact of requiring a distribution substation upgrade, whether associated with a transmission project or not, to obtain certification from the OPSB.<sup>1</sup> Requiring every distribution substation upgrade to go through the OPSB process would add a significant burden to electric cooperatives and other distribution utilities who regularly upgrade distribution substations to accommodate new load or improve reliability. Not only will this expansion of OPSB purview impact these utilities, but it will greatly increase the workload of the OPSB. As noted by DP&L, by their estimate, DP&L alone would have been required to submit an additional 46 filings at the OPSB.<sup>2</sup> Ohio Power Company and AEP Ohio Transmission Company, Inc. (collectively, “AEP”) estimated an increase in applications of 30-45% or more.<sup>3</sup> In addition, several commentors including the Data Center Coalition, Ohio Chamber of Commerce and Ohio Economic Development Association

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<sup>1</sup> Initial Comments of the Dayton Power and Light Company dba AES Ohio (“DP&L Comments”), page 2.

<sup>2</sup> DP&L Comments, page 4.

<sup>3</sup> Initial Comments of Ohio Power Company and AEP Ohio Transmission Company, Inc. (“AEP Comments”), page 7.

have highlighted that this expansion of OPSB oversight will have a negative impact on economic development by subjecting “both customer and utility-owned substations to new permitting requirements that will add time, cost and uncertainty for customers and utilities alike.”<sup>4</sup>

As noted by other commentors, including One Energy Enterprises Inc., this proposal exceeds OPSB’s siting authority.<sup>5</sup> OPSB has siting authority over “major utility facilities” which is defined to explicitly exclude “electric distributing lines and associated facilities as defined by the power siting board.”<sup>6</sup> DP&L noted that this proposed change is not consistent with House Bill 49 recently passed in 2017 that required the siting of major electric transmission facilities at or above 100 kV, as this 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.”<sup>7</sup> For these reasons, this change should not be adopted.<sup>8</sup>

*B. The Board Should Not Improperly Expand Its Jurisdiction to Cover 69 kV Facilities*

The Ohio Farm Bureau Federation (“Farm Bureau”) in its comments requested the Board to expand its jurisdiction to cover 69 kV transmission lines. The Farm Bureau’s request must be denied because Ohio law limits the OPSB’s siting authority to 100kV lines and above.<sup>9</sup> As a result, the expansion of the Board’s jurisdiction cannot be accomplished by rulemaking. The Farm Bureau acknowledges this legal limitation in its comments.<sup>10</sup>

Further, the OPSB has previously rejected proposals to expand its jurisdiction to cover 69 kV transmission lines. The OPSB addressed this issue in Case No. 21-769-EL-UNC in which

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<sup>4</sup> Ohio Chamber of Commerce Comments, page 2; *see also* The Data Center Coalition Comments and the Ohio Economic Development Association Comments.

<sup>5</sup> Initial Comments Submitted on Behalf of One Energy Enterprises Inc. (“One Energy Comments”), page 2.

<sup>6</sup> R.C. 4906.01(B)(2)(c).

<sup>7</sup> DP&L Comments, page 3.

<sup>8</sup> However, if the OPSB were to adopt this change, at a minimum the OPSB should exclude distribution substations that are owned by customers or utilities that are unaffiliated with the associated transmission system.

<sup>9</sup> R.C. 4906.01(B)(1)(b).

<sup>10</sup> Initial Comments of the Ohio Farm Bureau Federation, pages 8-10.

the OPSB submitted a report (“Legislative Report”) to the Ohio General Assembly in accordance with Ohio Revised Code Section 4906.105. The Legislative Report regarded power transmission system planning and made recommendations for legislative changes. In that docket, the OPSB properly declined to recommend expanding its jurisdiction to cover 69 kV transmission lines. The OPSB recognized that “[l]owering the OPSB’s jurisdiction would not accomplish the same effect that could be accomplished by FERC directing the regional transmission planner, PJM, to review and approve those projects.”<sup>11</sup> In addition, OPSB recognized that expanding its jurisdiction would increase the number of applications it would have to consider and increase costs for the applicants and their customers, with limited positive impacts for Ohio customers.<sup>12</sup> There is no reason the OPSB should now change its position on this issue.

*C. OPSB Should Reject Comments Relating to Supplemental Projects*

The OCC and OMAEG submitted comments asking the Board to promulgate rules to expand its oversight of “supplemental projects.”<sup>13</sup> As the OPSB recognized the Legislative Report addressing very similar complaints, these matters are best addressed at the federal level and at PJM Interconnection, LLC (“PJM”).<sup>14</sup> As Buckeye stated in its comments in Case No. 21-796-GE-UNC, these issues are being addressed at the federal level through the M-3 Process in which PJM reviews these projects in its unique role as a regional planner and provides opportunities for stakeholders to participate in this review. As a result, the OCC’s and OMAEG’s concerns with the oversight of supplemental projects should be addressed at PJM or FERC, not the OPSB.

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<sup>11</sup> See Legislative Report page 10.

<sup>12</sup> *Id.*

<sup>13</sup> Petition to Intervene and Comments of the Ohio Manufacturers’ Association Energy Group; Consumer Protection Comments by Office of the Ohio Consumers’ Counsel, pages 1-4.

<sup>14</sup> Legislative Report, pages 10-11. “The need review that is currently undertaken by the OPSB is a very different analysis than that which goes on through the PJM RTEP process.”

In fact, the FERC has opened a docket on Transmission Planning and Cost Management, Docket No. AD22-8, addressing the very concerns raised by the OCC and OMAEG. FERC has set up technical conferences in this docket that will “explore measures to ensure sufficient transparency into and cost effectiveness of local and regional transmission planning decisions.”<sup>15</sup> These measures to be addressed include: “(1) the role of cost management measures in ensuring the cost effective identification of local transmission needs (e.g., planning criteria) and solutions to address identified local transmission and regional reliability-related transmission needs; and (2) cost considerations and the processes through which transmission developers recover their costs to ensure just and reasonable transmission rates.”<sup>16</sup> The OCC, OMAEG, and other parties concerned about the oversight of supplemental projects should voice these concerns in Docket No. AD22-8 rather than asking the OPSB to pass rules to address these projects.

As recognized by the OPSB previously, “the OPSB is not a regional transmission planner.”<sup>17</sup> Subjecting transmission projects to the same, or potentially conflicting, requirements at two different levels (PJM and OPSB) will create unnecessary duplication and potential conflict resulting in an unworkable regulatory regime. Further, this double oversight could discourage companies from making necessary investments in transmission projects in the State of Ohio, and instead focus their investments in other states where the regulatory burden for project approval is lower. In such cases, Ohio customers will still be paying for these transmission upgrades in other states through the PJM transmission tariff but will receive far less of the benefits. Or if the project is in the State of Ohio, the additional regulatory hurdles will

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<sup>15</sup> Notice of Technical Conference (April 21, 2022), Docket No. AD22-8-000, page 1.

<sup>16</sup> Notice of Technical Conference (April 21, 2022), Docket No. AD22-8-000, page 1. An agenda for the technical conference occurring on October 6, 2022 was provided in the Supplemental Notice of Technical Conference (July 22, 2022), Docket No. AD22-8-000.

<sup>17</sup> Legislative Report, page 10.

increase the cost of the transmission owner's projects, and thus costs for consumers, without additional benefit.

For these reasons, the OPSB should reject the requests to expand its oversight of supplemental projects that are best addressed at the federal level.

*D. "Incident Reporting Rule" Should Not Apply to Electric Transmission*

Buckeye agrees with other commentors that the expansion of the "incident reporting rule" in O.A.C. 4906-07-06 to apply to transmission facilities may have significant adverse impacts on reliability and should be rejected. The rule requires operators of "any certificated facility" to provide the Board notice of injury to any person, damage to property other than the facility owner, and damage to the facility of more than \$50,000.<sup>18</sup> The rules also requires telephone notice to the Board's executive director, local law enforcement, and first responders within thirty minutes of the incident, a written report to be submitted to OPSB, and an investigation conducted by OPSB staff.<sup>19</sup>

Critically, the rule prohibits repair of the damage to transmission facilities until the OPSB Staff approves the movement of damaged property and does not allow the restart of a facility or resumption of construction until approval is obtained by the Board's executive director or designee.<sup>20</sup> As DP&L notes, the proposed revisions to the incident reporting rule appear to be intended to apply to generation facilities, but are broadly written to apply to "any certificated facility" where there is any injury or property damage.<sup>21</sup>

Buckeye supports the comments of Generation Pipeline LLC and other parties specifically identifying concerns with O.A.C. 4906-07-06 applying to electric transmission lines

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<sup>18</sup> O.A.C. 4906-07-06(B).

<sup>19</sup> O.A.C. 4906-07-06(C).

<sup>20</sup> O.A.C. 4906-07-06(E) and (F).

<sup>21</sup> DP&L Comments, page 14. *See* AEP Comments, page 17, noting that AEP already reports safety incidents pursuant to OSHA. These incident reporting requirements are arguably duplicative of OSHA standards.

and other critical infrastructure.<sup>22</sup> The notification requirements are written so that any storm damage of \$50,000 or more to transmission facilities will require immediate notification to the Board's executive director and others. When storm damage of this nature occurs, the focus should be on immediately restoring power. These notification requirements will simply delay and detract from power restoration, and it is unclear what purpose or goal these notifications would achieve.<sup>23</sup> In addition, as identified by AEP, requiring a project to halt until an OPSB Staff investigation has occurred and OPSB Staff approves resuming construction will unnecessarily delay the completion of projects that have been deemed necessary.<sup>24</sup>

The delays in transmission line restoration resulting from these rules are unnecessary and would have a significant negative impact on Ohio consumers. Buckeye and its members rely on uninterrupted transmission service to supply reliable electricity to their retail members. Shutting down because of incident reporting requirement would have a significant impact on Buckeye and its members, as well as any other retail customers receiving service from the transmission line. At a minimum, O.A.C. 4906-07-06(F) requiring a transmission line to remain offline until approval is obtained by certain members of the Board and O.A.C. 4906-07-06(E) requiring Staff approval before certain restoration activities can occur should be rejected.

*E. OPSB Should Consider Impact of Increased Burden of Rule Changes on Customers*

Buckeye generally agrees with other commentors regarding the increased burdens of certain proposed rules and the negative impacts on customers and entities obtaining delivery points off the transmission system. For example, subjecting electric transmission applicants to broader and less tailored requirements intended to apply to generation applicants by merging Chapter 4906-05 with Chapter 4906-04 will delay development and increases costs for

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<sup>22</sup> Initial Comments of Generation Pipeline LLC, pages 5-6.

<sup>23</sup> DP&L Comments, page 15.

<sup>24</sup> AEP Comments, page 17.

consumers. Buckeye asks that the OPSB consider these impacts when reviewing the proposed rules.

### **III. CONCLUSION**

WHEREFORE, Buckeye respectfully requests that the Board consider Buckeye's foregoing comments in its review of the proposed rule changes.

Respectfully submitted,

BUCKEYE POWER, INC.

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