

**BEFORE
THE OHIO POWER SITING BOARD**

In the Matter of the Application of
Ohio Power Company / AEP Ohio's
Certification of Environmental
Compatibility and Public Need to
Construct Lott 138 kV Transmission
Line Project

Case No. 22-0940-EL-BTX

**PETITION FOR LEAVE TO INTERVENE OF
THORPE FAMILY FARMS, INC. AND JAMES THORPE**

Pursuant to Ohio Revised Code Section 4906.08(A)(3) and Ohio Administrative Code ("OAC") Section 4906-2-12, this Motion to Intervene is being submitted on behalf of the following Petitioners:

Thorpe Family Farms

James Thorpe

A memorandum in support of this motion to intervene follows.

MEMORANDUM IN SUPPORT

OAC 4906-2-12(B) provides that the Ohio Power Siting Board ("Board") or administrative law judge may consider the following criteria when considering petitions to intervene:

- (a) The nature and extent of the person's interest;
- (b) The extent to which the person's interest is represented by existing parties;
- (c) The person's potential contribution to a just and expeditious resolution of the issues involved in the proceeding; and
- (d) Whether granting the requested intervention would unduly delay the proceeding or unjustly prejudice an existing party.

For the following reasons, there is good cause under these criteria to grant intervenor status to the Petitioners in these proceedings.

Nature and extent of interest

Petitioners have an interest in property over which the Applicant intends to construct the Lott 138 kV Transmission Line Project (the “Project”). Petitioners’ property is protected by agricultural easements granted by James Family Farms, James Thorpe, to the Ohio Department of Agriculture. In its application, the Applicant admits in relevant part:

Additionally, several parcels crossed by the ROW for the Preferred Route and Alternate Route contain Ohio Department of Agriculture Agricultural Easements.

The centerline and ROW of the Alternate Route crosses four Ohio Department of Agriculture Agricultural Easement parcels.

The Thorpe agricultural easements are a prior public use and a benefit to the State of Ohio. Construction of the Project over land protected by the agricultural easements is prohibited by the terms of the easements and by operation of law. See, *Columbia Gas of Ohio v. Patrick Bailey, et al. v. Don Bailey, Jr., Successor Trustee of the Arno Renner Trust Dated April 24, 1997, et al.*, 2022-Ohio-1246, Court of Appeals of Ohio, Third District, Union County, decided April 17, 2023.

The Petitioners should be granted the ability to intervene as parties in these proceedings.

Extent to which a person’s interest is represented by existing parties and potential contribution to the just and expeditious resolution of these proceedings

Petitioners’ interest is not represented by any existing party and Petitioners’ contribution will be necessary to ensure a just and expeditious resolution of these proceedings. Petitioners do not intend to grant a voluntary easement to the Applicant to construct the Project and will ask the Grantee of the easements, the Ohio Department of Agricultural, to defend the easements and oppose the Project. If the Ohio Power Siting Board approves an application that entails

construction on Petitioners' protected property, the Applicant will need to initiate appropriation proceedings under R.C. Sec. 163.01 *et seq.* The Petitioners will oppose the appropriation based on the necessity and right of the Applicant to take protected property.

Whether granting the requested intervention would unduly delay the proceeding or unjustly prejudice an existing party

No undue delay or prejudice to existing parties will result by Petitioners' participation in these proceedings. Petitioners seek leave to intervene to protect recognized and legitimate property rights and the public interest in protecting Ohio farmland, not for the purpose of delay. Petitioners will be represented by legal counsel experienced in practice before the Board.

For the reasons set forth above, Petitioners request the Board grant this Motion to Intervene.

Respectfully submitted,

/s/David Watkins

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CERTIFICATE OF SERVICE

This petition was filed with the Ohio Power Siting Board on June 20, 2023. The Ohio Power Siting Board's e-filing system will electronically serve notice of the filing of this document on the parties referenced on the service list of the docket card who have electronically subscribed to the case.

/s/ David Watkins

David Watkins (0059242)

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in

Case No(s). 22-0940-EL-BTX

Summary: Petition Petition for Leave to Intervene of Thorpe Family Farms, Inc. and James Thorpe electronically filed by David Watkins on behalf of Thorpe Family Farms, Inc. and James Thorpe.