

THE OHIO POWER SITING BOARD

IN THE MATTER OF THE APPLICATION OF
AEP OHIO TRANSMISSION COMPANY,
INC. FOR A CERTIFICATE OF
ENVIRONMENTAL COMPATIBILITY AND
PUBLIC NEED FOR THE NEW LIBERTY-
EAST LEIPSIC 138 KV TRANSMISSION
LINE UPGRADE PROJECT.

CASE NO. 22-856-EL-BTX

OPINION AND ORDER

Entered in the Journal on October 19, 2023

I. SUMMARY

{¶ 1} The Ohio Power Siting Board approves the stipulation and recommendation filed by the parties and issues a certificate of environmental compatibility and public need to AEP Ohio Transmission Company, Inc. for the construction, operation, and maintenance of the new Liberty-East Leipsic 138 kilovolt transmission line upgrade project along the preferred route, subject to the conditions set forth in this Opinion and Order.

II. PROCEDURAL BACKGROUND

{¶ 2} All proceedings before the Ohio Power Siting Board (Board) are conducted according to the provisions of R.C. Chapter 4906 and Ohio Adm.Code Chapter 4906-1, et seq.

{¶ 3} AEP Ohio Transmission Company, Inc. (AEP Ohio or Applicant) is a person as defined in R.C. 4906.01.

{¶ 4} Pursuant to R.C. 4906.04, no person shall construct a major utility facility without first having obtained a certificate from the Board. In seeking a certificate for an electric transmission line, applicants must comply with the filing requirements outlined in R.C. 4906.06, as well as Ohio Adm.Code Chapters 4906-3 and 4906-5.

{¶ 5} On September 19, 2022, AEP Ohio filed a preapplication notification letter informing the Board of its intent to file an application for a certificate of environmental compatibility and public need for the New Liberty-East Leipsic 138 kilovolt Transmission Line Upgrade Project (Project). The Project, as proposed, involves rebuilding and upgrading approximately 17 miles of power lines across Putnam and Hancock counties.

{¶ 6} On January 4, 2023, AEP Ohio filed its application for the Project.

{¶ 7} Pursuant to Ohio Adm.Code 4906-3-06, within 60 days after receipt of an application for a major utility facility, the Chair of the Board shall notify an applicant of the acceptance or rejection of the application as complete. By letter filed March 3, 2023, the Board notified AEP Ohio that its application was sufficiently complete to permit Staff to commence its review and investigation of the application. The letter directed AEP Ohio to serve appropriate government officials and public agencies with copies of the complete, certified application and provide proof of service with the Board. Further, the letter directed AEP Ohio, pursuant to R.C. 4906.06(F) and Ohio Adm.Code 4906-3-12, to submit the application fee.

{¶ 8} On March 21, 2023, AEP Ohio filed its notice of proof of compliance certifying service of its accepted and complete application, in accordance with the requirements in Ohio Adm.Code 4906-3-07. Also on April 20, 2023, AEP Ohio submitted correspondence informing the Board of its payment of the application fee, pursuant to Ohio Adm.Code 4906-3-12.

{¶ 9} R.C. 4906.07(A) provides that, upon receipt of an application complying with R.C. 4906.06, the Board must promptly fix a date for public hearing not less than 60 days nor more than 90 days after such receipt and shall conclude the proceeding as expeditiously as practicable.

{¶ 10} By Entry issued April 24, 2023, the effective date of the application was established as April 24, 2023, the public hearing was scheduled for July 11, 2023, and the adjudicatory hearing was scheduled to commence on July 25, 2023.

{¶ 11} On June 26, 2023, Staff filed its report of investigation (Staff Report).

{¶ 12} On July 11, 2023, the local public hearing was held, as scheduled, at the McComb Library, 113 South Todd Street, McComb, Ohio 45858.

{¶ 13} On July 24, 2023, Staff and AEP Ohio filed a joint stipulation and recommendation (Stipulation).

{¶ 14} Also on July 24, 2023, AEP Ohio filed the direct testimony of its witness, David Binger, and Staff filed the direct testimony of its witness, Mark Bellamy.

{¶ 15} On July 25, 2023, the adjudicatory hearing was held, as scheduled at the Commission's offices.

III. PROJECT DESCRIPTION

{¶ 16} AEP Ohio submits that the Project is for a 138 kilovolt (kV) upgrade project approximately 17 miles long, beginning at the company's East Leipsic Substation off Road 5 in Leipsic and travels east to the Radar Road Substation off County Road 126 in McComb County, then continues southeast to the New Liberty Substation off Township Road 94 in Findlay. In its Application, AEP Ohio proposed a preferred route (Preferred Route) that is approximately 16.9 miles in length, and an alternate route (Alternate Route) that was approximately 16.7 miles in length.

IV. CERTIFICATION CRITERIA

{¶ 17} Pursuant to R.C. 4906.10(A), the Board shall not grant a certificate for the construction, operation, and maintenance of a major utility facility, either as proposed or as modified by the Board, unless it finds and determines all of the following:

- (1) The basis of the need for the facility if the facility is an electric transmission line or gas pipeline;
- (2) The nature of the probable environmental impact;
- (3) The facility represents the minimum adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives, and other pertinent considerations;
- (4) In the case of an electric transmission line or generating facility, the facility is consistent with regional plans for expansion of the electric power grid of the electric systems serving this state and interconnected utility systems and the facility will serve the interests of electric system economy and reliability;
- (5) The facility will comply with R.C. Chapters 3704, 3734, and 6111, as well as all rules and standards adopted under those chapters and under R.C. 4561.32;¹
- (6) The facility will serve the public interest, convenience, and necessity;
- (7) The impact of the facility on the viability as agricultural land of any land in an existing agricultural district established under R.C. Chapter 929 that is located within the site and alternative site of the proposed major facility; and

¹ The statute also provides that, in determining whether the facility will comply with all rules and standards adopted under R.C. 4561.32, the Board shall consult with the Office of Aviation of the Division of Multi-Modal Planning and Programs of the Department of Transportation under R.C. 4561.341 (ODOT-OA).

- (8) The facility incorporates maximum feasible water conservation practices as determined by the Board, considering available technology and the nature and economics of the various alternatives.

V. SUMMARY OF EVIDENCE

{¶ 18} The Board has reviewed the evidence presented by the parties and has also considered the eight criteria set forth in R.C. 4906.10(A) in evaluating AEP Ohio's application. Any evidence not specifically addressed herein has nevertheless been considered and weighed by the Board in reaching its final determination.

A. *Public Hearing and Comments*

{¶ 19} At the public hearing held on June 26, 2023, two witnesses testified. The first witness, Cathy Schroll, mayor of the Village of McComb, expressed concern about the transmission poles that would go across a local park. Ms. Schroll stated that she and the village council request that the Board chooses the Alternate Route because it would be safer by following the railroad and avoid a parking lot and recreational sites. (Pub. Tr. at 8-9.) The second witness, Rick Beverly requested that the replacement transmission line does not deviate from its current route to avoid impacting his residence and a historical schoolhouse. (Pub. Tr. at 12-14.)

{¶ 20} A public comment was filed by Ms. Donna Kelly on July 25, 2023. Ms. Kelly owns an 80-acre farm that the transmission line would pass by or through, and she requested that the transmission line route does not significantly differ from its current placement. Ms. Kelly preferred the southernmost route, the Preferred Route, to reduce the amount of crop loss, ground compaction, and surface field drainage tile that would need to be replaced or repaired caused by the power line installation process and future access.

B. Staff Report

{¶ 21} Pursuant to R.C. 4906.07(C), Staff completed an investigation of the application, which included recommended findings regarding R.C. 4906.10(A). The following is a summary of Staff's findings.

1. BASIS OF NEED

{¶ 22} R.C. 4906.10(A)(1) requires that the Board consider the basis of the need for the facility if the facility is an electric transmission line or gas pipeline.

{¶ 23} Addressing the basis of need for the Project, Staff notes that the Applicant proposes to upgrade the electric transmission line to address baseline reliability issues that were identified by PJM in the Leipsic area. This area is served primarily by two 138 kV circuits that would cause, when lost, a 69 kV line and 34.5 kV branch to overload. Applicant represents that there has been significant load growth portion in the Leipsic area by the existing circuits. Staff finds that customers in the service area would be better served following the replacement and upgrading of aging 34.5 kV distribution circuits to 138 kV transmission lines. Staff recommends that the Board find that the basis of need for the Project has been demonstrated and therefore complies with the requirements specified in R.C. 4906.10(A)(1), provided that any certificate issued by the Board for the proposed facility included the conditions specified in the Staff Report. (Staff Ex. 1 at 19-20.)

2. NATURE OF PROBABLE ENVIRONMENTAL IMPACT

{¶ 24} R.C. 4906.10(A)(2) requires that the Board determine the nature of the probable environmental impact of the proposed facility.

{¶ 25} Staff addresses the socioeconomic impacts associated with the Project, including consideration of such factors as land use, regional planning, recreation, aesthetics, cultural resources, economics, liability insurance, safety, communications, roads and

bridges, noise, geology, and ecological impacts. Among other findings, Staff notes that community impacts are not expected to be significant.

{¶ 26} In relation to land use, the Applicant presents that the Project would be located in Hancock and Putnam counties and cross through portions of the towns of Leipsic and McComb. Staff observes that the land use in the area surrounding the proposed transmission line is predominantly agriculture, with some residential, commercial, and industrial uses. Agricultural land use makes up 68 percent of the Preferred Route for the Project and 60 percent for the Alternate Route. Road right-of-way would be crossed for 18 percent of the length for the Preferred Route, and 23 for the Alternate Route. There are 54 and 60 structures within 200 feet of the Preferred and Alternate routes, respectively. The Applicant states these residences are not expected to be impacted due to the majority of both routes being primarily within roadway right-of-way in these residential areas. Staff determines that the only permanent impacts of the right-of-way would be from tree and other vegetation clearing. Staff concludes the Project would not have a significant effect upon surrounding land uses. (Staff Ex. 1 at 21-22.)

{¶ 27} Concerning regional planning, Staff notes that the transmission line upgrade would foster increased reliability and availability of electric power to residential, commercial, institutional, and industrial users in the region. Applicant states that it consulted Hancock and Putnam counties regarding whether the Project would conflict with any regional land use plans and no conflicts were identified. (Staff Ex. 1 at 22.)

{¶ 28} In regard to recreation, the Village of McComb Community Park is within 1,000 feet of both the Preferred and Alternate routes. Though the Preferred Route would cross the park, the transmission line would be rebuilt in the existing right-of-way and would not impact any recreation equipment. Staff finds that the visibility of the Project would be unlikely to negatively affect recreational land use or ability to use recreation resources. (Staff Ex. 1 at 22.)

{¶ 29} Moreover, addressing aesthetic concerns, the Applicant does not expect that the Project would have significant visual impact on the surrounding area. The Project would slightly alter the visual landscape due to the material and height of the structures, because both the Preferred and Alternate routes largely utilize existing right-of-way and parallel existing “linear structures” such as roadways. (Staff Ex. 1 at 22.)

{¶ 30} Regarding cultural resources, the Applicant conducted a literature review and Phase I cultural resources survey to determine potential impacts to historical properties and archaeological sites. 12 new archeological sites were identified during field survey along the Preferred Route; however, all of them were recommended as not eligible for the National Register of Historic Places (NRHP). The results were submitted to the Ohio Historic Preservation Office (OHPO) that concurred no further archeological work is necessary. Staff agrees with these findings. (Staff Ex. 1 at 22-23.)

{¶ 31} The Applicant’s total cost estimated intangible and capital cost for the Preferred Route was \$10.1 million and the Alternative Route was \$11.2 million. The Applicant’s property tax estimate for the Preferred Route is \$431,000 and for the Alternate Route is \$476,000. The Applicant is self-insured and maintains additional liability insurance of at least \$1 million for any damages that may occur during the construction or operation of the proposed line. (Staff Ex. 1 at 23.)

{¶ 32} Addressing public services, facilities, safety concerns, and noise concerns, the Applicant states that it would comply with all applicable safety standards. The Applicant also intends to utilize and maintain an approximately 55 to 100 feet wide right-of-way for the proposed project. Regarding communications, the Applicant has incorporated minimization of interference into the design of the transmission line, and it does not expect AM or FM radio or television interference along either the Preferred or Alternate route. Staff finds there would be an increase in truck traffic during the construction of the Project. The Applicant would use flaggers for road crossing and expects a permit would be required for crossing a railroad. Staff notes these practices would

minimize traffic impacts. Concerning noise, construction would include the use of a digger derrick and a crane. Construction hours would be limited primarily to daytime hours and the Applicant would notify property owners or tenants of the upcoming construction activities. Staff recommends a condition that limits general construction activities to daylight hours unless the noise impact does not rise above ambient levels at sensitive receptors. Applicant shall notify Staff and affected property owners or tenants if nighttime construction is required. (Staff Ex. 1 at 24-25.)

{¶ 33} Concerning the Project's geological impacts, based on the geotechnical borings acquired by the Applicant, bedrock is unlikely to be encountered during portions of the proposed construction. The Ohio Department of Natural Resources (ODNR) review determined that 795 oil and gas wells are located within one mile of the Project area. Additionally, AEP Ohio's review found records of five wells within 50 feet of the Project's centerline. Staff agrees that using hydrovacing at structure locations in close proximity to the identified wells may avoid impacts. The Applicant anticipates that most self-supporting steel monopole structures would be installed by direct-embed methods. Staff finds that some poles may require concrete pier foundations, the excavation for each foundation would be approximately 4 to 8 feet in diameter and 20 to 35 feet deep. Staff recommends that the Applicant develop or provide a formal geotechnical report and that the final detailed engineering drawings of the final project account for geological features and soil condition identified within the final geotechnical report. Additionally, Staff recommends the Applicant perform hydro-excavation or a comparable method at structures near oil and gas well features. Based on the current data and considerations and implementation of the recommended conditions, Staff states that there appears to be no particular geological features within the Project area that are incompatible with construction and operation of the proposed electric transmission project. (Staff Ex. 1 at 25-26.)

{¶ 34} Staff also considered the Project's ecological impacts, including impacts to surface waters, threatened and endangered species, and vegetation. The Preferred Route and Alternate Route centerlines would both cross 17 streams. Approximately 9,482 linear

feet of stream is located within the Preferred Route's right-of-way and 9,452 linear feet within the Alternate Route's right-of-way. Applicant states that no streams are proposed to be filled or permanently impacted. Staff recommends that the Applicant only utilize temporary stream fording to cross dry intermittent stream. Applicant has committed to not conduct mechanized clearing within 25 feet of any streams and clearing that would be limited to trees that have the potential to interfere with safe construction and operation of the transmission line. Additionally, 14 wetlands were delineated within the environmental survey corridors of the Preferred and Alternate routes. The Preferred Route includes nine wetlands within the right-to-way and the Alternate Route includes 10. Staff finds the Applicant would avoid the placement of new pole structures within wetlands to the extent of practical. Four existing pole structures within wetlands would be replaced during construction, however no new permanent fill is anticipated. Six ponds were identified along the Preferred Route and five along the Alternate Route. The Applicant states that it would submit a Notice of Intent to obtain coverage under the Ohio General National Pollutant Discharge Elimination System Permit (NPDES) as well as implementing Specified best management practices (BMPs) within the Stormwater Pollution Prevention Plan to control erosion and sedimentation during construction. Staff concludes the Project is unlikely to have permanent adverse impacts to described surface waters. Coverage under the U.S. Army of Engineers (USACE) nationwide permit is anticipated for the Project. The Project also crosses portions of a Federal Emergency Management Agency 100-year flood plain. (Staff Ex. 1 at 26-28.)

{¶ 35} Further, Staff notes that Applicant considered potential threatened and endangered species (protected species) impacts by requesting information from the ODNR and the United States Fish and Wildlife Services (USFWS) regarding state and federal listed threatened and endangered plant and animal species. Additional information was provided through field assessments and review of published ecological information. Applicant's consultant identified the state endangered Indian bat, northern long-eared bat, tricolor bat, little brown bat, a variety of endangered mussels, and a threatened fish and reptiles. If the

Applicant encounters any of the listed species during construction, Staff recommends that the Applicant contact them, the ODNR, and the USFWS within 24 hours. Staff also recommends that if the Applicant encounters any listed species prior to construction that it includes the location of these observations and how impacts would be avoided during construction. (Staff Ex. 1 at 27-29.)

{¶ 36} As to vegetation, the Preferred and Alternative routes cross through mostly agricultural and pasturelands, landscaped residential and commercial areas, and forested areas. The Preferred Route would result in 5.8 acres of tree clearing while the Alternative Route would result in 6.2 acres of tree clearing. Trees adjacent to the proposed right-of-way that significantly encroach or prone to failure may require clearing to allow for safe operation of the transmission line. Vegetative wastes generated during construction would be wind-rowed or chipped and disposed of appropriately depending on landowner requests. Staff notes the use of herbicides is not anticipated during construction. (Staff Ex. 1 at 31.)

{¶ 37} In sum, following its review of the socioeconomic, ecological, and other environmental impacts, Staff recommends that the Board find that the Applicant has determined the nature of probable environmental impact for the proposed facility, and that the requirements specified in R.C. 4906.10(A)(2) have been met, provided that any certificate issued by the Board include the conditions specified in the Staff Report. (Staff Ex. 1 at 31.)

3. MINIMUM ADVERSE ENVIRONMENTAL IMPACT

{¶ 38} Pursuant to R.C. 4906.10(A)(3), the proposed facility must represent the minimum adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives, along with other pertinent considerations.

{¶ 39} Staff states that AEP Ohio's route selection process identified and quantified sensitive land uses. The primary factors in route selection were the locations of the East

Leipsic Substation and the New Liberty Substation. Most of the Preferred and Alternate routes are within the Company's existing transmission line right-of-way. The Applicant evaluated ecological factors, visual impact assessments and proximity to residences and road crossings, and cultural resources in consultation with the OHPO. Further, Staff determines that geologic features are similar for both routes and no portion of either route is precluded from construction due to geological features or soil condition concerns. However, several hundred historic oil and gas well features exist. To ensure minimal impact, the Applicant has proposed to conduct hydro-excavation at structures that are located within 50 feet of oil and gas well features. Staff adopted this proposal as a recommended condition of any certificate issued. The Applicant has sited the facility to avoid surface waters to the greatest extent possible. The Preferred Route contains approximately 2.81 acres of wetlands while the Alternate Route contains 2.74 acres. Furthermore, the Applicant would mitigate noise impacts by limiting construction activities to daylight hours whenever feasible. Impacts to cultural and recreational spaces are not anticipated. While both the Preferred and Alternate routes are viable, Staff concludes that the Preferred Route is a more efficient land use and best minimizes overall potential impacts. (Staff Ex. 1 at 32-33.)

{¶ 40} Staff recommends that the Board find that the preferred route represents the minimum adverse environmental impact and that the requirements specified in R.C. 4906.10(A)(3) have been satisfied, provided that any certificate issued by the Board for the proposed facility includes the conditions specified in the Staff Report. (Staff Ex. 1 at 33.)

4. ELECTRIC POWER GRID

{¶ 41} R.C. 4906.10(A)(4) provides that, in the case of an electric transmission line or generating facility, the Board must ensure that such facility is consistent with regional plans for expansion of the electric power grid of the electric systems serving this state and interconnected utility systems and that such facility would serve the interests of electric system economy and reliability.

{¶ 42} The Applicant has proposed to upgrade approximately 11 miles of existing 69 kV transmission line that runs between the existing East Leipsic Substation and the proposed Rader Road Substation to 138 kV standards. Staff finds that AEP Ohio would upgrade approximately seven miles of existing 34.5 kV distribution line that runs between the proposed Rader Road Substation and the existing New Liberty Substation to 138 kV standards. The wood structures on the existing East Leipsic-McComb 69 kV line and the existing New Liberty-McComb line would also be replaced with 90 steel structures and 66 self-supporting steel monopoles, respectively. The existing conductor on the Liberty-McComb 34.5 kV lines would be both be replaced by 795 kcmil ACSR 26/7. Additionally, the Project would upgrade 34.5 kV equipment at the substations to 138 kV standards. It would also expand the East Leipsic and New Liberty Station to allow for another 138 kV transmission line, and other components. (Staff Ex. 1 at 34.)

{¶ 43} The Applicant states that it performed a power flow analysis that identified contingency conditions, which result in numerous thermal overloads, voltage magnitude, and voltage deviation planning criteria violations. The lines that would be overloaded were identified in the PJM Reliability Analysis Update and in the Application. The analysis also showed that all planning violations would be resolved with the completion of this Project. (Staff Ex. 1 at 34.)

{¶ 44} Staff explains as an owner, operator, and/or user of the BPS, the Applicant is subject to compliance with various North American Electric Reliability Corporation (NERC) Reliability Standards, including but not limited to those related to transmission planning for contingency events. Staff notes that AEP Ohio follows internal transmission planning reliability criteria to plan its system, which are required by the Federal Regulatory Energy Commission (FERC) and are filed as part of the annual FERC Form No. 715 filing. The proposed Project is designed to meet AEP Ohio's transmission planning criteria. Staff also finds that upgrades to the transmission system are part of the PJM Regional Transmission Planning Process. This Project would address baseline reliability issues that have been identified in the Leipsic area through Applicant's FERC 715 Planning Criteria.

The Project was assigned as a baseline upgrade, in which such projects are planned for PJM reliability, operational performance, FERC Form No. 715, economic criteria, or State Agreement Approach projects. Staff finds that the Applicant's transmission system would be designed so that there are no thermal or voltage criteria violations for a maintenance outage followed by an unscheduled outage of any transmission element during off-peak load periods. (Staff Ex. 1 at 35-36.) Staff recommends that the Board find that the proposed facility is consistent with regional plans for expansion of the electrical power grid of the electric systems serving this state and interconnected utility system. Therefore, Staff recommends that the Board find that the facility complies with the requirements specified in R.C. 4906.10(A)(4), provided that any certificate issued by the Board for the proposed facilities include the conditions specified in this section of the Staff Report. (Staff Ex. 1 at 36.)

5. AIR, WATER, SOLID WASTE AND AVIATION

{¶ 45} Pursuant to R.C. 4906.10(A)(5), the facility must comply with Ohio law regarding air and water pollution control, withdrawal of waters of the state, solid and hazardous wastes, and air navigation.

{¶ 46} Staff finds that air quality permits are not required for construction of operation of the proposed facility. However, fugitive dust rules adopted under R.C. Chapter 3704 may be applicable. AEP Ohio would control temporary and localized dust by BMPs, such as minimizing exposed/disturbed areas, contain excavated materials, and use water or calcium carbonate as a dust suppressant. (Staff Ex. 1 at 37.)

{¶ 47} Regarding water, the Applicant would submit a Notice of Intent for coverage under the Ohio NPDES construction stormwater general permit, Ohio EPA Permit No. OHC000006. The Applicant stated coverage under the USACE's Nationwide Permit Program is anticipated for the project. Staff determines that with these measures,

construction and operation of this facility would comply with requirements of R.C. Chapter 6111, and the rules and laws adopted under that chapter. (Staff Ex. 1 at 37-38.)

{¶ 48} Regarding solid waste, Staff notes that the Project would generate debris from construction activities. Construction materials with salvage value would be removed for refuse or salvage. Staff determines that construction debris would be hauled away in construction dumpsters and disposed of in accordance with state and federal requirements; and sanitary waste would be collected in portable units and emptied regularly by a licensed sanitary waste management contractor. The Applicant estimates that construction of the transmission line would only result in minimal waste. Moreover, the Applicant's solid waste disposal plans must comply with solid waste disposal requirements set forth in R.C. Chapter 3734. (Staff Ex. 1 at 38.)

{¶ 49} Lastly, addressing aviation concerns, the anticipated height of the electric transmission support structures is expected to be approximately 75 to 95 feet tall. The Applicant also indicated it would use vehicle-mounted cranes or the equivalent during the construction of the proposed facility. Those heights are under the height requirement from the Federal Aviation Administration (FAA). Staff recommends that prior to commencing construction in areas that require permits or authorizations, that the Applicant provide copies of permits and authorizations to Staff within seven days of issuance or receipt by the Applicant. Further, the Applicant shall provide a schedule of construction activities and acquisition of corresponding permits per each activity at the preconstruction conference. According to the Applicant, the nearest public-use airports are the Findlay, Putnam County, and Ruhe's airports which are from 3.5 and 4.6 miles from the proposed transmission line. Staff has found, through the FAA, that the nearest heliport is at Blanchard Valley Hospital which is approximately 4.4 miles from the proposed transmission line. Staff has contacted the Ohio Department of Transportation Office of Aviation and no concerns have been identified. Staff recommends that the Board find that the proposed facility complies with the requirements specified in R.C. 4906.10(A)(5). (Staff Ex. 1 at 39.)

6. PUBLIC INTEREST, CONVENIENCE, AND NECESSITY

{¶ 50} Pursuant to R.C. 4906.10(A)(6), the Board must determine that the facility would serve the public interest, convenience, and necessity.

{¶ 51} The consideration of public interest, convenience, and necessity requires a balancing analysis as to the public's interest in energy generation that ensures continued utility services and the prosperity of the state versus the local public's interest in ensuring a process that allows for local citizen input, and the consideration of impacts to natural resources. As part of the Board's responsibility under R.C. 4906.10(A)(6) to determine that all approved projects would serve the public interest, convenience, and necessity, we must balance projected benefits against the magnitude of potential negative impacts on the local community.

{¶ 52} The electric transmission lines generate electromagnetic field (EMF) around the conductors, when energized. Laboratory studies have failed to establish any strong correlation between exposure to EMF and detrimental effects on human health. However, public concerns about health effects due to exposure to the EMF of transmission line still exists. Because of this, the Applicant has computed the EMF intensity associated with the new circuits. The maximum expected electric field intensity for this transmission line would be 0.61 kV/meter at the edge of the right-of-way. Staff finds that normal operation would be lower than the maximum intensity and physical structures and materials, such as walls of houses, provide shielding from electric fields. Additionally, the maximum magnetic field for this Project is expected to be 28.79 milligauss. Staff states that the Project would comply with the requirements of the NESC. (Staff Ex. 1 at 40.)

{¶ 53} Regarding public interaction and participation, the Applicant hosted two public informational meetings for the project and maintains a website with information about the project. The Applicant commits to notify affected property owners and tenants at least seven days prior to the start of construction. (Staff Ex. 1 at 40.)

{¶ 54} Staff recommends that the Board find that the proposed facility would serve the public interest, convenience, and necessity, and therefore complies with the requirements specified in R.C. 4906.10(A)(6), provided that any certificate issued by the Board for the proposed facility includes the conditions specified in the Staff Report. (Staff Ex. 1 at 40.)

7. AGRICULTURAL DISTRICTS AND AGRICULTURAL LAND

{¶ 55} Pursuant to R.C. 4906.10(A)(7), the Board must determine the facility's impact on the agricultural viability of any existing agricultural district land within the Preferred and Alternate routes of the proposed major utility facility. The agricultural district program was established under R.C. Chapter 929. Agricultural district land is exempt from sewer, water, and electrical service tax assessments.

{¶ 56} The Preferred Route is expected to temporarily impact approximately 131 acres of agricultural land, and 21.2 acres of agricultural district land. The Alternate Route is expected to temporarily impact approximately 130.5 acres of agricultural land and 17.6 acres of agricultural district land. Both routes are expected to permanently impact 0.04 acres of agricultural land and 0.006 acres of agricultural district land. Staff finds that no agricultural structures would be impacted by the project. The Applicant plans to use public record to avoid drain tiles to the extent of practical. AEP Ohio also pledges to immediately resolve any damage that that may happen to any field drainage tile affected by the Project. Staff agrees the Applicant has an adequate plan to mitigate the impact of the project on agricultural lands. (Staff Ex. 1 at 42.)

{¶ 57} Staff recommends that the Board find that the impact of the proposed facility on the viability of agricultural land in an existing agricultural district has been determined, and therefore complies with the requirements specified in R.C. 4906.10(A)(7) (Staff Ex. 1 at 42).

8. WATER CONSERVATION PRACTICE

{¶ 58} Pursuant to R.C. 4906.10(A)(8), the proposed facility must incorporate maximum feasible water conservation practices, considering available technology and the nature and economics of the various alternatives.

{¶ 59} During construction, the facility may require the use of minimal amounts of water for dust control. However, the transmission line would not require the use of any water during operation. Staff determines the facility would comply with and incorporate maximum feasible water conservation practices as specified under R.C. 4906.10(A)(8). (Staff Ex. 1 at 43.)

{¶ 60} Staff recommends that the Board find that the proposed facility would incorporate maximum feasible water conservation practices, and therefore complies with the requirements specified in R.C. 4906.10(A)(8), provided that any certificate issued by the Board for the proposed facility include the conditions specified in the section of this Staff Report.

9. RECOMMENDATIONS

{¶ 61} In addition to making various findings throughout the Staff Report, Staff recommended that 20 conditions be made part of any certificate issued by the Board for the proposed facility. The conditions are discussed below.

VI. STIPULATION AND CONDITIONS

{¶ 62} The Stipulation between the Applicant and Staff was offered and accepted into evidence at the adjudicatory hearing. Pursuant to the Stipulation, the parties recommend that the Board issue the certificate requested by the Applicant, subject to 20 conditions. Specifically, the Stipulation provides that the Applicant and Staff agree with the recommended conditions in the Staff Report, which includes that the Preferred Route is

the route recommended for the Board's approval (Joint Ex. 1 at 5-7). The following is a summary of the conditions recommended by the Applicant and Staff and is not intended to replace or supersede the Stipulation:

- (1) The Applicant shall install the Preferred Route, utilize equipment and construction practices, and implement mitigation measures as described in the application and as modified and/or clarified in supplemental filings, replies to data requests, and recommendations in this Staff Report of Investigation.
- (2) The certificate shall become invalid if the Applicant has not commenced a continuous course of construction of the proposed facility within five years of the date of journalization of the certificate unless the Board grants a waiver or extension of time.
- (3) As the information becomes known, if the Applicant has not commenced a continuous course of construction will begin, the date on which construction was completed, and the date on which the facility begins commercial operation.
- (4) 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.
- (5) The Applicant shall conduct a preconstruction conference prior to the commencement of any construction activities. Staff, the Applicant, and representatives of the primary contractor and all subcontractors for the Project shall attend the preconstruction conference. Prior to the conference, the Applicant shall provide a proposed conference agenda for Staff review and shall file a copy of the agenda on the case docket. The Applicant may conduct a separate preconstruction conference for each stage of construction.

- (6) Prior to the commencement of construction activities in areas that require permits or authorizations by federal, state, or local 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, to Staff within seven days of issuance or receipt by the Applicant and shall file such permits or authorizations on the public docket. The Applicant shall provide a schedule of construction activities and acquisition of corresponding permits. Any permit violation received by the Applicant from the permitting agency shall be provided on the case docket within seven days of receipt.
- (7) At least 30 days prior to the preconstruction conference, and at least 30 days prior to the commencement of construction, the Applicant shall provide Staff, for review and acceptance, a geotechnical engineering report. This report shall include a summary statement addressing the geologic and soil conditions of the project site. This report shall also address any inadequacies found to date and proposed remedies if applicable.
- (8) The Applicant shall conduct hydro-excavation or comparable methods at structures located within 50 feet of a suspected, subsurface, historic oil and gas well feature for the purpose of avoid impact.
- (9) At least 30 days prior to the start of construction, the Applicant shall file a copy of the final complaint resolution plan for construction and operation of the project on the public docket. At least seven days prior to the start of construction and at least seven days prior to the start of facility operations, the Applicant shall notify via mail affected property owners and tenants; all residents, airports, schools, and libraries located within one mile of the project area; parties to this case; county commissioners, township trustees, and emergency responders; any other person who requests updates regarding the project. The Applicant shall file a copy of these notices on the public docket.

- (10) The Applicant shall coordinate with the appropriate authorities regarding traffic and transportation requirements necessary for construction and operation of the proposed facility. To assure compliance with this condition, prior to the preconstruction conference, the Applicant shall file a final transportation management plan, this plan shall include (but not be limited to) the following:
- a. A summary of coordination with appropriate authorities regarding traffic and transportation requirements, including temporary road closures, road use agreements, driveway permits, lane closures, road access restrictions, and traffic control necessary for construction and operation of the proposed facility.
 - b. Documentation of this coordination, with copies of applicable permits or authorizations, or schedule for obtaining permits or authorizations not yet applicable.
 - c. A description of best management practices that would be implemented to maintain clean roads free of construction debris and excess mud.
- (11) Prior to construction, the Applicant shall file a copy of any floodplain permit required for construction of this project, or a copy of correspondence with the floodplain administrator showing that no permit is required.
- (12) The Applicant shall file on the public docket a complaint summary report by the fifteenth day of April, July, October, and January of each year during construction and through the first five years of operation.
- (13) General construction activities shall be limited to the hours of 7:00 a.m. to 7:00 p.m., or until dusk when sunset occurs after 7:00 p.m. Impact pile driving, if required, shall be limited to the hours between 10:00 a.m. to 5:00 p.m., Monday through Friday. Construction activities that do not involve noise increases above ambient levels or light pollution at sensitive receptors are permitted outside of daylight

hours when necessary. The Applicant shall notify Staff and affected property owners or tenants of upcoming construction activities including potential for nighttime construction activities.

- (14) The Applicant shall remove all construction staging area and access road materials after completion of construction activities, as weather permits, unless otherwise directed by the landowner. Impacted areas shall be restored to preconstruction conditions in compliance with the Ohio EPA General NPDES permit(s) obtained for the project and the approved Stormwater Pollution Prevention Plan created for this project. All construction debris and any contaminated soil shall promptly be removed and properly disposed of in accordance with Ohio EPA regulations.
- (15) The Applicant shall only utilize temporary stream fording to cross streams which are classified as intermittent and only when the stream segment being crossed is dry, unless coordination efforts with Staff allow a different course of action.
- (16) The Applicant 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 listed bat species, unless coordination with the ONDR and the USFWS allows a different course of action. If coordination with these agencies allows clearing between April 1 and September 30, the Applicant shall docket proof of completed coordination on the case docket prior to clearing trees.
- (17) Should construction be delayed beyond five years of the date of the certificate, certain wildlife surveys may be required to be updated as determined by Staff and the ODNR.
- (18) The Applicant shall contract Staff, the ODNR, and the USFWS within 24 hours if state or federal listed species are encountered during construction activities. Construction activities that could adversely impact the identified plants or animals

shall be immediately halted until an appropriate course of action has been agreed upon by the Applicant, Staff, and the appropriate agencies.

- (19) The Applicant shall conduct no in-water work in perennial streams from April 15 through June 30 to reduce impacts to indigenous aquatic species and their habitat, unless coordination efforts with the ODNR allows a different course of action. If coordination with the ODNR allows in-water work in perennial streams between April 15 and June 30, the Applicant shall file proof of such coordination on the docket.
- (20) Within 60 days after the commencement of commercial operation, the Applicant shall submit to Staff a copy of the as-built specification for the entire facility within 60 days after commencement of commercial operation, it may request an extension of time for the filing of such as-built specifications. The Applicant shall use reasonable efforts to provide as-built drawings in both hard copy and as geographically referenced electronic data.

VII. CONCLUSION

{¶ 63} Pursuant to Ohio Adm.Code 4906-2-24, parties before the Board are permitted to enter into stipulations concerning issues of fact, the authenticity of documents, or the proposed resolution of some or all of the issues in a proceeding. Under Ohio Adm.Code 4906-2-24(D), no stipulation is binding on the Board. However, the Board affords the terms of such an agreement substantial weight. The standard of review for considering the reasonableness of a stipulation has been discussed in a number of Board proceedings. *See, e.g., In re Hardin Wind LLC*, Case No. 13-1177-EL-BGN, et al., Opinion, Order, and Certificate (Mar. 17, 2014); *In re Northwest Ohio Wind Energy, LLC*, Case No. 13-197-EL-BGN, Opinion, Order, and Certificate (Dec. 16, 2013); *In re AEP Transmission Co., Inc.*, Case No. 12-1361-EL-BSB, Opinion, Order, and Certificate (Sept. 30, 2013); *In re Rolling Hills Generating, LLC*, Case No. 12-1669-EL-BGA, Order on Certificate Amendment (May 1, 2013); *In re American Transmission Systems, Inc.*, Case No. 12-1727-EL-BSB, Opinion, Order,

and Certificate (Mar. 11, 2013). The ultimate issue for the Board's consideration is whether the agreement, which embodies considerable time and effort by the signatory parties, is reasonable and should be adopted. In considering the reasonableness of a stipulation, the Board has used the following criteria:

- (a) Is the settlement a product of serious bargaining among capable, knowledgeable parties?
- (b) Does the settlement, as a package, benefit ratepayers and the public interest?
- (c) Does the settlement package violate any important regulatory principle or practice?

{¶ 64} Upon review, the Board finds that the Stipulation is the product of serious bargaining among capable and knowledgeable parties. AEP Ohio and Staff present that the Stipulation is the product of serious bargaining among knowledgeable and capable parties in a cooperative process to resolve all issues in the Stipulation (Joint Ex. 1 at 2). Applicant witness David Binger stated that the Stipulation represents a product of serious bargaining among capable, knowledgeable parties (Applicant Ex. 7 at 3). Consistent with this testimony, the Board finds that the first criterion is met.

{¶ 65} AEP Ohio and Staff represent in the Stipulation that as a package, would benefit the public interest and violates no regulatory principle or precedent (Joint Ex. 1 at 3). Mr. Binger asserts that the Stipulation would benefit customers and the public interest, given that the Project would ensure that the increased demands for electricity are met in the future and the existing service reliability would be strengthened and enhanced throughout the area. Mr. Binger states that the Project will produce tax revenues for the local community. The Applicant emphasizes that the project would also benefit the public because it requires AEP Ohio to comply with numerous conditions to minimize environmental, sociological, cultural, and other impacts of the area. As to the third part of the three-part test, Mr. Binger also testified that the Stipulation does not violate any

important regulatory principle or practice. (Applicant Ex. 7 at 4.)² Additionally, the Board notes that the Stipulation incorporates Staff's recommended conditions and benefits the public interest by resolving any differences between the parties' positions without the need for extensive litigation. Therefore, following a thorough review of the evidence of record, the Board concludes that the second and third parts of the three-part test are satisfied. Based on the record in this proceeding, the Board concludes that all of the elements established in accordance with R.C. Chapter 4906 are satisfied for the construction, operation, and maintenance of the Project, along the preferred route, as described in AEP Ohio's application, subject to the conditions set forth in the Stipulation, and this Opinion and Order. Accordingly, based upon all of the above, the Board hereby issues a certificate to Applicant in accordance with R.C. Chapter 4906.

VIII. FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶ 66} Applicant, AEP Ohio, is a person under R.C. 4906.01(A).

{¶ 67} The proposed electric transmission line is a major utility facility as that term is defined in R.C. 4906.01(B).

{¶ 68} On September 19, 2022, the Applicant filed a pre-application notification letter in accordance with Ohio Adm.Code 4906-3-03.

{¶ 69} On October 21, 2022, the Applicant filed proof of its publication regarding the public informational meetings in accordance with Ohio Adm.Code 4906-3-03(B)(2).

{¶ 70} The Applicant held a virtual open house meeting regarding the Project from September 30 to October 29, 2022. The Applicant held an in-person public informational meeting on October 6, 2022.

² Citing to page 4 out of 20 as filed in the case docket, provided that Applicant Ex. 7 did not contain labeled page numbers.

{¶ 71} On January 4, 2023, the Applicant filed its application for a certificate of environmental compatibility and public need to construct the Project.

{¶ 72} By letter dated March 3, 2023, the Board notified the Applicant that its application provided sufficient information to permit Staff to commence its review and investigation.

{¶ 73} On March 21, 2023, AEP Ohio filed its notice of proof of compliance certifying service of its accepted and complete application, in accordance with the requirements in Ohio Adm.Code 4906-3-07. Also on April 20, 2023, AEP Ohio submitted correspondence informing the Board of its payment of the application fee, pursuant to Ohio Adm.Code 4906-3-12.

{¶ 74} The Staff Report was filed on June 26, 2023.

{¶ 75} On July 3 and 13, 2023, the Applicant filed proof of service and initial publication regarding the date, time, and location of the public hearing and adjudicatory hearing, including proof of notice of the public hearing and adjudicatory hearing to affected property owners and elected officials, pursuant to Ohio Adm.Code 4906-3-09(A)(1).

{¶ 76} The public hearing was held on July 11, 2023. Two witnesses testified during the hearing.

{¶ 77} By Entry on July 17, 2023, the ALJ granted AEP Ohio's motion for an extension of the testimony deadline.

{¶ 78} On July 24, 2023, the Applicant and Staff filed the Stipulation, which would resolve all of the issues raised by the application and Staff's investigation in this proceeding. Also on July 24, 2023, Applicant filed the direct testimony of its witness, David Binger.

{¶ 79} Staff filed the direct testimony of Mark Bellamy on July 24, 2023.

{¶ 80} The adjudicatory hearing was held at the Board's offices on July 25, 2023.

{¶ 81} Adequate evidence on the proposed electric transmission line has been provided to make the applicable determinations required by R.C. 4906.10(A). The record evidence in this matter provides sufficient factual data to enable the Board to make an informed decision.

{¶ 82} The record establishes the need for the project, consistent with R.C. 4906.10(A)(1).

{¶ 83} The record establishes the nature of the probable environmental impact from construction, operation, and maintenance of the project, in accordance with R.C. 4906.10(A)(2).

{¶ 84} The record establishes that the project represents the minimum adverse environmental impact, considering the available technology and nature and economics of the various alternatives, and other pertinent considerations, in accordance with R.C. 4906.10(A)(3).

{¶ 85} The record establishes that the project is consistent with regional plans for expansion of the electric power grid of the electric systems serving this state and interconnected utility systems and that the Project will serve the interests of electric system economy and reliability, in accordance with R.C. 4906.10(A)(4).

{¶ 86} The record establishes that the project will comply with R.C. Chapters 3704, 3734, and 6111, R.C. 4561.32, and all rules and regulations thereunder, to the extent applicable, consistent with R.C. 4906.10(A)(5).

{¶ 87} The record establishes that the project will serve the public interest, convenience, and necessity, consistent with R.C. 4906.10(A)(6).

{¶ 88} The record establishes the project's impact on the viability as agricultural land of any land in an existing agricultural district established under R.C. Chapter 929 that is located within the project's site and alternative site, in accordance with R.C. 4906.10(A)(7).

{¶ 89} The record establishes that the project incorporates maximum feasible water conservation practices, considering available technology and the nature and economics of the various alternatives, consistent with R.C. 4906.10(A)(8).

{¶ 90} The evidence supports a finding that all of the criteria in R.C. 4906.10(A) are satisfied for the construction, operation, and maintenance of the project as proposed by AEP Ohio, subject to the conditions set forth in the Stipulation and this Opinion and Order.

{¶ 91} The Stipulation satisfies the criteria established by the Board for review and consideration of such agreements.

{¶ 92} Based on the record, the Board should issue a certificate of environmental compatibility and public need, pursuant to R.C. Chapter 4906, for the construction, operation, and maintenance of the project, along the preferred route, subject to the conditions set forth in the Stipulation and this Opinion and Order.

IX. ORDER

{¶ 93} It is, therefore,

{¶ 94} ORDERED, That the Stipulation be approved and adopted. It is, further,

{¶ 95} ORDERED, That a certificate be issued to AEP Ohio for the construction, operation, and maintenance of the Project, along the preferred route, subject to the conditions set forth in the Stipulation and this Opinion and Order. It is, further,

{¶ 96} ORDERED, That a copy of this Opinion and Order be served upon all parties and interested persons of record.

BOARD MEMBERS:

Approving:

Jenifer French, Chair
Public Utilities Commission of Ohio

Matt McClellan, Designee for Lydia Mihalik, Director
Ohio Department of Development

Damian Sikora, 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 Anne Vogel, Director
Ohio Environmental Protection Agency

Sarah Huffman, Designee for Brian Baldridge, Director
Ohio Department of Agriculture

Gregory Slone
Public Member

IMM/LJB/dmh

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Case No(s). 22-0856-EL-BTX

Summary: Opinion & Order approves the stipulation and recommendation filed by the parties and issues a certificate of environmental compatibility and public need to AEP Ohio Transmission Company, Inc. for the construction, operation, and maintenance of the new Liberty-East Leipsic 138 kilovolt transmission line upgrade project along the preferred route, subject to the conditions set forth in this Opinion and Order electronically filed by Debbie S. Ryan on behalf of Ohio Power Siting Board.