

BEFORE THE
OHIO POWER SITING BOARD

IN THE MATTER OF THE APPLICATION OF :
AMERICAN TRANSMISSION SYSTEMS, INC. :
FOR A CERTIFICATE OF ENVIRONMENTAL : CASE NO. 18-1335-EL-BTX
COMPATIBILITY AND PUBLIC NEED FOR THE :
CONSTRUCTION OF THE WOOD COUNTY :
138 KV REINFORCEMENT PROJECT :

**JOINT STIPULATION AND RECOMMENDED FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

Applicant, American Transmission Systems, Incorporated (“Applicant” or “ATSI”) is proposing to construct the Wood County 138kV Reinforcement Project (“Project”) to support ATSI’s electric system in the Bowling Green, Ohio area. Route alternatives under consideration traverse Middleton, Center and Plain Townships and a portion of the City of Bowling Green. The new transmission line will connect the Lemoyne-Midway 138 kV Transmission Line to the Brim Substation. The proposed Project will eliminate the existing 3-terminal line configuration and create two new transmission lines: Brim-Lemoyne 138-kV Transmission Line and Brim-Midway 138-kV Transmission Line circuits. The Applicant filed an Application for a Certificate of Compatibility and Public Need for the Project (“Application”), in this docket, Case No. 18-1335-EL-BTX, on December 19, 2018.

I. INTRODUCTION

The Project is described in detail in the Application. This Joint Stipulation and Recommendation (“Stipulation”) results from substantive discussions between ATSI and Staff, who agree that it is supported by the record and is therefore entitled to careful consideration by the Board.

ATSI and Staff recommend that the Board issue a Certificate of Environmental Compatibility and Public Need (“Certificate”) for the Preferred Route, as identified in the Application, and subject to the conditions described in this Stipulation.

This Stipulation is the product of serious bargaining among capable and knowledgeable parties. The Parties have each participated in negotiations. This Stipulation has been signed by the Applicant and OPSB Staff (collectively " Parties"). Each of the Parties was represented by experienced counsel who regularly practice and participate in proceedings before the Board.

The Stipulation will benefit customers and the public interest. The Stipulation does not violate any important regulatory principle or practice. This Stipulation results from substantive discussions between the Parties, who agree that it is supported by adequate data and information and is therefore entitled to careful consideration by the Board.

The other Party to these proceedings, American Municipal Power, Inc., and ATSI filed a separate stipulation on October 16, 2019 that resolved the outstanding issues between those parties.

II. STIPULATIONS

A. Recommended Findings of Fact

ATSI and Staff agree that the record in this case, which includes the Application, the *Staff Report of Investigation*, various notices and proofs of publication, and any testimony and documentary evidence submitted during the evidentiary hearing, contains sufficient probative evidence for the Board to find and determine, as findings of fact, that:

(1) Applicant American Transmission Systems, Incorporated is a wholly owned subsidiary of FirstEnergy Corp. ATSI owns and operates its electric transmission system within the State of Ohio.

(2) The proposed Wood County 138kV Reinforcement Project is a “major utility facility,” as defined in Section 4906.01(B)(2) of the Ohio Revised Code.

(3) ATSI held a public informational meeting prior to filing the Application. The public informational meeting was held on September 26, 2018 from 6:00-8:00 pm in the Middletown Township Building, located at 21745 N. Dixie Highway, Bowling Green, Ohio, 43402.

(4) On September 28, 2018, Applicant filed proof of publication of notice of the public information meeting. The public notice was published in *The Bowling Green Sentinel Tribune* on September 12, 2018.

(5) On September 28, 2018, Applicant filed proof of mailing of notice letters to property owners of the date and time of the public information meeting held on September 26, 2018. The notice letters, which were required by Admin. Code Rule 4906-3-03(B)(2), were sent via regular U.S. Mail on September 4, 2018.

(6) On December 19, 2018 the Applicant filed the Application with the Board, initiating the completeness review process.

(7) On January 22, 2019, Applicant filed additional information with the Board to supplement the Application.

(8) On February 19, 2019, the Board notified Applicant that the Application was complete.

(9) On March 1, 2019, Applicant filed proof of service notice of accepted and complete Application on local government officials.

(10) On April 2, 2019, Applicant filed proof of payment of application fee.

(11) By Entry dated April 11, 2019, the Administrative Law Judge set the effective date for the filing of the application as April 11, 2019 and scheduled both a local public hearing for June 13, 2019, at the Ohio Department of Transportation – District 2, 317 East Poe Road, Bowling Green, Ohio 43402 starting at 6pm, and an adjudicatory hearing for June 27, 2019 starting at 10:00 a.m., 11th floor, Hearing Room 11-C, at the offices of the Public Utilities Commission of Ohio, 180 East Broad Street, Columbus, Ohio 43215-3793.

(12) On April 29, 2019, Applicant filed proof of mailing of the first public notice letters required by Admin. Code Rule 4906-3-09(A)(1), which were sent via regular U.S. Mail, on April 23, 2019, to those persons who received a service of a copy of the Application pursuant to Admin. Code Rule 4906-3-07 and to each owner of a property crossed and/or adjacent to either the preferred and alternative route for the Project.

(13) On May 9, 2019, Applicant filed supplemental information with the Board.

(14) On May 22, 2019, American Municipal Power, Inc. moved to intervene in the proceedings as a Party.

(15) On May 23, 2019, Applicant and Staff jointly requested that the procedural order in these proceedings be suspended to allow Staff to complete its investigation.

(16) By Entry dated May 23, 2019, the Administrative Law Judge granted Staff and Applicant's request to suspend the procedural schedule in this proceeding and that Applicant provide notice of the cancellation of the public and adjudicatory hearings scheduled for June 13, 2019 and June 27, 2019, respectively.

(17) On June 17, 2019, Applicant filed proof of notice of the cancellation of the public and adjudicatory hearings as required by the Entry dated May 23, 2019.

(18) On August 15, 2019, Applicant requested the re-initiation of the procedural order and rescheduling of the public and adjudicatory hearings.

(19) By Entry dated September 4, 2019, the Administrative Law Judge granted the motion to re-initiate the procedural order. In this Entry, the Administrative Law Judge rescheduled the local public hearing for October 24, 2019, at the Ohio Department of Transportation – District 2, 317 East Poe Road, Bowling Green, Ohio 43402 starting at 6pm, and an adjudicatory hearing for November 7, 2019 starting at 10:00 a.m., 11th floor, Hearing Room 11-D, at the offices of the Public Utilities Commission of Ohio, 180 East Broad Street, Columbus, Ohio 43215-3793.

(20) The Entry of September 4, 2019 also granted American Municipal Power, Inc. intervenor party status in this proceeding.

(21) On October 9, 2019, Staff issued and filed its *Staff Report of Investigation* for the Project, recommending that a Certificate of Environmental Compatibility and Public Need be issued for the Preferred Route, as described in the Application, and subject the conditions enumerated in the report.

(22) On October 15, 2019, Applicant filed both a proof of publication of the newspaper notice and the mailing of the notification letters required by Admin. Code Rule 4906-3-09(A)(2) and the Entry of September 4, 2019 rescheduling the hearings in this proceeding. The public notices were published in *The Bowling Green Sentinel Tribune* on October 7, 2019 and the notice letters were mailed via regular U.S. Mail on October 7, 2019.

(23) A public hearing was held on October 24, 2019, at the Ohio Department of Transportation – District 2, 317 East Poe Road, Bowling Green, Ohio 43402 starting at 6pm.

(24) An adjudicatory hearing will be held on November 7, 2019 starting at 10:00 a.m., 11th floor, Hearing Room 11-D, at the offices of the Public Utilities Commission of Ohio, 180 East Broad Street, Columbus, Ohio 43215-3793.

(25) Adequate data on the proposed Project has been provided to the Board and Staff to determine the basis of the need for the proposed facility, as required by Section 4906.10(A)(1) of the Ohio Revised Code.

(26) Adequate data on the proposed Project has been provided to the Board and Staff to determine the nature of the probable environmental impact of the proposed facility, as required by Section 4906.10(A)(2) of the Ohio Revised Code.

(27) Adequate data on the proposed Project has been provided to the Board and Staff to determine that the Preferred Route described in the Application represents the minimum adverse environmental impact, considering the available technology and nature and economics of the various alternatives, and other pertinent considerations, as required by Section 4906.10(A)(3) of the Ohio Revised Code.

(28) Adequate data on the proposed Project has been provided to the Board and its Staff to determine that construction of 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 facility will serve the interests of electric system economy and reliability in compliance with Section 4906.10(A)(4) of the Ohio Revised Code.

(29) Adequate data on the proposed Project has been provided to the Board and its Staff to determine that the proposed facility will comply with Chapters 3704, 3734 and 6111 of the Ohio Revised Code, Sections 1501.33 and 1501.34 and 4561.32 of the Ohio Revised Code,

and all regulations adopted thereunder, all as required by Section 4906.10(A)(5) of the Ohio Revised Code.

(30) Adequate data on the proposed Project has been provided to the Board and its Staff to determine that the proposed facility will serve the public interest, convenience and necessity, as required by Section 4906.10(A)(6) of the Ohio Revised Code.

(31) Adequate data on the proposed Project has been provided to the Board and its Staff to determine the proposed facility's impact on the viability as agricultural land of any land in an existing agricultural district established under Chapter 929 of the Ohio Revised Code, as required by Section 4906.10(A)(7) of the Ohio Revised Code.

(32) Adequate data on the proposed Project has been provided to the Board and its Staff to determine that consideration of water conservation practices considering available technology and the nature and economics of the various alternatives under Section 4906.10(A)(8) of the Ohio Revised Code is not applicable to certification of the proposed Project.

(33) The information, data and evidence in the record of this proceeding provides substantial and adequate evidence and information to enable the Board to make an informed decision on the Application for the proposed Project.

B. Recommended Conclusions of Law

ATSI and Staff further agree that the record in this case contains sufficient probative evidence for the Board to find and determine, as conclusions of law, that:

(1) Applicant ATSI is a "person" under Section 4906.01(A) of the Ohio Revised Code.

(2) The proposed Wood County 138kV Reinforcement Project is a “major utility facility” as defined by Section 4906.01(B)(2) of the Ohio Revised Code.

(3) ATSI’s Application, filed on December 19, 2018, as supplemented by ATSI, complies with the applicable requirements of Admin. Code Chapter 4906.

(4) The record establishes the need for the proposed Project, as required by Section 4906.10(A)(1) of the Ohio Revised Code.

(5) The record establishes the nature of the probable environmental impact from construction, operation and maintenance of the proposed Project, as required by Section 4906.10(A)(2) of the Ohio Revised Code.

(6) The record establishes that the Preferred Route for the Project, if conditioned in the Certificate as recommended by ATSI and Staff, 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, as required by Section 4906.10(A)(3) of the Ohio Revised Code.

(7) The record establishes that the Preferred Route for the Project, if conditioned in the Certificate as recommended by ATSI and Staff, 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 facility will serve the interests of electric system economy and reliability in compliance with Section 4906.10(A)(4) of the Ohio Revised Code.

(8) The record establishes that the Preferred Route for the Project, if conditioned in the Certificate as recommended by ATSI and Staff, will comply with Chapters 3704, 3734, and 6111 of the Ohio Revised Code, and all rules and regulations adopted under those chapters, and

under Sections 1501.33, 1501.34 and 4561.32 of the Revised Code, all as required by Section 4906.10(A)(5) of the Ohio Revised Code.

(9) The record establishes that the Project will serve the public interest, convenience and necessity, as required by Section 4906.10(A)(6) of the Ohio Revised Code.

(10) The record establishes the impact of the proposed Project on the viability as agricultural land of any land in an existing agricultural district established under Chapter 929 of the Ohio Revised Code, as required by Section 4906.10(A)(7) of the Ohio Revised Code.

(11) The record establishes that no agricultural district parcels are located within the Project Area and, thus, the proposed Project will have no impact on existing agricultural districts.

C. Recommended Conditions of the Certificate of Environmental Compatibility and Public Need.

ATSI and Staff jointly recommend that the Board issue a Certificate of Environmental Compatibility and Public Need for the Preferred Route, as described in the Application, and subject to all the following conditions:

AGREED TO RECOMMENDED CONDITIONS

The Applicant, after reviewing the *Staff Report of Investigation*, is willing to accept the Conditions recommended below which are based on, but contain some amendments to, the conditions originally recommended by Staff in the *Staff Report of Investigation*. The Staff contends that these Conditions are necessary to ensure conformance with the proposed plans and procedures outlined in the case record to date, and to ensure compliance with all applicable requirements for the issuance of a Certificate by the Board. Although the Applicant does not take a position regarding the need for these conditions to ensure that a Certificate issued by the Board for this Project complies with applicable legal requirements, Applicant agrees to their

inclusion in a Certificate, if issued by the Board, to facilitate the expeditious resolution of this proceeding.

Recommended conditions for inclusion in a Certificate:

GENERAL CONDITIONS

(1) The facility shall be installed on the Applicant's Preferred Route, utilizing the equipment, construction practices, and mitigation measures as presented in the application filed on December 19, 2018, as supplemented on January 2, 2019 and May 9, 2019, and further clarified by the *Staff Report of Investigation*.

(2) The Applicant shall conduct a preconstruction conference prior to the start of any construction activities. Staff, the Applicant, and representatives of the prime contractor and/or subcontractors for the Project shall attend the preconstruction conference. The conference shall include a presentation of the measures to be taken by the Applicant and contractors to ensure compliance with all conditions of the certificate, and discussion of the procedures for on-site investigations by Staff during construction. Prior to the conference, the Applicant shall provide a proposed conference agenda for Staff review to ensure compliance with this condition. The Applicant may conduct separate preconstruction conferences for each stage of construction.

(3) At least 30 days before the preconstruction conference, the Applicant shall submit to Staff one set of detailed engineering drawings of the final project design, including the facility, temporary and permanent access roads, construction staging areas, and any other associated facilities and access points, so that Staff can determine that the final project design is in compliance with the terms of the Certificate. The final project design shall be provided in hard copy and as geographically referenced electronic data. The final design shall include all

conditions of the Certificate and references at the locations where the Applicant and/or its contractors must adhere to a specific condition in order to comply with the Certificate.

(4) Within 60 days after the commencement of commercial operation, the Applicant shall submit to Staff a copy of the as-built specifications for the entire facility. The Applicant shall provide as-built drawings in both hard copy and as geographically referenced electronic data.

(5) 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.

(6) As the information becomes known, the Applicant shall provide to Staff the date on which construction will begin, the date on which construction was completed, and the date on which the facility begins commercial operation.

(7) 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, including any permits necessary for aviation clearance. 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. The Applicant shall provide a schedule of construction activities and acquisition of corresponding permits for each activity at the preconstruction conference.

SOCIOECONOMIC CONDITIONS

(8) At least 30 days before the preconstruction conference, the Applicant shall provide Staff with a copy of a complaint resolution process, for confirmation that it complies with this condition, to address potential public complaints resulting from facility construction

and operation. The resolution process must describe how the public can contact the facility and how the facility would respond to anyone issuing a complaint.

ECOLOGICAL CONDITIONS

(9) the Applicant shall complete a geotechnical exploration and evaluation at any steel pole location that is adequate to confirm that there are no geotechnical issues to preclude the safe installation of any individual structure.. The Applicant must fill all boreholes, and borehole abandonment must comply with state and local regulations. The Applicant shall provide copies of any geotechnical boring logs it completes to comply with this Condition to Staff and to the ODNR Division of Geological Survey prior to construction.

(10) The Applicant shall contact 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.

(11) The Applicant shall provide a construction access plan for review prior to the preconstruction conference. The plan shall consider the location of streams, wetlands, wooded areas, and sensitive plant or animal species, and explain how impacts to all sensitive resources will be avoided or minimized during construction, operation, and maintenance. The plan shall include the measures to be used for restoring the area around all temporary access points, and a description of any long-term stabilization required along permanent access routes.

(12) The Applicant shall not cross streams by fording for construction access and shall instead employ timber matting or other methods that avoid or minimize streambed disturbance.

PUBLIC SERVICES, FACILITIES, AND SAFETY CONDITIONS

(13) The Applicant shall coordinate with the appropriate authority regarding any temporary road closures, lane closures, road access restrictions, and traffic control necessary for construction and operation of the proposed facility.

(14) 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, hoe ram, and blasting operations, 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 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.

AIR, WATER, SOLID WASTE, AND AVIATION CONDITIONS

(15) The Applicant shall meet all applicable and required Federal Aviation Administration (FAA) and Ohio Department of Transportation (ODOT) Office of Aviation requirements to construct an object that may affect navigable airspace. This includes submitting coordinates and heights for all structures that penetrate the notification slope of any public use airport or that exceed 199 feet above ground level for ODOT Office of Aviation and FAA review prior to construction, and the non-penetration of any FAA Part 77 surfaces.

(16) At least 30 days prior to the preconstruction conference, the Applicant shall file in this docket a copy of any FAA Determination of No Hazard letters and any FAA temporary construction permit(s) required for the electric transmission towers as shown in the application or any construction cranes.

(17) If required by applicable FAA regulations, within 30 days of construction completion, the Applicant shall file the as-built electrical transmission tower coordinates and heights with the FAA, the Wood County Airport, and OPSB.

(18) The Applicant shall notify the Wood County Airport authority regarding the use of construction cranes to ensure that any necessary notification can be issued by the airport.

(19) 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 Environmental Protection Agency (Ohio EPA) General National Pollutant Discharge Elimination System permit(s) obtained for the Project and the approved Stormwater Pollution Prevention Plan created for this Project. All construction debris and all contaminated soil shall promptly be removed and properly disposed of in accordance with Ohio EPA regulations.

III. EXHIBITS

The Applicant and Staff stipulate that the following Exhibits were among those exhibits in the docket which have been marked and admitted into the record of this proceeding, and that cross-examination is waived thereon:

Applicant Exhibit No. 1: The Application filed on December 19, 2018.

Applicant Exhibit No. 2: Certificates of Publication of the first and second notice in local papers and property owner letters as required by Admin. Code § 4906-5-08.

Staff Exhibit No. 1: *Staff Report of Investigation*, issued and filed on October 9, 2019.

Joint Exhibit No. 1: This Joint Stipulation and Recommendations, signed by counsel for ATSI and Staff.

In deliberating the merits of the Application and reasonableness of this Joint Stipulation, ATSI and Staff encourage the Board to review and consider all evidence and exhibits submitted and admitted in this case.

IV. OTHER STIPULATIONS

(1) This Stipulation is a compromise involving a balance of competing positions, and it does not necessarily reflect the position that either ATSI or Staff would have taken if these issues had been fully litigated. ATSI and Staff believe that this Stipulation represents a reasonable compromise of varying interests. This Stipulation is expressly conditioned upon adoption in its entirety by the Board without material modification by the Board. Should the Board reject or materially modify all or any part of this Stipulation, ATSI and Staff shall have the right, within thirty (30) days of the issuance of the Board's Order, to file an application for rehearing. Upon the Board's issuance of an entry on rehearing that does not adopt the Stipulation in its entirety without material modification, either Party may terminate or withdraw from the Stipulation by filing a second application for rehearing with the Board within thirty (30) days of the Board's entry on rehearing. The second application shall be limited in scope to a party giving notice of exercising its right to terminate and withdraw from the Stipulation to the Board, and requesting an evidentiary hearing with all appertaining rights of process, as if the Stipulation had never been executed. Prior to any Party seeking rehearing or terminating and withdrawing from this Stipulation pursuant to this provision, ATSI and Staff agree to convene immediately to work in good faith to achieve an outcome that substantially satisfies the intent of the Board or proposes a reasonable equivalent thereto to be submitted to the Board for its consideration. Upon a second application for rehearing being filed giving notice of termination

or withdrawal by either Party, pursuant to the above provisions, the Stipulation shall immediately become null and void.

(2) ATSI and Staff agree and recognize that this Stipulation has been entered into only for the purpose of this proceeding. Each party agrees not to assert against another party in any proceeding before the Board or any court, other than in a proceeding to enforce the terms of this Stipulation, that party's participation in this Stipulation as support for any particular position on any issue. Each party further agrees that it will not use this Stipulation as factual or legal precedent on any issue, except as may be necessary to support enforcement of this Stipulation.

WHEREFORE, based upon the record, and the information and data contained therein, ATSI and Staff recommend that the Board issue a Certificate of Environmental Compatibility and Public Need for construction, operation and maintenance of the proposed Wood County 138kV Reinforcement Project on the Preferred Route, as described in the Application filed with the Board on December 19, 2018, and as conditioned in this Stipulation.

The undersigned stipulate and represent that they are authorized to enter into this Joint Stipulation and Recommendation on this 4th day of November, 2019.

Respectfully submitted on behalf of:

**STAFF OF THE OHIO POWER
SITING BOARD**

DAVE YOST
ATTORNEY GENERAL OF OHIO

By: s/ Thomas G. Lindgren*
Thomas G. Lindgren
Assistant Attorney General
Public Utilities Section
180 East Broad Street, 6th Floor
Columbus, Ohio 43215-3793
(614) 644-8764
thomas.lindgren@ohioattorneygeneral.gov

** per email authorization 11/4/2019*

**AMERICAN TRANSMISSION
SYSTEMS, INCORPORATED**

s/Robert Schmidt
Robert J. Schmidt, Jr. (0062261)
Porter, Wright, Morris & Arthur LLP
41 South High Street
Columbus, OH 43215
(614) 227-2028
rschmidt@porterwright.com

Anne M. Rericha (0079637)
FirstEnergy Service Corp.
76 South Main Street
Akron, OH 44308
arericha@firstenergycorp.com

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Summary: Stipulation between ATSI and Staff of the Ohio Power Siting Board electronically filed by Mr. Robert J Schmidt on behalf of American Transmission Systems Inc.