

**FILE**

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April 18, 2008

VIA FEDERAL EXPRESS

Ohio Power Siting Board  
Docketing Division  
180 East Broad Street  
Columbus, Ohio 43215

RECEIVED-DOCKETING DIV  
2008 APR 21 AM 9:56  
PUCO

Re: In the Matter of the Certificate Application of American Transmission Systems, Inc. and The Cleveland Electric Illuminating Company for a Certificate of Environmental Compatibility and Public Need for the Construction of the Geauga County 138KV Transmission Line Supply Project, Ohio Power Siting Board Case No. 07-0171-EL-BTX

Dear Clerk:

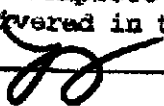
Enclosed are the original and 13 copies of the Response of Intervenor Citizens Advocating Responsible Energy to Applicants' Motion for Continuance. Please file the original and 11 copies and return the extra two copies in the stamped, self-addressed envelope.

Please contact me should you have any questions or concerns.

Sincerely,

  
Julie A. Crocker

JAC/sat  
Enclosure

This is to certify that the images appearing are an accurate and complete reproduction of a case file document delivered in the regular course of business.  
Technician  Date Processed 4-21-08

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**BEFORE  
THE OHIO POWER SITING BOARD  
OF THE STATE OF OHIO**

In the Matter of:	)	Case No. 07-0171-EL-BTX
The Certificate Application of American	)	
Transmission Systems, Inc. and The	)	
Cleveland Electric Illuminating Company	)	
for a Certificate of Environmental	)	
Compatibility and Public Need for the	)	
Construction of the Geauga County	)	
138KV Transmission Line Supply Project	)	
	)	
	)	

**PUCO**

**RECEIVED-DOCKETING DIV  
2008 APR 21 AM 9:56**

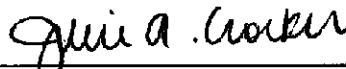
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**RESPONSE OF INTERVENOR CITIZENS ADVOCATING RESPONSIBLE ENERGY  
TO APPLICANTS' MOTION FOR CONTINUANCE**

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Intervenor Citizens Advocating Responsible Energy ("CARE") supports Applicants' motion for continuance, in part, for the reasons more fully set forth in the attached memorandum.

Respectfully submitted,



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Counsel for Intervenor Citizens  
Advocating Responsible Energy

**BEFORE  
THE OHIO POWER SITING BOARD  
OF THE STATE OF OHIO**

In the Matter of:	) Case No. 07-0171-EL-BTX
The Certificate Application of American	)
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Cleveland Electric Illuminating Company	)
for a Certificate of Environmental	)
Compatibility and Public Need for the	)
Construction of the Geauga County	)
138KV Transmission Line Supply Project	)
	)
	)

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**MEMORANDUM IN SUPPORT OF RESPONSE OF INTERVENOR CITIZENS  
ADVOCATING RESPONSIBLE ENERGY TO APPLICANTS' MOTION FOR  
CONTINUANCE**

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CARE supports Applicants' motion to continue the public hearings set for May 12 and May 13, 2008 and the Adjudicatory Hearing set for May 21, 2008. The proposed route suggested in Staff Interrogatory No. 16 would utilize a substantial part of the route previously approved for the Rachel Transmission Line. (See Case No. 95-0600-EL-BTX.) Further, the 138 kv circuits in the Q1-Q4 corridor to which Applicants wish to connect are available at the Pinegrove substation in Chardon, Ohio. If the Pinegrove Substation would be the northerly terminus of a new route utilizing the bike path portion of the previous Rachel route, that route likely would connect to the existing Ruth distribution substation as its southerly terminus. Note that the Pinegrove-Ruth route is approximately one-half the length of Applicants' preferred route.

Further, Applicants note that nearly all of the Pinegrove-Ruth route would follow a pre-existing railroad right-of-way that has been in place for more than a century, and would thereby avoid the substantial adverse environmental impacts caused by carving a

new utility right-of-way through Geauga County. In addition, since most of the right-of-way is currently owned by the Geauga Park District, and because the published mission of the Geauga Park District, is “to preserve, conserve and protect the natural features of Geauga County,” placing the proposed power lines adjacent to the bike path – and thereby preserving all of the homes and farms which would be destroyed or carved up by either of the routes proposed in the Application, would be consistent with that mission. Adding a bridle path to the bike path – as was required by the Rachel Certificate – would provide additional benefit to the Park District’s constituency.

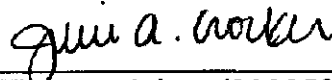
However, CARE respectfully disagrees with Applicants’ assertion that there are “significant legal questions regarding Applicants’ legal authority to acquire” land adjacent to the bike trail. To the contrary, for 20 years it has been settled that an appropriating authority is entitled to utilize eminent domain to acquire land owned by another public entity where the use being appropriated will not destroy or substantially interfere with the existing use. *Village of Middlefield v. City of Akron*, unreported, 1988 WL 388830 (Gauga Cty. App. 1988), appeal denied (1988), 38 Ohio St. 3d 715.

Here, the proposed use – placement of power poles – adjacent to the Maple Highlands Bike Trail will neither destroy nor substantially interfere with that use, a fact which was implicit in the approval granted to the Rachel power line. Indeed, as the Rachel proceedings determined, the project would *enhance* the Maple Highlands Trail by adding to it a bridle bath so that the area could be used simultaneously for recreational bicycle and horse traffic.

Finally, CARE respectfully suggests that selecting specific dates for the public hearings at this juncture would be premature, given that Applicants have not completed

the study proposed in their motion. Applicants and CARE have exchanged written discovery responses, and it is anticipated that additional time will be needed in order to coordinate follow-up written discovery and depositions. Accordingly, CARE suggests that Applicants should complete its investigation of the route proposed by Staff Interrogatory No. 16, and upon completion of that analysis the parties will then be in a better position to select (and advertise for) public and adjudicatory hearing dates that will be realistic.

Respectfully submitted,



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Counsel for Intervenor Citizens  
Advocating Responsible Energy

**CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of the foregoing Motion To Relocate Hearing and Conduct Site Inspection was served this 18th day of April, 2008, via regular U.S. Mail upon the following:

Christopher Schraff  
Robert J. Schmidt, Jr.  
Porter Wright Morris & Arthur  
41 South High Street  
Columbus, Ohio 43215

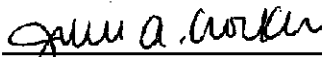
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