

FILE

BEFORE THE
OHIO POWER SITING BOARD

1
RECEIVED-DOCKETING DIV
2008 SEP 12 PM 4:18
PUCO

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

**RESPONSE OF INTERVENOR CITIZENS ADVOCATING RESPONSIBLE
ENERGY'S TO APPLICANTS' MOTION TO EXCLUDE MCGEE TESTIMONY**

The motion of Applicants to exclude the testimony of Kathleen McGee, an expert witness called by Intervenor Citizens Advocating Responsible Energy ("CARE"), should be denied. Ms. McGee is a licensed and certified appraiser, a member of the Appraisal Institute, and is well qualified to testify regarding the effect of electric power lines on property values.

Ms. McGee's testimony in this proceeding is being offered to show the socioeconomic impact of Applicants' site selection (OAC 4906-15-01(A)(4)), the cost of acquiring land and land rights for the right-of-way (OAC 4906-15-05(B)(1) and 4906-15-05(B)(a)), and the socioeconomic impact on the land of the routes chosen. All of the foregoing are factors relevant to Applicants' Application, as specified by OAC Chapter 4906-15 and are therefore relevant to this proceeding.

{K0446783.1}

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 9/15/08

ARGUMENT

McGee Is Qualified To Offer The Opinions Expressed In Her Initial Testimony, Her Opinion Is Relevant To Factors Articulated In OAC Chapter 4906-15 And Applicants' Challenges To The "Reliability" Of Her Opinion Go To Its Weight, Not Its Admissibility.

As indicated in Ms. McGee's Initial Testimony, Ms. McGee has offered the opinion that the choice of a route requiring the taking of private property, as compared to the choice of a route which involves the use of publicly-owned property, is from an economic standpoint, substantially less detrimental to the property being utilized. Ms. McGee bases her opinion upon a standard and well recognized empirical tool known as a "paired sale analysis" to determine the economic impact of a power line which cuts across private property. Ms. McGee opines that the reduction in value of private properties encumbered with electronic transmission lines is substantially greater than the reduction in value of a publicly owned property that is subjected to a similar encumbrance.

The cases cited by Applicants in their attempt to preclude the Board from hearing this testimony are inapposite. While Applicants are correct that Ms. McGee did not perform the kinds of individual, empirical appraisals which would be necessary in an eminent domain proceeding, her testimony is not offered to demonstrate specific or case-by-case property value losses. To the contrary, Ms. McGee's testimony is offered to demonstrate that FirstEnergy has ignored that utilization of a preexisting corridor, as opposed to the acquisition of a corridor comprised solely of privately owned property, would have substantially less economic impact on the route chosen and upon a number of factors which should have been considered under OAC Chapter 4906-15.

Ms. McGee's testimony is based, in part, upon a paired sale analysis, a well recognized appraisal technique about which Applicants thoroughly inquired on deposition. Applicants do not challenge that technique. Instead, they say Ms. McGee's opinions as to the relative economic impacts of the power line site selection should be excluded because they do not relate to specific quantitative evaluations on a property-to-property basis. This argument is specious because it ignores the purpose for which Ms. McGee's testimony is offered. The OPSB regulations do not require Applicants to demonstrate that they have evaluated properties on a quantitative, case by case basis. To the contrary, the OPSB regulations require Applicants to demonstrate that they have conducted precisely the kind of site section evaluation that Ms. McGee's testimony offers. Exclusion of Ms. McGee's testimony would therefore materially prejudice CARE, because it would deprive the Board of evidence demonstrating that Applicants have failed to consider the relative economic impact on Geauga County properties caused by FirstEnergy's decision to ignore the use of public rights-of-way in preference for the acquisition of a brand new, FirstEnergy-only right-of-way.

For example, OAC §4906-15-01(A)(4) required Applicants to engage in a "discussion of the principle...socioeconomic considerations of the Preferred and Alternate Routes of sites." Similarly, OAC §4906-15-03(A)(1)(g) required Applicants to describe "...any qualitative or other factors used by Applicant in the selection of the Preferred and Alternate routes or sites." OAC §4906-15-05(B)(1) and (9) required Applicants to estimate capital costs, including "land and land rights" and "right-of-way clearing and roads, trails or other access." OAC §4906-15-06 required Applicants to demonstrate "socioeconomic and land use impact," and OAC §4906-15-06(H) required

Applicants to “describe measures that were taken...to avoid or minimize adverse impact.” None of the analyses conducted by Applicants considered the relative cost to Geauga County properties of placing FirstEnergy’s transmission line on privately-owned property, instead of utilization of existing corridors.

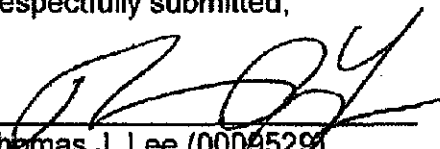
Ms. McGee’s testimony demonstrates that Applicants’ proposed routes, both of which involve substantial takings of private property, have a substantially greater economic impact than would a choice of an alternative route utilizing preexisting public corridors. Ms. McGee’s testimony is based upon a recognized appraisal methodology and years of appraisal experience. Exclusion of this testimony would be erroneous. *See City of Cincinnati v. Banks*, 143 Ohio App.3d 272, 281-2 (1st Dist. 2001), appeal not allowed 92 Ohio St.3d 14 13, reconsideration denied, 92 Ohio St.3d 1472. Indeed, because Ms. McGee’s testimony is relevant and can assist the trier of fact in evaluating factors mandated by the regulations, it should be admitted. Evid. Rule 702. Accordingly, Applicants’ attempt to exclude this testimony should be rejected.

Nothing in the Rules of Evidence or in common sense suggests an appraiser can offer a generalized opinion as to the relative value of using publicly owned land versus privately held land for an easement only if the appraiser conducts empirical studies on each and every parcel involved. Such a rule would severely hamper the citizens this proceedings is designed to protect by requiring them to spend enormous amounts to obtain such expert testimony. CARE respectfully suggests that this is not the intent of the OPSB regulations or of the statutes governing this proceeding, and a generalized opinion is therefore precisely what is mandated by the statute. If Applicants believe that empirical analyses of all properties should have been performed, they are free to cross-

examine Ms. McGee about this assertion. But such assertion goes to the weight, not the admissibility of her testimony, and serves as no basis for excluding the testimony entirely.

Accordingly, Applicants' motion to exclude the testimony of Ms. McGee should be overruled.

Respectfully submitted,



Thomas J. Lee (0009529)

tlee@taftlaw.com

Julie A. Crocker (0081231)

jcrocker@taftlaw.com


Taft, Stettinius & Hollister LLP

200 Public Square, Suite 3500

Cleveland, OH 44114-2302

(216) 241-2838 (telephone)

(216) 241-3707 (facsimile)



Michael A. Byers (0016092)

byers@taftlaw.com

Taft Stettinius & Hollister LLP

21 East State Street, Suite 1200

Columbus, Ohio 43215

(614) 221-2838 (telephone)

(614) 221-2007 (facsimile)

Counsel for Citizens Advocating
Responsible Energy

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing is being served this 12th day of September, 2008, via electronic mail and regular U.S. mail, upon the following:

Thomas Lindgren
Thomas McNamee
Office of the Attorney General of Ohio
Public Utilities Section
180 East Broad Street
Columbus, Ohio 43215-3793

thomas.lindgren@puc.state.oh.us
thomas.mcnamee@puc.state.oh.us

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

cschraff@porterwright.com
rschmidt@porterwright.com

David Ondrey
Todd Hicks
Thrasher Dinsmore & Dolan
100 Seventh Avenue, Suite 150
Chardon, Ohio 44024

dondrey@dolan.law.pro

Robert J. Hanna
Matthew S. Romano
Tucker Ellis & West LLP
1150 Huntington Building
925 Euclid Avenue
Cleveland, Ohio 44115-1414

robert.hanna@tuckerellis.com
matthew.romano@tuckerellis.com

Janet Stoneking
Administrative Law Judge
Public Utilities Commission of Ohio
180 East Broad Street
Columbus, Ohio 43215-3793

janet.stoneking@puc.state.oh.us

James Gillette
Law Director
City of Chardon, Ohio
Chardon Municipal Center
111 Water Street
Chardon, Ohio 44024-1238

jgillette@chardon.cc

Sally W. Bloomfield
Bricker & Eckler
100 South Third Street
Columbus, Ohio 43215-4291

sbloomfield@bricker.com

David L. McCombs
100 Public Square
P.O. Box 217
Andover, Ohio 44003-0217

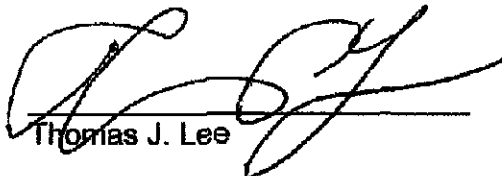
davidl@dlmatty.com

Margaret Malone
Lauren Angell
Office of the Attorney General
Public Utilities Section
180 E. Broad Street
Columbus, Ohio 43215-3793

langell@ag.state.oh.us
mmalone@ag.state.oh.us

Daniel J. Neilsen
McNees Wallace & Nurick LLC
21 E. State Street, 17th Floor
Columbus, Ohio 43215-4281

dneilsen@mwncmh.com



Thomas J. Lee