

FILE

**BEFORE
THE OHIO POWER SITING BOARD**

In the Matter of an Application by :
American Transmission Systems, Inc., and :
the Cleveland Electric Illuminating : Case No. 07-171-EL-BTX
Company, for a Certificate of :
Environmental Compatibility and Public :
Need for the Geauga County 138 kV :
Transmission Supply Project. :

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**REBUTTAL TESTIMONY
OF
JAMES S. O'DELL
UTILITIES DEPARTMENT/FACILITIES, SITING & ENVIRONMENTAL
SUBMITTED ON BEHALF OF THE STAFF OF
THE OHIO POWER SITING BOARD**

STAFF EXHIBIT NO. 3

Dated: September 25, 2008

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Technician ADN Date Processed 9/25/08

1 1. Q. Please state your name, title and business address.

2 A. My name is James S. O'Dell. I am employed by the Ohio Power Siting
3 Board as a siting specialist. My business address is 180 E. Broad Street,
4 Columbus, Ohio, 43215.
5

6 2. Q. Are you the same James S. O'Dell that has previously testified in this
7 matter?

8 A. Yes.
9

10 3. Q. Summarize the purpose of your rebuttal testimony.

11 A. The Staff believes that the conditions recommended in the Staff Report
12 should be revised to improve their clarity and efficacy. These revised
13 Recommended Conditions are attached to my testimony as Exhibit A. Staff
14 recommends that the Board certificate the preferred route subject to the
15 conditions enumerated in Exhibit A. The conditions in Exhibit A simply
16 accomplish the goals of the conditions contained in the Staff Report in a
17 clearer and more effective manner.
18

19 4. Q. Can you generally explain the types of revisions that are reflected in
20 Exhibit A?

1 A. The changes included in Attachment A are of two sorts, substantive and
2 non-substantive. The non-substantive changes are of a stylistic or
3 typographic nature and the reasons for them are self-evident.
4

5 5. Q. Which conditions contain substantive changes?

6 A. Conditions 12, 13, 15, 18, 28, 30 and 39 have been substantively changed.
7

8 6. Q. Explain the reason for each individual substantive change.

9 A. Condition 12 was modified to clarify its applicability and to include the
10 express requirement to comply with applicable federal and state laws and
11 rules related to application of herbicides.
12

13 Condition 13 was enhanced to outline specific survey requirements and
14 other obligations related to the yellow-bellied sapsucker.
15

16 Condition 15 was modified to more closely mirror standardized OEPA and
17 ODNR requirements if endangered species are encountered by the
18 Applicant.
19

20 Condition 18 incorporated language to better maintain and protect
21 snowshoe hare habitat.
22

1 Condition 28 was changed to clarify the criteria for the tree clearing plan.

2
3 Condition 30 was changed to clarify the Applicant's responsibility to
4 develop and implement a plan, including signage, that protects wetland and
5 riparian areas from the effects of unintended clearing or maintenance.


6
7 When Condition 39 was drafted, the Staff had identified five instances
8 where there was the potential that, through very slight adjustments in pole
9 placement, some environmental enhancements might be achieved. A final
10 determination about whether in fact such enhancements were possible
11 could only be made after a detailed field examination which had not
12 occurred as of the time of issuance of the Staff Report. Subsequently, the
13 Staff has returned to each of these locations and performed the necessary
14 detailed review. As a result of this examination Staff has determined that
15 the only workable adjustment was near Wetland 65. Therefore, only this
16 very slight adjustment initially recommended by Staff for further evaluation
17 is now recommended for implementation through this Recommended
18 Condition.

19
20 7. Q. Do you have anything else to add?

21 A. Not at this time.

PROOF OF SERVICE

I hereby certify that a true copy of the foregoing Rebuttal Testimony of James S. O'Dell, submitted on behalf of the Staff of the Ohio Power Siting Board, was served by regular U.S. mail, postage prepaid, hand-delivered, and/or delivered via electronic mail, upon the following parties of record, this 25th day of September, 2008.


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RECOMMENDED CONDITIONS

- 1) That the facility be installed following the Applicants' Preferred Route as presented in the application filed on September 28, 2007, and as further clarified by the Applicants' supplemental filings.
- 2) That the Applicants shall utilize the equipment and construction practices as described in the application, and as modified in supplemental filings, replies to OPSB Staff's data requests, and these conditions.
- 3) That the Applicants shall implement the mitigative measures described in the application, any supplemental filings, and these conditions.
- 4) That the Applicants shall properly install and maintain erosion and sedimentation control measures at the project site in accordance with the following requirements:
 - (A) During construction of the facility, seed all disturbed soil, except within cultivated agricultural fields, within seven (7) days of final grading with a seed mixture acceptable to the appropriate County Cooperative Extension Service. Denuded areas, including spoils piles, shall be seeded and stabilized within seven (7) days, if they will be undisturbed for more than twenty-one (21) days. Reseeding shall be done within seven days of emergence of seedlings as necessary until sufficient vegetation in all areas has been established;
 - (B) Inspect and repair all erosion control measures after each rainfall event of one-half of an inch or greater over a twenty-four (24) hour period, and maintain controls until permanent vegetative cover has been established on disturbed areas;
 - (C) Obtain NPDES permits for storm water discharges during construction of the facility. A copy of each permit or authorization, including terms and conditions, shall be provided to the Staff within seven (7) days of receipt. Prior to construction, the construction Storm Water Pollution Prevention Plan shall be submitted to the Staff for review and acceptance;
 - (D) Utilize "best management practices" ("BMPs") when working in the vicinity of environmentally sensitive areas. This includes, but is not limited to, the installation of silt fencing (or similarly effective measure) prior to initiating construction near streams and wetlands. The installation shall be done in accordance with generally accepted construction methods and shall be inspected regularly.
- 5) That the Applicants shall have an environmental specialist on site at all times that construction (including vegetation clearing) is being performed in or near a sensitive area such as a designated wetland, stream, river, or in the vicinity of identified threatened/endangered species or their identified habitat.

- 6) That the Applicants shall employ construction methods as specified in paragraphs 7, 8, 9 and 10 in proximity to any watercourses and/or wetlands.
- 7) That all watercourses and/or wetlands shall be delineated by fencing, flagging, or other prominent means.
- 8) That all construction equipment shall avoid watercourses and/or wetlands, except at specific locations where OPSB Staff has approved access.
- 9) That storage, stockpiling and/or disposal of equipment and materials in watercourses and/or wetlands shall be prohibited.
- 10) That structures shall be located outside of watercourses and/or wetlands, except at locations where OPSB Staff has approved placement.
- 11) That all storm water runoff is to be diverted away from fill slopes and other exposed surfaces to the greatest extent practicable, and directed instead to appropriate catchment structures, sediment ponds, etc., using diversion berms, temporary ditches, check dams, or similar measures.
- 12) That, for construction and for the period of two years of initial operation, the Applicants shall limit, to the greatest extent possible, the use of herbicides in proximity to surface waters, including wetlands along the right-of-way ("r-o-w"). Individual treatment is preferred; while general, widespread use of herbicides is strongly discouraged. Prior to initiation of construction, the Applicants shall submit a plan describing the planned herbicide use throughout the project corridor, for review and approval by the Staff. After the two year period of initial operation, Applicants shall comply with all federal and state laws, rules and regulations governing the application of herbicides in the r-o-w.
- 13)
 - (A) If tree clearing must be conducted outside of the October through March period, the Applicants shall, prior to tree clearing, conduct Indiana bat surveys in areas identified as suitable habitat in coordination with Staff, including the following specific locations: (a) Forest stand including woodlots 8, 9, 10 and 11; (b) Forest stand including woodlots 20, 21, 22, 23, and 24; (c) Forest stand including woodlots 36, 37, and 38. The results of this study shall be forwarded to Staff for review and approval prior to any clearing or construction in the areas of concern.
 - (B) Prior to any tree clearing, Applicants shall conduct yellow-bellied sapsucker surveys in areas identified as suitable habitat for these birds in coordination with Staff and the Ohio Department of Natural Resources, Division of Wildlife ("ODNR-DOW"). If the results of the study identify the presence of the nesting/breeding yellow-bellied sapsuckers, then the tree clearing in that area shall be limited to that period of time when the yellow-bellied sapsuckers are not present. The results of this study, together with a tree clearing plan, shall be forwarded to Staff for review and approval prior to any clearing or construction in the areas of concern.

- 14) That the Applicants shall contact Crane Creek Wildlife Research Station shortly before initiating construction to ensure there are no bald eagle nests within 0.5 miles of the selected project r-o-w.
- 15) That the Applicants shall flag endangered plant species locations within the r-o-w and prevent vehicle access to these areas. Use of herbicides within fifty feet of these flagged areas during construction and maintenance activities shall be prohibited, unless otherwise approved as part of Applicant's herbicide use plan. Prior to construction, the Applicants shall provide for Staff review and approval a threatened and endangered species protection plan. For plants, this should include specific r-o-w clearing/avoidance recommendations, herbicide restrictions, and potential monitoring procedures, while for animal species it should also include construction timing limitations related to breeding activities and the potential impacts of long-term r-o-w maintenance work.
- 16) That Staff, the ODNR-DOW, and the United States Fish and Wildlife Service shall be immediately contacted if the presence of threatened or endangered species is confirmed during construction activities. Activities that could adversely impact the identified plants or animals will be halted until an appropriate course of action has been agreed upon by the Applicants and Staff.
- 17) That the Applicants, to the extent practicable, shall retain all tree snags within the r-o-w that do not present a safety or reliability concern for the construction and operation of the new electric transmission line.
- 18) That, prior to finalizing engineering plans for the project, the Applicants shall identify the area known to support snowshoe hare. The Applicants shall submit a plan for this area to the Staff and the ODNR-DOW for review and Staff's approval. The Applicants shall not employ clear-cutting or generalized broadcasting of herbicide for vegetation maintenance and, to the maximum extent possible, shall leave shrub and scrub woody vegetation within this identified area of the r-o-w.
- 19) That the Applicants shall avoid and minimize, if practicable, any damage to field drainage systems resulting from construction and operation of the facility. Damaged field tile systems shall be repaired to at least original conditions at Applicants' expense.
- 20) That the Applicants shall not dispose of gravel or any other construction material during or following construction of the facility by spreading such material on agricultural land. All construction debris shall be promptly removed and properly disposed of.
- 21) That the Applicants shall remove all temporary gravel and other construction laydown area and temporary access road materials within ten (10) days of completing construction activities.
- 22) That the Applicants shall dispose of all contaminated soil and all construction debris in approved landfills in accordance with Ohio EPA regulations.

- 23) That prior to construction, the Applicants shall obtain and comply with all applicable permits and authorizations, as required by federal and state laws, rules and regulations for any activities where such permit or authorization is required. Copies of permits and authorizations, including all supporting documentation shall be provided to Staff within fifteen (15) days of issuance.
- 24) That the Applicants shall conduct a pre-construction conference prior to the start of any project work, which the Staff shall attend, to discuss how environmental concerns will be satisfactorily addressed. Additional pre-construction conferences may be utilized in support of a staged sequence of construction.
- 25) That at the time of the pre-construction conference(s), the Applicants shall have marked structure locations as well as the route's centerline and r-o-w clearing limits in environmentally sensitive areas associated with the construction area being reviewed.
- 26) That at least thirty (30) days before the first pre-construction conference, the Applicants shall submit to the Staff, for review and approval, one set of detailed drawings for the certificated electric transmission line, including all laydown areas and access points so that the Staff can determine that the final project design is in compliance with the terms of the certificate. The access plan shall consider the location of streams, wetlands, wooded areas and sensitive plant species.
- 27) That the Applicants shall assure compliance with fugitive dust rules by the use of water spray, or other appropriate dust suppressant, whenever necessary.
- 28) That the Applicants shall prepare a detailed tree clearing plan describing how compatible trees and shrubs along the proposed alignment will be protected from damage during construction, and, where clearing cannot be avoided, how such clearing work will be done so as to minimize removal of compatible woody vegetation. Priority should be given to protecting all compatible woody vegetation in wetlands, to the extent practicable. This tree clearing plan, shall be submitted to Staff for review and approval prior to initiation of construction.
- 29) That the Applicants shall limit clearing in all riparian areas and within at least 25 feet from the top of the bank on each side on all streams during construction and operation of the facility; provided, however, that Applicants may selectively hand-clear taller-growing trees that are incompatible with the operation and maintenance of the transmission line, leaving all low growing plant species, (including trees and other woody vegetation), undisturbed unless otherwise directed by Staff. All stumps shall be left in place.
- 30) That, prior to construction, the Applicants shall develop and submit to Staff for review and approval a long-term plan consistent with federal and state laws, rules and regulations to be implemented by the Applicants, that will require, among other things, the installation and maintenance of signs, written in both English and Spanish, that identify the boundary of all "no clear-cut" areas for all identified wetlands and riparian areas within the project r-o-w.

These “no clear” areas shall also be identified on the engineering drawings for the project as well as noted on future maintenance plans and protected from clear cutting and generalized broadcasting of herbicides during all future r-o-w maintenance, unless otherwise approved by Staff. This plan as approved by Staff shall be integrated into the Applicants’ long-term maintenance practices for this transmission line.

- 31) That the Applicants shall ensure that Montville Swamp, Thompson Ledges Park, and any other identified natural areas in proximity to the proposed project are protected from any construction-related activity.
- 32) That prior to construction, the Applicants shall prepare a Phase I Cultural Resources Survey of the selected route. This survey shall be coordinated with the Ohio Historic Preservation Office and submitted to Staff for review and acceptance. If the survey discloses a find of cultural or archaeological significance, or a site that could be eligible for inclusion on the National Register of Historic Places, then the Applicants shall submit a route amendment, route modification, or mitigation plan for Staff’s acceptance. The Applicants shall consult with Staff to determine the appropriate course of action.
- 33) That a public information program be instituted that informs affected property owners of the nature of the project, specific contact information for Applicants’ personnel who are familiar with the project, the anticipated proposed timeframe for project construction, and the schedule for restoration activities. Notification letters shall be sent to property owners via United States Postal Service first class mail postmarked at least 30-days prior to work on the affected property. This letter shall include the Applicants’ offer to meet with each property owner prior to construction on their property to review construction activities on the property owner’s property.
- 34) That existing septic systems impacted by construction, operation or maintenance of either line, be repaired or replaced by the Applicants to at least original condition.
- 35) That at least 30 days prior to the first pre-construction conference, the Applicants shall submit a detailed construction and restoration plan for all stream and wetland crossings for Staff’s review and approval. The plan shall include sufficiently detailed information to address the following:
 - (A) Construction methods to be used at each location, including site-specific access and equipment crossing proposals. Construction methods and equipment movement during both dry and wet conditions should be included;
 - (B) Storm water erosion control practices to be used during construction work in and around each crossing location;
 - (C) Any and all stream stabilization and wetland, stream, and riparian area restoration practices to be used;

- (D) Applicants shall use all necessary means to ensure that, to the extent practicable, no trees, limbs, branches, or other clearing residue is placed or disposed of in any stream, wetland, or other water body except in accordance with the approved tree clearing plan;
 - (E) Applicants shall use all practicable means to ensure that no fill, topsoil, stone, or other construction-related material is placed or disposed of in any stream, wetland, or other water body, except for the short-term placement of stone, culvert pipe, timber mats, or other temporary stream crossing materials, as pre-approved by Staff;
 - (F) To the extent practicable, crossings of ephemeral streams should occur during no flow periods.
- 36) That removal of mature trees adjacent to residences should be avoided if possible. If such removal is necessary for the safe construction and the safe and reliable operation of the transmission line, then the Applicants shall consult with affected property owners and develop a residential landscape planting plan to be submitted to staff for review and approval prior to the commencement of construction.
- 37) That the Applicants will coordinate with the appropriate authority any vehicular lane closures due to the construction of the transmission line along either route.
- 38) That if the Alternate Route is selected by the Board, the Applicants shall coordinate with the Geauga County Park District in order to ensure that transmission line pole placement will not interfere with access/egress plans for any proposed parks by the Geauga County Park District.
- 39) That to further minimize impacts, the Applicants shall implement an alignment shift of the Preferred Route adjacent to Wetland 65 (south of Leggett Road), by shifting the corner of the transmission line located to the southwest of Wetland 65 approximately 250 feet to the north to avoid a series of forested vernal pools.
- 40) That if the Preferred Route is selected by the Board, prior to the commencement of construction, the Applicants shall present a plan to Staff for review and approval that mitigates potential off-road recreational use of the utility corridor to the extent practicable.
- 41) That if the Board certifies the Preferred Route, at least thirty days prior to the pre-construction conference, the Applicants shall submit to Staff for review and approval a wetland-stream crossing enhancement/preservation plan which will be included as part of any application submitted for an Ohio 401 Water Quality Certification or a Clean Water Act Section 404 Permit, and that will include, to the extent feasible, at least the following or its equivalent:
- (A) Propose preservation easements for the portion of two Applicant-owned properties along the Preferred Route. For the Applicant-owned property at the site of the Stacy substation, Parcel 16-011052, the area of the preservation easements shall generally include the area of the property between the northern boundary of the property and

approximately 25 feet south of stream Pr-s001, excluding the area of the r-o-w and associated danger trees of the transmission line, and any access route to or through the transmission line r-o-w. For the Applicant-owned property located on the south side of Burrows Road, Parcel 20-070824, the area of the preservation easements shall generally include all of the parcel, except for the area of the r-o-w and associated danger trees of the transmission line, and any access route to or through the transmission line r-o-w;

- (B) Along, or in proximity to, the Preferred Route obtain rights to real property that includes not less than 6.7 acres of existing wetland, excluding wetland that is within the r-o-w for the project, that can be enhanced through appropriate replanting and/or deed restriction to a forested wetland;
 - (C) To the extent reasonably possible, acquire 2,500 linear feet of conservation easements (as measured in the bed of the stream) for a higher quality stream with a minimum easement width of 25 feet on each side, including the upper limits of a stream bank along or in proximity to the Preferred Route. The Applicants shall document all efforts to accomplish the above mitigation to Staff upon request.
- 42) That the certificate shall become invalid if the Applicants have not commenced a continuous course of construction of the proposed facility within five (5) years of the date of journalization of the certificate.
- 43) That the Applicants shall provide to the Staff the following information as it becomes known:
- (A) The date on which construction will begin;
 - (B) The date on which construction was completed;
 - (C) The date on which the facility began commercial operation.