

FILE



TUCKER ELLIS & WEST LLP

ATTORNEYS AT LAW

1150 Huntington Bldg. 925 Euclid Avenue Cleveland, Ohio 44115-1414
phone 216.592.5000 facsimile 216.592.5009 tuckerellis.com

CLEVELAND COLUMBUS LOS ANGELES SAN FRANCISCO

Direct Dial: 216.696.4661
Email: mromano@tuckerellis.com

October 15, 2008

VIA FEDEX

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

Re: In the Matter of: The Application of American Transmission Systems,
Incorporated and The Cleveland Electric Illuminating Company
Case No: 07-0171-EL-BTX

Dear Sir/Ma'am:

Enclosed for filing is *Post-Hearing Brief of George K. Davet*. I have included an original plus 11 copies. Please return a time-stamped copy in the envelope provided.

Thank you for your cooperation in this matter.

Yours very truly,

TUCKER ELLIS & WEST LLP

Matthew S. Romano

RJH:lm

Enclosure - Original plus 11 copies

cc: David L. McCombs
James O'Dell
Michael R. Beiting
David Ondrey
Janet Stoneking
Thomas Lindgren
Christopher Schraff
Thomas Lee

PUCO

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BEFORE THE
OHIO POWER SITING BOARD

In the Matter of:)	CASE NO. 07-171-EL-BTX
)	
The Application of American Transmission)	
Systems, Incorporated and The Cleveland)	
Electric Illuminating Company for a Certificate)	
of Environmental Compatibility and Public)	
Need for the Geauga County 138 kV)	
Transmission Line Supply Project)	

POST-HEARING BRIEF OF GEORGE K. DAVET

SUBMITTED ON BEHALF OF
Himself as Intervenor

I. INTRODUCTION

Applicants American Transmission Systems, Incorporated and The Cleveland Electric Illuminating Company (collectively, the “Applicant”) have applied for the construction and operation of 138kV transmission lines along a “preferred” route that goes through predominately rural property, including directly through the middle of Intervenor George K. Davet’s (“Davet”) farm. Applicant wants this Board to approve its application even despite the fact that Applicant has failed to show that it took adequate measures to mitigate the aesthetic and health-related nuisances that will result from these power lines. Just as important as that, Applicant has failed to show that the preferred route is the least environmentally destructive even though 14 alternative routes ranked better, and distributive generation alternatives – which could avoid the building of power lines altogether – were not adequately explored. For these reasons, this Board should deny the application.

II. FACTS

A. The power lines will substantially impede Davet’s use of his farm.

Davet has owned and farmed his land nearly forty years. (Direct Testimony of George K. Davet, filed September 8, 2008 [“Davet Ex. 1”] at ¶¶ 1-6.) Now, through its “preferred” route, Applicant wants to put high-powered transmission lines smack through the middle of it! (Davet Ex. 1 at ¶¶ 7-10.) Applicant’s new power lines would have severe, negative impacts to the aesthetic appeal of Davet’s land no matter where on his property they were placed, but that Applicant wants to place them through the middle of Davet’s property makes their presence even more obnoxious. The physical structure of the towers and lines will destroy the picturesque views of his pond and fields, and the accompanying buzzing and humming from the electricity will disturb his farm’s quietness and tranquility. (*Id.* at ¶¶ 11, 20-22, 33; *see also*, Davet Ex. 2

and Davet Ex. 2(A)-(C).) Aside from being a significant annoyance, this will obviously reduce the value of Davet's property. (Davet Ex. 1 at ¶¶ 11, 21.)

Equally as concerning as lost aesthetic appeal, however, is that operation and maintenance of the power lines could potentially have hazardous health effects. For example, Applicant's own literature acknowledges that there is a correlation between a power line's electromagnetic field and childhood leukemia. (*Id.* at 16.) Similarly, Applicant is known to use herbicides to control plant growth around the lines. (*Id.* at ¶¶ 16, 19.) Given that he raises a heard of 45 Hereford cattle that intensively graze on his environmentally-friendly, sustainable farm, Davet is understandably disturbed about these genuine health concerns. (*Id.* at ¶¶ 6, 14.) Davet's cattle graze throughout the very location where Applicant intends to place its power lines, which is precisely within the range of the electromagnetic field and Applicant's future use of herbicides. (Davet Ex. 1 at ¶¶ 15-16.) These same concerns apply to the crops that Davet harvests, some of which will not only be impacted by the herbicides, but will also be outright destroyed by the building of the power lines. (*Id.* at ¶¶ 6, 18-19.)

Finally, the building and maintenance of the power lines will cause significant inconvenience to Davet's own use of the land. Even if the health risks could somehow be adequately addressed, the physical existence of the power lines will make it more difficult for Davet to harvest crops and for his cattle to graze. (*Id.* at ¶¶ 15, 17, and 19.) Similarly, because the lines will be placed in the middle of his property, in close proximity to his house and cabin, Davet will be faced with strangers (Applicant's agents and any other persons traversing the right of way) coming onto his property – an invasion of privacy undesirable to any property owner. (*See generally, id.* at ¶¶ 10, 22.)

B. Applicant failed to adequately consider other routes or distribution methods.

According to the Staff, this “preferred” route – which, out of the routes considered, was the only one which goes directly through the middle of Davet’s property – ranked only 15th best out of the ones considered. (*Id.* at ¶¶ 7-10.) Thus, there were 14 other routes that should have been selected, instead of encumbering Davet’s farm with these aesthetically unpleasing, hazardous, and inconvenient power lines. For that matter, the need for any power lines (and the coinciding negative environmental impact that goes with them) could be avoided through distributive generation alternatives.

Unfortunately, Applicant’s application, the Staff’s Report, and testimony at the hearing barely reference these distributive generation alternatives. (Davet Ex. 1 at ¶ 26-27.) Instead, Davet himself was forced to identify the potential for these more environmentally-friendly alternatives, having sought advice and recommendations from the former Director of PUCO, as well as the Chairmen and Chief Scientist at the Rocky Mountain Institute. (*Id.* at ¶ 25.) Through his own research and discussions with experts, Davet learned of many more considerations that should have been identified and explored by the Applicant and/or Staff, yet apparently were not. (*Id.* at ¶¶ 27-29.)

In fact, not only did Applicant fail to adequately address these distributive generation alternatives in its application, but it also failed to adequately address these alternatives through the testimony of its expert witness, James A. Sears, Jr. Although Mr. Sears makes conclusory statements regarding distributive generation in his direct and rebuttal testimony (Applicant Ex. 4 at pp. 52-54 and Applicant Ex. 13 at pp. 11-13, respectfully), he could not fully answer any of Davet’s distributive generation-related, cross-examination questions during the hearing. (*See generally*, Tr. Vol. I at pp. 58-60.) Rather, Mr. Sears stated that he did not directly perform the

distributive generation analysis, and instead, KEMA was responsible for performing such an analysis. (*Id.* at p. 58.) Remarkably, however, Applicant never produced any KEMA study or representatives to this Board, nor did it initially provide such evidence in response to discovery requests from Davet and the Staff, despite such information being requested.¹ (*See e.g.*, Applicants' Responses to Staff's First Set of Interrogatories Directed to Applicants and Request for Production of Documents, Response to Interrogatory No. 9, filed April 15, 2008; *see also*, Davet Ex. 1 at ¶¶ 27.)

The need for a more thorough analysis of distributive generation is even more compelling in light of the many times Davet and others have brought those alternatives to the attention of this Board and Applicant. In 2007, for example, Davet wrote a letter to this Board, explaining the past history of the proposed power lines and the environmental benefits of using distributive generation. (Davet Ex. 1 at ¶¶ 31-32; *see also*, Davet Ex. 3.) The conclusion of that letter and Davet's extensive research and counseling from experts is that Applicant and this Board should embrace the opportunity to be "green" through the use of distributive generation – a much more efficient and environmentally friendly manner of providing end-users with power and energy. (*See generally*, *id.* at ¶¶ 31-32.)

III. ARGUMENT

According to the Ohio law, this Board should not grant an applicant the right to build the line unless, among other things, the line "represents the minimum adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives, and other consideration." *See* R.C. § 4906.10(A)(3). In light of the many additional route paths that could have been chosen, and the various distributive generation alternatives

¹ Despite such information being requested through discovery well in advance of the hearing, it was not until after the hearing that applicant finally produced the KEMA report, on October 9, 2006.

which were not adequately explored. Applicant has failed to meet its burden to show that the preferred route represents the “minimum adverse environmental impact.”

A. The application should be denied because the line route should not go through the middle of Davet’s property.

For the building of electric power transmission lines, Ohio law requires that an “applicant shall provide the following health, safety, and aesthetic information for each site route/alternative: . . . the views of the proposed facility from such sensitive vantage points as residential areas, lookout points, scenic highways, and waterways; . . . how the proposed [line] will likely affect the aesthetic quality of the site and surrounding area. A.C. § 4906-15-06(F)(3)(a)-(c). In this same vein, “the applicant shall estimate the effect of noise generation due to the operation or maintenance of the transmission line” and any procedures implemented to mitigate that noise. A.C. § 4906-15-06(G)(2),(3).

By choosing a preferred route that goes directly through the middle of Davet’s property, destroying the picturesque views of his ponds and fields and placing them close enough to his house and cabin that the noise emissions will surely be a disturbance, Applicant has done nothing to address or mitigate the destruction to the aesthetic and peaceful qualities of Davet’s land. (*See generally*, Davet Ex. 1 at PP 11, 20-22, 33; *see also*, Davet Ex. 2 and Davet Ex. 2(A)-(C).) Davet even raised these very concerns through his pre-filed testimony, yet Applicant still failed to provide adequate explanation for why the lines need to go through the middle of Davet’s property, rather than along one of its borders or through the tree lines. This point is rather significant, given that the Supreme Court of Ohio has held that residences located under or directly near power lines are essentially uninhabitable. *See Shemo v. Mayfield Heights*, 88 Ohio St. 3d 7, 12-13.

Similarly, Applicant is also required to address overall health concerns, and particularly those relating to the electromagnetic field. *See* A.C. § 4906-15-06(E)(2). Here again, as with Davet's other legitimate concerns, Applicant failed to provide any counterarguments or evidence establishing that Davet's crops and cattle will remain healthy in spite of Applicant's future use of herbicides or the location of the electromagnetic field that Applicant itself acknowledges is linked to cancer. (*See* Davet Ex. 1 at ¶¶ 6, 14-16, 18 and 19.)

Finally, with regard to "agricultural land" such as Davet's, Applicant is required to provide an evaluation that "shall include impacts to cultivated land, permanent pasture land, managed wood lots, orchards, nurseries, and agricultural-related structures." A.C. § 4906-15-06(C). Notably, Applicants preferred route goes directly through or by Davet's cultivated land, pasture land, wood lots, and even where the property has, and still could be used to cultivate grapes. (Davet Ex. 1 at ¶¶ 6-10.) Thus, the preferred route as it pertains to Davet's property impacts virtually every type of "agricultural land" for which Applicant was to provide an adequate evaluation. Applicant was required to "estimate the probable impact of the proposed [power lines] on each land use, including: . . . Field operations such as plowing, planting, cultivating, spraying, and harvesting." A.C. § 4906-15-06(C)(1)(b). However, this too was not done with regard to Davet's property, even despite his voiced concerns about how the chosen route will make it more difficult for him to harvest crops and control the location for his cattle to graze. (Davet Ex. 1 at ¶¶ 15, 17, and 19.)

Simply put, with the preferred route Applicant has chosen, Applicant has failed to adequately address or mitigate the negative impact that the power lines will have on Davet's use of his farm, whether those impacts are to his aesthetic enjoyment, health, or agricultural use.

B. The application should be denied because Applicant failed to adequately address the feasibility for more environmentally sound means for power transmission, such as distributive generation alternatives.

The rejection of the preferred route should not only be due to the placement of the power lines through the middle of Davet's property, but also due to the fact that the building of any power lines, through whatever route, could be avoided through the use of distributive generation alternatives. In fact, Ohio law requires that an applicant adequately address such alternatives. Specifically, an "applicant shall provide an analysis and evaluation of the options considered which would eliminate the need for construction of an electric power transmission line, including electric power generation options and options involving changes to existing and planned electric power transmission substations." A.C. § 4906-15-02(D).

As Davet has pointed out, there are many reasons distributive generation should have been more closely examined and considered by Applicant and the Staff. For instance, after discussions with experts from the Rocky Mountain Institute, Davet presented a series of questions and issues that the Applicant and Staff should have considered or addressed regarding distributive generation. (Davet Ex. 1 at P 29.) These items include:

1. Usually installing distributed generation on a system could make the overall utility system more reliable generally. The Staff Report's justification is quite short and there is not enough information to bring the reader along. Some additional back-up analysis is needed around the reasoning rejecting distributed generation alternative. Will it be done and provided?
2. The Staff Report does not include any documentation supporting First Energy's rejection of non-transmission alternatives of demand-side management, energy efficiency, or distributed generation. It just says that "it was thought" these options would not be sufficient. As an intervenor, I request that such an analysis be conducted and the documentation given.

3. Also, there is no evidence showing the rate of growth of the region that would result in a 32-45 MW growth that they claim. Will there be a more detailed analysis of the growth?
4. The Staff Report rejects each of the non-transmission alternatives. It seems they are assuming that each alternative alone would not be sufficient. However they do not look at the option of pursuing *all three alternatives together* (energy efficiency, renewable energy and distributed generation with captured heat and power ["CHP"]) as a way of meeting the demand. Has this been considered? What is the result?
5. The Staff Report does not discuss the option of pursuing all alternatives together and its impacts on the need for the transmission line. In other words, perhaps there is a more cost effective optimum whereby a little bit of efficiency and demand response and distributed generation together would lead to smaller (and therefore cheaper) transmission capacity need. Will this be done?
6. Finally, there is no supporting alternative economic evaluation either. A diesel generator costs \$500/kWh or \$5,000 for 1 MW. Installation cost of \$300,000 seems high. Were these considered?

(*Id.*) Rather than specifically address these points before or at the hearing, however, Applicant and its expert referred to a third party report that was never offered into evidence or otherwise produced to the other parties before the hearing.² (*See generally*, Tr. Vol. I at pp. 58-60; *see also*, Applicants' Responses to Staff's First Set of Interrogatories Directed to Applicants and Request for Production of Documents, Response to Interrogatory No. 9, filed April 15, 2008; Davet Ex. 1 at ¶¶ 27.)

Without having presented adequate evidence – through a KEMA report, or otherwise – Applicant has failed to meet its burden to show that the need for additional power could not

² This fact is even more poignant given that there are already ample natural gas lines in the Middlefield area, coupled with a recent reduction in the need for additional power due to the slowing Middlefield economy (with the Johnson Rubber plant closing in 2008 ending nearly 400 jobs, and layoffs at the Kraftmaid plant in 2007 approaching 500 jobs).

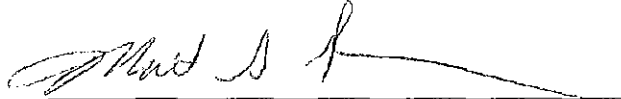
otherwise be met through distribute generation alternatives, rather than new, environmentally destructive power lines that Applicant is proposing. The viability of using distributive generation to address the power needs remains an economically achievable and environmentally-sound solution that circumvents the need for new power lines and the destruction of pristine country land, including Davet's farm.

IV. CONCLUSION

This Board should deny Applicant's request to build power lines along the preferred route for the simple reasons that Applicant failed to provide sufficient evidence showing that the selected route adequately mitigates destruction to the aesthetic beauty and health of Davet's farm, or that the required power distribution could not be achieved through more environmentally friendly and efficient distributive generation alternatives. For these reasons, and all other reasons stated above, the application should be denied.

Date: October 16, 2008

Respectfully submitted,



Robert J. Hanna (0037230)(Trial Attorney)

Matthew S. Romano (0076263)

TUCKER ELLIS & WEST LLP

925 Euclid Avenue

1150 Huntington Building

Cleveland, Ohio 44115

Telephone: (216) 592-5000

Facsimile: (216) 592-5009

*Attorneys for Intervening Party George K.
Davet*

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing *Post-Hearing Brief of George K. Davet* has been served upon the following counsel or parties of record this 15th day of October, 2008, via first class U.S. Mail, postage prepaid to:

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

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

James O'Dell
Klaus Lambeck
Ohio Power Sitting Board
180 East Broad Street
Columbus, OH 43215

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

Michael R. Beiting
Morgan E. Parke
Theodore Krauss
FirstEnergy Service Company
76 South Main Street
Akron, OH 44308

Christopher Schraff
Robert Schmidt
Porter Wright Morris & Arthur
41 South High Street
Columbus, OH 43215

David Ondrey
Todd Hicks
Thrasher Dinsmore & Dolan
100 Seventh Avenue, Suite 150
Chardon, OH 44204

Thomas Lee
Julie Crocker
Taft, Stettinius & Hollister
200 Public Square, Suite 3500
Cleveland, OH 44114

Date: October 15, 2008

Respectfully submitted,



Robert J. Hanna (0037230)(Trial Attorney)
Matthew S. Romano (0076263)
TUCKER ELLIS & WEST LLP
925 Euclid Avenue
1150 Huntington Building
Cleveland, Ohio 44115
Telephone: (216) 592-5000
Facsimile: (216) 592-5009

Attorneys for Intervening Party George K. Davet