

**FILE**

**BEFORE  
THE OHIO POWER SITING BOARD**

10  
RECEIVED-DOCKETING DIV  
2008 OCT 16 PM 3:40  
PUCO

In the Matter of 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. )

Case No. 07-171-EL-BTX

---

**POST-HEARING BRIEF OF INTERVENOR CITY OF CHARDON**

---

**I. Introduction**

The post-hearing brief of the City of Chardon is limited to the evidence concerning the location of 138 kV electric transmission lines on the Maple Highlands Trail and through the City of Chardon, upon or in proximity to the abandoned B & O Railroad right-of-way.

**II. Procedural History**

The application for the Geauga County 138 kV transmission line supply project was filed by The American Transmission Systems Inc. ("ATSI") and The Cleveland Electric Illuminating Company ("CEI") (together, "Applicants") on February 21, 2007. On March 27, 2008, the staff of the Ohio Power Siting Board ("OPSB") directed data requests to Applicants, including Interrogatory No. 16:

State whether a combination of the Maple Highlands Bike Trail right-of-way and utilization of an abandoned railroad corridor through the City of Chardon [was] considered in the route selection process. If so, provide a detailed explanation as to why this route was rejected. Include any legal constraints that may prevent acquisition of easements.

The Applicants filed their response on May 19, 2008.

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 **OCT 16 2008**

The City of Chardon filed its Motion to Intervene on June 30, 2008, which was granted. Local public hearings were held on August 27, 2008, August 28, 2008 and September 10, 2008. The adjudicatory hearings were held on September 16, 2008 through September 19, 2008 and then concluded on October 1, 2008.

### **III. Statement of Facts**

#### **A. FirstEnergy's Report applying the route selection process to the "Combination Route" described in OPSB Staff Interrogatory No. 16.**

In response to OPSB Staff Interrogatory No. 16, and as documented in a report attached to that response, the Applicants made the following points regarding the route selection process. As part of that report, the Applicants applied the route selection process to a route comprised of a combination of the Maple Highlands Trail and the abandoned B & O Railroad corridor through the City of Chardon ("Combination Route"). The Combination Route ranked 209 of 894 total routes evaluated by the applicants' consultant, URS.<sup>1</sup>

The same route selection study methodology applied to the preferred and alternate routes was used to evaluate the Combination Route. Because URS could utilize pedestrian reconnaissance along the entire portion of the Maple Highlands Trail, its review was more comprehensive.<sup>2</sup> URS concluded that of the routes studied, the "Combination Route had the maximum values of residences between 100 and 1,000 feet, the maximum value of linear feet of sensitive land uses crossed (due to a large portion of the route being located in a public park) and the maximum value of Ohio Historical Inventory Structures located within 1,000 feet."<sup>3</sup> The report also noted "engineering challenges to be overcome" because of the man-made land

---

<sup>1</sup> Response to Interrogatory No. 16 of Staff's First Set of Interrogatories Directed to Applicants ("Response to Interrogatory No. 16"), p. 1.

<sup>2</sup> Report of FirstEnergy attached to Response to Interrogatory No. 16 ("First Energy Report"), p. 2.

<sup>3</sup> First Energy Report, p. 3.

features on the bike trail;<sup>4</sup> and routing through residential development in the City of Chardon.<sup>5</sup> When discussing the western portion of the Combination Route within the City of Chardon, URS noted difficulties associated with construction of an electric transmission line in an urban setting:

Buried and above ground utilities, potential traffic congestion, higher density residential, commercial and industrial development, zoning and land use restrictions, safety and First Energy-specific utility line clearance requirements, and the likelihood of future development \*\*\*Municipal areas are generally avoided when other feasible candidate routes are available.<sup>6</sup>

Construction through the major commercial areas at the northern end of the City of Chardon, "while technically possible," will be difficult due to space limitations between buildings.<sup>7</sup> Typically, ATSI will not install a transmission line above a structure nor permit a structure to be located within the transmission line right-of-way.<sup>8</sup> If constructed on the Combination Route, a steel pole would have to be installed in the parking lot of Chardon Plaza. Also noted were specially zoned areas, the municipal cemetery and a golf course; and a church adjacent to the northeast corner of the intersection of the Maple Highlands Trail and South Street.<sup>9</sup> Residential condominiums, high density residence areas and planned unit developments constructed within the last few years were also noted.<sup>10</sup>

In its report, URS also commented upon the proposed Rachael Project for which the Board granted a certificate of need in Case No. 95-600-EL-BTX.<sup>11</sup> It noted that one of the conditions of the certificate was to use only the top of the railroad embankment for poles and

---

<sup>4</sup> Id., p. 3.

<sup>5</sup> Id., p. 4.

<sup>6</sup> Id.

<sup>7</sup> Id., p. 5.

<sup>8</sup> Id.

<sup>9</sup> Id.

<sup>10</sup> Id., p. 6.

<sup>11</sup> Id., p. 8.

construction access.<sup>12</sup> It also noted that the construction above the Maple Highlands Trail, which includes covered bridges, would prevent pole installation on top of the railroad embankment.<sup>13</sup> Current Ohio Department of Transportation design guidelines for bicycle trails suggest a preference for at least five feet of separation between the edge of a bicycle path and the outer edge of an obstruction.<sup>14</sup>

Finally, URS stated that “poles installed along the elevated railroad grade would be visually more noticeable (both within and outside of the Combination Route) than the visual impact of poles along the preferred or alternate routes.”<sup>15</sup> Further, “[i]nstalling the transmission line on the south side of the covered bridge crossing on Claridon Road will require installing the transmission line between the covered bridge and a nearby residence.”<sup>16</sup>

**B. Testimony from the local public hearing on August 27, 2008.**

Opponents of the Combination Route who testified at the local public hearings raised additional concerns. Additional transmission lines to the Pine Hollow substation will cause more congestion in that area.<sup>17</sup> High voltage transmission lines on poles of 80 feet or higher will have a negative impact upon the historic City of Chardon, which is fighting to preserve its small-town atmosphere.<sup>18</sup> The location of steel structures in the parking lot of Chardon Plaza will be a significant economic detriment to the owner and tenants of the shopping center.<sup>19</sup> When the bike path from the northerly terminus of the Maple Highlands Trail to the southerly terminus of another bike trail at the northerly boundary of the City of Chardon is completed, it will have a

---

<sup>12</sup> Id.

<sup>13</sup> Id.

<sup>14</sup> Id.

<sup>15</sup> Id., pp. 9-10.

<sup>16</sup> Id., p. 10.

<sup>17</sup> Testimony of Peter Bongiovanni, Transcript of local public hearing held Wednesday, August 27, 2008 at the Ledgemont Elementary-Middle School (“August 27 Transcript”), p. 10, line 25; p. 11, lines 1-4.

<sup>18</sup> Testimony of Mayor Karen Simpson, August 27 Transcript, p. 42, lines 24-25; p. 43, lines 1-6.

<sup>19</sup> Testimony of James Grasso, August 27 Transcript, p. 19, lines 1-9.

positive economic impact on the City. The users of the trail will stop in the City for food, beverages or other goods and services.<sup>20</sup>

Opponents of the preferred or alternate routes rarely refer to the Combination Route by name; rather, they talk about unnamed “existing civil corridors” and “public rights-of-way” as more appropriate locations for the high voltage transmission lines. Excluding the Maple Highlands Trail and one parcel owned by CSX, all of the abandoned B & O Railroad right-of-way is privately owned and most of the parcels have been developed as commercial or residential uses.

**C. Initial direct testimony of Philip King and David B. Hartt.**

The City of Chardon submitted the testimony of two witnesses, Philip King, Vice-Mayor of the City of Chardon, and David B. Hartt, D. B. Hartt Inc., a land planning consultant to the City of Chardon.

David B. Hartt has been practicing as an urban planner since 1967, mostly in northeastern Ohio.<sup>21</sup> He testified that the Combination Route includes 1.9 miles within the City of Chardon.<sup>22</sup> Approximately 300 homes are located within 1,000 feet of the proposed centerline.<sup>23</sup> Several homes would be within 125 feet of the centerline of the proposed line, and 71 homes are within 300 feet.<sup>24</sup> He commented upon the “incompatible visual intrusion of the lines with poles 80-100 feet high and generally less than 400 feet apart.”<sup>25</sup> Sixty historic homes would be within 1,000 feet of the line.<sup>26</sup> As a community striving to preserve its historic areas, “any impediments that

---

<sup>20</sup> Testimony of Mary Jo Stark, August 27 Transcript, p. 22, lines 5-23.

<sup>21</sup> Initial Direct Testimony of David B. Hartt (“Hartt Testimony”), p. 2, lines 14-17.

<sup>22</sup> Id., p. 4, line 22; p. 13, line 1.

<sup>23</sup> Id., p. 7, lines 7-8; p. 13, lines 1-3.

<sup>24</sup> Id., p. 13, lines 7-13.

<sup>25</sup> Id., p. 13, lines 15-16.

<sup>26</sup> Id., p. 7, lines 7-9.

do not 'contribute' to the historical aspects potentially undermine the City's ability to assure long term preservation and marketability."<sup>27</sup>

Mr. Hartt noted that the Combination Route would also bisect the older retail areas along Center Street and Water Street, reduce the future potential for coordinating existing and proposed developments into a cohesive retail environment and hinder mixed-use redevelopment of the older retail areas as envisioned in the City of Chardon Comprehensive Plan.<sup>28</sup> Locating poles or towers in the Chardon Plaza Shopping Center parking lot will create a less desirable shopping environment.<sup>29</sup> He stated that older areas of the City, both retail and residential, will struggle to remain competitive in the regional market.<sup>30</sup> His testimony on these points was unrebutted in his cross examination<sup>31</sup> and there was no other testimony on the record that refutes his conclusions.

Philip King, Vice-Mayor of the City of Chardon, recounted that Chardon was founded in 1812 as the county seat and has become a commercial center for residents of the city and surrounding townships while continuing to develop as a residential community.<sup>32</sup> During the past decade, 259 sublots for single family homes have been approved and 220 permits for single family home construction have been issued.<sup>33</sup> The City recently expended substantial funds to develop a comprehensive plan aimed at preserving the small town, Western Reserve character of the City.<sup>34</sup> The Combination Route contradicts the municipal plan to preserve its small town character in future development and expansion and is incompatible with the existing plan.<sup>35</sup> In

---

<sup>27</sup> Id., p. 14, lines 16-18.

<sup>28</sup> Id., p. 14, lines 21-23; p. 15, lines 1-4.

<sup>29</sup> Id., p. 15, lines 7-10.

<sup>30</sup> Id., p. 15, lines 11-13.

<sup>31</sup> Transcript from September 18, 2008 Hearing, Vol. III, pp. 128-140.

<sup>32</sup> Initial Direct Testimony of Phillip King ("King Testimony"), September 8, 2008, p. 1, lines 25-26; p. 2, lines 1-6.

<sup>33</sup> King Testimony, p. 2, lines 9-12.

<sup>34</sup> Id., p. 3, lines 21-24.

<sup>35</sup> Id., p. 3, line 24; p. 4, lines 1-2.

Mr. King's opinion, the Combination Route "would destroy the very environment that has enabled Chardon to thrive for 200 years."<sup>36</sup>

Intervenor Citizens Advocating Responsible Energy (C.A.R.E.) presented the testimony of Kathleen McGee, J.D. MAI, who testified about the impact of a transmission line along the alternate and preferred routes and the Maple Highlands Trail. She presented no testimony about the reduction of property values in the City of Chardon if the Combination Route is adopted.<sup>37</sup>

#### **IV. Argument**

The Combination Route ranked 209<sup>th</sup> of 894 routes evaluated by the Applicants' consultant URS who applied the same rating system for route selection used to evaluate the preferred and alternate routes. Routes should be located on a "pre-existing civil corridor" or a "public right-of-way." The validity and credibility of the study is evident by its acceptance in the Staff Report of Investigation and Recommended Findings.<sup>38</sup>

If the phrase "pre-existing civil corridor" means the abandoned B & O Railroad right-of-way within the City of Chardon, then a "pre-existing civil corridor" no longer exists. The Geauga Park District acquired and developed a portion thereof and built the Maple Highlands Trail, a fully improved asphalt trail. The remainder of the former B & O Railroad right-of-way within the City has been developed for residential and commercial uses. C.A.R.E.'s argument that a "pre-existing civil corridor" is available through the City of Chardon is not well taken.

As noted in the URS report attached to response to Interrogatory No. 16, "municipal areas are generally avoided when other feasible candidates are available."<sup>39</sup> The evidence before the Board supports this conclusion. Poles on the Maple Highlands Trail within the City will be

---

<sup>36</sup> Id., p. 5, lines 1-2.

<sup>37</sup> See Direct Testimony of Kathleen McGee, J.D., September 8, 2008.

<sup>38</sup> Staff Report, August 12, 2008, pp. 3-4.

<sup>39</sup> FirstEnergy Report, p. 4.

more visible because of their placement on a manmade raised embankment. The Combination Route would intrude upon quiet residential subdivisions, planned unit developments and condominiums. Many homes are within 1,000 feet of the line. The Combination Route would bisect the commercial area in the heart of the City. To ensure that the Combination Route does not cross over retail buildings, steel structures for the lines will be built in a shopping center parking lot. The introduction of high voltage electrical transmission lines into the City of Chardon would interfere with the City's plan to assure that older residential and commercial buildings remain competitive in the face of increased new homes and shopping areas in the City of Chardon and the surrounding market areas. Any adverse impact will degrade or reduce the viability and marketability of these areas. The introduction of the Combination Route into the City of Chardon should not be even considered when other feasible alternatives are available.

The Amendment to the Comprehensive Plan recently adopted by the City of Chardon calls for development consistent with its small town, Western Reserve character. Were the Board to reject the Applicants' preferred or alternate routes and indicate a preference for the Combination Route, the goals of the City of Chardon Comprehensive Plan could not be achieved.

Most of the Combination Route will be built on the Maple Highlands Trail. For the reasons given in its Post-Hearing Brief by the Geauga Park District, the City of Chardon joins in its arguments in its opposition.

## **V. Conclusion**

For the foregoing reasons, the City of Chardon respectfully requests the Board to adopt the alternate or preferred routes proposed by the Applicants and to reject the Combination Route as an alternative thereto.



Respectfully submitted,  
CITY OF CHARDON, OHIO

By: James M. Gillette  
James M. Gillette, Law Director  
117 South Street, Suite 208  
Chardon, OH 44024  
[jgillette@chardon.cc](mailto:jgillette@chardon.cc)  
440-286-7195  
Fax: 440-286-1207

**CERTIFICATE OF SERVICE**

A copy of the foregoing Post-Hearing Brief of the City of Chardon was sent via ordinary U.S. mail on this 16th day of October 2008 to the following parties of record.

  
Sally W. Bloomfield

Christopher Schraff, Esq.  
Robert J. Schmidt, Esq.  
Porter Wright Morris & Arthur  
41 South High Street, Suites 2800-3200  
Columbus, Ohio 43215-6194

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

Thomas J. Lee, Esq.  
Julie Crocker, Esq.  
Taft, Stettinius & Hollister  
200 Public Square, Suite 3500  
Cleveland, Ohio 44114-2302

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

David J. Neilsen, Esq.  
McNees Wallace & Nurick LLC  
21 E. State Street, 17<sup>th</sup> Floor  
Columbus, Ohio 43215-4281

Thomas Curtin  
Geauga Park District  
9160 Robinson Road  
Chardon, Ohio 44024

David M. Ondrey  
Thrasher, Dinsmore & Dolan, LPA  
100 Seventh Avenue, Suite 150  
Chardon- OH 44024

Margaret Malone, Esq.  
Lauren Angell, Esq.  
Office of the Attorney General  
EPA Section  
30 E. Broad Street, 25th Floor  
Columbus, Ohio 43215

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

Thomas G. Lindgren Esq.  
Thomas M. McNamee  
Ohio Attorney General  
180 East Broad Street, 9th Floor  
Columbus OH 43215