BEFORE

THE OHIO POWER SITING BOARD

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| In the Matter of the Application of American Transmission Systems, Incorporated for a Certificate of Environmental Compatibility and Public Need for the Construction of the Black River Substation. | Case No. 11-5855-EL-BSB |
| In the Matter of the Application of American Transmission Systems, Incorporated for a Certificate of Environmental Compatibility and Public Need for the Construction of the Black River Transmission Line. | Case No. 11-5856-EL-BTX |

OPINION, ORDER, AND CERTIFICATES

The Ohio Power Siting Board (Board), coming now to consider the above-entitled matter; having appointed an administrative law judge (ALJ) to conduct a public hearing; having reviewed the exhibits introduced into evidence, including the Joint Stipulation and Recommendation; and being otherwise fully advised, hereby waives the necessity for an ALJ report and issues its opinion, order, and certificates in this case, as required by Section 4906.10, Revised Code.

APPEARANCES:

Porter Wright Morris & Arthur LLP, by Christopher R. Schraff, and Robert J. Schmidt, 41 South High Street, Columbus, Ohio 43215, and FirstEnergy Corporation by Morgan Park, and Anne Juterbock, 76 South Main Street, Akron, Ohio 44308, on behalf of American Transmission Systems, Inc.

Mike DeWine, Ohio Attorney General, by Devin D. Parram, Assistant Attorney General, Public Utilities Section, 180 East Broad Street, 6th Floor, Columbus, Ohio 43215.

OPINION:

I. Summary of the Proceedings:

All proceedings before the Board are conducted according to the provisions of Chapter 4906, Revised Code, and Chapter 4906, Ohio Administrative Code (O.A.C.).

On December 20, 2011, American Transmission Systems, Inc. (ATSI or Applicant), held a public informational meeting at the St. Joseph Community Center in Lorain, Ohio, regarding applications that ATSI intended to file for a certificate of environmental compatibility and public need (certificate) to construct a 138 kilovolt (kV) Black River Substation, which would serve as a transmission switching station with 138 kV to 69 kV transformation. Additionally, the public information meeting regarded an application that Applicant intended to file for a certificate to construct and install new lines on open arms of existing transmission structures on several 138 kV circuits, as well as upgrading an existing 69 kV line for 138 kV operation.

On December 20, 2011, ATSI filed a motion for a waiver of certain limited requirements of Section 4906.06(A)(6), Revised Code, regarding the one-year notice period, and Rule 4906-5-04, O.A.C., regarding the requirement that the alternative routes have less than 20 percent in common. On December 23, 2011, Staff filed correspondence indicating that it did not object to the motion. The motion was granted on January 5, 2012.

On December 22, 2011, the Applicant filed an application for a certificate to construct the substation project in Case No. 11-5855-EL-BSB (11-5855) and an application for a certificate to construct the transmission line project in Case No. 11-5856-EL-BTX (11-5856). (Applicant Ex. 1.)

Also on December 22, 2011, the Applicant filed a motion for a protective order, seeking protective treatment for conditional diagrams containing load flow data, confidential business information, and critical energy information. At the adjudicatory hearing held February 23, 2011, the ALJ granted the Applicant's motion, finding the information contained within the diagrams constitutes trade secret information, and meets the requirements contained within Rule 4906-7-07, O.A.C. (Adjudicatory Hearing Transcript at 5.) Rule 4901-1-24(F), O.A.C., provides that, unless otherwise ordered, protective orders under Rule 4906-7-07(H)(6), O.A.C., automatically expire after 18 months. Therefore, confidential treatment shall be afforded for a period ending 18 months from the date of this order, or until September 26, 2013. Until that date, the Docketing Division should maintain, under seal, the conditional diagrams, filed under seal on December 22, 2012. Rule 4906-7-07(H)(6), O.A.C., requires a party wishing to extend a protective order to file an appropriate motion in advance of the expiration date, including a detailed discussion of the need for continued protection from disclosure. If the Applicant wishes to extend this confidential treatment, it should file an appropriate motion at least 45 days in advance of the expiration date. If no such motion to extend confidential treatment is filed, the Board may release this information without prior notice to the Applicant.

By letter dated December 23, 2011, the Board notified the Applicant that its applications for the substation and transmission line projects had been certified as

complete pursuant to Rule 4906-5-05, O.A.C. On December 23, 2011, the Applicant filed a motion to consolidate cases 11-5855 and 11-5856, which the ALJ granted by entry issued January 5, 2012. By entry issued January 5, 2012, the ALJ scheduled a local public hearing for February 21, 2012, at the Lorain City Hall Council Chambers, Lorain, Ohio, and an adjudicatory hearing for February 23, 2012, at the offices of the Public Utilities Commission of Ohio (Commission), in Columbus, Ohio. Further, the January 5, 2012, entry directed the Applicant to publish notice of the applications and hearings, as required by Rule 4906-5-08, O.A.C., and directed that petitions to intervene by interested persons be filed within 30 days following publication of the notice required by Rule 4906-5-08, O.A.C.

On January 9, 2012, ATSI filed a motion requesting that the requirement contained within Rule 4906-5-08(C)(1), O.A.C., be waived to permit ATSI to file its initial newspaper notice on January 11, 2012. By entry issued January 11, 2012, the ALJ granted ATSI's motion. Thereafter, on January 20, 2012, the Applicant filed proof of publication in local newspapers of the local public hearing scheduled for February 21, 2012, and the adjudicatory hearing scheduled for February 23, 2012. (Applicant Ex. 2.)

On February 3, 2012, Staff filed its report of investigation of the applications (staff report) (Staff Ex. 1). On February 9, 2012, ATSI filed a motion requesting that the ALJ extend the deadline for the Applicant to file its direct testimony, stating the parties were involved in settlement negotiations and nearing a stipulation. On February 10, 2012, the ALJ granted ATSI's motion, and ordered ATSI and Staff to file direct testimony by February 17, 2012, if no stipulation was reached, or the stipulation entered into between the two parties. On February 17, 2012, ATSI and Staff filed expert testimony in these matters.

The local public hearing was held, as scheduled, on February 21, 2012. At the local public hearing, nine individuals offered testimony regarding the transmission line and substation projects. Eight of the nine witnesses testifying at the public hearing supported the transmission line and substation projects. One witness opposed the preferred substation site, but supported the overall transmission line and substation projects. (Local Public Hearing Transcript at 6-22.)

On February 22, 2012, the Applicant and Staff filed a Joint Stipulation and Recommendation (Stipulation) resolving all issues in these cases. The adjudicatory hearing commenced as scheduled on February 23, 2012.

II. Proposed Facility and Siting:

According to the applications, the transmission line and substation projects involve the construction of a 138 kV transmission line and supporting substation. The Black River substation project will be a 138 kV transmission switching station with 138 kV to 69 kV

transformation. The substation project is intended to provide reliable electric power service to a new electric arc furnace and associated new load at the Republic Steel expansion site in Lorain, Ohio. Further, the substation project will serve the greater Lorain, Sheffield, Lake, and Vermillion areas. (Applicant Exhibit 1 at 1-2, 1-3.)

The transmission line project involves the construction of small sections of new 138 kV transmission lines, rebuilding existing 138 kV transmission lines, reconductoring existing 138 kV transmission lines, and installing 138 kV transmission lines on the open arms of existing transmission structures. The existing transmission system in Lorain, Ohio cannot accommodate the delivery of the expected new load of 110 megawatt (MW) associated with the Republic Steel expansion, as a result, the Black River transmission line project is designed to support load associated with the expansion of the Republic Steel site. (*Id.* at 1-3.)

The preferred site for the substation project sits within a block of land that is bordered by Clifton Avenue to the west, East 29th Street on the north, Canton Avenue on the east, and East 30th Street on the south. The city of Lorain currently owns the preferred site but has initiated a process to transfer ownership of the site to the Applicant. The preferred substation site currently contains athletic fields and a basketball court. The cost to build the preferred substation site is approximately $11.9 million. (*Id.* at 1-3, 1-4; Staff Ex. 1 at 5.)

The alternate site for the substation project is located at the southeast corner of a parcel of land between Globe Avenue and Dunton Road, along East 36th Street. The parcel of land is currently owned by CSX Railroad. The alternate substation site is presently unused and consists of a former rail yard that has been removed. Residential areas border the north and east sides of the alternate site. The cost to build the alternate substation site is approximately $12.6 million. (*Id.*)

The preferred route for the transmission line project consists of two new 138 kV loops from the existing double circuit transmission line along Clifton Avenue to the east towards the preferred substation site. Included in the transmission line project for the preferred route would be 138 kV jumper work at the existing transmission tower located 480 feet north of the preferred substation site where existing 138 kV lines intersect. The jumper work would allow the substation to be connected directly to the Republic Steel facility. The preferred route for the transmission project also consists of rebuilding approximately 2,770 feet of the existing 138 kV transmission line, as well as installing approximately 2,330 feet of new 138 kV conductor circuit on the existing transmission line, and reconductoring approximately 4,760 feet of the deenergized 138 kV side of the existing transmission line. The cost to build the preferred route for the transmission line project is approximately $1.25 million. (Staff Ex. 1 at 5-6.)

The transmission line route for the alternate substation site is approximately 0.4 miles long and runs parallel to an existing 69 kV transmission line corridor. The alternate transmission line route includes two new 138 kV loops from the existing 138 kV line, and would include 138 kV jumper work at the existing transmission tower located approximately 480 feet north of Site 3. In addition, the alternate route would include reconductoring the deenergized 138 kV side of the existing 69 kV transmission line, as well as rebuilding an existing 69 kV transmission line to operate at 138 kV. The cost to build the alternate transmission line route is approximately $1.15 million. (*Id.*)

III. Certification Criteria:

Pursuant to Section 4906.10(A), Revised Code, the Board shall not grant a certificate for the construction, operation, and maintenance of a major utility facility, either as proposed or as modified by the Board, unless it finds and determines all of the following:

(1) The basis of the need for the facility if the facility is an electric transmission line or natural gas transmission line.

(2) The nature of the probable environmental impact.

(3) The facility represents the minimum adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives, and other pertinent considerations.

(4) In case of an electric transmission line or generating facility, such facility is consistent with regional plans for expansion of the electric power grid of the electric systems serving this state and interconnected utility systems; and that such facilities will serve the interests of electric system economy and reliability.

(5) The facility will comply with Chapters 3704, 3734, and 6111, Revised Code, and all rules and standards adopted under those chapters and under Sections 1501.33, 1501.34, and 4561.32, Revised Code.

(6) The facility will serve the public interest, convenience, and necessity.

(7) The impact of the facility on the viability as agricultural land of any land in an existing agricultural district established under Chapter 929, Revised Code, that is located within the site and alternative site of the proposed major facility.

(8) The facility incorporates maximum feasible water conservation practices as determined by the Board, considering available technology and the nature and economics of various alternatives.

IV. Local Public Hearing:

At the local public hearing, eight witnesses, including county and city officials, testified in support of the substation and transmission line projects. The individuals expressed that the projects would provide numerous benefits, including over four hundred jobs, and creating future development in the city of Lorain. Further, several individuals testified that the project would provide for opportunities to develop the lakefront by removing existing transmission facilities. One individual who owns land adjacent to the preferred site testified in support of the overall transmission line and substation projects, but in opposition to the use of the preferred substation site, stating that city and company officials never contacted him regarding the preferred site location. (February 21, 2012, Local Hearing Transcript.)

V. Summary of the Evidence:

A. Basis of Need (Section 4906.10(A)(1), Revised Code)

The Applicant states that the substation and transmission line projects are necessary to provide reliable and economical electric power service to a proposed electric arc furnace at the Republic Steel facility in Lorain, Ohio. The proposed electric arc furnace will add an additional 100 MW of new electric load in addition to the current steel manufacturing load of 115 MW, resulting in an 87 percent load increase. (Applicant Ex. 1 at 2-3, Staff Ex. 1 at 13-14.)

Staff notes that PJM Interconnection, LLC (PJM), a regional transmission organization, issues an annual regional transmission expansion plan (RTEP) providing details of transmission upgrades necessary to maintain reliability. Staff provides that while the proposed Black River projects were not identified in the most recent PJM RTEP, PJM is aware of the project and ATSI plans to submit the proposed projects and load addition to PJM for the next RTEP. Staff notes that the Applicant would then provide a copy of this request to Staff once it is submitted to PJM. (Staff Ex. 1 at 13.)

Therefore, due to the significant increase in load in the area and the inability for the current transmission facilities to handle this increased load, Staff recommends that the Board find the basis of need for the transmission line and substation projects has been demonstrated, as required by Section 4906.10(A)(1), Revised Code. (*Id.* at 13-14.)

B. Nature of Probable Environmental Impact and Minimum Adverse Environmental Impact (Sections 4906.10(A)(2) and (3), Revised Code)

The staff report discussed the following with regard to the nature of the probable environmental impact:

(1) The project area is densely populated and is heavily industrial, with supporting institutional and commercial uses scattered throughout the area. While the project will have positive consequences on local economic development, it is not expected to impact the demographics of the region as a whole. (*Id.* at 15.)

(2) Although the area is industrial in nature, the application indicates that approximately 297 residences are located within 1,000 feet of the preferred substation site, and one residence is located within 100 feet of the site. There are 161 residences are within 1,000 of the alternate substation site. There are 33 commercial and industrial properties within 1,000 feet of the preferred substation site, including Republic Steel and USS Kobe Steel, and none located within 1,000 feet of the alternate substation site. Regarding the transmission line project, there are 840 residences, 44 businesses, and six public facilities within 1,000 feet of the preferred, alternate, and common transmission line routes for the preferred substation site. No residences are located within 100 feet of the preferred transmission line route. The construction of the facilities would likely result in temporary impacts associated with increased noise, traffic, and dust (*Id.* at 15-16.)

(3) The preferred substation site will have an impact on recreational land use, as the land is currently used as a city park/recreational area. However, the substation would require only 1.4 acres of the 6.2 acre site, with the remaining 4.8 acres to be returned to the City of Lorain for public use after the construction of the substation. No other recreational land uses have been identified within 1,000 feet of the preferred substation site. (*Id.* at 16.)

(4) One Ohio Historic Inventory (OHI) site is located within 1,000 feet of the preferred substation site, and seven OHI sites are located within 1,000 feet of the alternate site. The Applicant provided that none of the sites or listed or likely to be eligible

for the Nation Register of Historic Places (NRHP). One OHI site is listed within 1,000 feet of the new portion of the preferred and alternate transmission line routes for the preferred site. The common transmission line route for the preferred site is within 1,000 feet of six historical properties. None of these sites, according to the Applicant, are listed or anticipated to be eligible for the NRHP. (*Id.* at 16.)

(5) The Black River substation and transmission line facilities would have a minimal impact on public and residential views within the project area. Because the preferred substation site sits on the northern portion of the city park adjacent to existing light industrial buildings, not only would most of the city park be retained, but also the visual impact to nearby residences would be minimized. While the engineering limitation of the site does not allow for visual screening, the substation at this site is consistent and comparable with the industrial and commercial land use in the area. In the event that there is a visual impact, the Applicant should submit a landscaping plan to Staff for Staff review and approval in order to minimize any impacts from the project. (*Id.* at 16-17.)

(6) Regarding the construction of the preferred transmission line route to the preferred substation site, it would be necessary to remove trees that currently offer screening to nearby residents, but, this loss of screening will be addressed by the installation of vegetation that is compatible with the transmission line project, as part of the Applicant's landscaping plan. The alternate substation site would incorporate existing vegetation to lessen visual impacts. Further, as there is an existing transmission line located near the site, new construction improvements would not be highly visible. The reconductoring of existing transmission lines would have negligible aesthetic impacts due to the presence of existing transmission lines. The Black River substation and transmission line project does not visually affect any historic districts, NRHP listed or eligible sites, and is not near any scenic highways, lookouts, or waterways within 1,000 feet of the routes. Thus, no important view sheds or historic settings would be negatively affected. (*Id.*)

(7) Concerning economic impacts, the costs to build the preferred subside is approximately $11.9 million, with an additional $1.25

million for associated transmission lines, while the alternate substation site costs are approximately $12.6 million, with an additional $1.15 million for the associated transmission lines. ATSI would pay property taxes on utility facilities to the city of Lorain, Sheffield Township, and Lorain County that would benefit the local school district, park district, and fire department. The project would further facilitate the expansion of Republic Steel, resulting in an estimated 449 new jobs. (*Id.* at 17.)

(8) There are no streams or drainage channels within 100 feet of any of the transmission line routes for the preferred substation site, nor at the preferred substation site. There are four isolated emergent wetlands within 100 feet of the common transmission line route for the preferred substation site, but no direct impacts would occur, as all wetlands associated with the preferred site would be spanned during construction, operation, and maintenance activities. There are no wetlands located within 100 feet of the preferred substation site. (*Id.*)

(9) No streams or drainage channels are located within 100 feet of any of the transmission line routes for the alternate substation site, although a roadside drainage ditch, as well as a narrow, Federal Emergency Management Agency-designated floodplain associated with this drainage ditch are present. Both the ditch and the associated floodplain would be spanned, resulting in no impacts to the either the ditch or floodplain. There are two small emergent wetlands and one forested wetland located along the preferred transmission line route for the alternate substation site, however, the Applicant states that there are no wetlands within the footprint of the alternate substation site. Not all wetlands associated with the alternate substation site would be avoided, however, where practicable, Applicant would span these resources during construction, operation, and maintenance activities. (*Id.* at 17-18.)

(10) The Applicant requested information from the Ohio Department of Natural Resources (ODNR) and the United States (U.S.) Fish and Wildlife Service (USFWS) about state and federally-listed threatened and endangered plant and animal species and gathered information through field assessments and review or published ecological information. Direct and indirect impacts to wildlife at the Black River project would be

minimized by prohibiting the clearing of golden-winged warbler nesting habitat during critical breeding periods, as well as Kirtland's warbler suitable habitats during spring and fall migration periods. (*Id.* at 18-20.)

(11) The preferred and alternate transmission line routes for the preferred substation project contain various grass and weed species, and the common transmission line route traveling entirely within an existing right-of-way contains turf grass with some shrub species gathered throughout. While the preferred substation site is flat and contains maintained grasses, potential tree and vegetation clearing may be required for the preferred transmission line route. No tree clearing would be required for construction of the alternate or common transmission line routes, with the exception of some brush contained within the existing right-of-way. A small amount of clearing and grading would be required at the preferred substation site, with the total land disturbance activity for the preferred substation site and associated transmission lines estimated to be up to 2.5 acres. (*Id.* at 20-21.)

(12) For the alternate substation project, the transmission line routes cross mostly open space with small shrub species and scattered tree groupings. The right-of-way associated with the transmission line routes for the alternate substation site would need to be cleared to accommodate placement of poles and towers to facilitate conductoring. Some minor vegetation clearing would be necessary for the alternate transmission line route and at the alternate substation site. The total land disturbance activity site and associated transmission lines is estimated to be up to five acres. (*Id.* at 21.)

(13) Construction noise impacts would occur throughout the five-month transmission line construction period and the 13-month substation construction period, with the most intense noise to occur during auger drill rig or pneumatic tool operations. The impacts of these operations to residents should be reduced by limiting construction to Monday through Friday from 7:00 a.m. to 7:00 p.m. The construction noise would be nearly equal at either substation site. (*Id.*)

(14) Intermittent noise impacts would occur during maintenance of the transmission lines, but only for short durations, and the

transmission lines would generally not emit audible noise during operation. As provided in the application, the preferred and alternate substation sites yielded operational exceedances of 7.1 to 11.8 decibels over the existing background noise, prompting the Applicant to move forward with quieter transformers than originally proposed within the application. These transformers result in a substation design that nearly eliminates operation increases of the existing background noise levels, and reduces sound levels by 16 decibels, reducing noise impacts to residents and the need for future mitigation. The preferred substation site presents the least operational noise impacts to the surrounding residences and businesses. (*Id.* at 21-22.)

(15) While the Applicant provides that radio and television interference should not result from the operation of the proposed transmission line and substation, in the event that defective substation hardware does create interference, the Applicant assures that these problems are easily identifiable and correctable. However, the Applicant fails to consider microwave communication paths or wired telephone circuit noise created by electrical interference. Therefore, the Applicant should consult and work with a local telephone provider to ensure no degradation to wired telephone service occurs, or in the event that it does, is acceptably mitigated. (*Id.* at 22.)

(16) the Applicant conducted a systematic site selection study intended to identify preferred and alternate substation sites that would meet engineering requirements for the project with minimal ecological, cultural, and land use impacts. In conducting this study, the Applicant considered a one-mile zone around the power demand and reliability need area, and identified six potential sites that contained desirable attributes and avoided major constraints to the greatest extent practicable. The overall desirability of these potential sites was ranked, and the Applicant conducted further review of the three highest scoring sites, and then further refined its selection to the preferred and alternate substation sites. (*Id.* at 23.)

(17) Route alternatives for transmission lines were identified in the vicinity of the preferred and alternative substation sites and considered based on their proximity to the Republic Steel plant

> and existing ATSI transmission lines and easements. Both substation sites had extensive routing criteria considered, including proximity of the lines to residences, historical sites, and new parcels crossed. Primary constraints were identified, which consisted of residences and neighborhoods, parks and recreation areas, wetlands, east of interconnection, and availability of existing transmission corridors. (*Id.*)

Staff recommends the preferred substation site as representing the minimum adverse environmental impact. Staff understands there are direct recreational impacts at the preferred site, but proclaims that the City of Lorain supports the project and the remaining property associated with the preferred site would be available for recreational uses after the Applicant returns the unused land back to the City. Further, Staff recommends the preferred transmission line route for the preferred substation site, as it is further away from existing residences than is the alternate route. In addition, the preferred substation site and associated transmission line routes would not impact surface waters and require less than 2.5 acres of vegetation clearing, approximately half of the required clearing associated with the alternate substation. (*Id.*)

Therefore, Staff states that the nature of the probable environmental impact has been determined for the proposed facility and complies with the requirements set forth in Section 4906.10(A)(2), Revised Code, and that the preferred substation site, with the associated preferred transmission line route, represents the minimal adverse environmental impact, and complies with the requirements specified in Section 4906.10(A)(3), Revised Code, provided that any certificate issued by the Board include the conditions as set forth in the staff report. (*Id.* at 23-24.)

C. Electric Power Grid (Section 4906.10(A)(4), Revised Code)

The proposed projects would be located in the PJM control area. Staff explains that, in order for the local and regional electric system to handle the increased load growth, the electric transmission system will have to be expanded. Specifically, Staff believes there is a need for a new substation which would require looping three existing 138 kV lines to the proposed Black River substation to create new lines, as well as deenergizing the existing 138 kV line. Further, as the Black River project has not previously been identified in the PJM RTEP, Staff finds that ATSI shall submit the proposed project for inclusion in the next RTEP. (*Id.* at 25.)

ATSI performed a load flow study on the current 138 kV transmission systems in the areas of Lorain, Sheffield Lake, and Vermillion to analyze the project area without the proposed Black River project in service. The analysis showed that, without the Black River project, the existing transmission and distribution system is unable to adequately supply

service to the increase load that would result from the Republic Steel expansion. Further, the load flow studies indicate that, even with the Black River project, one of the 138 kV lines may still overload under certain contingencies. ATSI plans to address this issue by bringing a 345 kV to 138 kV source into the Lorain area, and plans to make a submission to the Board in 2012. (*Id.* at 26-27.)

Staff indicates that the Applicant provided load flow details demonstrating the power flows on the system with and without the proposed substation and transmission lines. Upon review of the load flow details, Staff believes that, without the Black River project, the system may become unstable, and, even with the project, one line may remain unreliable during certain contingencies. Accordingly, ATSI will submit a project in 2012 to correct reliability problems in order to meet North American Electric Reliability Corporation criteria.

Staff recommends that the Board find that the proposed facility is consistent with Section 4906.10(A)(4), Revised Code, as well as with regional plans for expansion of the electric power grid of the electric systems serving this state and its interconnected utility systems, and that the facility would serve the interests of electric system economy and reliability. (*Id.* at 27.)

D. Air and Water Permits and Solid Waste Disposal (Section 4906.10(A)(5), Revised Code)

In its report, Staff notes that air quality permits are not required for construction of the proposed facility. However, fugitive dust rules adopted pursuant to Chapter 3704, Revised Code, may be applicable to the proposed facility. Further, Staff states that fugitive dust would be controlled, where necessary, through dust suppression techniques such as irrigation, mulching, or application of tackifier resins. Staff contends that these methods of dust control should be sufficient to comply with fugitive dust rules. (*Id.* at 28.)

Staff asserts that neither construction nor operation of the proposed facility would require the use of significant amounts of water, so requirements under Sections 1501.33 and 1501.34, Revised Code, are not applicable to this project. (*Id.*)

Staff points out that, according to the application, ATSI has indicated it will apply for the Ohio National Pollutant Discharge Elimination System (NPDES) by filing a notice of intent (NOI) application, which includes the Storm Water Pollution Prevention Plan (SWPPP), with the Ohio Environmental Protection Agency (EPA) 21 days before construction. Staff believes that, with implementation of these plans and permits, construction and operation of the proposed facility would comply with Chapter 6111, Revised Code. (*Id.*)

In its report, Staff notes that the Applicant has determined that, where trees must be cleared from the right-of way, the resulting brush would be cut into appropriate lengths for sale or disposition by the landowner, and stumps would be buried or hauled from the site. Staff explains that the Applicant expects approximately 200 cubic years of waste to be generated during construction which would be disposed of at an approved landfill. Staff believes that the Applicant's solid waste disposal plans comply with solid waste disposal requirements in Chapter 3734, Revised Code, and all regulations adopted thereunder. (*Id.*)

According to Staff, the application provides that there are five public-use air transportation facilities within 20 miles of the proposed substation and transmission line projects. Staff notes that, because of the distance, coupled with the lack of structures greater than 200 feet above ground level in the vicinity, the construction and operation of the proposed facility is not expected to have a significant impact on airport facilities.

Staff, therefore, contends that the facility will comply with the requirements contained in Section 4906.10(A)(5), Revised Code, provided the proposed facility includes the conditions provided in the Staff Report. (*Id.* at 28-29.)

E. Public Interest, Convenience, and Necessity (Section 4906.10(A)(6), Revised Code)

Staff explains that the new substation will permit the current Edgewater substation located on Lorain's lakefront to be removed. In its report, Staff states that city officials hope the lakefront property will be redeveloped. The application also provides that ATSI will comply with safety standards set forth by the Occupational Safety and Health Administration, the Commission, and equipment specifications. (*Id.* at 30.)

Staff provides that the Applicant computed the electromagnetic fields (EMF) associated with the new circuits, based on the maximum loadings of the lines. The magnetic fields were estimated at the substation fence line to be less than 91.9 milligauss, and the electric field would be less than 1.61 kilovolt/meter. Staff explains that the magnetic field output is comparable to that of common household appliances. Staff also states that the daily current load levels normally operate below the maximum load conditions, further reducing nominal EMF values. Further, Staff believes the electric fields are easily shielded by physical structures, and the magnetic fields generated by the project are rapidly lessened as the distance from them increases.

Therefore, Staff recommends that the Board find that the proposed facility would serve the public interest, convenience, and necessity, and complies with the requirements set forth in Section 4906.10(A)(6), Revised Code. (*Id.*)

F. Agricultural Districts and Agricultural Lands (Section 4906.10(A)(7), Revised Code)

Classification as agricultural district land is achieved through an application and approval process that is administered through local county auditor offices. Staff reports that there are no agricultural district parcels within the project area; thus, no impacts to agricultural districts would occur. Staff recommends the Board find that the impact of the proposed transmission line and substation projects on the viability of existing agricultural land in an agricultural district has been determined, as required under Section 4906.10(A)(7), Revised Code. (*Id.* at 31.)

G. Water Conservation Practice (Section 4906.10(A)(8), Revised Code)

Staff states that the proposed transmission line and substation projects will not require the use of water for operation and that, consequently, water conservation practice as specified in Section 4906.10(A)(8), Revised Code, is not applicable to the projects. Staff recommends that the Board find that the projects would incorporate maximum feasible water conservation practices and, therefore, complies with the requirements specified in Section 4906.10(A)(8), Revised Code. (*Id.* at 32.)

VI. Stipulation's Recommended Conditions:

In the Stipulation, the parties stipulate and recommend to the Board that adequate evidence has been provided to demonstrate that construction of the proposed transmission line and substation projects meets the statutory criteria of Sections 4906.10(A)(1) through (8), Revised Code (Joint Ex. 1 at 7-9). As part of the Stipulation, the parties recommend that the Board issue certificates for the preferred transmission line route and preferred substation site, as described in the applications, subject to the 29 conditions set forth in the Stipulation (*Id.* at 9-17). The following is a summary of the conditions agreed to by the stipulating parties and is not intended to replace or supersede the Stipulation. The stipulating parties agree that:

(1) The facility should be installed at Applicant's preferred substation site, with the associated transmission line project to be constructed on the preferred route and the common transmission line route, as modified and/or clarified by the supplemental filings.

(2) The Applicant shall utilize the equipment and construction practices as described in the applications and as modified and/or clarified in supplemental filings, replies to data

requests, and recommendations in the staff report, as amended by the Stipulation.

(3) The Applicant shall implement the mitigation measures as described in the applications and as modified and/or clarified in supplemental filings, replies to data requests, and recommendations in the staff report, as amended by the Stipulation.

(4) The Applicant shall conduct a preconstruction conference prior to the start of any construction activities for each discrete stage of the project. The preconstruction conference shall be attended by Staff, the Applicant, and representatives from the prime contractor and all subcontractors for the projects. The conference shall include a presentation of the measures to be taken by the Applicant and the contractors to ensure compliance with all conditions of the certificates, and discussion of the procedures for on-site investigations by Staff during construction.

(5) Prior to the commencement of construction, the Applicant shall obtain and comply with all applicable permits and authorizations as required by federal and state laws and regulations for any activities where such permits or authorizations are required. The Applicant shall provide Staff with copies of the permits and authorizations within seven days of issuance of receipt by the Applicant.

(6) Prior to the first preconstruction conference, the Applicant shall have a complaint resolution procedure in place to address reasonable public grievances resulting from project construction.

(7) Any proposed system modifications and/or load additions associated with the Black River project that are submitted to PJM for inclusion in the RTEP shall be submitted to Staff.

(8) Any new structures for the transmission line system shall not be located closer to existing residences than those that already exist at that location.

(9) The Applicant shall prepare a landscape plan addressing aesthetic impacts of the facility for Staff's approval prior to the commencement of construction.

(10) The Applicant shall submit a construction access plan to Staff prior to the commencement of each stage of project construction. The plan should consider how impacts to any streams or wetlands may be avoided or minimized during construction, as well as provide specific details on all wetlands, streams, and ditches to be crossed by the transmission lines. The Applicant shall include specific discussion of the proposed crossing methodology for each wetland and stream crossing, as well as post-construction site restoration. The plan should also include the measures to be used for restoring the area around all temporary access points, as well as a description of any long-term stabilization required along permanent access routes.

(11) The Applicant shall submit a vegetation management plan to Staff prior to the commencement of each stage of project construction. The plan should identify all areas of vegetation clearing for the project, specifying the extent of the clearing, describe how vegetation will be protected from damage, and, in cases where clearing cannot be avoided, how such clearing will be minimized. Nothing in this condition is intended to preempt or alter the Applicant's obligations to provide maintenance and operation of its transmission system pursuant to any applicable standards for the reliable transmission of electricity.

(12) The Applicant shall limit the use of herbicides in proximity to surface waters and wetlands along the right-of-way. Whenever the Applicant applies herbicides for the control of aquatic plants, notice must be given to the Ohio EPA Director before any chemicals are used. The Ohio EPA may order that chemicals not be applied upon the finding that the proposed application would pose an unreasonable danger to human or aquatic life.

(13) The Applicant shall have a Staff-approved environmental specialist on site during construction activities which may affect designated wetlands, streams, and locations of threatened or endangered species as mutually agreed upon between the Applicant and Staff.

(14) Staff and the ODNR Division of Wildlife, shall be contacted within 24 hours if state threatened or endangered species are encountered during construction activities, and the USFWS shall be contacted if a federal threated or endangered species are encountered. Construction activities that may adversely impact the identified plants or animals shall be halted until an appropriate course of action has been agreed to by the parties. Nothing in this provision shall preclude agencies having jurisdiction over the facility with respect to threatened or endangered species from exercising their legal authority over the facility.

(15) In the event the golden-winged warbler preferred habitat types are present and will be impacted by construction, construction in this habitat shall be prohibited during the nesting period of May 15 to July 15.

(16) In the event the Kirtland's warbler preferred habitat types are present and will be impacted by construction, construction in this habitat shall be avoided during the nesting period of April 22 through June 1, and August 15 to October 15.

(17) The Applicant shall adhere to seasonal cutting dates of September 30 through April 1 for the removal of suitable Indiana bat habitat trees during any stage of construction, if avoidance measures cannot be achieved. If any habitat trees must be cut during the summer season of April 2 through September 29, a mist-netting survey must be conducted in May or June prior to cutting. Staff and ODNR shall be contacted to discuss methodologies prior to the commencement of any mist-netting surveys. All mist-netting surveys must be reviewed and approved by Staff and ODNR prior to cutting any Indiana bat habitat trees during the summer season.

(18) Prior to the preconstruction conference for any stage of the construction of the project, Applicant shall submit to Staff all NPDES permits, including its approved SWPPP, approved Spill Prevention Control and Countermeasure procedures, and its erosion and sediment control plan applicable to that stage of construction. Any soil issues must be addressed through proper design and should adhere to the Ohio EPA best management practices (BMPs) related to erosion and sedimentation control.

(19) The Applicant shall employ erosion and sedimentation control measures, construction methods, and BMPs when working near environmentally-sensitive areas and/or when in close proximity to any watercourses, in accordance with the Ohio NPDES permit and SWPPP obtained for the project:

(a) During construction of the transmission line and substation projects, seed all disturbed soil, except within actively cultivated agricultural fields, within seven 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 days, if they will be undisturbed for more than 21 days.

(b) Inspect and repair all erosion control measures after each rainfall event of one-half of an inch or greater over a 24-hour period, and maintain controls until permanent vegetative cover has been established on disturbed areas.

(c) Delineate all watercourses, including wetlands, by fencing, flagging, or other prominent means.

(d) Avoid entry of construction equipment into watercourses, including wetlands, except at specific locations where construction has been approved.

(e) Prohibit storage, stockpiling, and/or disposal of equipment and materials in these sensitive areas.

(f) Locate structures outside of identified watercourses, including wetlands, except at specific locations where construction has been approved.

(g) Divert all storm water runoff away from fill slopes and other exposed surfaces to the greatest extent possible, and direct instead to appropriate catchment structures, sediment ponds, etc., using

diversion berms, temporary ditches, check dams, or similar measures.

(20) The Applicant shall remove all temporary gravel and other construction staging area and access road materials after completion of construction activities, as weather permits, unless otherwise directed by the landowner. Impacted areas shall be restored to preconstruction conditions in compliance with the NPDES permit(s) obtained for the projects and the approved SWPPP created for the projects.

(21) The Applicant shall comply with fugitive dust rules by the use of water spray or other appropriate dust suppressant measures whenever necessary.

(22) The Applicant shall restrict public access to the Black River Substation with appropriately placed warning signs or other necessary measures.

(23) Prior to the commencement of construction activities, the Applicant shall obtain all required transportation permits. The Applicant shall coordinate with the county engineer, the Ohio department of Transportation (ODOT), local law enforcement, and health and safety officials, if necessary and required. The Applicant must provide a summary of the coordination to Staff prior to the first preconstruction conference.

(24) General construction activities shall be limited to the hours of 7:00 a.m. to 7:00 p.m., or until dusk when sunset occurs after 7:00 p.m. If required, impact pile driving and hoe ram operations shall be limited to the hours between 10:00 a.m. to 5:00 p.m., Monday through Friday. Any construction activities that do not involve significant noise increases above ambient levels at sensitive receptors are permitted outside of daylight hours if necessary. The Applicant shall notify property owners or affected tenants within the meaning of Rule 4906-5-08(C)(3), O.A.C., of upcoming construction activities including potential for nighttime construction activities.

(25) The Applicant shall notify, in writing, any owner of a public-use airport registered with the Federal Aviation Administration or the ODOT located within 10 miles of the project boundary whose operations, operating thresholds/minimums,

landing/approach procedures and/or vectors are expect to be altered by the siting, operation, maintenance, or decommissioning of the facility 30 days prior to the commencement of any construction.

(26) Prior to the preconstruction conference for any stage of construction, the Applicant shall submit to Staff a hard copy of one set of detailed engineering drawings of the final project design for review and acceptance, for Staff to determine if the final project design is in compliance with the terms of the certificate.

(27) Within one year after the commencement of commercial operation, the Applicant shall provide as built drawings in hard copy to Staff.

(28) The certificate shall become invalid if the Applicant has not commenced a continuous course of construction of the proposed facility within 5 years of the date of journalization of the certificate.

(29) As the information becomes available, the Applicant shall provide to Staff the date on which construction will begin, the date on which construction is completed, and the date on which the facility begins commercial operation.

(Joint Ex. 1 at 7-15.)

VII. Conclusion:

In the Stipulation, the parties recommend that, based upon the record and the information and data contained therein, the Board issue certificates for the construction, operation, and maintenance of the transmission line, on the preferred route, and the substation, at the preferred site, as described in the applications (Joint Ex. 1 at 19). Although not binding on the Board, stipulations are given careful scrutiny and consideration, particularly where no party objects to the stipulation.

Applicant witness Jessica Thacker provides that the Stipulation represents the product of serious discussion among the parties in these proceedings, and reflects a reasonable compromise that balances the parties' competing interests and does not necessarily produce the position the parties would have taken had these cases been fully litigated. Further, Ms. Thacker explains that the Stipulation provides clarity and certainty with respect to several conditions within the staff report, thus serving the public interest.

Ms. Thacker also points out that the provisions within the Stipulation do not violate any important regulatory practice or principle. (Applicant Ex. 3 at 5.)

At the adjudicatory hearing, Ms. Thacker states that the project will lead to the creation of approximately 450 jobs to the city of Lorain, and will enable a reconfiguration of the waterfront facilities along Lake Eire and the Black River. Ms. Thacker acknowledges that, while certain recommended conditions from the staff report were not in the Stipulation, after further analysis, the parties agreed that the conditions were not warranted for these applications. Specifically, Ms. Thacker notes that ATSI is not aware and does not expect there to be any adverse impacts on television, radio, or microwave signals, which led to the removal of Conditions 26 through 30 in the staff report. (Transcript at 10-11, Staff Ex. 1 at 37-38.)

Therefore, based upon the record in these proceedings, the Board finds that all of the criteria in Section 4906.10(A), Revised Code, are satisfied for the construction, operation, and maintenance of the transmission line on the preferred route and the substation at the preferred site, subject to the conditions set forth in the Stipulation.

The Ohio Supreme Court has recognized that the statutes governing these cases vest the Board with the authority to issue certificates upon such conditions as the Board considers appropriate; thus acknowledging that the construction of these projects necessitates a dynamic process that does not end with the issuance of a certificate. The Court concluded that the Board has the authority to allow Staff to monitor compliance with the conditions the Board has set. *In re Application of Buckeye Wind, L.L.C. for a Certificate to Construct Wind-Powered Electric Generation Facilities in Champaign County, Ohio*, 2012-Ohio-878, ¶16-17, 30 (*Buckeye*). Such monitoring includes the convening of preconstruction conferences and the submission of follow-up studies and plans by the Applicant. As recognized in *Buckeye*, if an applicant proposes a change to any of the conditions approved in the certificate, the applicant is required to file an amendment. In accordance with Section 4906.07, Revised Code, the Board would be required to hold a hearing, in the same manner as on an application, where an amendment application involves any material increase in any environmental impact or substantial change in the location of all or a portion of the facility.

Accordingly, based upon all of the above, the Board finds that the Stipulation is the product of serious bargaining among knowledgeable parties, will promote the public interest, convenience and necessity, and does not violate any important regulatory principle or practice. Therefore, the Board approves and adopts the Stipulation and hereby issues certificates to the Applicant for the construction, operation, and maintenance of the proposed transmission line, on the preferred route, and the proposed substation, at the preferred site, as described in the applications and subject to the 29 conditions set forth in the Stipulation and this order.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

(1) The transmission line and substation projects are major utility facilities as defined in Section 4906.01(B)(2), Revised Code.

(2) The Applicant is a person under Section 4906.01(A), Revised Code.

(3) On December 20, 2011, the Applicant held a public information meeting in Lorain, Ohio.

(4) On December 20, 2011, the Applicant filed a motion for waiver of certain limited requirements of Section 4906.06(A)(6), Revised Code, regarding the one-year notice period, and Rule 4906-5-04, O.A.C., regarding the requirement that the alternative routes have less than 20 percent in common.

(5) On December 22, 2011, the Applicant filed its applications for certificates for the transmission line and substation projects.

(6) On December 22, 2011, the Applicant filed a motion for a protective order, seeking protective treatment for conditional diagrams. The ALJ granted the Applicant's motion on February 23, 2012.

(7) On December 23, 2011, the Board notified the Applicant that the applications were complete.

(8) By entry issued January 5, 2012, the ALJ granted the Applicant's motion to consolidate and scheduled a local public hearing for February 21, 2012, at the Lorain City Hall Council Chambers, Lorain, Ohio, and an adjudicatory hearing for February 23, 2012, at the offices of the Commission, in Columbus, Ohio.

(9) On December 23, 2011, as supplemented on December 27, 2011, the Applicant filed its proof of service of the applications to the appropriate government officials and public agencies pursuant to Rule 4906-5-06, O.A.C.

(10) On February 23, 2012, the Applicant filed an additional affidavits serving as notice that the Applicant had served notification letters to property owners and public officials as required by Section 4906-5-06, O.A.C.

(11) On February 3, 2012, Staff filed its report of investigation of the applications.

(12) A local public hearing was held, as scheduled, on February 21, 2012. At the local public hearing, nine individuals offered testimony on the proposed transmission line and substation projects.

(13) On February 22, 2012, the Applicant and Staff filed a joint Stipulation resolving all issues raised in these proceedings.

(14) On February 23, 2012, the adjudicatory hearing was held.

(15) The record establishes the need for the projects as required by Section 4906.10(A)(1), Revised Code.

(16) The record establishes the nature of the probable environmental impact from construction, operation, and maintenance of the projects as required by Section 4906.10(A)(2), Revised Code.

(17) The record establishes that the preferred transmission line route and preferred substation site, subject to the conditions set forth in this order, represent the minimum adverse environmental impact, considering the available technology and nature and economics of the various alternatives, and other pertinent considerations as required by Section 4906.10(A)(3), Revised Code.

(18) The record establishes that the preferred transmission line route and preferred substation site, subject to the conditions set forth in this order, are consistent with regional plans for expansion of the electric grid for the electric systems in this state, will have no adverse impact upon the grid, and will serve the interests of electric system economy and reliability as required by Section 4906.10(A)(4), Revised Code.

(19) The record establishes that the preferred transmission line route and preferred substation site, subject to the conditions set forth in this order, will comply with Chapters 3704, 3734, and 6111, Revised Code, and Sections 1501.33, 1501.34, and 4561.32, Revised Code, and all rules and regulations thereunder, to the extent applicable, as required by Section 4906.10(A)(5), Revised Code.

(20) The record establishes that the projects, subject to the conditions set forth in this order, will serve the public interest, convenience, and necessity, as required by Section 4906.10(A)(6), Revised Code.

(21) The record establishes that the projects, subject to the conditions set forth in this order, has been assessed as to viability of agricultural land in an existing agricultural district as required by Section 4906.10(A)(7), Revised Code.

(22) Inasmuch as water conservation practices are not involved with these projects, Section 4906.10(A)(8), Revised Code, does not apply in this circumstance.

(23) The record evidence of this proceeding provides sufficient factual data to enable the Board to make an informed decision.

(24) Based on the record, the Board shall issue certificates of environmental compatibility and public need pursuant to Chapter 4906, Revised Code, for construction, operation, and maintenance of transmission line and substation projects, subject to the conditions set forth in the Stipulation and this order.

ORDER:

It is, therefore,

ORDRED, That the Commission's docketing division maintain, under seal, the Applicant's conditional diagrams, which were filed under seal on December 22, 2012, for a period of 18 months, ending on September 26, 2013. It is, further,

ORDERED, That the Stipulation filed by the parties is approved and adopted. It is, further,

ORDERED, That certificates be issued to the Applicant for the construction, operation, and maintenance of the projects as proposed at the preferred transmission line route and preferred substation site. It is, further,

ORDERED, That the certificates contain the 29 conditions set forth in Section VI of this order. It is, further,

ORDERED, That a copy of this opinion, order, and certificates, be served upon each party of record and any other interested person of record.

THE OHIO POWER SITING BOARD

Todd A. Snitchler, Chairman
Public Utilities Commission of Ohio

Christiane Schmenk, Board Member and Director of the Ohio Department of Development

James Zehringer, Board Member and Director of the Ohio Department of Natural Resources

Theodore Wymyslo, Board Member and Director of the Ohio Department of Health

Scott Nally, Board Member and Director of the Ohio Environmental Protection Agency

David Daniels, Board Member and Director of the Ohio Department of Agriculture

Board Member and Public Member

JJT/sc
Entered in the Journal
MAR 26 2012

Barcy F. McNeal
Secretary