



## **I. INTRODUCTION**

The project is described in ATSI's Application for the Knox Transmission Substation (Case No. 12-864-EL-BSB), filed on August 3, 2012. This Joint Stipulation results from discussions between ATSI and the Staff of the Ohio Power Siting Board ("Staff") (or collectively the "Parties"), who agree that this Joint Stipulation and Recommendation is supported by the record and is therefore entitled to careful consideration by the Ohio Power Siting Board ("Board"). Accordingly, the Parties recommend that the Board issue a Certificate of Environmental Compatibility and Public Need ("Certificate") for the Preferred Substation Site, as identified in the Application and subject to the conditions described in this Joint Stipulation.

## **II. STIPULATIONS**

### **A. Recommended Findings of Fact**

The Parties agree that the record in this case, which consists of the Applications and all supplements thereto, Staff Report of Investigation, and any testimony and documentary evidence submitted during the evidentiary hearing, contains sufficient probative evidence for the Board to find and determine, as findings of fact, that:

(1) Applicant American Transmission Systems, Incorporated is a wholly owned subsidiary of FirstEnergy Corp. ATSI owns and operates its electric transmission system within the State of Ohio.

(2) The proposed Knox Transmission Substation is a "major utility facility," as defined in Section 4906.01(B)(2) of the Ohio Revised Code.

(3) A public information meeting was held on Tuesday, May 8, 2012 from 5:30–7:30 p.m. in the West Township Administration Building, 8610 Knox School Road, Minerva, Ohio.

(4) On June 8, 2012, Applicant filed a request pursuant to R.C.

§ 4906.06(A)(6), Admin. Code § 4906-1-05, Admin. Code § 4906-1-03, and Admin. Code § 4906-5-04(B) for waivers of the following application requirements:

a. The requirement set forth in Section 4906.06(A)(6) of the Ohio Revised Code that applications be filed not less than one year (nor more than five years) prior to the planned date of commencement of construction; and

b. The requirement set forth in Admin. Code § 4906-5-04(A) that an application for a proposed transmission line project contain fully developed information on an alternative route.

(5) On June 26, 2012, the Staff filed a letter stating that it did not object to the Applicant's requests for waivers but that Staff reserved the right to require information from the Applicant in areas covered by the requested waivers and to investigate and contest all other issues presented in the litigation.

(6) By Entry on June 29, 2012, Applicant's request for waivers was granted.

(7) On August 3, 2012, the Applicant filed the Application for the proposed Knox Transmission Substation Project with the Board, initiating the completeness review process.

(8) On August 6, 2012, Applicant filed a motion to seal portions of the record in the proceedings, pursuant to Admin. Code § 4906-7-07(H)(4)(b), and memorandum in support, pursuant to Admin. Code § 4906-7-07(H)(4)(c).

(9) By Entry on August 10, 2012, Applicant's motion to seal portions of the record was granted.

(10) On September 11, 2012, the Board notified Applicant that the Application was complete.

(11) On September 13, 2012, the Applicant filed an affidavit of proof of service of complete application on public officers.

(12) On September 14, 2012, by Entry, the Board scheduled a local public hearing in these matters for Wednesday, November 7, 2012 at 6:00 p.m., at the West Township Administration Building, 8610 Knox School Road, Minerva, Ohio 44657, and an adjudicatory hearing for Friday, November 16, 2012 at 10:00 a.m., 11th floor. Hearing Room 11-D, at the offices of the Public Utilities Commission of Ohio, 180 East Broad Street, Columbus, Ohio 43215-3793.

(13) On October 5, 2012, Applicant filed proof of publication of the first newspaper notice required to be published pursuant to Admin. Code § 4906-5-08(C)(1) and 4906-5-09(A). The required newspaper notification was published in the September 21, 2012 issues of the *Lisbon Journal*, *East Liverpool Review*, and *Salem News*, and in the September 27, 2012 issue of the *News Leader*.

(14) On October 11, 2012, Applicant filed proof of service of both Certified Applications with local officials and libraries in accordance with Admin. Code § 4906-5-08.

(15) On October 22, 2012, Staff issued and filed its "Staff Report of Investigation" for the proposed Knox Transmission Substation Project, recommending that a Certificate of Environmental Compatibility and Public Need be issued for the Preferred Substation location, as described in the Application and subject to all conditions enumerated within the Staff Report.

(16) On October 26, 2012, Applicant filed the proof of publication of the second newspaper notice, as required by Admin. Code § 4906-5-08(C)(2). The required second newspaper notification was published on October 18, 2012.

(17) On October 29, 2012, Applicant filed a prehearing statement of issues in advance of the public and adjudicatory hearings scheduled by the Board.

(18) A public hearing was held on Wednesday, November 7, 2012, at 6:00 p.m., at the West Township Administration Building, 8610 Knox School Road, Minerva, Ohio 44657.

(19) An adjudicatory hearing will be held on Friday, November 16, 2012 at 10:00 a.m., 11th floor. Hearing Room 11-D, at the offices of the Public Utilities Commission of Ohio, 180 East Broad Street, Columbus, Ohio 43215-3793.

(20) Adequate data on the proposed Knox Transmission Substation Project has been provided to the Board and Staff to determine the basis of the need for the proposed facility, as required by Section 4906.10(A)(1) of the Ohio Revised Code.

(21) Adequate data on the proposed Knox Transmission Substation Project has been provided to the Board and Staff to determine the nature of the probable environmental impact of the proposed facility, as required by Section 4906.10(A)(2) of the Ohio Revised Code.

(22) Adequate data on the proposed Knox Transmission Substation Project has been provided to the Board and Staff to determine that the Preferred Substation Location in the Applications, as filed by the Applicant, 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) of the Ohio Revised Code.

(23) Adequate data on the proposed Knox Transmission Substation Project has been provided to the Board and its Staff to determine that construction of the proposed substation and transmission line 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

the facility will serve the interests of electric system economy and reliability in compliance with Section 4906.10(A)(4) of the Ohio Revised Code.

(24) Adequate data on the proposed Knox Transmission Substation Project has been provided to the Board and its Staff to determine that the proposed facility will comply with Chapters 3704, 3734 and 6111 of the Ohio Revised Code, Sections 1501.33 and 1501.34 and 4561.32 of the Ohio Revised Code, and all regulations adopted thereunder, all as required by Section 4906.10(A)(5) of the Ohio Revised Code.

(25) Adequate data on the proposed Knox Transmission Substation Project has been provided to the Board and its Staff to determine that the proposed facility will serve the public interest, convenience and necessity, as required by Section 4906.10(A)(6) of the Ohio Revised Code.

(26) Adequate data on the proposed Knox Transmission Substation Project has been provided to the Board and its Staff to determine the proposed facility's impact on the viability as agricultural land of any land in an existing agricultural district established under Chapter 929 of the Ohio Revised Code, as required by Section 4906.10(A)(7) of the Ohio Revised Code.

(27) Adequate data on the proposed Knox Transmission Substation Project has been provided to the Board and its Staff to determine that consideration of water conservation practices considering available technology and the nature and economics of the various alternatives under Section 4906.10(A)(8) of the Ohio Revised Code is not applicable to certification of the proposed Knox Transmission Substation Project.

(28) The information, data and evidence in the record of this proceeding provides substantial and adequate evidence and information to enable the Board to make an informed decision on the Applications for the proposed Knox Transmission Substation Project.

**B. Recommended Conclusions of Law**

The Parties further agree that the record in this case contains sufficient probative evidence for the Board to find and determine, as conclusions of law, that:

(1) Applicant ATSI is a “person” under Section 4906.01(A) of the Ohio Revised Code.

(2) The proposed Knox Transmission Substation is a “major utility facility” as defined by Section 4906.01(B)(2) of the Ohio Revised Code.

(3) ATSI's Applications, filed on August 3, 2012, comply with the requirements of Admin. Code §§ 4906-15-01 *et seq.*

(4) The record establishes the need for the proposed Knox Transmission Substation Project, as required by Section 4906.10(A)(1) of the Ohio Revised Code.

(5) The record establishes the nature of the probable environmental impact from construction, operation and maintenance of the proposed Knox Transmission Substation Project, as required by Section 4906.10(A)(2) of the Ohio Revised Code.

(6) The record establishes that the preferred location for the Knox Transmission Substation, if conditioned in the certificate as recommended by the Parties, 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, as required by Section 4906.10(A)(3) of the Ohio Revised Code.

(7) The record establishes that the preferred location for the Knox Transmission Substation, if conditioned in the certificate as recommended by the Parties, 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 the facility will serve the interests of electric system economy and reliability in compliance with Section 4906.10(A)(4) of the Ohio Revised Code.

(8) The record establishes that preferred location for the Knox Transmission Substation, if conditioned in the certificate as recommended by the Parties, will comply with Chapters 3704, 3734, and 6111 of the Ohio Revised Code, and all rules and regulations adopted under those chapters, and under Sections 1501.33, 1501.34 and 4561.32 of the Revised Code, all as required by Section 4906.10(A)(5) of the Ohio Revised Code.

(9) The record establishes that the Knox Transmission Substation Project will serve the public interest, convenience and necessity, as required by Section 4906.10(A)(6) of the Ohio Revised Code.

(10) The record establishes the impact of the proposed Knox Transmission Substation Project on the viability as agricultural land of any land in an existing agricultural district established under Chapter 929 of the Ohio Revised Code, as required by Section 4906.10(A)(7) of the Ohio Revised Code.

(11) The record establishes that no agricultural district parcels are located within the project areas and, thus, the proposed Knox Transmission Substation Project will have no impact on existing agricultural districts.



**C. Recommended Conditions of the Certificate of Environmental Compatibility and Public Need.**

The Parties recommend that the Board issue a Certificate of Environmental Compatibility and Public Need for the Preferred Substation Site, as described in the Application and subject to all of the following conditions:

(1) The facility shall be installed at the Applicant's Preferred Site as presented in the application, and as modified and/or clarified by the Applicant's supplemental filings and further clarified by recommendations in this Staff Report of Investigation.

(2) The Applicant shall utilize the equipment and construction practices as described in the application and as modified and/or clarified in supplemental filings, replies to data requests, and recommendations in this Staff Report of Investigation.

(3) The Applicant shall implement the mitigation measures as described in the application and as modified and/or clarified in supplemental filings, replies to data requests, and recommendations in this Staff Report of Investigation.

(4) The Applicant, in support of a staged sequence of construction, shall conduct preconstruction conferences prior to the start of any construction activities on that stage of the Project. The planned staged sequence of construction shall be presented at the first preconstruction conference. Staff, the Applicant, and representatives of the prime contractor and all subcontractors for that stage of the project shall attend each preconstruction conference. The conference shall include a presentation of the measures to be taken by the Applicant and contractors to ensure compliance with all conditions of the certificate, and discussion of the procedures for on-site investigations by Staff during construction. Prior to each preconstruction conference, the Applicant shall provide a proposed conference agenda for Staff review.

(5) Prior to the preconstruction conference, the Applicant shall submit to Staff, for review and acceptance, one set of engineering drawings of the final project layout, that include depictions of the substation layout, temporary and permanent access roads, construction staging

areas, and any other associated facilities and access points, so that Staff can determine that the final project design is in compliance with the terms of the certificate. The Staff shall be provided up to 30 days for their review of this submittal. Unless requested by Staff, foundation, structure and equipment fabrication and construction drawings, wiring diagrams and similar detailed engineering drawings do not need to be included in this submittal. The engineering drawings of the final project layout shall be provided in hard copy. The Applicant's geographically-referenced electronic data of the final project layout, to the extent that the Applicant develops this as part of its engineering design, shall also be provided. The final design shall include all conditions of the certificate and references at the locations where the Applicant and/or its contractors must adhere to a specific condition in order to comply with the certificate.

(6) If any changes are made to the project layout after the submission of final engineering drawings, all changes shall be provided to Staff in hard copy and to the extent applicable, as geographically-referenced electronic data. All changes outside the environmental survey areas and any changes within environmentally-sensitive areas will be subject to Staff review and acceptance, to ensure compliance with all conditions of the certificate, prior to construction in those areas.

(7) Within one year after the completion of construction, the Applicant shall submit to Staff a copy of the as-built engineering drawings of the facility. If the Applicant demonstrates that good cause prevents it from submitting a copy of the as-built engineering drawings of the facility within one year after completion of construction, it may request an extension of time for the submittal of such as-built engineering drawings. The Applicant shall use reasonable efforts to provide as-built drawings in both hard copy and to the extent applicable, as geographically-referenced electronic data.

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

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

## SOCIOECONOMIC CONDITIONS

Staff recommends the following conditions to address the impacts discussed in the Socioeconomic Impacts section of the Nature of Probable Environmental Impact:

(10) 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. Impact pile driving and hoe ram operations, if required, shall be limited to the hours between 10:00 a.m. to 5:00 p.m., Monday through Friday. Construction activities that do not involve noise increases above ambient levels at sensitive receptors are permitted outside of daylight hours when necessary. The Applicant shall notify property owners or affected tenants within the meaning of Admin. Code § 4906-5-08(C)(3) of upcoming construction activities including potential for nighttime construction activities.

## ECOLOGICAL CONDITIONS

Staff recommends the following conditions to address the impacts discussed in the Ecological Impacts section of the Nature of Probable Environmental Impact:

(11) The Applicant shall have a construction and maintenance access plan based on final plans for the access roads, substation, and types of equipment to be used. Prior to commencement of construction, the Applicant shall submit the plan to Staff, for review and confirmation that it complies with this condition. The plan shall consider the location of streams, wetlands, wooded areas, and sensitive plant species, as identified by the ODNR, Division of Wildlife (ODNR-DOW), and explain how impacts to all sensitive resources will be avoided or minimized during construction, operation, and maintenance. The plan shall provide specific details on all wetlands, streams, and/or ditches to be crossed by the substation, including those

where construction or maintenance vehicles and/or facility components such as access roads cannot avoid crossing the waterbody. In such cases, specific discussion of the proposed crossing methodology for each wetland and stream crossing (such as culverts), and post-construction site restoration, must be included. The plan shall include the measures to be used for restoring the area around all temporary access points, and a description of any long-term stabilization required along permanent access routes.

(12) The Applicant shall have a vegetation management plan. Prior to commencement of construction, the Applicant shall submit this plan to Staff, for review and confirmation that it complies with this condition. The plan must identify all areas of proposed vegetation clearing for the project, specifying the extent of the clearing, and describing how such clearing work will be done so as to minimize removal of woody vegetation. The plan must also describe how trees and shrubs around structures, along access routes, at construction staging areas, during maintenance operations, and in proximity to any other project facilities will be protected from damage. Priority should be given to protecting mature trees throughout the project area, and all woody vegetation in wetlands and riparian areas, both during construction and during subsequent operation and maintenance of all facilities; low-growing trees and shrubs in particular should be protected wherever possible within the proposed right-of-way. The vegetation management plan should also explore various options for disposing of downed trees, brush, and other vegetation during initial clearing for the project, and recommend methods that minimize the movement of heavy equipment and other vehicles within the right-of-way that would otherwise be required for removing all trees and other woody debris off site.

(13) The Applicant shall contact Staff, ODNR, and the USFWS within 24 hours if state or federal threatened or endangered species are encountered during construction activities. Construction activities that could adversely impact the identified plants or animals shall be halted until an appropriate course of action has been agreed upon by the Applicant, Staff, and ODNR in coordination with the USFWS. Nothing in this condition shall preclude agencies having jurisdiction over the facility with respect to threatened or endangered species from exercising their legal authority over the facility consistent with law.

(14) The Applicant shall adhere to seasonal cutting dates of September 30 through April 1 for removal of suitable Indiana bat habitat trees, if avoidance measures cannot be achieved. If suitable Indiana bat 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. Net surveys shall incorporate either two net sites per square kilometer of project area, with each net site containing a minimum of two nets used for two consecutive nights, or one net site per kilometer of stream within the project limits, with each net site containing a minimum of two nets used for two consecutive nights. Staff and ODNR shall be contacted to discuss methodologies prior to commencement of any mist-netting surveys proposed by the Applicant. All mist-netting results shall be submitted to Staff and ODNR. If the results of the survey indicate the presence of Indiana bats, then further coordination with Staff and ODNR shall be required prior to the cutting of trees in order to avoid impacts to the Indiana bat.

#### AIR, WATER, SOLID WASTE, AND AVIATION CONDITIONS

Staff recommends the following conditions to address the requirements discussed in Air, Water, Solid Waste, and Aviation:

(15) Prior to the commencement of construction activities that require permits or authorizations by federal or state laws and regulations, the Applicant shall obtain and comply with such permits or authorizations. The Applicant shall provide copies of permits and authorizations, including all supporting documentation, to Staff within seven days of issuance or receipt by the Applicant. The Applicant shall provide a schedule of construction activities and acquisition of corresponding permits for each activity at the preconstruction conference.

(16) Prior to the first preconstruction conference, the Applicant shall submit to Staff, for review and acceptance, a copy of all NPDES permits including its approved SWPPP, approved SPCC procedures, and its erosion and sediment control plan. Any soil issues must be addressed through proper design and adherence to the Ohio EPA BMPs related to erosion and sedimentation control. The Staff shall be provided up to seven days for their review of this

submittal.

(17) The Applicant shall employ the following 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(s) and SWPPP obtained for the project:

- (a) During construction of the facility, 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. Re-seeding shall be done within seven days of emergence of seedlings as necessary until sufficient vegetation in all areas has been established.
- (b) Inspect and repair all erosion control measures after each rainfall event of one-half of an inch or greater over a 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.

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

### **III. Exhibits**

The Parties stipulate that the following Exhibits were among those exhibits in the docket which have been marked and admitted into the record of this proceeding, and that cross-examination is waived thereon:

Applicant Exhibit No. 1: The Application filed on August 3, 2012.

Applicant Exhibit No. 2: Certificates of Publication of the first and second notice required by Admin. Code § 4906-5-08 in local newspapers.

Staff Exhibit No. 1: Staff Report of Investigation, issued and filed on October 22, 2012.

Joint Exhibit No. 1: This Joint Stipulation and Recommendation, signed by counsel for each of the Parties.

In deliberating the merits of the Applications and reasonableness of this Joint Stipulation, the Parties encourage the Board to review and consider all evidence and exhibits submitted and admitted in these cases.

### **IV. Other Stipulations.**

(1) This Stipulation is a compromise involving a balance of competing positions, and it does not necessarily reflect the position that one or more of the Parties would have taken if these issues had been fully litigated. The Parties believe that this Stipulation represents a

reasonable compromise of varying interests. This Stipulation is expressly conditioned upon adoption in its entirety by the Board without material modification by the Board. Should the Board reject or materially modify all or any part of this Stipulation, the Parties shall have the right, within thirty (30) days of the issuance of the Board's Order, to file an application for rehearing. Upon the Board's issuance of an entry on rehearing that does not adopt the Stipulation in its entirety without material modification, any Party may terminate or withdraw from the Stipulation by filing a second application for rehearing with the Board within thirty (30) days of the Board's entry on rehearing. The second application shall be limited in scope to a party giving notice of exercising its right to terminate and withdraw from the Stipulation to the Board, and requesting an evidentiary hearing with all appertaining rights of process, as if the Stipulation had never been executed. Prior to any Party seeking rehearing or terminating and withdrawing from this Stipulation pursuant to this provision, the Parties agree to convene immediately to work in good faith to achieve an outcome that substantially satisfies the intent of the Board or proposes a reasonable equivalent thereto to be submitted to the Board for its consideration. Upon a second application for rehearing being filed giving notice of termination or withdrawal by any Party, pursuant to the above provisions, the Stipulation shall immediately become null and void.

(2) The Parties agree and recognize that this Stipulation has been entered into only for the purpose of this proceeding. Each party agrees not to assert against another party in any proceeding before the Board or any court, other than in a proceeding to enforce the terms of this Stipulation, that party's participation in this Stipulation as support for any particular position on any issue. Each party further agrees that it will not use this Stipulation as factual or legal precedent on any issue, except as may be necessary to support enforcement of this Stipulation.



The Parties request that the Board recognize that its use of this Stipulation in any proceeding other than this proceeding is contrary to the intentions of the Parties in entering into this Stipulation.

WHEREFORE, based upon the record, and the information and data contained therein, the Parties recommend that the Board issue a Certificate of Environmental Compatibility and Public Need for construction, operation and maintenance of the proposed Knox Transmission Substation Project, as described in the Applications as filed with the Board on August 3, 2012, and as conditioned herein.

The undersigned stipulate and represent that they are authorized to enter into this Joint Stipulation and Recommendation on the 14<sup>th</sup> day of November, 2012.

Respectfully submitted on behalf of:

**STAFF OF THE OHIO POWER  
SITING BOARD**

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