

BEFORE THE
OHIO POWER SITING BOARD

In The Matter Of:)	
The Application of American Transmission)	Case No. 11-4152-EL-BSB
Systems, Incorporated for a Certificate of Environmental)	
Compatibility and Public Need for the Construction)	
of the Fulton Substation)	
)	

**JOINT STIPULATION AND RECOMMENDED FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

Applicant, American Transmission Systems, Incorporated (“Applicant” or “ATSI”), a wholly owned subsidiary of FirstEnergy Corp., has submitted an application for a Certificate of Environmental Compatibility and Public Need for the construction of the Fulton Substation Project, Case. No. 11-4152-EL-BSB. Applicant proposes to construct a 345 kV Substation and associated 138 kV and 345 kV Transmission Line Connections (filed separately) to reinforce a section of ATSI’s Bulk Electrical System in the western portion of The Toledo Edison Company’s service area. The proposed Fulton Substation will use an existing 345 kV transmission line to provide a new Bulk Electric System connection and source to supply the 138 kV transmission line circuit between the Wauseon and Wentworth substations.

I. INTRODUCTION

The project is described in ATSI's Application for the Fulton Substation (Case No. 11-4152-EL-BSB), filed on June 15, 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 Fulton 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 July 28, 2011 from 6:30–8:30 p.m at the Valleywood Golf Course, 13501 Airport Highway, Swanton, Ohio, 43558.

(4) On June 1, 2012, Applicant filed a request pursuant to R.C. § 4906.06(A)(6) for waiver of 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;

(5) On September 14, 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 September 21, 2012, Applicant's request for waivers was granted.

(7) On June 15, 2012, the Applicant filed the Application for the proposed Fulton Substation Project with the Board, initiating the completeness review process.

(8) On September 26, 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) On August 15, 2012, the Board notified Applicant that the Application was complete.

(10) On September 6, 2012, the Applicant filed an affidavit of proof of service of complete application on public officers.

(11) On September 21, 2012, by Entry, the presiding Attorney Examiner scheduled a local public hearing, pursuant to Section 4906.08(C), Revised Code, on November 13, 2012, at 6:00 p.m., at the Vallywood Golf Club, 13501 Airport Highway, Swanton, Ohio 43558 and an evidentiary hearing commencing on November 26, 2012, at 10:00 a.m., at the offices of the Public Utilities Commission of Ohio, 180 East Broad Street, Hearing Room 11-C, Columbus, Ohio 43215-3793.

(12) On October 12, 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 Blade on September 27, 2012, The Delta Atlas on October 3, 2012, and The Swanton Enterprise on October 2, 2012.

(13) On September 6, 2012, Applicant filed proof of service of the Accepted and Complete Application with local officials and libraries in accordance with Admin. Code § 4906-5-08.

(14) On October 29, 2012, Staff issued and filed its "Staff Report of Investigation" for the proposed Fulton 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.

(15) On November 9, 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 in The Blade on October 30, 2012, the Swanton Enterprise on October 30, 2012 and the Delta Atlas on October 31, 2012.

(16) On November 5, 2012, Applicant filed a prehearing statement of issues in advance of the public and adjudicatory hearings scheduled by the Board.

(17) A public hearing was held on Tuesday, November 13, 2012, at 6:00 p.m., at the Valleywood Golf Course, 13501 Airport Highway, Swanton, Ohio, 43558.

(18) An adjudicatory hearing will be held on Monday, November 26, 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.

(19) Adequate data on the proposed Fulton 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.

(20) Adequate data on the proposed Fulton 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.

(21) Adequate data on the proposed Fulton Substation Project has been provided to the Board and Staff to determine that the Preferred Substation Location in the Application, as filed by the Applicant, represents 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.

(22) Adequate data on the proposed Fulton 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.

(23) Adequate data on the proposed Fulton 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.

(24) Adequate data on the proposed Fulton 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.

(25) Adequate data on the proposed Fulton 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.

(26) Adequate data on the proposed Fulton 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 Fulton Substation Project.

(27) 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 Fulton 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 Fulton Substation is a "major utility facility" as defined by Section 4906.01(B)(2) of the Ohio Revised Code.

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

(4) The record establishes the need for the proposed Fulton 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 Fulton 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 Fulton Substation Project, 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 Fulton Substation Project, 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 Fulton Substation Project, 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 Fulton 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 Fulton 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 Fulton 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

(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

(11) 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.

(12) The Applicant shall contact the Ohio Department of Natural Resources, Division of Wildlife, (419) 898-0960, for the location(s) of the eagle nest(s) in the county. If any active nests are located within 660 feet of the project, then additional coordination with the ODNR-OW and OPSB Staff is required.

AIR, WATER, SOLID WASTE, AND AVIATION CONDITIONS

(13) 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.

(14) 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.

(15) 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.

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

(17) 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 June 5, 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 29, 2012.
Joint Exhibit No. 1:	This Joint Stipulation and Recommendation, signed by counsel for each of the Parties.

In deliberating the merits of the Application 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 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 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 Fulton Substation Project, as described in the Application as filed with the Board on June 15, 2012, and as conditioned herein.

The undersigned stipulate and represent that they are authorized to enter into this Joint Stipulation and Recommendation on the 19th day of November, 2012.

Respectfully submitted on behalf of:

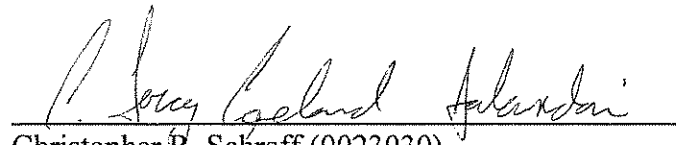
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AMERICAN TRANSMISSION SYSTEMS, INCORPORATED

A handwritten signature in cursive script, appearing to read "C. Schraff", is written over a horizontal line.

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Summary: Stipulation and Recommended Findings of Fact and Conclusions of Law
electronically filed by Ms. Catherine Darcy Copeland on behalf of American Transmission
Systems, Incorporated