

BEFORE THE
OHIO POWER SITING BOARD

In The Matter Of:)	
The Application of American Transmission)	Case No. 11-2754-EL-BSB
Systems, Incorporated and the Cleveland Electric)	
Electric Illuminating Company for a Certificate)	
of Environmental Compatibility and Public Need)	
for the Construction of the Cleveland Clinic Substation)	

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

Applicants, American Transmission Systems, Incorporated (“Applicant” or “ATSI”) and The Cleveland Electric Illuminating Company ("CEI"), wholly owned subsidiaries of FirstEnergy Corp., have submitted an application for a Certificate of Environmental Compatibility and Public Need in Case No. 11-2754-EL-BSB to construct a new substation to serve the main campus of the Cleveland Clinic in Cleveland, Ohio. The proposed new Clinic Substation Project is needed to serve the existing and expanded hospital facilities on the main campus of the Cleveland Clinic. The Clinic Substation Project will require the construction of a new substation in a highly developed commercial and industrial area and will involve construction on property that has already been previously developed.

I. INTRODUCTION

The project is described in the Application for the Clinic Substation (Case No. 11-2754-EL-BSB), filed on June 15, 2012. This Joint Stipulation results from discussions between Applicants 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 Application 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. Applicant The Cleveland Electric Illuminating Company is a wholly owned subsidiary of FirstEnergy Corp. and the operating company covering the service territory the Project is located in.

(2) The proposed Clinic 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 May 17, 2011 from 6:30–9:00 p.m at the John Jay High School, 2065 Stokes Blvd., Cleveland, Ohio 44106.

(4) On June 1, 2012, Applicants 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 substation project contain fully developed information on an alternative site.

(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 25, 2012, Applicants' request for waivers was granted.

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

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

(9) On September 6, 2012, the Applicants filed an affidavit of proof of service of Accepted and Complete Application on public officials.

(10) On September 25, 2012, by Entry, the presiding Attorney Examiner scheduled a local public hearing, pursuant to Section 4906.08(C), Revised Code, on November 14, 2012, at 6:00 p.m., at the Cleveland City Hall, Council Chambers, 2nd Floor, 601 Lakeside Ave, Cleveland, Ohio 44114 and an evidentiary hearing commencing on November 27, 2012, at 10:00 a.m., at the offices of the Public Utilities Commission of Ohio, 180 East Broad Street, Hearing Room 11-D, Columbus, Ohio 43215-3793.

(11) On October 12, 2012, Applicants 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 Cleveland Call and Post Newspaper on October 3, 2012 and The Plain Dealer on September 30, 2012.

(12) On September 9, 2012, Applicants filed proof of service of the Accepted and Complete Application with local officials and libraries in accordance with Admin. Code § 4906-5-08.

(13) On October 30, 2012, Staff issued and filed its “Staff Report of Investigation” for the proposed Clinic 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.

(14) On November 9, 2012, Applicants filed the proof of publication of the second newspaper notice, as required by Admin. Code § 4906-5-08(C)(2). The required newspaper notification was published in The Cleveland Call and Post Newspaper on October 31, 2012 and The Plain Dealer on October 31, 2012.

(15) On November 2, 2012, Applicants filed a prehearing statement of issues in advance of the public and adjudicatory hearings scheduled by the Board.

(16) A public hearing was held on November 14, 2012, at 6:00 p.m., at the Cleveland City Hall, Council Chambers, 2nd Floor, 601 Lakeside Ave, Cleveland, Ohio 44114.

(17) An adjudicatory hearing will be held on November 27, 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.

(18) Adequate data on the proposed Clinic 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.

(19) Adequate data on the proposed Clinic 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.

(20) Adequate data on the proposed Clinic 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.

(21) Adequate data on the proposed Clinic 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.

(22) Adequate data on the proposed Clinic 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.

(23) Adequate data on the proposed Clinic 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.

(24) Adequate data on the proposed Clinic 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.

(25) Adequate data on the proposed Clinic 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 Clinic Substation Project.

(26) 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 Application for the proposed Clinic 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. Applicant CEI is a "person" under Section 4906.01(A) of the Ohio Revised Code.

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

(3) The 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 Clinic 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 Clinic 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 Clinic 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 Clinic 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 Clinic 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 Clinic 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 Clinic 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 Clinic 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 Applicants' Preferred Site as presented in the Application, and as modified and/or clarified by the Applicants' supplemental filings and further clarified by recommendations in this Staff Report of Investigation.

(2) The Applicants 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 Applicants 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 Applicants, 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 Applicants, 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 Applicants 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 Applicants shall provide a proposed conference agenda for Staff review.

(5) Prior to the preconstruction conference, the Applicants 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 Applicants' geographically-

referenced electronic data of the final project layout, to the extent that the Applicants develop 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 Applicants and/or their 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 Applicants shall submit to Staff a copy of the as-built engineering drawings of the facility. If the Applicants demonstrate 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 Applicants 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 Applicants have 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 Applicants 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) The Applicants shall consult with the Ohio Historic Preservation Office in the development of educational documentation examining the early 20th century architectural history of the project area as embodied in surviving architecture. The Applicants shall provide this final report and analysis to Staff and the Ohio Historic Preservation Office upon project completion for review and confirmation that it complies with this condition.

(11) Prior to commencement of construction, the Applicants shall prepare a landscaping plan that addresses the aesthetic impacts of the facility. This plan shall include a two-year post construction monitoring period that ensures at least an 80 percent plant species survival rate. Landscaping proposed to be planted to the north of the facility along Cedar Road can only occur on Cleveland Clinic-owned property and will only be implemented to the extent that it is acceptable to the Cleveland Clinic. If this Cleveland Clinic-owned parcel is developed, the species survival rate will not apply to vegetation removed or otherwise impacted by that development. The Applicants shall submit the results of the monitoring plan to Staff on an annual basis. The Applicants shall submit the plan to Staff for review and acceptance to ensure that it complies with this condition.

(12) 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 Applicants 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

(13) The Applicants 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 Applicants, 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.

AIR, WATER, SOLID WASTE, AND AVIATION CONDITIONS

(14) Prior to the commencement of construction activities that require permits or authorizations by federal or state laws and regulations, the Applicants shall obtain and comply with such permits or authorizations. The Applicants shall provide copies of permits and authorizations, including all supporting documentation, to Staff within seven days of issuance or receipt by the Applicants. The Applicants shall provide a schedule of construction activities and

acquisition of corresponding permits for each activity at the preconstruction conference.

(15) Prior to the first preconstruction conference, the Applicants 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.

(16) The Applicants 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.

(17) The Applicants shall comply with fugitive dust rules by applying 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:

- | | |
|---------------------------|---|
| Applicants Exhibit No. 1: | The Application filed on June 15, 2012. |
| Applicants 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 30, 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 this case.

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 Clinic 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 21st day of November, 2012.

Respectfully submitted on behalf of:

STAFF OF THE OHIO POWER SITING BOARD

By: MIKE DEWINE
OHIO ATTORNEY GENERAL

By: s/Ryan O'Rourke*
William L. Wright (0018010)
Ryan O'Rourke (0082651)
Assistant Attorneys General
Public Utilities Section
180 East Broad Street, 6th Floor
Columbus, Ohio 43215
Phone: (614) 466-4395
Fax: (614)-644-8764
Email: bill.wright@puc.state.oh.us

By: s/Summer J. Koladin-Plantz*
Summer J. Koladin-Plantz (0072072)
Assistant Attorneys General
Environmental Enforcement Section
30 East Broad Street, 25th Floor
Columbus, Ohio 43215
Phone: (614) 466-2766
Fax: (614)-644-1926
Email: summer.plantz@ohioattorneygeneral.gov

** pursuant to authorization November 21, 2012*

**AMERICAN TRANSMISSION SYSTEMS, INCORPORATED
THE CLEVELAND ELECTRIC ILLUMINATING COMPANY**

s/Robert J. Schmidt

Christopher R. Schraff (0023030)

Robert J. Schmidt, Jr. (0062261)

C. Darcy Copeland (0086981)

Porter, Wright, Morris & Arthur LLP

41 South High Street

Columbus, OH 43215

Phone: (614) 227-2097

Fax: (614) 227-2100

Anne Juterbock (0079637)

FirstEnergy Corp.

76 South Main Street

Akron, OH 44308

Email: ajuterbock@firstenergycorp.com

COLUMBUS/1653698v.3

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

11/21/2012 11:14:31 AM

in

Case No(s). 11-2754-EL-BSB

Summary: Stipulation Joint Stipulation of Fact, Conclusions of Law and Recommended Conditions electronically filed by Mr. Robert J Schmidt on behalf of American Transmission Systems Inc. and The Cleveland Electric Illuminating Company