

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Amendment Two to the Hayes-)
West 138 kV Transmission Line Project) Case No. 16-1594-EL-BTA

In the Matter of the Amendment Two to the Hayes-)
West 138 kV Transmission Line Project) Case No. 16-1595-EL-BTA

MOTION TO INTERVENE OF NEXUS GAS TRANSMISSION, LLC

Pursuant to Ohio Administrative Code (“OAC”) Rule 4906-2-12, Nexus Gas Transmission, LLC (“NEXUS”) respectfully moves for leave to intervene in the above-captioned proceedings. NEXUS requests that the Ohio Power Siting Board (“OPSB” or “Board”) grant NEXUS leave to intervene because NEXUS has a real and substantial interest in these proceedings, its participation will not cause undue delay, and the Board’s disposition of these proceedings will impair and/or impede NEXUS’ ability to protect that interest. In accordance with OAC 4906-2-12(C), there is good cause for the administrative law judge to grant NEXUS’s motion to intervene.

MEMORANDUM IN SUPPORT

I. INTRODUCTION AND BACKGROUND

A. NEXUS’ Pipeline

Additional pipeline transportation infrastructure is needed in Ohio, Michigan and Ontario, Canada to support the growing demand for clean-burning natural gas and to offset the decline in traditional western Canadian supplies.

To meet this need, NEXUS, an interstate gas pipeline company, proposes to construct an approximately 255-mile interstate natural gas transmission pipeline to deliver 1.5 billion cubic feet per day (Bcf/d) of clean-burning natural gas from receipt points in eastern Ohio to existing pipeline system interconnects in southeastern Michigan (the “Project”). The lead developers for NEXUS have secured significant market interest in new natural gas supplies in Ohio, Michigan, and Canada to provide increased energy diversity, security and reliability across these regions. Specifically, the Project will transport emerging Appalachian shale gas supplies directly to consumers in northern Ohio; southeastern Michigan and the Dawn Hub in Ontario, Canada. As of March 2016, NEXUS had signed thirteen (13) connection agreements with various Ohio markets along the proposed route. These connections include local distribution companies, industrial parks and power plants.

By expanding access to natural gas in these markets, NEXUS will provide consumers across the region with affordable, cleaner-burning and domestically-abundant natural gas to help meet the growing demand for cleaner power generation, industrial and commercial use, and home heating. The NEXUS project will deliver local benefits in Ohio by creating construction jobs, ongoing tax revenue, permanent jobs to operate the pipeline, and it will provide local energy consumers with affordable, cleaner-burning, and domestically-abundant natural gas.

B. NEXUS’ FERC Application

The permitting of interstate natural gas transmission lines, like the Project, is under the exclusive jurisdiction of the Federal Energy Regulatory Commission (“FERC”) pursuant to the Natural Gas Act. To receive permission to construct and operate the Project, NEXUS must apply for and obtain a certificate of public convenience and necessity from FERC. The FERC application process is a long process that stretches over multiple years, including approximately

one year of pre-application information-gathering and submissions to FERC, which is followed by another significant period of time to hold public meetings to obtain public comment on the Project and to conduct a comprehensive review of the application. FERC mandates that applicants provide immense amounts of survey data, including environmental and cultural impact reports, to allow FERC to review and approve a route that minimizes impacts to interested parties and the environment.

NEXUS initiated the FERC application process on December 30, 2014, when it filed a letter with FERC requesting that FERC initiate an environmental review of the Project under the agency's National Environmental Policy Act ("NEPA") Pre-Filing Process. The NEPA Pre-Filing Process provides landowners, agencies and stakeholders with important information about the proposed route of the Project so that any issues concerning the pipeline location can be identified and addressed. NEXUS submitted a project schedule to FERC in its pre-filing submittal that identifies numerous interdependent milestones, federal and state regulatory approvals, and other activities that must be achieved in a timely and cost-effective manner. FERC formally approved NEXUS' request to initiate Pre-Filing review on January 9, 2015, in FERC Docket No. PF15-102. Since that time, NEXUS filed its formal FERC application on November 20, 2015, and received its Draft Environmental Impact Statement on July 8, 2016. NEXUS remains on schedule to receive its Final Environmental Impact Statement on November 30, 2016, and its certificate of public convenience and necessity from FERC in early 2017.

C. ATSI's Transmission Line and Proposed Amendments

On August 25, 2014, the OPSB issued an Opinion, Order and Certificate in Case No. 12-1636-EL-BTX, granting the application of American Transmission Systems, Incorporated

(“ATSI”) to construct the Hayes-West Fremont 138kV Transmission Line Project (“Transmission Line”). ATSI has not yet started construction on the Transmission Line.

On July 29, 2016, ATSI filed three proposed amendments in Case Nos. 16-1593-EL-BTA, 16-1594-EL-BTA, and 16-1595-EL-BTA (Amendments “One,” “Two,” and “Three,” respectively). Amendment One seeks authorization for ATSI to install a second 138 kV circuit onto the open arm position of the same structures that would be installed for the Transmission Line.¹ Amendments Two and Three propose adjustments to the certificated alignment.² NEXUS’ concerns involve Amendments Two and Three.

D. NEXUS’ Efforts to Avoid the ATSI Transmission Line

NEXUS intentionally routed its Project in a manner that minimizes any impacts to ATSI’s easements and transmission line infrastructure. Such routing efforts resulted from numerous discussions with ATSI, including discussions about the Transmission Line. As a result, NEXUS was able to successfully route its interstate natural gas pipeline around the Transmission Line route as originally approved in 2014.

ATSI now demands that NEXUS shift the Project route to accommodate ATSI’s newly proposed adjustments. Specifically, there are multiple locations where planned Transmission Line structures now interfere with the Project route due to ATSI’s adjustments. These conflicts occur where the Project and Transmission Line intersect, resulting in planned Transmission Line structures (poles) in the Project route. Although these conflicts can likely be resolved with very minor siting adjustments, these newly proposed Transmission Line locations interfere with NEXUS’ surveyed easement areas.

¹ OPSB Staff Report of Investigation (October 27, 2016) at 1.

² *Id.*

II. ARGUMENT

A. Extraordinary circumstances exist for NEXUS' late-filed motion to intervene to be granted.

NEXUS has been in regular communication with ATSI, and ATSI has long been aware of the Project's proposed route through direct communication, as well as the Project's filing at FERC. ATSI and NEXUS were in regular communication about the Project for over twelve (12) months prior to ATSI's filing of the amendments in the above-captioned proceedings. Despite NEXUS' efforts to maintain open communication with ATSI, NEXUS was not informed of the proposed amendments, and was only recently instructed by ATSI to move the Project route due to conflicts with new locations of Transmission Line structures. ATSI's demand that NEXUS now re-route parts of its Project pose a significant risk to the Project's timeline, and should be subject to additional review by the Board.

For the reasons set forth herein, extraordinary circumstances justify the granting of NEXUS' motion to intervene. Moreover, NEXUS agrees to be bound by agreements, arrangements, and other matters previously made in the above captioned proceedings.

B. There is good cause for NEXUS' motion to intervene to be granted.

Under O.A.C. 4906-2-12(B), the Board or the administrative law judge shall grant petitions for leave to intervene only upon a showing of good cause. In deciding whether to permit intervention under this paragraph, the board or the administrative law judge may consider:

- (a) The nature and extent of the person's interest.
- (b) The extent to which the person's interest is represented by existing parties.
- (c) The person's potential contribution to a just and expeditious resolution of the issues involved in the proceeding.

- (d) Whether granting the requested intervention would unduly delay the proceeding or unjustly prejudice an existing party.

Under these criteria, NEXUS is able to demonstrate the requisite good cause for its motion to be granted.

1. NEXUS' interests are significant and will be harmed by ATSI's proposed adjustments.

As described above, NEXUS has invested considerable time and resources to develop the proposed route for its Project, including numerous submissions to FERC. In all, the Project represents an approximate \$2 billion in investment. ATSI's proposed adjustments to the Transmission Line, without any consultation with NEXUS, are very likely to adversely impact the Project. ATSI's newly proposed Transmission Line structure locations will interfere with NEXUS' surveyed easement areas. As stated above, NEXUS routed the Project to accommodate the Transmission Line as originally approved by the Board. New interference from the Transmission Line with the Project route could lead to costly delays at this late stage of the permitting process for the Project. FERC is scheduled to issue its Final Environmental Impact Statement (FEIS) on November 30, 2016, followed by a certificate of public convenience and necessity in early 2017. The FEIS compiles FERC's comprehensive environmental review of the project, including its review of the specific routing at issue here. Altering that routing would create new information which FERC has not reviewed in preparing these important project milestone approvals.

2. No existing party represents NEXUS' interests.

The existing case record indicates that no existing party represents NEXUS' interests. Moreover, a review of the filings by ATSI and the Board Staff indicate that the Project, despite its public filing at FERC and ATSI's full awareness of the Project, has not been considered.

3. NEXUS' participation in the proceeding will contribute to a just and expeditious resolution of the issues involved in the proceeding.

Both ATSI's Transmission Line and NEXUS' Project are important components to Ohio's energy future. It is critical for such projects to co-exist, and NEXUS' participation in the above-captioned proceedings will help to ensure that both projects can move forward in a timely manner. By resolving siting issues in this forum, both projects will be able to avoid potential litigation in federal or state courts that could significantly delay both projects. As discussed in further detail below, NEXUS believes that the issues can be resolved with minor siting adjustments.

4. Granting NEXUS' motion will not unduly delay the proceeding or unjustly prejudice an existing party.

NEXUS' issues in this proceeding are very limited in scope and will not unduly delay the proceedings. The conflicts involving the proposed amendment to the Transmission Line occur in a few locations where the Project and Transmission Line intersect. At these locations, a single proposed Transmission Line structure (pole) is located in the NEXUS Project route. It is NEXUS' understanding that minor siting adjustments to individual structures will likely resolve the issue, and it encourages the Board to either leave the Transmission Line route as currently approved, or require ATSI to make these minor adjustments. NEXUS does not seek for ATSI to modify its route but only to shift the location of a limited number of structures to no longer interfere with the Project.

Further, NEXUS' participation in this proceeding will not unjustly prejudice ATSI. First, NEXUS' issues are of very limited scope and should not require significant adjustments or rerouting of the Transmission Line. Moreover, due to the limited scope of NEXUS' intervention, even if greater time is needed to resolve the issues between ATSI and NEXUS,

ATSI will still be able to move forward with significant portions of the Transmission Line unaffected with Amendments Two and Three. Further, ATSI will not be unjustly prejudiced because NEXUS' Project route is not new information for ATSI. As discussed above, ATSI and NEXUS were in communication about the Project for over twelve (12) months prior to ATSI's filing of the amendments in the above-captioned proceedings.

C. If NEXUS' motion is not granted, the content of the motion and any subsequent filing should be treated as a public comment and treated as part of the record.

In the alternative, if NEXUS' motion to intervene is not granted, NEXUS respectfully requests that its comments in this and all subsequent filings to this docket concerning impacts of ATSI's proposed adjustments to the Transmission Line be treated as public comments to the record and duly considered by the Board. At a minimum, the Board should require ATSI to work with NEXUS to make engineering adjustments to avoid adverse impacts to the Project.

III. CONCLUSION

For these reasons, NEXUS respectfully requests that its motion to intervene be granted.

Respectfully submitted on behalf of
NEXUS GAS TRANSMISSION, LLC



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Motion to Intervene has been served upon the following parties listed below via electronic mail, this 14th day of November 2016.



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Summary: Motion to Intervene of Nexus Gas Transmission, LLC electronically filed by Teresa Orahoo on behalf of Dylan F. Borchers