

BEFORE THE  
OHIO POWER SITING BOARD

IN THE MATTER OF THE APPLICATION OF	:	
AMERICAN TRANSMISSION SYSTEMS, INC.	:	
FOR A CERTIFICATE OF ENVIRONMENTAL	:	CASE NO. 19-1337-EL-BLN
COMPATIBILITY AND PUBLIC NEED FOR THE	:	
CONSTRUCTION OF THE FOSTORIA	:	
WEST END (AEP) LEMOYNE WEST FREMONT	:	
138 KV TRANSMISSION LINE	:	
AND WOODVILLE NO. 2 SUBSTATION	:	
UPGRADE PROJECT	:	

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

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Applicant, American Transmission Systems, Incorporated (“Applicant” or “ATSI”) is proposing to construct the Fostoria West End (AEP) -Lemoyne-West Fremont 138 kV Transmission Line and Woodville No. 2 substation upgrade Project (“Project”) to support ATSI’s electric system in the area of the existing Woodville No. 2 Substation. ATSI filed an Application for a Certificate of Compatibility and Public Need for the Project (“Application”), in this docket, Case No. 19-1337-EL-BLN, on September 9, 2019.

**I. INTRODUCTION**

The Project qualified for filing with the Ohio Power Siting Board (“Board”) using the Letter of Notification (“LON”) format for accelerated applications, as provided in Admin. Code Chapter 4906-6. During the Board’s Staff’s review of the Application, Staff concluded that additional information was needed before it could issue a Staff Report and, as a result, on December 2, 2019, Staff suspended the review of the application for ninety (90) days, as provided in Admin. Code Rule 4906-6-09. The key issue identified by the Staff in the notice suspending the review of the Application was the lack of measures to mitigate their concerns

about the aesthetic impacts to a neighboring property located immediately to the west of the Woodville #2 Substation. Following the suspension of the Application, Staff and Applicant engaged in several meaningful discussions regarding Staff's concerns.

On January 15, 2020, Staff issued its *Staff Report of Investigation* for this Project which recommend that the Board approve the Project subject to four conditions. After reviewing the proposed conditions in the *Staff Report of Investigation*, Applicant informed Staff that it was not in a position to accept Condition #4 because it would not be able to comply with the condition as drafted. Applicant proposed, and Staff agreed, to enter into discussions regarding potential amendments to the language of Condition #4 to address Applicant's concerns.

This Joint Stipulation and Recommendation ("Stipulation") results from these substantive discussions between ATSI and Staff, who agree that it is supported by the record and is therefore entitled to careful consideration by the Board.

ATSI and Staff recommend that the Board issue a Certificate of Environmental Compatibility and Public Need ("Certificate") for the Project, as identified in the Application, and subject to the conditions described in the *Staff Report of Investigation* and this Stipulation.

This Stipulation is the product of serious bargaining among capable and knowledgeable parties. The Parties have each participated in negotiations. This Stipulation has been signed by the Applicant and OPSB Staff (collectively "Parties"). Each of the Parties was represented by experienced counsel who regularly practice and participate in proceedings before the Board.

The Stipulation will benefit customers and the public interest. The Stipulation does not violate any important regulatory principle or practice. This Stipulation results from substantive discussions between the Parties, who agree that it is supported by adequate data and information and is therefore entitled to careful consideration by the Board.

## II. STIPULATIONS

### AGREEMENT TO OMIT PROPOSED CONDITION #4

The Applicant, after reviewing the *Staff Report of Investigation*, is willing to accept the Conditions in the *Staff Report of Investigation*, with the omission of Condition #4. The Staff contends that the Conditions proposed in the *Staff Report of Investigation* are necessary to ensure conformance with the proposed plans and procedures outlined in the case record to date, and to ensure compliance with all applicable requirements for the issuance of a Certificate by the Board. Although the Applicant does not take a position regarding the need for these conditions to ensure that a Certificate issued by the Board for this Project complies with applicable legal requirements, Applicant agrees to their inclusion in a Certificate, if issued by the Board, to facilitate the expeditious resolution of this proceeding.

This Stipulation proposes the elimination of Condition #4 proposed in the *Staff Report of Investigation*. This change is necessary because during the suspension period of this Project, Applicant was able to negotiate a reasonable agreement with the property owner in question that addresses Staff's concerns. Applicant provided Staff during its investigations information that confirms the agreement with the property owner, and which, by entering into this Stipulation, both Applicant and Staff agree address the intent of Condition #4 as proposed in the *Staff Report of Investigation*. The purpose of the proposed Condition #4 has been satisfied. The condition, therefore, is not necessary to address the change in circumstances occasioned by Applicant reaching an agreement in advance of the issuance of the Certificate with the impacted property owner.

Therefore, ATSI and Staff recommend that Condition #4 as proposed in the *Staff Report of Investigation* not be included in the Certificate issued by the Board.

### **III. OTHER STIPULATIONS**

(1) This Stipulation is a compromise involving a balance of competing positions, and it does not necessarily reflect the position that either ATSI or Staff would have taken if these issues had been fully litigated. ATSI and Staff 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, ATSI and Staff 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, either 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, ATSI and Staff 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 either Party, pursuant to the above provisions, the Stipulation shall immediately become null and void.

(2) ATSI and Staff 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.

WHEREFORE, based upon the record, and the information and data contained therein, ATSI and Staff recommend that the Board issue a Certificate of Environmental Compatibility and Public Need for construction, operation and maintenance of the Project as described in the Application filed with the Board on September 9, 2019, and as conditioned in this Stipulation.

The undersigned stipulate and represent that they are authorized to enter into this Joint Stipulation and Recommendation on this 12th day of February, 2020.

Respectfully submitted on behalf of:

**STAFF OF THE OHIO POWER  
SITING BOARD**

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ATTORNEY GENERAL OF OHIO

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*\* per email authorization 02/12/2020*

**AMERICAN TRANSMISSION  
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**Case No(s). 19-1337-EL-BLN**

Summary: Stipulation between Applicant and Staff Concerning Proposed Condition #4 in Staff Report of Investigation electronically filed by Mr. Robert J Schmidt on behalf of American Transmission Systems Inc.