

BEFORE THE
OHIO POWER SITING BOARD

In The Matter Of: The Application by)
American Transmissions Systems,)
Incorporated, for a Certificate of)
Environmental Compatibility and Public)
Need for the Lake Avenue Substation)

Case Number: 14-2162-EL-BSB

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

Applicant, American Transmission Systems, Incorporated (“Applicant” or “ATSI”) is proposing to construct the Lake Avenue Substation to support ATSI’s electric system in the Project Area in the City of Elyria, Lorain County, Ohio. The project is needed to support the quality of residential, industrial and commercial electric service and reliability in the greater Elyria-Lorain, Ohio area. To resolve this need, ATSI is proposing to construct the Lake Avenue Substation. The proposed Lake Avenue Substation will provide 345kV to 138kV transformation and support the bulk transmission system in the Project Area.

The Applicant filed an Application for a Certificate of Compatibility and Public Need for the Construction of the Lake Avenue Substation Project (“Application”), Case No. 14-2162-EL-BSB, on March 6, 2015.

I. INTRODUCTION

The Project is described in ATSI’s Application for the Lake Avenue Substation, Case No. 14-2162-EL-BSB, filed on March 6, 2012. This Joint Stipulation results from discussions between ATSI and Staff, who agree that this Joint Stipulation and Recommendation is supported by the record and is therefore entitled to careful consideration by the Board. Accordingly, ATSI and Staff 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. There are no other parties to these proceedings.

II. STIPULATIONS

A. Recommended Findings of Fact

ATSI and Staff agree that the record in this case, which consists of the Application, the *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 Lake Avenue Substation is a “major utility facility,” as defined in Section 4906.01(B)(2) of the Ohio Revised Code.

(3) ATSI held a public informational meeting prior to filing the Application. The public informational meeting was held on January 5, 2014 from 6:00-8:00 pm in the first floor conference room at the Ohio Edison Company Elyria Service Center located at 6326 Lake Avenue in Elyria, Ohio 44035.

(4) On December 29, 2014 and January 5, 2014, Applicant filed proof of publication of notice of the public information meeting. The public notices were published in *The Chronical Telegram* and *The Morning Journal* on December 23, 2014.

(5) On March 6, 2015, Applicant filed a request for a partial waiver of the application requirement set forth in Admin. Code. § 4906-15-06(E)(2)(a) for fully developed EMF data on the Alternate Site.

(6) On May 28, 2015, Staff filed a letter of notification indicating Staff did not object to Applicant's request for partial waiver, but reserved the right to request information from the Applicant in areas covered by the requested waiver if determined to be necessary during the course of the investigation.

(7) On March 6, 2015, the Applicant filed the Application for the proposed Lake Avenue Substation Project with the Board, initiating the completeness review process.

(8) On May 11, 2015, the Board notified Applicant that the Application was complete.

(9) On May 20, 2015, Applicant filed proof of service notice of accepted and complete Application on local government officials.

(10) On June 15, 2015 and June 16, 2015, by Entries, the Administrative Law Judge set the effective date for the filing of the application as June 12, 2015 and scheduled a local public hearing in this matter for August 12, 2015, at 6:00 p.m., at the Spitzer Conference Center, Room 117, Lorain County Community College, Main Campus, 1005 North Abbe Road, Elyria, Ohio 44035, and an adjudicatory hearing for August 26, 2015 at 10:00 a.m., 11th floor. Hearing Room 11-C, at the offices of the Public Utilities Commission of Ohio, 180 East Broad Street, Columbus, Ohio 43215-3793.

(11) On July 1, 2015, 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 public notices were published in *The Chronical Telegram* and *The Morning Journal* on June 24, 2015.

(12) On May 20, 2015, Applicant filed an affidavit stating that, in accordance with Admin. Code § 4906-5-06, the mailing list required to be sent to each public official entitled to service of

the Application pursuant to Admin. Code § 4906-5-08(C)(3) was sent to each public official by UPS delivery, return signature requested, on May 15, 2015.

(13) On July 28, 2015, Staff issued and filed its “Staff Report of Investigation” for the proposed Lake Avenue Substation Project, recommending that a Certificate of Environmental Compatibility and Public Need be issued for the Preferred Substation Site, as described in the Application (“Preferred Site”), and subject to all conditions enumerated within the Staff Report.

(14) On July 30, 2015, Applicant filed proof of publication of the second newspaper notice required to be published pursuant to Admin. Code §§ 4906-5-08(C)(2) and 4906-5-09(B). The public notices were published in *The Chronical Telegram* and *The Morning Journal* on July 29, 2015.

(15) A public hearing was held on August 12, 2015 at 6:00 p.m., at the Spitzer Conference Center, Room 117, Lorain County Community College, Main Campus, 1005 North Abbe Road, Elyria, Ohio 44035.

(16) An adjudicatory hearing will be held on August 26, 2015 at 10:00 a.m., 11th floor, Hearing Room 11-C, at the offices of the Public Utilities Commission of Ohio, 180 East Broad Street, Columbus, Ohio 43215-3793.

(17) Adequate data on the proposed Lake Avenue 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.

(18) Adequate data on the proposed Lake Avenue 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.

(19) Adequate data on the proposed Lake Avenue Substation Project has been provided to the Board and Staff to determine that the Preferred Site described in the Application 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.

(20) Adequate data on the proposed Lake Avenue Substation Project has been provided to the Board and its Staff to determine that construction of the proposed substation 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.

(21) Adequate data on the proposed Lake Avenue 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.

(22) Adequate data on the proposed Lake Avenue 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.

(23) Adequate data on the proposed Lake Avenue 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.

(24) Adequate data on the proposed Lake Avenue 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 Lake Avenue Substation Project.

(25) 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 Lake Avenue Substation Project.

B. Recommended Conclusions of Law

ATSI and Staff 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 Lake Avenue 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 March 6, 2015, complies with the requirements of Admin. Code §§ 4906-15-01 *et seq.*

(4) The record establishes the need for the proposed Lake Avenue 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 Lake Avenue Substation Project, as required by Section 4906.10(A)(2) of the Ohio Revised Code.

(6) The record establishes that the Preferred Site for the Lake Avenue Substation Project, if conditioned in the Certificate as recommended by ATSI and Staff, 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 Site for the Lake Avenue Substation Project, if conditioned in the Certificate as recommended by ATSI and Staff, 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 the Preferred Site for the Lake Avenue Substation, if conditioned in the Certificate as recommended by ATSI and Staff, 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 Lake Avenue 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 Lake Avenue 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 Lake Avenue Substation Project will have no impact on existing agricultural districts.

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

ATSI and Staff jointly 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 the *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 the *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 the *Staff Report of Investigation*.

(4) The Applicant shall conduct a preconstruction conference prior to the start of any construction activities. Staff, the Applicant, and representatives of the prime contractor and all subcontractors for the project shall attend the 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 the conference, the Applicant shall provide a

proposed conference agenda for Staff review. The Applicant may conduct separate preconstruction meetings for each stage of construction.

(5) At least 30 days prior to the preconstruction conference, the Applicant shall have in place a complaint resolution procedure to address potential public grievances resulting from project construction and operation. The resolution procedure must provide that the Applicant will work to mitigate or resolve any issues with those who submit either a formal or informal complaint and that the Applicant will immediately forward all complaints to Staff. The Applicant shall provide the complaint resolution procedure to Staff, for review and confirmation that it complies with this condition, prior to the preconstruction conference.

(6) At least 30 days before the preconstruction conference, the Applicant shall submit to Staff, for review to ensure compliance with this condition, one set of detailed engineering drawings of the final project design, including the facility, temporary and permanent access roads, any crane routes, 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 final project layout shall be provided in hard copy and as geographically-referenced electronic data. 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.

(7) 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 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 to ensure compliance with this condition, prior to construction in those areas.

(8) Within 60 days after the commencement of commercial operation, the Applicant shall submit to Staff a copy of the as-built specifications for the entire facility. If the Applicant demonstrates that good cause prevents it from submitting a copy of the as-built specifications for the entire facility within 60 days after commencement of commercial operation, it may request an extension of time for the filing of such as-built specifications. The Applicant shall use reasonable efforts to provide as-built drawings in both hard copy and as geographically referenced electronic data.

(9) 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.

(10) 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

ATSI and Staff recommend the following conditions to address the impacts discussed in the **Socioeconomic Impacts** section of the Nature of Probable Environmental Impact of the *Staff Report of Investigation*:

(11) Prior to commencement of construction, the Applicant shall develop a public information program that informs affected property owners of the nature of the project, specific contact information of Applicant personnel who are familiar with the project, the proposed timeframe for project construction, and a schedule for restoration activities.

(12) Prior to commencement of construction, the Applicant shall prepare a vegetative mitigation plan that addresses the aesthetic and noise impacts of the facility. Of special concern

are the five residential properties that are located nearest to the southeast corner of the Preferred Site. The Applicant shall consult with those property owners in the development of this plan and provide the plan to Staff for review and confirmation that it complies with this condition.

ECOLOGICAL CONDITIONS

ATSI and Staff recommend the following conditions to address the impacts discussed in the **Ecological Conditions** section of the Nature of Probable Environmental Impact of the *Staff Report of Investigation*:

(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) The Applicant shall have an environmental specialist on site during construction activities that may affect sensitive areas, as mutually agreed upon between the Applicant and Staff, and as shown on the Applicant's final approved construction plan. Sensitive areas include but are not limited to areas of vegetation clearing, designated wetlands and streams, and locations of threatened or endangered species or their identified habitat. The environmental specialist shall be familiar with water quality protection issues and potential threatened or endangered species of plants and animals that may be encountered during project construction.

(15) The Applicant shall contact Staff, the Ohio Department of Natural Resources, and the U.S. Fish and Wildlife Service within 24 hours if state or federally-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 the Ohio Department of Natural Resources in coordination with the U.S. Fish and Wildlife Service. 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.

(16) Construction in upland sandpiper preferred nesting habitat types shall be avoided during the species' nesting period of April 15 to July 31.

(17) Construction in sandhill crane preferred nesting habitat types shall be avoided during the species' nesting period of April 1 to September 1.

PUBLIC SERVICES, FACILITIES, AND SAFETY CONDITIONS

ATSI and Staff recommend the following conditions to address the impacts discussed in the **Public Services, Facilities, and Safety** section of the Nature of Probable Environmental Impact the *Staff Report of Investigation*:

(18) The Applicant shall restrict public access to the facility with appropriately placed warning signs or other necessary measures.

(19) Prior to commencement of construction activities that require transportation permits, the Applicant shall obtain all such permits. The Applicant shall coordinate with the appropriate authority regarding any temporary or permanent road closures, lane closures, road access restrictions, and traffic control necessary for construction and operation of the proposed facility. Coordination shall include, but not be limited to, the county engineer, Ohio Department of Transportation, local law enforcement, and health and safety officials. This coordination shall be detailed as part of a final traffic plan submitted to Staff prior to the preconstruction conference for review and confirmation that it complies with this condition.

(20) 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, hoe ram, and blasting 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 OAC 4906-5-08(C)(3), of upcoming construction activities including potential for nighttime construction activities.

(21) The Applicant shall meet all Federal Communications Commission and other federal agency requirements to construct an object that may affect radio or television communications. The Applicant shall mitigate any effects or degradation caused by facility operation or placement. For any residence that is shown to experience a degradation of television or radio reception or interference due to facility operation, the Applicant shall provide, at its own expense, cable or direct broadcast satellite television service or other mitigation acceptable to the affected resident(s).

AIR, WATER, SOLID WASTE, AND AVIATION CONDITIONS

ATSI and Staff recommend the following conditions to address the impacts discussed in Air, Water, Solid Waste, and Aviation section of the *Staff Report of Investigation*:

(22) At least seven days before the preconstruction conference, the Applicant shall submit to Staff, for review to ensure compliance with this condition, a copy of all National Pollutant Discharge Elimination System permits including its approved Stormwater Pollution Prevention Plan, approved Spill Prevention, Control, and Countermeasure procedures, and its erosion and sediment control plan. Any soil issues must be addressed through proper design and adherence to

Ohio Environmental Protection Agency best management practices related to erosion and sedimentation control.

(23) The Applicant shall employ the following erosion and sedimentation control measures, construction methods, and best management practices when working near environmentally-sensitive areas and/or when in close proximity to any watercourses, in accordance with the National Pollutant Discharge Elimination System permit(s) and Stormwater Pollution Prevention Plan obtained for the project:

(a) During construction of the facility, seed all disturbed soil, 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 environmentally-sensitive areas.

(f) Locate structures outside of identified watercourses, including wetlands, except at specific locations where construction has been approved.

(g) Divert all stormwater 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.

(24) The Applicant shall remove all temporary gravel and other construction staging area and access road materials after completion of construction activities, as weather permits, unless otherwise directed by the landowner. Impacted areas shall be restored to preconstruction conditions in compliance with the National Pollutant Discharge Elimination System permit(s) obtained for the project and the approved Stormwater Pollution Prevention Plan created for this project.

(25) All construction debris and all contaminated soil shall be promptly removed and properly disposed of in accordance with Ohio Environmental Protection Agency regulations.

(26) 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 ATSI and Staff 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 March 6, 2015.

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

Staff Exhibit No. 1: *Staff Report of Investigation*, issued and filed on July 28, 2015.

Joint Exhibit No. 1: This Joint Stipulation and Recommendations, signed by
counsel for ATSI and Staff.

In deliberating the merits of the Applications and reasonableness of this Joint Stipulation, ATSI and Staff 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 ATSI and 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, 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, 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 any 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 proposed Lake Avenue Substation Project, as described in the Application filed with the Board on March 6, 2015, and as conditioned herein.

The undersigned stipulate and represent that they are authorized to enter into this Joint Stipulation and Recommendation on the 25th day of August, 2015.

Respectfully submitted on behalf of:

**STAFF OF THE OHIO POWER
SITING BOARD**

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** per authorization August 25, 2015*

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Summary: Stipulation of American Transmission Systems, Incorporated and Staff of the Ohio Power Siting Board electronically filed by Mr. Robert J Schmidt on behalf of American Transmission Systems Inc.