

**BEFORE  
THE OHIO POWER SITING BOARD**

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

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**NEXUS GAS TRANSMISSION, LLC'S REPLY TO AMERICAN TRANSMISSION  
SYSTEMS, INCORPORATED'S MEMORANDUM IN OPPOSITION TO NEXUS'  
MOTION TO INTERVENE**

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**I. INTRODUCTION**

American Transmission Systems, Incorporated's ("ATSI") opposition to Nexus Gas Transmission, LLC's ("NEXUS") intervention in the above-captioned proceedings is surprising. ATSI is well aware that NEXUS' interstate natural gas transmission line project ("Project") is generally located in the same area as the Hayes-West Fremont 138kV Transmission Line Project ("Transmission Line"), and that the proposed amendments in the above-captioned cases impact the Project. Yet, ATSI inaccurately claims in its memorandum in opposition that the potential impacts to the Project are "unsubstantiated" and that NEXUS' interest will not be harmed by the amendments. Mem. in Opp'n at 1, 8, and 9.

In reality, NEXUS carefully planned its Project route based on prior discussions with ATSI and the Transmission Line route approved by the Ohio Power Siting Board (the "Board") in Case No. 12-1636-EL-BTX. Based on that route, NEXUS filed its application with the Federal Energy Regulatory Commission ("FERC"), for which NEXUS received its Final Environmental Impact Statement ("FEIS") from the FERC Staff on November 30, 2016, which

represents the last major milestone prior to receipt of its FERC certificate.<sup>1</sup> ATSI's decision to unilaterally move Transmission Line structures without informing NEXUS or seeking NEXUS' input is unreasonable and warrants the Board not only granting NEXUS intervenor status but addressing NEXUS' discrete concerns. This is especially true considering ATSI failed to inform NEXUS about the proposed amendments although ATSI and NEXUS have been in discussions regarding the Project for more than a year. NEXUS' intervention will not harm ATSI, because NEXUS is not proposing to change the Transmission Line route, just the location of certain structures within ATSI's proposed route, and will result in a reasonable resolution which will allow the Project and the Transmission Line to co-exist.

## II. LAW AND ARGUMENT

### A. NEXUS established that extraordinary circumstances exist to support its intervention in the above-captioned cases.

- i. *NEXUS has invested a tremendous amount of time, money, and energy in the Project, which will be harmed by the amendments.*

By any measurement, NEXUS has a significant interest in the above-captioned cases. The NEXUS' Project, which is the result of years of planning and coordination, represents an approximately \$2 billion investment. ATSI is aware of the tremendous investment NEXUS has in the Project. For over a year, NEXUS attempted to work with ATSI to ensure that the Project and Transmission Line would co-exist with limited impact. See e.g., Mem. in Opp'n at 1 and 5. Importantly, this included carefully considering the Transmission Line route approved by the Board in Case No. 12-1636-EL-BTX.

ATSI misguidedly claims, however, that the potential impacts to the Project are "hypothetical" because a certificate has not yet been issued by FERC. Mem. in Opp'n at 5 and

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<sup>1</sup> See FERC announcement regarding the issuance of the FEIS at <https://www.ferc.gov/industries/gas/enviro/eis/2016/11-30-16-eis.asp>

9. The proposed amendment will have a substantial impact on NEXUS because the amendments appear to conflict with NEXUS' proposed pipeline route, which may necessitate a change in the Project route. This change in the pipeline route may delay consideration of NEXUS' application before FERC. It is undeniable that NEXUS has invested a substantial amount of time, money, and effort in its FERC filings. It is also undeniable that the recent issuance of the FEIS by the FERC Staff approving the proposed Project route is one of the last major milestones prior to the issuance of the FERC certificate. Based on the information available, and communications from ATSI, NEXUS believes that the amended locations of ATSI's structures will directly impact the location of its pipeline route. These impacts to the Project can potentially cause a delay in NEXUS' FERC proceeding because the Project route is based on prior discussions with ATSI and the Transmission Line route approved by the Board in Case No. 12-1636-EL-BTX.

Further, ATSI's argument that the potential for impacts is theoretical is disingenuous because FirstEnergy Service Company, on behalf of ATSI, intervened in NEXUS' FERC proceeding. See Motion to Intervene of FirstEnergy Service Company, FERC Case No. CP16-22-000 (December 10, 2015). In its motion to intervene, FirstEnergy Service Company acknowledges that it has "significant transmission and distribution lines ... located along portions of the proposed pipeline route" that would be "directly affected" by any decision FERC makes regarding the Project. *Id.* Clearly, ATSI recognizes that there is a realistic chance that the Project and the Transmission Line may impact each other, which is why FirstEnergy Service Company intervened at FERC on ATSI's behalf.

- ii. *NEXUS established that it has a significant interest in the above-captioned proceedings because the amendments will result in Transmission Line structures being sited in the same location as NEXUS' pipeline.*

ATSI's claims that the amendments will not "significantly" impact the Project are misleading. Mem. in Opp'n at 8 and 9. As an initial matter, intervenors are not required to prove that potential impacts are "significant" for purposes of intervention. Such a requirement would result in a mini-trial every time a party seeks to intervene in a case. All that is required is a showing of a potential impact to a legitimate interest of the intervenor. As discussed above, it is undisputable that NEXUS has a substantial interest in ensuring that its Project is installed with minimal interference, especially considering the efforts it took to avoid impacts with ATSI and/or FirstEnergy electric transmission lines and easements. The Board and Staff regularly consider potential impacts to surrounding facilities and structures under R.C. 4906.10(A)(2), thereby warranting intervention in this proceeding.

Based on the information available, NEXUS believes, in good faith, that there are areas where Transmission Line structures will be sited directly above the pipeline due to the amendments. NEXUS has attempted to identify the specific locations of the proposed, amended structure locations, but has not been provided specific information by ATSI. In addition, ATSI recently demanded NEXUS to reroute the pipeline to accommodate a change in the placement of certain Transmission Line structures, even though NEXUS has already obtained FERC Staff approval of the Project's current route. Any modification to the Project route at this stage may impact the FERC's review of the Project, and reverse the progress NEXUS has made in its FERC proceeding. This would significantly and negatively impact NEXUS' interest. The only way to preserve its interest is to intervene in this proceeding and work with the Board Staff and ATSI to ensure the structures are located so as to not interfere with the NEXUS project.

The Board has previously allowed parties to intervene late in cases when the parties established that a proposed project would affect their interest. For example, in *In re American*

*Municipal Power, Inc.* OPSB Case No. 06-1358-EL-BGN (December 4, 2007), the Board allowed a group of local landowners to intervene late because they alleged that their interest would be affected by a proposed electric generating facility and claimed that they had concerns about the environmental impacts of the proposed facility. Furthermore, in a number of Commission<sup>2</sup> cases where late intervention was granted, the intervenors that were allowed to intervene had much less at stake than NEXUS. For example, in *In re Ohio Power Company*, PUCO Case Nos. 10-501-FOR, et al. (January 9, 2013), the Commission granted the University of Toledo Innovation Enterprises’ (“UTIE”) motion for late intervention in a case regarding AEP-Ohio’s attempt to demonstrate need for a proposed solar facility. UTIE was allowed to intervene in that case although its only interest was that it was an advocate for the advancement of solar energy in Ohio. In another case, *In re Columbia Gas of Ohio Inc.*, PUCO Case Nos. 16-1309-GA-UNC, et al. (September 27, 2016) (“*Columbia Gas*”), the Environmental Law and Policy Center’s (“ELPC”) motion for late intervention was granted when ELPC’s only interest involved a request to modify Columbia Gas of Ohio’s demand-side management program proposal.

Unlike NEXUS, UTIE and ELPC did not have substantial financial interests at stake, and did not demonstrate how their interests would be impacted. Yet, the Commission allowed both parties to intervene. This is not surprising, as it is consistent Ohio Supreme Court precedent which states that the statutes and rules governing intervention should be “liberally construed in favor of intervention.” *Ohio Consumers’ Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5833, ¶ 16 (2006) (quoting *State ex rel. Polo v. Cuyahoga Cty. Bd. Of Elections*, 74

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<sup>2</sup> Because the Board’s rules largely mirror the Commission’s rules regarding intervention, the Board regularly looks to Commission cases for guidance. The Board should do so in this case.

Ohio St.3d. 143, 144, 656 N.E. 1277 (1995). The Board should apply this precedent here and allow NEXUS to intervene in this case.

- iii. *ATSI failed to notify NEXUS of the amendments, and NEXUS independently learned of the above-captioned cases after ATSI ordered NEXUS to relocate its pipeline.*

O.A.C. 4906-2-12(C) requires parties attempting to intervene after the intervention deadline to show “good cause for failing to timely file” a motion to intervene. ATSI suggests that good cause does not exist in these cases because NEXUS did not intervene until after the Staff Report was issued. Mem. in Opp’n at 1-3. ATSI fails to mention, however, that it did not inform NEXUS of the proposed amendments although it was in ongoing discussion with NEXUS for over a year. NEXUS had to independently learn of the amendments, which occurred after ATSI informed NEXUS that it would have to relocate its pipeline. It is not clear why ATSI chose not to disclose the potential amendments, but the impact of ATSI’s decision is obvious. NEXUS was unable to intervene, which resulted in Staff issuing a Staff Report without all of the relevant information, thereby failing to identify the significant impacts the amendments will have on the Project.

ATSI’s response is to claim that NEXUS should have learned about the Project based upon notice in local newspapers. Mem. in Opp’n at 2-3. However, NEXUS’ Project spans across twelve (12) counties in Ohio. ATSI published notice on one day (August 3, 2016) in two local newspapers (the Freemont News Messenger and Sandusky Register). It is unreasonable to expect NEXUS to continuously monitor all local newspapers in all of the counties where the Project route is planned. This expectation is especially unreasonable considering that NEXUS was in ongoing discussions with ATSI regarding the Project. Instead of monitoring local newspapers, it was reasonable for NEXUS to assume that ATSI would notify NEXUS about the

amendments. While NEXUS may have incorrectly assumed ATSI would act in good faith, this does not legitimize ATSI's actions.

Further, although notice was published regarding these cases, the fact remains that NEXUS did not learn about these cases until after the intervention deadline. NEXUS did not simply sit on its hands while the cases were pending. The Commission has previously allowed parties to intervene late because they were unaware of the intervention deadline. See e.g., *In re Dayton Power and Light*, PUCO Case Nos. 08-1094-EL-SSO, et al., Entry at 2 (February 5, 2008) (where Edgemont Neighborhood Coalition was allowed to intervene because it was “unaware” of the intervention deadline). In fact, parties are allowed to intervene late even when they are actually aware of the intervention deadline, but new developments arise during the course of the case which necessitate intervention. *Columbia Gas*, PUCO Case Nos. 16-1309-GA-UNC, et al., Entry at 4 (September 27, 2016). In *Columbia Gas*, Columbia Gas filed an application to continue its demand-side management programs. *Id.* at 1. ELPC was aware of the case and the intervention deadline, but decided not to intervene because it assumed the Ohio Consumer's Counsel (“OCC”) would support Columbia Gas' application. *Id.* at 4. However, after it learned that OCC was opposing the application, ELPC sought to intervene to advocate for modifications in the proposed demand-side management programs. *Id.* The attorney examiner granted ELPC's motion to intervene and stated that ELPC “demonstrated good cause for leave to file for intervention after the specified deadline....” *Id.* at 6.

The record demonstrates that NEXUS has good cause for intervening after the intervention deadline and Commission precedent supports NEXUS' motion to intervene.

**B. NEXUS is attempting to intervene in good faith and its intervention will not harm ATSI or unreasonably delay these cases.**

As explained in the motion to intervene, NEXUS' intervention should be granted because the scope of its intervention is narrowly tailored to both allow the Transmission Line route, as amended, to be approved while ensuring there is no conflict with the FERC Staff-approved route for the NEXUS project. Specifically, NEXUS believes that approximately three (3) minor changes to the location of proposed (not constructed) Transmission Line structures would resolve the issues between the parties. This would not require any modification to the Transmission Line route, but would require some coordination between ATSI, NEXUS and the Board. Without NEXUS' intervention, Board Staff will be unable to determine exactly where NEXUS' proposed pipeline is located, and unable to head off an otherwise preventable conflict.

Specifically, the Board should require ATSI to work with NEXUS to make engineering adjustments to avoid impacts to the Project. ATSI should be more than willing to accept this proposal because this is exactly what ATSI requested in *In re NRG Ohio Pipeline Company, LLC*, Case No. 14-1717-GA-BLN ("*NRG Ohio Pipeline*"). In *NRG Ohio Pipeline*, ATSI intervened to ensure that NRG Ohio coordinated with ATSI during the construction of NRG Ohio's pipeline. ATSI and NRG Ohio included a provision in the stipulation which required an agreement between ATSI and NRG Ohio regarding the location of NRG Ohio's pipeline. *NRG Ohio Pipeline*, Joint Stipulation and Recommendation at 1 (April 2, 2015). ATSI should be subject to the same requirement in these cases with respect to NEXUS' Project.

Because ATSI is unable to state how it will be negatively impacted by NEXUS' intervention, ATSI claims that Oregon Clean Energy Center ("*Oregon*") may be impacted if these cases are delayed. Mem. in Opp'n at 7. However, it is completely speculative to argue that NEXUS' intervention will necessarily cause curtailments for Oregon. NEXUS' proposed



resolution in these cases would not require a substantial delay. As explained above, minor adjustments in the Transmission Line structures would probably resolve these issues. Further, nothing that NEXUS proposes would delay the Transmission Line route that was approved by the Board in Case No. 12-1636-EL-BTX. ATSI could begin construction of the Transmission Line while also working with NEXUS and Board Staff to resolve issues regarding the subject Transmission Line structures. This process would not impact the construction schedule for the Transmission Line and would not impact Oregon.

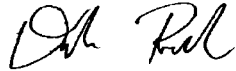
Finally, ATSI appears to be accusing NEXUS of intentionally delaying the Board's consideration of the amendment applications. Mem. in Opp'n at 7. Apparently, ATSI believes NEXUS intentionally waited until the last second to file its motion to intervene to delay the Board's consideration of ATSI's applications. Because the Board's agenda was not announced when NEXUS filed its motion – a fact ATSI admits in its memo in opposition – it is not clear how or why NEXUS would do this. It could not know when the Board was going to consider ATSI's applications. In reality, NEXUS intervened as soon as possible to protect its interest. While ATSI obviously prefers a proceeding without any intervenors, ATSI has no basis for claiming that NEXUS is intentionally attempting to delay these cases. It is not.

### **III. CONCLUSION**

Based on the foregoing, the Board should grant NEXUS' motion to intervene in the above referenced cases. NEXUS has no intention to delay these cases, and actually seeks to work with ATSI and Board Staff to reach a mutually agreeable resolution to its concerns and allow both projects to be constructed in a timely manner.

[Signature on the following page]

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 has been served upon the following parties listed below via electronic mail, this 5th day of November 2016.



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Summary: Reply of Nexus Gas Transmission, LLC to American Transmission Systems, Incorporated's Opposition to Nexus Gas Transmission Motion to Intervene electronically filed by Teresa Orahod on behalf of Dylan F. Borchers