

**BEFORE  
THE OHIO POWER SITING BOARD**

In the Matter of the Ohio Power Siting )  
Board’s Review of Ohio Adm. Code ) Case No. 21-902-GE-BRO  
Chapters 4906-1, 4906-2, 4906-3, 4906-4, )  
4906-6, and 4906-7. )

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**REPLY COMMENTS OF  
AMERICAN TRANSMISSION SYSTEMS, INCORPORATED**

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American Transmission Systems, Incorporated (“ATSI”), a FirstEnergy company, provides the following reply to certain initial comments filed in the above-referenced docket regarding Staff’s draft Ohio Power Siting Board Rules. These reply comments supplement the initial comments filed by ATSI on August 5, 2022.

**I. General Reply Comments**

Regulatory certainty and expediency are of paramount importance.  
- *Ohio Power Siting Board, 2021*.<sup>1</sup>

**A. Siting Process Integrity and Predictability**

Initial commenters with generally divergent views are allied in their calls for predictability and concerns for the integrity of the siting process. (*See, e.g.*, Initial Comments of Ohio Partners for Affordable Energy (“OPAE”) at 3-5; Initial Comments of International Brotherhood of Electrical Workers (“IBEW”) at 2-4; Ohio Environmental Council’s (“OEC’s”) Comments at 1-4; and Initial Comments of Natural Resources Defense Council (“NRDC”) at 2-3.) Because the siting process should not have subjective or ambiguous application requirements, ATSI joins initial commenters who suggest that the Rules be vetted for language that falls short of objective, measurable standards. (*E.g.*, Initial Comments of OPAE at 4, 8-9.)

Nor should the Board give controlling weight, under the guise of “public interest,” to views untethered from evidence relevant to the statutory criteria under R.C. 4906.10(A). Though the “public interest” criterion is indeed broad and malleable, the Board’s interpretation needs consistent standards to which parties can adhere. On this point, ATSI agrees with the NRDC’s suggestion that the Board clarify weight given to public comments outside the bounds of an evidentiary hearing. (Initial Comments of NRDC at 4.) Additionally, ATSI agrees with

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<sup>1</sup> *In the Matter of the Ohio Power Siting Board’s Report to the General Assembly Regarding the Power Transmission System (“OPSB Transmission Report”), Entry, Case No. 21-7960-EL-UNC, 23 (Nov. 18, 2021).*

OPAE that sheer numerosity in public comments opposing a major utility facility should not usurp record evidence that the project satisfies the statutory criteria under R.C. 4906.10(A). (Initial Comments of OPAE at 5.) ATSI further requests that the Board ensure applicants are afforded an opportunity to respond to any public comment(s) that the Board deems meritorious and not addressed during the adjudicatory hearing.

Relatedly, the OEC proposes that Staff Reports should substantively respond to public comments. (OEC's Comments at 2.) While ATSI does not oppose this concept, especially to the extent it may resolve community skepticism about a major utility facility, the Board should not require any substantive response (by either Staff or an applicant) to any public comment about a non-jurisdictional issue.

#### B. Burdensome Regulation

ATSI also asks the Board to strongly consider the united voices opposing proposed rule revisions that create unduly burdensome regulation – which, for electric power transmission lines, only inflates transmission costs. As already addressed in ATSI's Initial Comments, consolidation of Chapters 4906-4 and 4906-5 has significant consequences in this regard.<sup>2</sup> The Board should therefore inventory the surviving regulatory restrictions—categorically for electric power transmission lines, gas pipelines, and generation facilities—as well as perform a quantitative financial analysis of additional regulatory restrictions prior to finalizing its proposed Rules. Doing so will afford stakeholders reasonable transparency regarding the likely business impact of the Board's rulemaking. And such analysis is integral to the Board's compliance with R.C. 121.95 and Ohio S.B. 9<sup>3</sup> in any event.<sup>4</sup> Further, ATSI concurs with National Grid Renewables Development, LLC. ("National Grid") that the rulemaking process should, in the meantime, be stayed. (Initial Comments of National Grid at 4.)

#### C. Reasonable Informational Requirements

ATSI generally objects to any and all recommendations by initial commenters that would require an electric power transmission line applicant to compile non-public information as part of its application to the Board. (*See e.g.*, Initial Comments of Ohio Farm Bureau Federation ("OFBF") at 4 (pages unnumbered in document) (proposing requirement for applicants to provide additional agricultural information, including "more robust information

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<sup>2</sup> ATSI echoes shared concern among initial commenters has not conducted a business impact analysis as required by R.C. 106.03, nor focused on reducing regulatory burdens, as intended by R.C. 121.95. (*See* Initial Comments of National Grid Renewables at 2-4; Initial Comments of IBEW at 4; Initial Comments of Ohio Oil and Gas Association at fn. 1; Initial Comments of Generation Pipeline Initial Comments at 6.)

<sup>3</sup> 2022 Am. Sub. S.B. No. 9.

<sup>4</sup> R.C. 121.95 requires an agency to remove two regulatory restrictions for each new one added. S.B. 9 requires agencies to reduce regulatory restrictions by 10% before June 30, 2023 and to produce a revised inventory and historical progress report before September 15, 2022. The OPSB base inventory of regulatory restrictions is dated 12.27.19.

on irrigation systems, field drainage systems, soils, structures used for agricultural operations”).) Even if compliance were feasible, any requirement to obtain non-public information from non-parties to a siting proceeding would inherently interpose unreasonable delay.

D. Transmission Planning

ATSI’s final general reply comment relates to initial comments of the Ohio Consumers’ Counsel (“OCC”) and the Ohio Manufacturers’ Association Energy Group (“OMAE”) impugning the Board’s siting process for PJM supplemental projects. OCC appears to contend that the Board should create new requirements to fill a “vacuum” in transmission planning created by PJM. (Consumer Protection Comments by Office of the Ohio Consumers’ Counsel (“OCC”) at 2-3.) But the Board has properly disclaimed regional transmission planning oversight. (*OPSB Transmission Report*, Entry, Case No. 21-7960-EL-UNC, 4.) An electric power transmission line project’s “supplemental” designation by PJM from a transmission planning function standpoint does not (and should not) increase the Board’s relevant application requirements for siting purposes.

Similarly, OMAE offers a litany of metrics that it contends the Board should require of applicants when a major utility facility also happens to be a PJM supplemental project – metrics that could be used to impair the security or reliability of the bulk-power system or distribution facilities. (Initial Comments of OMAE at 8-9.) Such information would thus be designated as Critical Energy Infrastructure Information (“CEII”) and subject to confidential treatment under the Federal Energy Regulatory Commission’s standard.

Because OCC’s and OMAE’s recommendations purport to erase jurisdictional boundaries between the Federal Energy Regulatory Commission (“FERC”) and the Board, ATSI would be remiss not to address them generally herein. Nevertheless, ATSI is confident that the Board appreciates the impropriety of OCC’s and OMAE’s recommendations that could create conflicts with PJM and other FERC-approved transmission planning processes.

**II. Specific Reply Comments**

**a. Proposed Admin. Code Rule 4906-1-01: Definitions**

**i. 4906-1-01(D) “Agricultural District”**

The OFBF recommends amendment of the definition of “agricultural district” to include lands enrolled in the Current Agricultural Use Valuation (“CAUV”) program. (See Initial Comments of OFBF, at 2-3 (pages unnumbered in document).) The OFBF believes that the CAUV program has much higher enrollment than an agricultural district program, which would result in a more comprehensive farmland impact study during the application process. (*Id.*)

ATSI does not believe that the OFBF's proposed change is needed because current Rules provide the Board with sufficient information relative to a project's impact on lands in agricultural production. If the Board were to be persuaded that applicants should identify farmland properties enrolled in the CAUV program, such requirement should only have force or effect if that designation is publicly-available on the relevant county auditor's website. Otherwise, this change would impose an undue regulatory burden. Accordingly, ATSI requests the following qualification to OFBF's recommendation:

(D) "Agricultural district" means any agricultural district established pursuant to Chapter 929. and of the Revised Code, and if publicly available on the county auditor's website, land enrolled in the Current Agricultural Use Valuation program under Section 5713.30 of the Revised Code and ensuing statutes.

**ii. (F)(2)(b) "Associated Facility" or "Associated Facilities"**

Strikingly, the mélange of initial comments lacks support for Staff's proposed revision to the definition of "associated facilities" for electric transmission lines. Eight of the initial comments<sup>5</sup> emphatically oppose departure from longstanding jurisdictional precedent, particularly without any reasoned analysis for the change and with no underlying change of language in the law.<sup>6</sup> AEP's quantitative analysis of material adverse impact to its industrial and business customers—as well as to economic development in Ohio by comparison to neighboring states—is an astute illustration of how problematic Staff's proposed revision would be if adopted. (Initial Comment of AEP, at 7-8.) So too has the Board acknowledged the correlative relationship between expansion of its jurisdiction and increased costs to ratepayers. *See* OPSB Transmission Report at 11 (recognizing that "benefits [of additional OPSB review] should be weighed against the potential increased costs that would be imposed on customers").

ATSI thus requests, at the very least, that the Board preserve exclusion of those substations that change electricity from transmission voltage to distribution voltage from the definition of "associated facilities," as Ohio Energy Group, Duke Energy, and others so urge. (*E.g.*, Initial Comments of Ohio Energy Group at 2; Initial Comments of Duke Energy Ohio at 3.)

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<sup>5</sup> *See* Initial Comments of Ohio Power Company and AEP Ohio Transmission Company, Inc. (together, "AEP"); Ohio Energy Group; Buckeye Power; Duke Energy Ohio; Ohio Chamber of Commerce; Ohio Economic Development Association; Ohio Manufacturing Association Energy Group; Data Center Coalition; and Ohio Energy Enterprises.

<sup>6</sup> *See In re Columbus S. Power Co.*, 2011-Ohio-1788, ¶ 52 (instructing the public utilities commission to "respect its own precedents" and to explain any change in course). *See also State ex rel. Peregrine Health Servs. of Columbus, LLC v. Sears*, 2020-Ohio-3426, ¶ 82 (Brunner, J., dissenting) (finding Ohio Department of Medicaid's latest interpretation of R.C. 5165.23(A)(2) to be arbitrary in that it changed with little to no explanation with no underlying change of language in the law).

**iii. 4906-1-01(MM) "Route"**

ATSI's Initial Comments suggested that the proposed definition for "Route" should be amended to facilitate the Board's adoption of a transmission corridor concept. (Initial Comments of ATSI at 3-4.) ATSI thus concurs with Duke Energy Ohio ("Duke") that "Route" should mean a proposed corridor. (Initial Comments of Duke at 6-7.) The redline that Duke suggests, however, would seem to erode desired siting efficiencies by constraining "Route" width to right-of-way or easement width. (*Id.*) For many companies siting electric power transmission lines, rights-of-way and easements are often not acquired until after the project has been approved by the Board and are dependent variables of the final transmission line path. Therefore, the Board should not adopt Duke's proposed revision to "Route."

Although ATSI still prefers that the Board expressly adopt corridor siting, ATSI is amenable to Dayton Power & Light's ("AES Ohio's") alternative reading of Staff's proposed definition.<sup>7</sup> (Initial Comments of AES Ohio at 5.) Both approaches would afford applicants much-needed flexibility to shift the path of an electric power transmission line within the bounds of a certificated corridor.

**iv. 4906-1-01(KK) "Replacement of Existing Facility with a Like Facility" and 4906-1-01(QQ) "Substantial addition"**

Duke suggests that the Board propose a formal methodology for addressing emergency replacements of existing facilities. (Initial Comments of Duke at 2, 3.) ATSI agrees that transmission infrastructure owners must have authority to repair facilities in an emergency, but notes that the definition of "substantial addition" in proposed Admin. Code Rule 4906-1-01(QQ) already contemplates an exemption from the Board's application requirement for emergency construction to restore service. Further guidance from the Board as to emergency replacements could thus be provided in the "substantial addition" definition, as follows:

(QQ) "Substantial addition," in the case of an electric power transmission line or gas pipeline already in operation, is any ~~addition or modification~~ project that meets any of the descriptions listed in the "Application Requirement Matrix" contained in appendix A and appendix B to this rule. Minor upgrades or maintenance in the ordinary course of business or construction necessary to restore service of a transmission line in an emergency or damaged by reason of natural or human-caused disaster or accident ~~does~~ not constitute a substantial addition and therefore ~~does~~ not necessitate the filing of a certificate application.

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<sup>7</sup> Such different interpretations of the proposed "Route" definition seems to indicate that some clarification is warranted, however.

**b. 4906-3-11: Amendments of accepted, complete applications and of certificates**

With regard to 4906-3-11(A)(6), the National Resources Defense Council (“NRDC”) and National Grid both raised concern with the Board’s proposed standard for denying application amendments that “*appear to create further additional adverse impacts.*” (Initial Comments of NRDC at 5; Initial Comments of National Grid at 12). NRDC asserts that this standard is not evidence-based and will not lead to uniform application. ATSI agrees that “appear to” should be stricken as subjective.

**c. 4906-4-03: Project description in detail and project schedule in detail.**

ATSI agrees with AES Ohio that proposed Admin. Code Rule 4906-4-03(A)(4)(b) should be changed so that exact pole locations do not have to be specified in an electric transmission line project application. (Initial Comments of AES Ohio at 11.) Because geotech surveys and borings can affect transmission structure placements, this requirement is premature.

**d. 4905-4-05 Fully developed site or route information.**

ATSI aligns with Duke in requesting a revision to the text of this rule in conformance with the Board’s longstanding, historical practice of differentiating between studies required for the preferred route and those required for the alternate route. (*See* Initial Comments of Duke at 9-10.) Duke’s initial comments are also consistent with ATSI’s – providing “fully developed” information for both the preferred and alternative routes would inflate transmission costs borne by ratepayers and needlessly burden property owners along the alternate route with invasive field surveys. (*Id.* at 10.) Moreover, ATSI believes that Duke makes a compelling point that other states like Kentucky require only one route to be presented for siting approval. (*Id.*)

**e. 4906-4-08(D)(5) Health and safety, land use and ecological information.**

ATSI agrees with National Grid that the second sentence of this rule requiring that mitigation procedures be developed in consultation with the Ohio History Connection should be deleted. (Initial Comments of National Grid at 16-17.) Consultation with the Ohio History Connection should be determined on a case-by-case basis and is thus appropriately handled as a certificate condition rather than a rule requirement.

**f. 4906-7-06 Self-Reporting of Incidents**

ATSI supports AEP, National Grid, International Brotherhood of Electrical Workers, District 4 (“IBEW”), and Generation Pipeline, LLC in their shared requests that the Board either reject or limit Staff’s proposed Rule 4906-7-06. (Initial Comment of AEP at 18; Initial Comments of National Grid at 24; Initial Comments of IBEW at 9; and Generation Pipeline Initial Comments at 6.) The Rule’s open-ended, indeterminate requirement to suspend construction or operation of a project is highly problematic. If nothing else, the Board should narrow the

proposed Rule as suggested by AEP and National Grid, though ATSI would supplement National Grid's proposed language for (B)(2) as follows:

(B)(2) There is damage to property other than the property subject to the facility operator's right-of-way or easement or leased or owned by the facility operator.

### CONCLUSION

ATSI thanks the Board for its thoughtful consideration of the foregoing comments and recommendations. Finally, no inference should be made by ATSI's silence regarding any of the draft Rules or initial comments. By extension, the fact that ATSI has opted not to reply herein to a draft Rule or initial comment should not be construed as agreement, support, non-opposition, acquiescence, ambivalence, or otherwise relative to that comment.

Respectfully submitted,

*/s/ Devan K. Flahive*

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