

**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.)

**AMERICAN TRANSMISSION SYSTEMS, INCORPORATED'S
SUPPLEMENTAL REPLY COMMENTS**

American Transmission Systems, Incorporated ("ATSI"), a FirstEnergy company, provides the following reply to certain supplemental initial comments regarding Staff's further proposed modifications to the proposed Ohio Power Siting Board Rules, per the Board's Entry of January 19, 2023 ("*January 19th Entry*"). ATSI qualifies these Supplemental Reply Comments with the same introductory caveats as it included for its Supplemental Initial Comments, filed on January 30, 2023, in this proceeding.

I. General Supplemental Reply Comments

A. The Board Should Clarify That It Is Only Considering Supplemental Comments Regarding Rules Provided in Attachment A to the January 19th Entry.

In its January 19th Entry, the Board expressly and unambiguously requested comments on further modifications to the proposed rules "as outlined in Attachment A." *January 19th Entry*, ¶ 7. The Board did not invite supplemental comments for the draft rules that were issued on June 16, 2022 – for which the comment period closed on August 12, 2022. *See In re Ohio Power Siting Board's Review of Ohio Adm. Code Chapters 4906-1, et seq.*, Case No. 21-902-GE-BRO, Entry, ¶ 12 (July 14, 2022). ATSI therefore asks the Board to outright reject all supplemental initial comments that exceed the scope of proposed modifications to rules provided in Attachment A in the January 19th Entry.

B. The Board Should Summarily Reject Supplemental Initial Comments Suggesting Changes That Must Be Made By the General Assembly.

Certain supplemental initial comments have proposed revisions for the Rules that would contravene the Board's statutory powers and duties. (*See, e.g., Supplemental Comments of The Ohio Manufacturers' Association Energy Group*, at 3-5 (proposing expansion of the Board's jurisdiction to include 69 kV electric power transmission lines)). Because the final Rules must be in conformance with the Board's authority pursuant to R.C. 4906.03, those rule changes would be legally impermissible and ATSI requests that the Board summarily reject them.

II. Specific Reply Comments

ATSI specifically replies to two supplemental initial comments, both from the Ohio Manufacturers' Association – Energy Group (“OMAEG”). That ATSI has limited its Supplemental Reply Comments to these points, however, should not be implied as tacit assent to any other supplemental initial comments that have been filed with the Board.

A. The Board's Regulatory Classifications For Substations As “Associated Facilities” Should Remain Non-Discriminatory.

OMAEG's proposed amendments to the modified language proposed by Staff for Ohio Adm.Code 4906-1-01(F)(2)(b) would create divergent regulatory classifications based on facility ownership, exempting all non-public-utility-owned substations from the Board's siting jurisdiction and expanding the Board's siting jurisdiction to public-utility-owned distribution substations. ATSI opposes this unprecedented recommendation.

By OMAEG's own admission, the inclusion of distribution/“step-down” substations within Ohio Adm.Code 4906-1-01(F) would create an “undue regulatory burden” (ATSI agrees) and OMAEG does not articulate any reason or rationale for saddling only utility-owned distribution substations—and their ratepayers—with it.¹ ATSI therefore opposes OMAEG's proposed definition for Ohio Adm.Code 4906-1-01(F)(2)(b). Instead, the Board should uphold the exclusion of all distribution/“step-down” substations from classification as “associated facilities,” as proposed by Staff.

B. Eliminating the Requirement of Providing “Fully Developed Information” For an Alternate Route Will Neither Lower An Applicant's Burden of Proof Nor Affect the Board's Review of Accelerated Projects

OMAEG contends that Staff's proposed modifications to Ohio Adm.Code 4906-3-05 will result in a “*lower* burden of proof” for transmission projects and more “unchecked * * * supplemental transmission investment.” (See OMAEG's Supplemental Comments, at 7.) Neither is in fact true.

The Board can conclude from its review of fully developed information for one route that a project should be approved (for that preferred route) without separately needing to consider fully developed information for an alternate route. Staff disfavors (and the Board has never approved) an applicant's having discretion to choose between multiple certificated routes for a project. *In re Application of South Field Energy LLC for a Certificate of Environmental Compatibility and Public Need for a Transmission Line in Columbiana County*, Case No. 15-17-17-EL-BTX, 2016 Ohio PUC LEXIS 874, Opinion, Order, and Certificate, at *33-34 (Sept. 22, 2016) (finding “that it is not pragmatic to issue certificates for multiple routes”). Consequently, even

¹ The Board has recognized the correlation between its expanded jurisdiction and increased costs to ratepayers. (See *Reply Comments of American Transmission Systems, Incorporated* at 4 (September 2, 2022) (quoting OPSB Transmission Report at 11).)

when both a preferred and an alternate route for a transmission line project are viable, the Board's approval will only extend to one of the two.

Nothing in Staff's further proposed modification to Ohio Adm.Code 4906-3-05 relieves an applicant of demonstrating that the preferred route for a project meets all certification criteria or implies that the Board will certificate an alternate route without fully developed information. Therefore, the burden of proof is unchanged.

Staff's further proposed modification for Ohio Adm.Code 4906-3-05 has the same practical effect as when the Board grants a request for waiver from a requirement to provide information specified by the rules. In either case, the applicant's burden of proof relative to its application is not diminished because the applicant must still demonstrate that a project satisfies all requirements of R.C. 4906.10(A) before the Board will grant a Certificate of Environmental Compatibility and Public Need.

Moreover, Ohio Adm.Code 4906-3-05 does not even apply to the accelerated certificate applications that OMAEG contends entail "little-to-no" review for supplemental transmission investment. (OMAEG's Supplemental Comments, at 8.) OMAEG's argument that transmission owners should "be required to outline a sufficiently detailed justification for their expenses" for supplemental projects presented in accelerated certificate applications has no connection to Staff's further proposed modification to Ohio Adm.Code 4906-3-05. (*See id.*) Accordingly, the Board should disregard OMAEG's supplemental initial comments in part (C) as outside the scope of those invited by the Board's January 19th Entry; ATSI also reiterates its support for adoption Ohio Adm.Code 4906-3-05 as set forth therein.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The Ohio Power Siting Board's e-filing system will electronically serve notice of the filing of this document on the parties referenced on the service list of the docket card who have electronically subscribed to the case. In addition, the undersigned hereby certifies that a copy of the foregoing document is also being served via electronic mail on the 6th day of February, 2023, upon the parties listed below:

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Summary: Comments Supplemental Reply Comments electronically filed by Ms.
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