

Citizens Advocating Responsible Energy  
**CARE**  
**Communicator**

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**From CARE's attorney: All about those FirstEnergy  
 Right of Way Option Contracts**

**Taft /**

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March 13, 2008

Mr. James M. Galm  
 3559 Townley Road  
 Shaker Heights, Ohio 44122-5156

Re: Proposed 138 KV Power Transmission Line

Dear Jim:

I am writing regarding the so-called "Right of Way Option Contract" that FirstEnergy has recently been trying to get the property owners in Citizens Advocating Responsible Energy ("CARE"). At this juncture, neither you nor any other CARE member is under any obligation to accept this proposed option agreement or to further negotiate with FirstEnergy for sale of your property or of an easement over any part of your properties.

Please keep in mind that the route for that proposed transmission line is just that: a *proposed* route, and that First Energy has no right to utilize the power of eminent domain to acquire any property unless and until the route has been approved by the Ohio Power Siting Board.

The Ohio Supreme Court has repeatedly affirmed that the right to own property is a fundamental right under the Ohio Constitution. There are also statutory safeguards to protect a property owners' rights. In fact, effective October 11, 2007, the Ohio legislature amended Ohio's eminent domain law, providing property owners facing eminent domain challenges with new and additional rights.

Below are some of the rights afforded to Ohio property owners before their property can be taken through eminent domain:

- The appropriating agency must have the right to appropriate. Here, because the Ohio Power Siting Board has not approved the location for the proposed power line, First Energy lacks the right to utilize eminent domain to acquire any property for that line.
- The appropriating agency must provide the property owner with notice of its intent to acquire the property and must make a good faith offer to

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**What your neighbors are saying about the proposed power line . . .**

*...In the report, The Rachel and Route 87 routes note the presence of Park land that could be negatively impacted by the proposed transmission lines. However, the Clay Street Route makes no mention of property owned by Geauga Park District. The Park owns a 530-acre parcel adjacent to Clay Street and is currently negotiating for additional acreage along this route. We are developing a new Park in this area and groundbreaking is set for spring 2008.*

*We are asking The Ohio Power Siting Board to take this omission into account when reviewing First Energy's application for the route of the proposed transmission line.*

Thomas G. Curtin,  
 Executive Director, Geauga Park District

*It has been brought to my attention that Geauga Park District's letter of October 26, 2007 [above] has not been included in the documents for American Transmission System's 138kV Transmission Line in Geauga County. I have attached the letter and request that it be entered into the record.*

*The land negotiation I refer to in the second paragraph is nearing completion and will add significant frontage along Clay Street.*

*Once again I convey that Geauga Park's Board of Commissioners urges the Power Siting Board to consider transmission line routes that would take advantage of highways and State routes that are already heavily impacted.*

Thomas G. Curtin,  
 Executive Director, Geauga Park District

**CARE CONTACTS**

- Jim Galm,**  
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- Pat Jonath,**  
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**CARE meets at 7:30 p.m. on the first Thursday of every month at the Montville Community Center, next to the Fire Station on Rt. 528, just south of US Rt. 6, Montville. Everyone welcome.**  
**The next CARE meeting will be Thursday, April 3**  
**Find us on the Web at [www.caregeauga.org](http://www.caregeauga.org)**

**Show your support!**



**Display a  
 CARE  
 Yard Sign**

**For yours  
 Call Pat at 440-636-5153**

# OPSB could choose Clay Street over 528 route

Just because the FirstEnergy Geauga County - 138kV Transmission Line Supply Project application designates the Rt. 528, Cross Country, route as "Preferred" does not mean that, if the Ohio Power Siting Board (OPSB) decides in mid-year to permit construction to go ahead, the new line will follow that path. The company has already purchased Mayfield Road properties, one each at the southern terminus of each route, where the required substation would be located.

The rules governing the decision are spelled out in an OPSB manual titled **Siting New Energy Infrastructure in Ohio, A Guidance Document, February 2005.**

**Section II. Power Siting in Ohio, Part B, Siting Process in Ohio, The Application,** reads, in

part:

*While one of the routes is designated "preferred" by the applicant, both the preferred and alternative must be actual and viable routes that the Board could approve. The "preferred" designation does not indicate any favor or prior approval of the Board.*

It is therefore in the OPSB's power to (1) deny the application altogether which is CARE's preference, (2) allow the application using the Preferred Route, or (3) allow the application using the Alternate, Clay Street, Route.

The required hearings have now been scheduled, Public Hearings on May 12 and 13, and the Adjudicatory Hearing on May 21. The board is expected to render its decision in the case in mid-June.

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**From CARE's attorney: All about those FirstEnergy**

## **Right of Way Option Contracts**

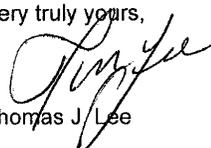
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purchase the property before it can initiate eminent-domain proceedings. The so-called "Right of Way Option Contract" does not meet the good-faith requirement under Ohio law.

- The property owner is entitled to seek the advice of an attorney, a real estate appraiser, or any other person of his or her choice.
- If the value of the property subject to eminent domain exceeds \$10,000, the appropriating agency is required to provide the property owner with a written offer **and an appraisal upon which the offer was based.**
- If the appropriating agency and the property owner cannot agree on acquisition of the property based upon a good faith offer from the appropriating agency, and a proper basis exists to challenge the taking, the property owner has the right to challenge the appropriating agency's right to take the property, necessity for the property, and whether its inability to agree with the property owner was in good faith.
- If the property owner is successful in challenging the appropriating agency's ability to take the property by eminent domain, the property owner is entitled to recover his or her attorney's fees, costs, and expenses.
- With respect to compensation, the property owner is entitled to a jury trial to determine the value of the property being taken. The property owner is entitled to be compensated for the value of the property being taken, plus compensation for any damage the taking has caused to any property which remains.
- If the jury awards the property owner an amount significantly in excess of the appropriating agency's offer, the property owner may be entitled to recover his or her attorney's fees, costs, and expenses, subject to certain statutory limitations.

I will be happy to further discuss this matter with you or any other affected property owner.

Very truly yours,



Thomas J. Lee

TJL:III

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## What's New

### Now for some spaghetti!

The CARE fish fry dinners are happy history. The fish dinners, created by Rocco and Mary Di-Franco, ably assisted by an enthusiastic crew of CARE volunteers, drew hungry crowds to the Montville Community Center for five successive Fridays winding up on March 21. But now the scene will shift to Middlefield, and the menu to Italian spaghetti. The whole CARE kitchen crew will be on hand three Saturdays this spring serving all-you-can-eat spaghetti with three meatballs, garlic toast, tossed salad, coffee and dessert; all for \$7 adults, \$4 K-6th grade, and free for pre-schoolers.

The dates are Saturdays April 5, May 3 and May 10, 5 to 7:30 p.m. at the Middlefield Fire Department, 14870 N. State St., Middlefield.

For any questions feel free to call Pat at 440-636-5153

### Volunteers needed to testify at OPSB hearings

Hearings have been scheduled for The Geauga County - 138kV Transmission Line Supply Project, OPSB Case No. 07-0171-EL-BTX. Two types of hearings are involved in this segment of the OPSB process: public hearings and an adjudicatory hearing.

The Public Hearings are intended to allow the Administrative Law Judge to hear testimony from citizens. Witnesses at the public hearings need not be affected property owners. Anyone wanting to make his or her voice heard has a right to testify at the public hearings.

The Adjudicatory Hearing is the evidentiary hearing intended for the parties in the case. (CARE's motion to intervene as a party in the case was recently granted.) At this hearing, parties, through their attorneys, present exhibits, call witnesses, cross examine the witnesses of other parties and submit briefs.

CARE is looking for volunteers to be witnesses and present testimony at the Public Hearings and at the Adjudicatory Hearing.

If you are interested in making a presentation at either of the Public Hearings, or if you want to be considered to be a witness on behalf of CARE at the Adjudicatory Hearing, please contact Jim Galm, e-mail [jgalm@caregeauga.org](mailto:jgalm@caregeauga.org), (216) 346-0782, as soon as possible to volunteer. The first Public Hearing is May 12. There is no time to waste.