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BEFORE THE  
OHIO POWER SITING BOARD

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2008 MAY 22 PM 12: 33

In the Matter of: )  
The Application of American Transmission )  
Systems, Incorporated and The Cleveland Electric )  
Illuminating Company for a Certificate of )  
Environmental Compatibility and Public Need )  
for the Geauga County 138 kV Transmission Line )  
Supply Project )

PUCO

Case No. 07-0171-EL-BTX

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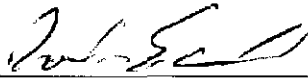
**JOINT MOTION OF APPLICANTS AMERICAN TRANSMISSION SYSTEMS,  
INCORPORATED AND THE CLEVELAND ELECTRIC ILLUMINATING COMPANY  
AND CITIZENS ADVOCATING RESPONSIBLE ENERGY FOR ISSUANCE OF A  
PROTECTIVE ORDER TO PROTECT FROM DISCLOSURE CERTAIN  
CONFIDENTIAL INFORMATION PRODUCED DURING DISCOVERY**

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Pursuant to Rule OAC §4906-7-07(H)(1)(g) and (h), Applicants American Transmission Systems, Incorporated and The Cleveland Electric Illuminating Company ("Applicants") jointly with Intervenor Citizens Advocating Responsible Energy ("CARE") request the issuance of the attached Protective Order to facilitate the production of confidential business information and critical infrastructure information by the Applicants to CARE in response to discovery responses. CARE's first discovery requests requested the production of certain documents that Applicants considered to be confidential, trade secret and/or critical infrastructure information entitled to protection from disclosure. As detailed briefly in the attached memorandum in support, the Parties have negotiated the attached Protective Order to facilitate the exchange of documents during discovery. The parties request that the Administrative Law Judge issue the attached Protective Order to ensure the confidentiality of these documents.

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Respectfully submitted,



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s/ Julie A. Crocker

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\*pursuant to email authorization 5/22/2008

## MEMORANDUM IN SUPPORT

On April 3, 2008, CARE propounded upon Applicants its first set of interrogatories and requests for production of documents. On April 15, 2008, Applicants provided written responses to the interrogatories that were also filed with the Board. Prior to producing certain confidential documents, Applicants requested, and CARE agreed, to negotiate a Protective Order to ensure the confidentiality of trade secret, confidential business information and critical infrastructure information. Applicants are required to limit dissemination of critical infrastructure information and are entitled to the protection of legitimate trade secret and confidential business information. Applicants understand their obligations in responding to discovery and have reached an acceptable compromise with CARE through the negotiation of the attached Protective Order.

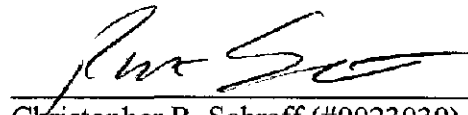
For example, CARE requested the base case power flow model data as required by OAC 4906-15-02(A)(4). This information was provided to Staff and is subject to a protective order issued on March 3, 2008. Applicants requested at that time that this information be maintained as confidential business information because it contains raw data on the design, structure and condition of the transmission system owned and operated by ATSI. The ALJ issued an order protecting this information from disclosure. It is therefore reasonable under these circumstances to maintain its secrecy. Although Applicants do not believe that the production of this information to CARE is relevant or likely to lead to the discovery of relevant information, in the spirit of cooperation, Applicants are willing to produce this information to CARE subject to the attached Protective Order.

In addition to the specific request for the base case power flow model data, CARE included requests for other collections of documents that may include information that is either trade secret or critical infrastructure information. In order to allow the Parties to work

cooperatively in discovery while protecting the confidentiality of these documents, the Parties request that the attached Protective Order be issued as soon as practical.

The proposed Protective Order was negotiated between Applicants and CARE and represents the effort of the parties to balance the need to maintain confidential information while allowing for the otherwise appropriate use of confidential information during the adjudicatory hearing. The Protective Order in no way alters the obligation of either party with respect to the admissibility of confidential information in these proceedings, but is designed to ensure that the individuals who handled the confidential information are aware of its confidential status and are on notice that any impermissible use would constitute a violation of the Protective Order. CARE, while not conceding that any particular document is confidential, believes that the attached Protective Order will facilitate the exchange of documents and represents a cooperative effort between the Parties to complete discovery. Both Parties understand the seriousness of handling trade secret and critical infrastructure information, and consequently, they jointly request that the attached Protective Order be issued to facilitate the production of these documents.

Respectfully submitted,



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Counsel for Intervenor Citizens Advocating  
Responsible Energy

\* pursuant to email authorization 5/22/2008

CERTIFICATE OF SERVICE

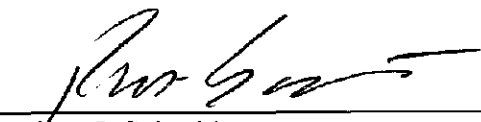
I hereby certify that a copy of the foregoing Joint Motion of Applicants American Transmission Systems, Incorporated and The Cleveland Electric Illuminating Company and Citizens Advocating Responsible Energy for issuance of a Protective Order to cover certain confidential information to be produced by Applicants to CARE during discovery was served upon the following persons by mailing a copy, postage prepaid, on May<sup>22</sup>~~21~~, 2008, addressed to:

Thomas Lindgren, Esq.  
Thomas McNamee, Esq.  
Office of the Attorney General of Ohio  
Public Utilities Section  
180 East Broad Street  
Columbus, Ohio 43215-3793

Klaus Lambeck, Chief  
Facilities, Siting & Environmental Analysis Division  
Ohio Power Siting Board  
180 East Broad Street  
Columbus, Ohio 43215-3793

Jim O'Dell  
Ohio Power Siting Board  
180 East Broad Street  
Columbus, Ohio 43215-3793

Janet Stoneking, Esq.  
Administrative Law Judge  
Public Utilities Commission of Ohio  
180 East Broad Street  
Columbus, Ohio 43215-3793

  
\_\_\_\_\_  
Robert J. Schmidt

**PROPOSED PROTECTIVE ORDER**

BEFORE THE  
OHIO POWER SITING BOARD

In the Matter of:	)	
The Application of American Transmission	)	
Systems, Incorporated and The Cleveland Electric	)	
Illuminating Company for a Certificate of	)	Case No. 07-0171-EL-BTX
Environmental Compatibility and Public Need	)	
for the Geauga County 138 kV Transmission Line	)	
Supply Project	)	

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**PROTECTIVE ORDER REGARDING  
CONFIDENTIAL INFORMATION AND DOCUMENTS**

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It is hereby ordered that this Protective Order Regarding Confidential Information and Documents ("Protective Order") shall apply with respect to certain documents and other information produced and/or disclosed in connection with the Application of American Transmission Systems, Incorporated and The Cleveland Electric Illuminating Company (the "Applicants") in Ohio Power Siting Board Case No. 07-0171-EL-BTX.

1. For the purpose of this Protective Order, "Discovery Material" shall mean all documents, testimony, or other information produced, subpoenaed, transcribed, given to, served upon, or filed by any Party to this action in connection with formal or informal discovery, the public hearings, or the adjudicatory hearing (whether in the form of depositions, transcripts, interrogatory answers, document productions, responses to requests to admit, or otherwise) or in any pleading, motion, affidavit, declaration, brief, or other document submitted to the Ohio Power Siting Board.

2. For the purpose of this Protective Order, "Confidential Information" shall mean Discovery Material containing proprietary, trade secret, financial and business information, or



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critical infrastructure information that the Applicants believe in good faith is or contains material entitled to protection from disclosure. No Confidential Information or any copy, excerpt, digest, compilation, or summary thereof, or the information contained therein shall be delivered or disclosed to any person except as provided herein.

3. If Applicants believe in good faith that the Discovery Material contains Confidential Information, they may designate such material as confidential (1) by stamping the word "CONFIDENTIAL" on the Discovery Material in a readily visible and noticeable manner. Confidential Information, including copies, excerpts, and summaries thereof, or the information contained therein, shall be subject to all of the conditions and limitations set forth in this Protective Order.

4. CARE shall have the right to challenge the designation of documents marked "CONFIDENTIAL," using a procedure requiring parties to exhaust extrajudicial means of discovery dispute resolution. CARE will notify Applicants in writing if CARE contends that any document is not subject to protection, and provide an explanation of why CARE so contends. Within seven (7) days of receiving notification of an objection, Applicants will inform CARE in writing whether Applicants are withdrawing its confidential designation. If Applicants maintain their confidential designation, and CARE maintains its challenge after this communication, the parties will seek an informal telephone conference with Administrative Law Judge Stoneking. If after such negotiations, the parties are still not able to come to an agreement regarding disputed documents, either party may seek a formal determination from the ALJ with regard to any such disputed document. Documents in dispute will remain protected under this Order until the ALJ rules on their status. If Applicants withdraw a confidential designation, or if the ALJ rules that a disputed document is not subject to protection under this Order, Defendant will provide an

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unmarked copy of such document to CARE. Nothing in this Order shall alter the Applicants' burden to establish its entitlement to protection of any document to which an objection is lodged as set forth above.

5. No person shall use any confidential information for any purpose other than to assist counsel in the preparation for, and the presentation of evidence at, the adjudicatory hearing of this action. To the extent otherwise admissible, Counsel shall be permitted to introduce confidential information as evidence at the adjudicatory hearing. Nothing in this Order shall be construed as waiving any Party's ability to object to the admissibility of confidential information on any permissible grounds. Any such confidential information admitted as evidence shall remain subject to this protective order and further orders as necessary to ensure that the confidential information remains confidential. Confidential Information shall not be disclosed by the person receiving it to any other person without Applicants' prior written consent or an order of the ALJ, except to the following:

- a. Counsel for the Parties in this matter;
- b. Counsel's employees to whom it is disclosed for purposes of this matter;
- c. Employees or other agents, not including the individual members of CARE, of the Parties with responsibilities relating to this matter;
- d. Litigation consultants, contractors, and persons designated as expert witnesses to assist in the conduct of this matter;
- e. The Ohio Power Siting Board and ALJ and its employees, including, without limitation, court reporters, employees in the Clerk's Office, and law clerks, provided that the Confidential Information is filed in accordance with the terms of this Protective Order;
- f. Stenographers, or other persons preparing transcripts of testimony in this litigation; or
- g. Witnesses.

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6. With the exception of those persons designated in Paragraph 5(e), no disclosure of Confidential Information, or any copy, excerpt, or summary thereof, or the information contained therein, received from Applicants, shall be made to any person until such person has been provided with a copy of this Protective Order and such person has agreed to be bound thereto by execution of the agreement attached hereto as Exhibit A. Upon written request of Counsel for Applicants, Counsel for CARE shall provide copies of the executed agreements to Counsel for Applicants. Documents may be handled by clerical personnel, who are performing purely clerical duties, such as mail handling, copying, bates stamping, filing, etc., without such personnel signing the agreement, but such personnel shall be advised of the provisions of this Order and counsel for the Party utilizing such personnel shall maintain a list identifying the personnel or the companies or organizations employing such personnel.

7. The agreement, attached hereto as Exhibit A, shall provide for the return of all copies of the Confidential Information, not previously destroyed, at the conclusion of this matter, including any appeals therein, to Applicants' counsel. At the conclusion of this matter, CARE's counsel shall provide written notice to Applicants that all copies have been returned to counsel for the Applicants or were destroyed.

8. Whenever Confidential Information is to be referred to or disclosed in a deposition, any Party may exclude from the room during such testimony any person who is not authorized to receive Confidential Information under this Protective Order. Any testimony given in any deposition herein that refers to or discloses Confidential Information may be designated as "CONFIDENTIAL" by any Party by making such designation on the record. A Party may also make such designation in writing to the court reporter on or before the date the transcript

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signature page is returned to the reporter, provided that notice of such designations is sent to all Counsel of record. The reporter shall then separately transcribe those portions of the testimony so designated and shall mark the face of the transcript with the words "CONFIDENTIAL," and seal it in a separate envelope. Whenever any document designated as "CONFIDENTIAL" is identified as an exhibit in connection with testimony given in any deposition, it shall be so marked and separately sealed. After the time for the correction of the deposition has expired, the Court Reporter shall not retain copies of any materials containing Confidential Information. Only persons who have executed the agreement attached hereto as Exhibit A, and those persons designated in Paragraph 5 (e), shall be entitled to obtain copies of that portion of the transcript and/or exhibit. A copy of this Protective Order shall be identified and marked as an exhibit to any such transcript, and all persons who have actual notice of this Protective Order shall be bound by its terms.

9. All Parties, their counsel, and all persons designated in Paragraph 5 above who obtain Confidential Information shall take all necessary and appropriate measures to maintain the confidentiality of the Confidential Information, shall disclose such information only to persons authorized to receive it under this Protective Order, and shall retain such information in a secure manner.

10. All Confidential Information filed with or received by the Clerk of the Ohio Power Siting Board shall be kept in a sealed envelope or other container marked on the outside with the title of the action, an identification of each item within and a statement as follows:

CONFIDENTIAL

This envelope contains documents that are subject to a Protective Order entered by the Administrative Law Judge in this action governing the use of Confidential Information. The envelope should not be opened or the contents thereof disclosed or revealed other than to the ALJ except by Order of the ALJ or consent of the Party making the claim of confidentiality.

Any such Confidential Information shall be maintained under seal by the Clerk.

11. Throughout, and after the conclusion of this matter, including any appeals, the restrictions on communication and disclosure provided for herein shall continue to be binding upon the Parties and all other persons to whom Confidential Information has been communicated or disclosed pursuant to the provisions of this Protective Order or any other order of this Court.

12. This Protective Order is designed to: (1) facilitate discovery and production of documents in this matter that a Party or non-Party considers Confidential Information; and (2) preclude dissemination of Discovery Material designated in good faith as Confidential Information, prior to an agreement among the Parties or a definitive determination by the ALJ. It does not constitute a determination that documents or information so designated are "Confidential Information." Nothing in this Order shall prejudice in any way the right of any Party to seek a determination of whether particular documents, information or testimony should remain subject to the terms of this Protective Order. Any Party may request that the Court modify or otherwise grant relief from any provision of this Order.

13. Within 90 days after the final termination of this matter, including any and all appeals thereof, (a) all original and identical copies of Confidential Information shall be promptly be returned to the Party or non-Party who provided such Confidential Information or shall be destroyed; and (b) any and all notes, abstracts, summaries, and excerpts prepared from

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Confidential Information shall be destroyed. Counsel for the Party receiving Confidential Information shall provide a certification in writing within five (5) business days of such destruction, to counsel for all other Parties or non-Parties that such materials have been returned or destroyed.

14. Counsel for the Parties shall use their best efforts to ensure that the provisions of the Protective Order are adhered to by the Party they represent and by those acting on its behalf.

IT IS SO ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

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Janet Stoneking  
Administrative Law Judge

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**BEFORE THE  
OHIO POWER SITING BOARD**

In the Matter of:	)	
The Application of American Transmission	)	
Systems, Incorporated and The Cleveland Electric	)	
Illuminating Company for a Certificate of	)	Case No. 07-0171-EL-BTX
Environmental Compatibility and Public Need	)	
for the Geauga County 138 kV Transmission Line	)	
Supply Project	)	

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**CONFIDENTIALITY AGREEMENT PURSUANT TO PROTECTIVE ORDER**

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I, \_\_\_\_\_, hereby acknowledge that I have received a copy of the Protective Order entered in this action, to which this agreement was attached as Exhibit A, have read it, and agree to be bound by all provisions thereof including, without limitation, that I will not use Confidential Information for any purpose not permitted by the Protective Order; that I shall return to Counsel supplying me with said Confidential Information, at the earlier of the end of my involvement or the conclusion of this Litigation, including any appeals therein, all copies of such Confidential Information that have been provided to me, including all notes, abstracts, summaries and excerpts prepared from Confidential Information that have not previously been destroyed by me and certify to such Counsel that all Confidential Information in my possession has been returned to such Counsel or destroyed; that I shall not make any copies of Confidential Information for any purpose not permitted by the Protective Order; and, that I shall not provide Confidential Information to anyone else who has not executed this Agreement or who, pursuant to paragraph 5 of the Protective Order is not entitled to receive Confidential Information without executing this Agreement. I further understand that I shall

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remain bound by the Protective Order after the conclusion of this matter unless otherwise ordered by the Administrative Law Judge. I understand that violation of this Protective Order may constitute contempt of an Order.

Dated: \_\_\_\_\_

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_