

BEFORE THE OHIO POWER SITING BOARD

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In the Matter of: :  
: Case No. 07-171-EL-BTX

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

- - -

PROCEEDINGS

before Ms. Janet Stoneking, Attorney Examiner, at the  
Public Utilities Commission of Ohio, 180 East Broad  
Street, Room 11-F, Columbus, Ohio, called at 10:00  
a.m. on Wednesday, May 21, 2008.

- - -

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1 APPEARANCES:

2 Porter, Wright, Morris & Arthur, LLP  
By Mr. Robert J. Schmidt  
3 and Mr. Christopher R. Schraff  
41 South High Street  
4 Columbus, Ohio 43215-6194

5 On behalf of the Applicants.

6 FirstEnergy Corp.  
By Mr. Morgan E. Parke  
7 76 South Main Street  
Akron, Ohio 44308

8  
9 On behalf of the FirstEnergy Company.

10 Taft, Stettinius & Hollister, LLP  
By Mr. Benjamin J. Parsons  
21 East State Street  
11 Suite 1200  
Columbus, Ohio 43215-4221

12  
13 On behalf of the Citizens Advocating  
Responsible Energy

14 Mark Dann, Ohio Attorney General  
Duane W. Luckey, Senior Deputy  
15 Attorney General  
Public Utilities Section

16 By Mr. Thomas W. McNamee  
and Mr. Thomas Lindgren  
17 180 East Broad Street, 9th Floor  
Columbus, Ohio 43215-3793

18  
19 On behalf of the Staff of the Ohio Power  
Siting Board.

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1                   Wednesday Morning Session,

2                   May 21, 2008.

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4           THE ATTORNEY EXAMINER: The Ohio Power  
5   Siting Board as assigned for hearing at this time and  
6   place Case No. 07-171-EL-BTX, captioned: In the  
7   Matter of the Application of the American  
8   Transmission Systems, Incorporated, and the Cleveland  
9   Electric Illuminating Company for a Certificate of  
10   Environmental Compatibility and Public Need for the  
11   Geauga County 138 Kilovolt Transmission Line Supply  
12   Project.

13           My name is Janet Stoneking and I am the  
14   Administrative Law Judge that has been assigned by  
15   Ohio Power Siting Board to conduct the hearing for  
16   this case.

17           First I'd like to take appearances for  
18   counsel starting with the company.

19           MR. SCHRAFF: Yes, your Honor. On behalf

20 of the applicants, American Transmission Systems  
21 Incorporated and the Cleveland Electric Illuminating  
22 Company, Christopher Schraff, outside counsel with  
23 the law firm of Porter, Wright, Morris & Arthur,  
24 41 South High Street, Columbus, Ohio, 43215.

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1 THE ATTORNEY EXAMINER: Thank you.

2 Intervenors.

3 MR. PARSONS: Yes, your Honor. Benjamin

4 Parsons, with the law firm of Taft, Stettinius &

5 Hollister, LLP, 21 East State Street, Suite 1200,

6 Columbus Ohio, here on behalf of the intervenor,

7 Citizens Advocating Responsible Energy.

8 THE ATTORNEY EXAMINER: Staff.

9 MR. LINGREN: On behalf of the Ohio Power

10 Siting Board, the Ohio Attorney General's Office,

11 Public Utilities Section, by Duane Luckey, section

12 chief, Thomas Lindgren and Thomas McNamee, assistant

13 attorneys general. The address is 180 East Broad

14 straight knight floor Columbus, Ohio 43215.

15 THE ATTORNEY EXAMINER: Thank you.

16 MR. SCHRAFF: I may also mention with me

17 is co-counsel, Robert J. Schmidt, also of the law

18 firm of Porter, Wright, Morris & Arthur, and sitting

19 in between us is Morgan Parke, attorney for

20 FirstEnergy and the applicants.

21 THE ATTORNEY EXAMINER: Thank you. I'd

22 like to note for the record a status conference was

23 held with the parties on April 21, and during that

24 status conference we discussed some procedural issues

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1 for the case, one of which was to continue local  
2 public hearings which were scheduled for May 12 and  
3 May 13 in order for the company to have additional  
4 time to respond to discovery requests from staff.  
5 It's my understanding that that discovery request was  
6 docketed yesterday.

7 MR. SCHRAFF: That's correct, your Honor.

8 THE ATTORNEY EXAMINER: To your  
9 knowledge, Mr. Schraff, does this complete the  
10 discovery responses to staff?

11 MR. SCHRAFF: Yes, it does. As far as  
12 we're concerned, we believe that the response is  
13 complete.

14 THE ATTORNEY EXAMINER: Thank you. I  
15 understand that staff probably hasn't had time to go  
16 through that.

17 MR. LINGREN: That's correct, your Honor,  
18 the staff is currently reviewing the discovery  
19 response. It reserves the right to issue additional

20 discovery if it believes any of the information there

21 is not complete or not sufficient.

22 THE ATTORNEY EXAMINER: Thank you. I'd

23 like to note for the record in that status conference

24 we had between the parties we had established a

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1 discovery completion date of June 30 for the parties,  
2 and then the objective is to conduct the local public  
3 hearings in early July and reconvene this hearing in  
4 mid-July.

5 We have another status conference for  
6 counsel for the parties set for June 23 at 1:30 by  
7 teleconference, and I will provide the bridge number  
8 prior to that for the parties. At the June 23  
9 teleconference I would like for the parties to be  
10 prepared to discuss any outstanding discovery issues  
11 if there are any. Hopefully there will be none.

12 Are there any administrative issues we  
13 should deal with today?

14 MR. SCHRAFF: Your Honor, there are a  
15 couple of issues we would like to take up with you.  
16 One is the status of the interventions. Currently in  
17 addition to CARE, I believe one township, Huntsburg  
18 Township, has filed a notice of intervention. I  
19 don't know if that's been acted upon, but it appears

20 that they likely would be another party to the

21 hearing.

22 We understand that in light of the

23 staff's discovery request No. 16 with respect to this

24 bike path alternate route, it's our understanding

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1 that the Geauga County Park District will shortly be  
2 seeking to intervene into these proceedings. And it  
3 is also possible that we may have additional  
4 intervenors beyond that, in particular, the City of  
5 Chardon, which would also be traversed by the  
6 alternate hybrid bike path route, has given  
7 indications it may shortly be filing a request for  
8 intervention. So I just wanted to bring that to the  
9 attention of the judge because it may affect how we  
10 proceed from here on out.

11 THE ATTORNEY EXAMINER: Thank you.

12 Just to briefly respond to your concern  
13 about the intervention cutoff, my understanding is  
14 that based on the Power Siting rules, that the normal  
15 intervention by right, that time frame has expired.  
16 However, the rules also provide that parties may  
17 intervene for just cause. So based on what's put  
18 forth in the motions for intervention, we would make  
19 a decision based on that, and I do understand if

20 those parties do intervene and want to conduct  
21 discovery, that may impact the balance of the  
22 schedule.

23 Are there any other administrative  
24 matters today, Mr. Schraff?

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1           MR. SCHRAFF: A couple of other items,  
2 and maybe these can be handled in part by the status  
3 conference that's to be convened on June 23.  
4 Currently I believe all the parties have before them  
5 the application. They now have our response to staff  
6 Interrogatory No. 16. They have our responses to  
7 CARE discovery requests, which identify our  
8 witnesses, and we've identified at least two  
9 witnesses who will be presenting our case-in-chief.

10           There is a third witness we will identify  
11 shortly, although it's no secret that Aaron Geckle of  
12 the consulting firm URS Corporation, who should be  
13 testifying in respect to much of the material that  
14 was provided in response Interrogatory No. 16 as well  
15 as the site selection, route selection process.

16           In looking at CARE responses to our  
17 discovery, we can only identify two possible issues  
18 that were identified in their discovery as being in  
19 play at this time. One is that a reading of the CARE

20 discovery responses would tell us that they believe  
21 an alternate route following some sort of preexisting  
22 civil corridor, such as Route 11 or possibly the old  
23 Rachel route line, are in some fashion preferable to  
24 either the preferred or alternate route in this case.

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1           The other issue that we can just  
2 generally discern is that they in some fashion take  
3 issue with the completeness of our application and  
4 the issue of whether or not we fully comply with the  
5 information requirements for the application set  
6 forth in the Board's rules.

7           Beyond that we are unaware of what issues  
8 CARE wishes to raise in this proceeding, and we also  
9 received no information as to the number or identity  
10 of witnesses they intend to call in their  
11 case-in-chief. We are feeling a little bit  
12 constrained in terms of our ability to prepare for  
13 this hearing. We don't have any idea who the  
14 witnesses will be, and we are not sure whether all  
15 the issues have been identified for hearing in this  
16 matter.

17           I don't want to try this case by surprise  
18 and get here on the hearing date only to find we have  
19 new issues we weren't prepared for, so I would like

20 to suggest a couple of things.

21 THE ATTORNEY EXAMINER: Okay.

22 MR. SCHRAFF: Number one is I would like

23 to suggest that certainly no later than the status

24 conference on June 23 that all of the issues that are

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1 going to be in play in this proceeding be identified  
2 by all the parties. Secondly, we talked earlier, and  
3 I believe the judge agreed, that in this case we're  
4 going to use prefiled testimony.

5 THE ATTORNEY EXAMINER: Yes.

6 MR. SCHRAFF: If there are  
7 late-developing issues, and I understand things  
8 evolve and the parties may wish to raise issues that  
9 haven't been identified to date, but if we're going  
10 to identify issues late in the game, one suggestion I  
11 have, one question I have is with respect to rebuttal  
12 testimony, does the Court want prefiled rebuttal  
13 testimony, and if we have late-developing issues,  
14 would it be appropriate to have a break of perhaps a  
15 week or two between the cases-in-chief that the  
16 parties put on and then the rebuttal portion of  
17 proceeding.

18 THE ATTORNEY EXAMINER: Thank you. I  
19 think it's certainly reasonable to request that the

20 parties identify their issues prior to the status  
21 conference, and I will also put out an entry  
22 addressing that and also to explain the other agenda  
23 items for the status conference, such as identifying  
24 the witnesses.

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1           Also it's been my experience that in the  
2 case if there are some late-rising issues, that we  
3 would appropriately take a break and allow parties  
4 time to prepare prefiled rebuttal testimony and then  
5 resume the hearing in order to do that and address  
6 cross-examination or other issues.

7           I would also note if it is not possible  
8 by the status conference for parties to identify  
9 specific witnesses, if we would at least identify the  
10 type of witness they intend to seek and the general  
11 subject matter they want. It's my understanding  
12 based on what CARE has filed previously in the docket  
13 that they are having difficulty identifying, at least  
14 at the time of the filing, identifying the witnesses.

15           Are there any other administrative  
16 matters?

17           MR. LINGREN: No, your Honor.

18           MR. SCHMIDT: Your Honor, Rob Schmidt.

19 We have been negotiating with CARE over the course of

20 the last several weeks and agreed to a protective  
21 order. We would request you enter in this matter for  
22 purposes of protecting confidential and critical  
23 infrastructure information that will be provided to  
24 them as part of our discovery responses. I would

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1 expect a joint motion to be filed with you asking you  
2 to issue that protective order to be filed by CARE  
3 and the applicants within the next day or, just so  
4 you are aware that's coming.

5 THE ATTORNEY EXAMINER: Thank you.

6 Does CARE have anything they would like  
7 to raise at this point?

8 MR. PARSONS: No, your Honor. What was  
9 talked about with regard to identifying the issues  
10 and potential witnesses, or at least the types of  
11 witnesses by the status conference is obviously, I  
12 think, that's fine with us. We have no objection or  
13 anything to add today.

14 THE ATTORNEY EXAMINER: All right. Thank  
15 you.

16 I will address the protection order once  
17 it's filed in combination with items concerning the  
18 purpose of the June 23 status conference and identify  
19 the bridge number also.

20           Hearing no other administrative issues --

21           I'm sorry, yes, Mr. Schraff.

22           MR. SCHRAFF: In your next entry, Judge,

23 will you identify the new public hearing dates and

24 the --

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1 THE ATTORNEY EXAMINER: Off the record

2 for a second.

3 (Discussion off record.)

4 THE ATTORNEY EXAMINER: The parties

5 discussed off the record the status of discovery and

6 other issues. Based on that information the

7 Administrative Law Judge is not inclined at this

8 point to include the local public hearing dates and

9 the evidentiary hearing date in any entry published

10 prior to the June 23 status conference.

11 Is there anything else?

12 MR. SCHRAFF: No, your Honor.

13 THE ATTORNEY EXAMINER: Thank you.

14 Hearing no other administrative matters before the

15 Ohio Power Siting Board, this hearing is adjourned

16 until further notice from the Power Siting Board.

17 Thank you.

18 (The hearing adjourned at 10:20 a.m.)

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CERTIFICATE

I do hereby certify that the foregoing is a  
true and correct transcript of the proceedings taken  
by me in this matter on Wednesday, May 21, 2008, and  
carefully compared with my original stenographic  
notes.

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Rosemary Foster Anderson,  
Professional Reporter and  
Notary Public in and for  
the State of Ohio.

My commission expires April 5, 2009.

(RFA-8147)

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**This foregoing document was electronically filed with the Public Utilities**

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Summary: Transcript American Transmission Systems 5-21-08 electronically filed by Mrs. Jennifer D. Duffer on behalf of Armstrong & Okey, Inc.