

BEFORE

THE OHIO POWER SITING BOARD

In the Matter of the Application of)
 American Transmission Systems,)
 Incorporated and The Cleveland Electric) Case No. 07-171-EL-BTX
 Illuminating Company for a Certificate of)
 Environmental Compatibility and Public)
 Need for the Geauga County 138 kV)
 Transmission Line Supply Project.)

ENTRY

The Administrative Law Judge finds:

- (1) On June 23, 2008, a case status conference was conducted with the parties to this proceeding. By entry issued July 11, 2008, the following procedural schedule was established for this proceeding:

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|------------------------|----------------------|
| Witness Identification | August 1, 2008 |
| File Staff Report | August 12, 2008 |
| Discovery Completion | August 15, 2008 |
| Case Status Conference | August 18, 2008 |
| File Direct Testimony | August 25, 2008 |
| Local Public Hearings | August 27 & 28, 2008 |
| Adjudicatory Hearing | September 2, 2008 |

- (2) By entry issued August 6, 2008, a third local public hearing was scheduled for Wednesday, September 10, 2008.
- (3) On August 7, 2008, intervenor Citizens Advocating Responsible Energy (CARE) filed a motion seeking to continue the adjudicatory hearing set for September 2, 2008. In its motion, CARE requests that the adjudicatory hearing be continued until October 1, 2008, or later. CARE also seeks an immediate ruling on this motion. Memoranda contra CARE's motion were timely faxed or filed on August 12, 2008, by intervenors City of Chardon, Geauga Park District, and Industrial Energy Users-Ohio (IEU-Ohio), and the American Transmission Systems, Incorporated and The Cleveland Electric Illuminating

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Company (the Companies), in accordance with the request made by the Administrative Law Judge on August 7, 2008 via electronic message.

- (4) CARE raises several arguments in support of its motion. First, it contends that the Companies are using unfair tactics to prevent discovery of information, including the filing of a significant number of documents under seal in this proceeding. CARE opines that the six "DVDs" filed on September 28, 2007, as part of the Companies' application, contain thousands of documents. CARE asserts that, while it received five computer disks (CDs) from the Companies on July 25, 2008, one of the CDs was readable only using GE proprietary software. Next, CARE asserts that it has "confirmed that the evidence filed under seal is not available to the parties," even though it has been deemed necessary and made available to the Ohio Power Siting Board's staff (Staff) for more than nine months. CARE argues that, while it does not know what the precise nature of this evidence is, it believes that this massive amount of information is likely to contain documents relevant to CARE's presentation at the adjudicatory hearing.
- (5) With respect to discovery, the Companies assert that the vast majority of the documents requested by CARE were produced on May 21, 28, and 30, 2008, with the exception of 362 pages and the raw power flow data that were produced on or before June 18, 2008. Further, the Companies assert that with respect to the documents under seal, CARE received identical copies of the "DVDs" on July 24, 2008. Next, the Companies assert that CARE received copies of the five line diagrams that were provided to Staff, subsequent to the Companies' application filing. Last, the Companies argue that CARE's contention that the Companies are withholding information is unfounded.
- (6) With respect to the allegations raised by CARE concerning the documents held under seal, the Administrative Law Judge conducted an *in camera* review of the information granted a protective order to-date in this proceeding. The Administrative Law Judge finds that, while there were six computer disks (CDs) filed under seal on September 28, 2007, there are only two CDs with different contents, with three copies of each CD. Further, a review of the information stored on the CDs indicates there are approximately 110 files that either contain

raw data or are program files to be used in conjunction with the General Electric Positive Sequence Load Flow (GE PSLF) software.¹ Accordingly, the Administrative Law Judge finds that the contents of the CDs properly provide the information required by Rule 4906-15-02, Ohio Administrative Code (O.A.C.).

- (7) Concerning the information filed under seal on November 8, 2007, the Administrative Law Judge notes that this filing was made in response to a Staff request for additional information, and supplemented by the Companies on November 26, 2007. In their memorandum contra, the Companies assert that all of the information under seal has now been provided to CARE, including five line diagrams. The Administrative Law Judge finds that the information filed under seal is consistent with the Companies' assertions, with one exception. Six diagrams were filed under seal, with four "transcription diagrams" filed on November 8, 2007, and two additional "transcription diagrams" filed on November 26, 2007. Accordingly, the Administrative Law Judge directs the Companies to determine which of the transcription diagrams still needs to be provided to CARE, consistent with the parties' confidentiality agreement.
- (8) Next, the Administrative Law Judge finds it necessary to explain that, under Rule 4906-7-7(H), O.A.C., a party may request protection of information provided to Staff as part of its application, when the party believes that the information is a trade secret or other confidential business information. If a motion for a protective order is granted, then the information remains under seal and those documents may only be accessed by Staff during a proceeding and in a manner that protects the company's proprietary information. The Ohio Power Siting Board rules do not provide for party access to information maintained under a protective order. Therefore, when a party seeks any confidential information that has been provided to Staff, it is that party's responsibility to contact the party who filed the information under seal. Last, if a party doubts whether it has received all of the information that it requested through discovery, that party is not prevented from asking

¹ The Administrative Law Judge notes that she was able to open all of the files on the CDs using either Windows Notepad, or Microsoft Excel, or Adobe Acrobat. However, to use the raw data files for analyses purposes, the user would need a licensed copy of the GE PSLF software.

questions in that regard either at deposition and/or an evidentiary hearing.

- (9) CARE further argues, in support of its motion, that it will not be able to complete discovery and depositions of the additional witnesses, who were identified by the intervening parties, by the August 15, 2008 discovery cutoff. After consideration of all the arguments raised by the parties in their pleadings, the Administrative Law Judge finds that the case procedural schedule should be amended as follows:

| | |
|------------------------|----------------------|
| Case Status Conference | August 18, 2008 |
| Local Public Hearings | August 27 & 28, 2008 |
| Discovery Completion | August 29, 2008 |
| File Direct Testimony | September 8, 2008 |
| Local Public Hearing | September 10, 2008 |
| File Staff Testimony | September 16, 2008 |
| Adjudicatory Hearing | September 16, 2008 |

- (10) With respect to the case status conference noted above, counsels for the parties are reminded to call the teleconference bridge number (614 644-1080) on Monday, August 18, 2008, at 1:30 p.m. to participate in the case status conference.
- (11) Last, the adjudicatory hearing in this case should be scheduled to resume on Tuesday, September 16, 2008, at 10:00 a.m., at the offices of the Public Utilities Commission of Ohio, 180 East Broad Street, 11th floor, Hearing Room C, Columbus, Ohio 43215-3793.

It is, therefore,

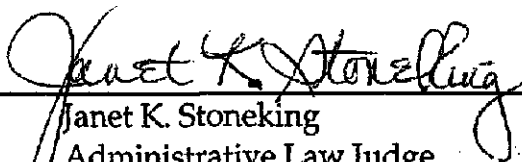
ORDERED, That the Companies comply with the directive in finding 7. It is, further,

ORDERED, That the procedural schedule set forth in finding 9 be adopted. It is, further,

ORDERED, That the adjudicatory hearing in this case be scheduled to resume on Tuesday, September 16, in accordance with finding 11. It is, further,

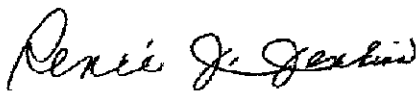
ORDERED, That a copy of this entry be served upon the Companies and their counsel, those individuals served a copy of the certified application pursuant to Rule 4906-5-05, O.A.C., and all other interested persons of record.

THE OHIO POWER SITING BOARD


By: Janet K. Stoneking
Administrative Law Judge

RRC/ct

Entered in the Journal

AUG 14 2008

Renee J. Jenkins
Secretary