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October 17, 2008

VIA ELECTRONIC AND REGULAR U.S. MAIL

Ohio Power Siting Board
Docketing Division
180 East Broad Street
Columbus, Ohio 43215

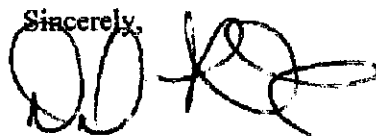
Re: In the Matter of: The Application of American Transmission Systems
Incorporated and the Cleveland Electric Illuminating Company
Case No: 07-0171-EL-BTX

To Whom It May Concern In the PUCO Docketing Division:

Enclosed for filing is the emergency motion of the Village of Orwell. I have served the parties electronically and included 11 hard copies with this filing. Please time-stamp the extra copy of the pleading and return to me in the pre-paid pre-addressed envelope provided.

Thank you for your cooperation in this matter.

Sincerely,



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Enclosures
cc: Service List (w/encls)

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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)	

**EMERGENCY MOTION OF
THE VILLAGE OF ORWELL
TO STRIKE
INTERVENOR CITIZENS ADOVCATING RESPONSIBLE ENERGY
INITIAL BRIEF**

Throughout the course of these proceedings, Intervenor "Citizens Advocating Responsible Energy" ("CARE") has sought to portray itself as a victim and, on that basis, has sought to be excused from the Board's procedural and substantive requirements. Ironically, CARE's single-minded disregard of the Board's legal and equitable requirements now has victimized the rights of the approximately 1,500 citizens of the Village of Orwell. Accordingly, the Village of Orwell, on behalf of its citizens, hereby moves the Board to strike CARE's initial brief. The attached Memorandum in Support describes the factual and legal basis for this motion..

Respectfully submitted,
Orwell Village



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October 17, 2008

BEFORE THE
OHIO POWER SITING BOARD

In the Matter of:)	
The Application of American Transmission)	
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Illuminating Company for a Certificate of)	Case No. 07-0171-EL-BTX
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for the Geauga County 138 kV Transmission Line)	
Supply Project)	

**MEMORANDUM IN SUPPORT OF
EMERGENCY MOTION OF
THE VILLAGE OF ORWELL
TO STRIKE
INTERVENOR CITIZENS ADOVCATING RESPONSIBLE ENERGY
INITIAL BRIEF**

Relevant Facts

On October 1, 2008, the Administrative Law Judge established the briefing schedule for this proceeding. Initial briefs were to be filed on October 16, 2008, and reply briefs are to be filed on October 23, 2008.

Late in the afternoon of October 16, 2008, counsel for CARE forwarded via electronic mail to Orwell's counsel CARE's "Notice of Filing Initial Brief Under Seal." In this Notice, counsel for CARE advised Orwell (and presumably other parties) that it is filing its "Initial Brief" under seal, and that CARE was proceeding in this manner because CARE's Initial Brief discusses and references information and documents that the Board has deemed to be confidential. For convenience, a copy of CARE's Notice is attached to this pleading.

Orwell is aware that portions of the adjudicatory hearing transcript were sealed. Orwell is not a party to any confidentiality or non-disclosure agreement in this proceeding. Further, Orwell has not sought to access any of the confidential or sealed information in this proceeding.

Neither CARE nor its attorneys contacted Orwell to advise of CARE's intention to file its "Initial Brief" under seal. Consequently, Orwell had no knowledge of CARE's intentions and therefore must seek relief before the Board.

Argument

The usual practice is that parties that wish to address confidential or sealed evidence in their briefs should file two versions of their brief: (i) an unredacted version should be filed under seal with the agency; and (ii) a redacted copy should be filed for posting in the public docket of the agency, and should be served on all of the parties to the proceeding.¹ Observance of this rule ensures that all of the parties to the proceeding receive their due process rights to hear and respond to the other parties' arguments.

The Board's Rules require that all written motions and memoranda be filed with the Board and be served upon all parties.² The Village of Orwell is a party to this proceeding and therefore is entitled to service of CARE's brief. The Board's Rules, as supplemented by the Rules of The Public Utilities Commission of Ohio, outline the procedure that CARE should have followed. Specifically, redacted copies of the document should have been served on all parties and unredacted copies filed under seal.³

¹ O.A.C. § 4901-1-24(D)(1, 2). *See also* O.A.C. § 4906-7-07(4)(a, b).

² O.A.C. § 4906-7-12(D).

³ O.A.C. § 4906-7-07(4)(a, b) *and* O.A.C. § 4901-1-24(D)(1, 2).

CARE's failure to observe this practice might be justified if facts that were submitted into evidence under seal were specifically identified and discussed in each and every line of CARE's brief. If this were the case, arguably CARE's entire Initial Brief might be filed under seal – although Orwell is aware of at least one instance where a party was required to submit a document where substantially all of the information other than the caption was redacted.⁴

Orwell strongly doubts that CARE calls out the specific sealed facts in each and every line of CARE's Initial Brief that would be necessary to justify submitting the entire brief under seal. If Orwell is correct that portions of CARE's Initial Brief do not identify specific sealed facts, then CARE was obligated by applicable legal and equitable rules to file a redacted copy of CARE's Initial Brief for posting in the Board's public dockets, and to serve a copy of the redacted brief on Orwell.

CARE's failure to serve a copy of a redacted brief on Orwell irreparably harms Orwell's procedural and substantive rights in this case. As explained in its Initial Brief, Orwell's position in this case is that the Board should do everything in its power to resolve the power problems that plague Orwell's 1,500 citizens and numerous businesses. At this point, the most effective and expeditious approach is to certify the "preferred route" without further delay. CARE's opposition to the "preferred route" (and the "alternate route") is a matter of record. As such, it is reasonable for Orwell to assume that CARE's Initial Brief is devoted to arguments that would delay or defeat certification of the preferred route. Unfortunately, Orwell has to make assumptions about CARE's

⁴ PUCO Case No. 02-1668-GA-CRS, *Application of Vetren Retail et al*, Entry dated February 7, 2006, at ¶ 4.

arguments – because CARE couldn't be bothered to provide a redacted version of CARE's Initial Brief to Orwell. And because CARE didn't provide a redacted version of its Initial Brief to Orwell, Orwell is unable to prepare and file a brief that rebuts CARE's factual analysis and arguments. As such, CARE's course of conduct has harmed Orwell's procedural and substantive rights in this proceeding.

Having been injured, Orwell now must seek relief from the Board. Unfortunately, the deadline for filing rebuttal briefs is October 23, 2008. Orwell already has lost October 17th, and likely will lose the weekend of October 18 and 19th, which means that Orwell's rights cannot be restored at this point merely by directing CARE to serve a redacted version of CARE's Initial Brief on Orwell.

Orwell's position is that CARE should be held accountable for its decision-making in this proceeding. CARE is represented by qualified counsel who should have advised CARE of the potential consequences of reckless disregard of Orwell's substantive and procedural rights. Moreover, the equities of holding CARE accountable are compelling. Throughout the course of this proceeding, CARE has portrayed itself as a victim and, on that basis, repeatedly has sought procedural and substantive relief under the Board's rules. CARE now has victimized another party to the proceeding. The equitable course is to craft a remedy that holds CARE accountable for its conduct and that protects the rights of the injured party. It follows that the most equitable and efficient course is to strike CARE's Initial Brief.

CONCLUSION

For the reasons discussed in this pleading, and for other good and lawful reasons, the Village of Orwell respectfully moves to strike intervenor CARE's "Initial Brief" in this proceeding.

Respectfully submitted,
Orwell Village


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October 17, 2008

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing "Initial Brief of Orwell Village" has been served on each party to this proceeding in accordance with the requirements of Rule 4906-7-06 of the Board's Rules of Proceedings by mailing a copy, postage prepaid, on October 16, 2008 to the following addresses:

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41 South High Street, 30th Floor
Columbus, OH 43215

Dated at Orwell, Ohio, this 17th day of October, 2008.

Respectfully Submitted,
Orwell Village

A handwritten signature in black ink, appearing to be 'D. McCombs', written over a horizontal line.

David L. McCombs, No. 0025317

BEFORE THE
OHIO POWER SITING BOARDRECEIVED-DOCK
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PUCO

In the Matter of:)

) The Certificate Application of American
) Transmission Systems, Inc. and The
) Cleveland Electric Illuminating
) Company for a Certificate of
) Environmental Compatibility and Public
) Need for the Construction of the
) Geauga County 138KV Transmission
) Line Supply Project)

CASE NO. 07-0171-EL-BTX

**INTERVENOR CITIZENS ADVOCATING RESPONSIBLE
ENERGY'S NOTICE OF FILING INITIAL BRIEF UNDER SEAL**

Intervenor, Citizens Advocating Responsible Energy ("CARE"), hereby gives notice to the Ohio Power Siting Board and the parties to this action, that it is filing its Initial Brief under seal. Although CARE maintains that all documents filed in the instant proceeding should be made publicly available, and opposes shielding any documents related to this case from the public, it is nevertheless filing its Initial Brief under seal because it discusses and references information and documents that this Board has deemed to be confidential.

Respectfully submitted,



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Counsel for Citizens Advocating
Responsible Energy

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing is being served this 16th day of October 2008, via regular U.S. mail, upon the following:

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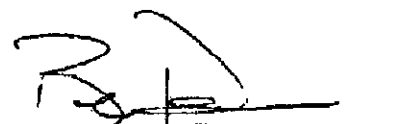
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