

BEFORE

THE OHIO POWER SITING BOARD

In the Matter of the Application of)
American Transmission Systems,)
Incorporated for a Certificate of) Case No. 12-864-EL-BSB
Environmental Compatibility and Public)
Need for the Construction of the Knox)
Transmission Substation.)

ENTRY

The administrative law judge finds:

- (1) On August 3, 2012, American Transmission Systems, Incorporated (ATSI), a wholly-owned subsidiary of FirstEnergy Corp., filed an application seeking to upgrade the existing Knox Substation and convert the current substation from a distribution substation to a distribution and transmission switching substation by adding two transmission line connections and associated equipment within the Knox Substation.
- (2) On August 6, 2012, ATSI filed a motion seeking to protect nine diagrams containing confidential load-flow data that qualifies for protection as both confidential trade secret information and critical energy infrastructure information (CEII). ATSI submits that, for purposes of the application, the alleged confidential information has been generally discussed in the Need Section of the application.
- (3) Rule 4906-7-07(H)(4), Ohio Administrative Code (O.A.C.), provides that, upon motion of any party or person filing a document with the Board's docketing division relative to a case before the Board, the Board or administrative law judge (ALJ) may issue any order which is necessary to protect the confidentiality of information contained in the document, to the extent that state or federal law prohibits release of the information.
- (4) The ALJ has reviewed the information covered by ATSI's motion for protective order, as well as the assertions set forth in the supportive memorandum and finds that the information filed under seal contains raw load-flow data, as well as

diagrams detailing load-modeling information for the Knox Substation upgrade, and recognizes that, as such, the information constitutes CEII, as defined in 18 CFR 388.113(C)(2). In addition, applying the requirements that the information have independent economic value and be the subject of reasonable efforts to maintain its secrecy pursuant to Section 1333.61(D), Revised Code, as well as the six-factor test set forth by the Ohio Supreme Court,¹ the ALJ finds that the information covered by the motion contains trade secret information and CEII. Its release is, therefore, prohibited under state law. The ALJ finds that nondisclosure of this information is not inconsistent with the purposes of Title 49 of the Revised Code. Moreover, the ALJ concludes that these documents could not be reasonably redacted to remove the confidential information contained therein. Therefore, the ALJ finds that ATSI's motion for protective order regarding documents filed on August 6, 2012, should be granted.

- (5) Rule 4906-7-07(H)(6), O.A.C., provides that, unless otherwise ordered, protective orders under Chapter 4906-7-07, O.A.C., automatically expire after 18 months. ATSI requested that the ALJ grant the request for protective order for an indefinite time frame and not limit the period to 18 months, due to the fact that the information qualifies as CEII. As previously recognized by the Board in *In the Matter of the Application of Columbus Southern Power Company for a Certificate of Environmental Compatibility and Public Need to Construct the Don Marquis 138-Kilovolt Transmission Line Project*, Case No. 07-715-EL-BTX (07-715), transmission network information of an electric utility is not as dynamic as an entity's financial information and CEII is granted protective treatment for security purposes. Therefore, the Board found it reasonable to waive the standard 18-month protective order period in 07-715 and extend protective treatment for a period of 36 months. Therefore, confidential treatment shall be afforded in this case for a period of 36 months until August 10, 2015. Until that date, the docketing division should maintain, under seal, the information filed confidentially on August 6, 2012.
- (6) Rule 4906-7-07(H)(6), O.A.C., requires a party wishing to extend a protective order to file an appropriate motion in

¹ See *State ex rel. The Plain Dealer v. Ohio Dept. of Ins.*, 80 Ohio St.3d 513, 524-525 687 N.E.2d 661 (1997).

advance of the expiration date, including a detailed discussion of the need for continued protection from disclosure. If ATSI wishes to extend this confidential treatment, ATSI should file an appropriate motion at least 45 days in advance of the expiration date. If no such motion to extend confidential treatment is filed, the Board may release this information without prior notice to ATSI.

It is, therefore,

ORDERED, That the motion for protective treatment of information filed on August 6, 2012, be granted for a period of 36 months until August 10, 2015. It is, further,

ORDERED, That the Board's docketing division shall maintain, under seal, the unredacted documents filed on August 6, 2012, for a period of 36 months, ending August 10, 2015. It is, further,

ORDERED, That a copy of this entry be served upon ATSI and all other interested persons of record.

THE OHIO POWER SITING BOARD

s/ Jeffrey R. Jones

By: Jeffrey R. Jones
Administrative Law Judge

sef/vrm

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8/10/2012 1:49:05 PM

in

Case No(s). 12-0864-EL-BSB

Summary: Attorney Examiner Entry granting a motion for protective order filed by American Transmission Systems, Incorporated electronically filed by Vesta R Miller on behalf of Jeffrey R. Jones, Administrative Law Judge, Ohio Power Siting Board