

FILE

12

BEFORE THE OHIO POWER SITING BOARD

RECEIVED-DOCKETING DIV.

In the Matter of the Application of the City of)
Hamilton and American Municipal Power, Inc.,)
for a Certificate of Environmental Compatibility)
and Public Need for the Construction of a)
Substation in Franklin and Washington)
Townships.)

2016 MAY 24 PM 12:02

Case No. 10-2439-EL-BSB
PUCO

In the Matter of the Application of the City of)
Hamilton and American Municipal Power, Inc.)
for a Certificate of Environmental Compatibility)
and Public Need for the Construction of a)
Transmission Line in Franklin and)
Washington Townships.)

Case No. 10-2440-EL-BTX

**AMERICAN MUNICIPAL POWER, INC.'S
MOTION FOR PROTECTIVE TREATMENT OF PROPRIETARY AND CONFIDENTIAL
CRITICAL ENERGY INFRASTRUCTURE INFORMATION**

Pursuant to Ohio Administrative Code ("O.A.C.") Section 4906-7-07(H)(4) American Municipal Power, Inc., ("AMP") respectfully moves the Ohio Power Siting Board ("Board") to issue a protective order to prevent disclosure of certain designated confidential trade secrets and critical energy infrastructure information ("CEII") contained in AMP's Meldahl Hydroelectric Project Transmission Line and Substation Record Drawings ("As-built Drawings") which are being submitted in satisfaction of certain stipulated conditions set forth in the Certificate of Environmental Compatibility and Public Need ("Certificate") issued in the above captioned cases. AMP requests an order sealing indefinitely these As-built Drawings to protect this information from public disclosure. Pursuant to Rule 4906-7-07(H)(4)(b), O.A.C., three (3) unredacted copies containing the CEII confidential information that is the subject of this Motion have been filed under seal concurrently with this Motion, and are identified as confidential and

This is to certify that the images appearing are an
accurate and complete reproduction of a case file
document delivered in the regular course of business.

Technician Jim Date Processed MAY 24 2016

CEII. The reasons supporting this Motion are more fully set forth in the attached Memorandum in Support, which is incorporated by reference herein.

Respectfully submitted,



American Municipal Power, Inc.
John W. Bentine, Senior VP and General Counsel
Lisa G. McAlister, Deputy General Counsel
Michael A. Kyser, Asst. Deputy General Counsel
1111 Schrock Road, Suite 100
Columbus, Ohio 43229
Telephone: 614-540-6400
Fax: 614-540-6397
Email: jbentine@amppartners.org
lmcalister@amppartners.org
mkyser@amppartners.org

BEFORE THE OHIO POWER SITING BOARD

In the Matter of the Application of the City of)
Hamilton and American Municipal Power, Inc.,)
for a Certificate of Environmental Compatibility) Case No. 10-2439-EL-BSB
and Public Need for the Construction of a)
Substation in Franklin and Washington)
Townships)

In the Matter of the Application of the City of)
Hamilton and American Municipal Power, Inc.)
for a Certificate of Environmental Compatibility) Case No. 10-2440-EL-BTX
and Public Need for the Construction of a)
Transmission Line in Franklin and)
Washington Townships)

MEMORANDUM IN SUPPORT OF MOTION FOR PROTECTIVE TREATMENT OF PROPRIETARY AND CONFIDENTIAL CRITICAL ENERGY INFRASTRUCTURE INFORMATION

I. INTRODUCTION

On November 28, 2011, the Board issued a Certificate of Environmental Compatibility and Public Need to the City of Hamilton and AMP, a nonprofit Ohio corporation, for the construction, operation and maintenance of an approximately 2.2-mile long, double circuit 345 kilovolt ("kV") transmission line in Franklin and Washington Townships, Clermont County, Ohio along the preferred route in order to transmit the electricity generated by the then-proposed Meldahl hydroelectric facility ("Meldahl") (the "Order"). See, Case No. 10-2439-EL-BSB; See *also*, Case No. 10-2440-EL-BTX; *Opinion, Order and Certificate*, November 28, 2011.

Contained in the Order were fifty (50) stipulated conditions agreed upon by the City of Hamilton and AMP, which must be met in order to maintain the applicability of the Certificate. Condition number forty-eight (48) provides, in relevant part, the

following: “(48) Within 60 days after the commencement of commercial operation, Applicants shall submit to Staff a copy of as-built specifications for the transmission line and substation projects in their entirety. [...]” Meldahl began commercial operation on Tuesday April 12, 2016. In compliance with the above-cited condition, AMP now submits to Board Staff the enclosed As-built Drawings. These detailed drawings of the final design and construction are CEII and proprietary trade secrets, as they provide precise and detailed information on the design, structure, location and condition of AMP’s transmission interconnection facilities. Therefore this information must not be released to the public.

II. ARGUMENT

A. The Public Utilities Commission’s Rules Permit Protective Treatment of Confidential Information and Trade Secrets.

Rule 4906-7-07(H)(4), Ohio Administrative Code allows for protective treatment of certain confidential information filed before the Board in order to prevent disclosure of such information. OAC 4906-7-07(H)(4) states in relevant part:

“(4) 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 the administrative law judge assigned to the case 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, including where it is determined that both of the following criteria are met: The information is deemed by the board or administrative law judge assigned to the case to constitute a trade secret under Ohio law, and where non-disclosure of the information is not inconsistent with the purpose of Title 49 of the Revised Code. [...]”

(Emphasis added).

The As-built Drawings clearly constitute CEII and are subject to confidential treatment pursuant to the rules of the Federal Energy Regulatory Commission

("FERC"). Following the terrorist attacks of September 11, 2001, FERC began a detailed review and reassessment of the public availability of energy infrastructure information. Following this formal review and rulemaking process, FERC issued Order No. 630 in Case Numbers RM02-4-000-000 and PL02-1-000-000 (February 21, 2003) adopting regulations for protecting critical energy infrastructure information that would not otherwise be available under the federal Freedom of Information Act ("FOIA"), 5 U.S.C. §522. FERC defines critical energy infrastructure information as "specific engineering, vulnerability, or detailed design information about critical infrastructure that: (i) Relates details about the production, generation, transportation, transmission, or distribution of energy; (ii) Could be useful to a person in planning an attack on critical infrastructure; (iii) Is exempt from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. 552; and (iv) Does not simply give the general location of the critical infrastructure." 18 C.F.R. § 388.113(c)(1).

FERC defines Critical Infrastructure as "existing and proposed systems and assets, whether physical or virtual, the incapacity or destruction of which would negatively affect security, economic security, public health or safety, or any combination of those matters." *Id.* In discussing the types of information that would fall under this definition, FERC specifically noted that transmission system and substation maps and diagrams used by utilities for transmission planning which are submitted with FERC Form No. 715, Annual Transmission Planning and Evaluation Report are CEII. See, FERC Order No. 630, paragraph 34, pg. 28. Recently, FERC reiterated that the blanket release of such information must be prevented. See, 121 FERC ¶ 61, 107. Restricting access to the As-built Drawings as requested by AMP is consistent with these concerns

and necessary to prevent disclosure of CEII. Moreover, the Board previously found that these types of engineering drawings and diagrams are both trade secrets and CEII. See, e.g., *In the Matter of the Application of American Transmission Systems, Incorporated for a Certificate of Environmental Compatibility and Public Need for the Construction of the Black River Substation*, Case No. 11-5855-EL-BSB et al., Opinion, Order and Certificates (March 26, 2012).

The As-built Drawings contain detailed diagrams and the location of AMP's transmission system. These drawings include, among other things, topography mapping, engineering specifications, details on structural integrity of apparatus, and the specific location of the entire 2.2-mile transmission line including the location and layout of Meldahl itself. This is the precise information that FERC sought to protect from public disclosure. Openly discussing or disseminating the CEII contained in the As-built Drawings presents security risks because such information could be used by terrorist organizations or others, as a means to disrupt AMP's ability to provide reliable electric service to its Members. Those intent on disrupting the delivery of electricity, an essential public health and safety benefit, could use the CEII contained in the As-built Drawings to permanently disable AMP's transmission facilities.

In addition to the As-Built Drawings being CEII, state law prohibits the release of this document because it contains trade secrets. See, R.C. §§ 1333.61(D) and 133.62. Under R.C. 1333.61(D), "Trade Secret" is defined as:

"information, including the whole or any portion or phase of any scientific or technical information, design, process, procedure, formula, pattern, compilation, program, device, method, technique, or improvement, or any business information or plans, financial information, or listing of names, addresses, or telephone numbers, that satisfies both of the following:

(1) It derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use.

(2) It is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.”

This definition evidences the State’s desire to protect trade secrets, such as the detailed engineering and design information which is at issue here. Similarly, the Ohio Supreme Court has provided the following factors to consider when evaluating whether certain information constitutes a trade secret:

“(1) The extent to which the information is known outside the business; (2) the extent to which it is known to those inside the business, *i.e.*, by the employees; (3) the precautions taken by the holder of the trade secret to guard the secrecy of the information; (4) the savings effected and the value to the holder in having the information as against competitors; (5) the amount of effort or money expended in obtaining and developing the information; and (6) the amount of time and expense it would take for others to acquire and duplicate the information.”

State ex. rel. The Plain Dealer v. Ohio Dept. of Ins. (1997), 80 Ohio St. 3d 513, 524-525. In *Plain Dealer* the court further stated that there is a presumption of trade secret status, so long as the party in possession of the trade secret has taken “active steps to maintain its secrecy”. *Id.* Applying these factors to conclude that the information now being provided constitutes a trade secret, is consistent with both Ohio statutory law and the dictates of the Ohio Supreme Court.

The As-built Drawings meet the definition of a “trade secret” under Section 1331.61(D) because they contain proprietary data on the design, structure and condition of the transmission system owned and operated by AMP. Furthermore, a considerable amount of proprietary data and software was used to develop the As-built Drawings, and releasing such information could place the Movant at a competitive disadvantage.

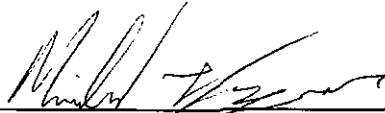
To prevent such adverse consequences, AMP has taken every possible affirmative step to maintain this document's secrecy, as its contents are not generally known among AMP employees and are shared only by those who have express authorization to review the information. Lastly, from its conception, AMP has clearly marked the document as containing CEII, and has never before released this document in any public record. Finally, the nondisclosure of the information will not impair the purpose of Title 49, as the Board and its Staff have access to the requested information. It is reasonable under the circumstances, and in light of the affirmative steps taken by AMP, to maintain the secrecy of the As-built Drawings as a trade secret, and prohibit public access thereto.

Therefore, because the data contained in the As-built Drawings are CEII and trade secret, it is appropriate for the Board to issue an Order sealing this information to protect it from public disclosure.

III. CONCLUSION

For the good cause demonstrated and for the reasons stated herein, Movant respectfully requests that the Board or Administrative Law Judge grant its Motion and issue an Order finding that the detailed engineering drawings filed under seal are CEII and trade secrets subject to protection from public disclosure as expeditiously as possible. Pending a ruling on this Motion, Movant respectfully requests that the detailed engineering drawings and diagrams be maintained as confidential.

Respectfully submitted,



American Municipal Power, Inc.

John W. Bentine, Senior VP and General Counsel

Lisa G. McAlister, Deputy General Counsel

Michael A. Kyser, Asst. Deputy General Counsel

1111 Schrock Road, Suite 100

Columbus, Ohio 43229

Telephone: 614-540-6400

Fax: 614-540-6397

Email: jbentine@ampppartners.org

lmcalister@ampppartners.org

mkyser@ampppartners.org

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion for Protective Order of Proprietary and Confidential Information was served upon the following parties of record as a courtesy, via electronic delivery and/or postage prepaid U.S. Mail, on May 24, 2016.


Michael A. Kyser

Richard B. Uhle
Michael Hack
Hack, Gabrae & Stephen
285 Main Street
Batavia, OH 45103

Eubanks, Lee R.
Attorney Thomas J. Ruwe
211 Columbia Wooster Bldg. 5710
Wooster Rd.
Cincinnati, OH 45227
tjruwe@fuse.net

April R. Bott
Bott Law Group LLC
5126 Blazer Parkway
Dublin OH 43017
abott@bottlawgroup.com

Timothy Chappars
P.O. Box 280
Xenia, OH 43585

Steven Beeler
Assistant Attorney General
Public Utilities Section
180 East Broad Street, 6th Floor
Columbus, OH 43215
Steven.Beeler@puc.state.oh.us

Andre T. Porter
David Daniels
David Goodman
Craig Butler
Richard Hodges
James Zehringer
Ohio Power Siting Board
180 East Broad Street, 6th Floor
Columbus, Ohio 43215
Andre.Porter@puc.state.oh.us
David.Daniels@puc.state.oh.us
David.Goodman@puc.state.oh.us
Craig.Butler@puc.state.oh.us
Richard.Hodges@puc.state.oh.us
James.Zehringer@puc.state.oh.us

MELDAHL HYDROELECTRIC PROJECT

(FERC PROJECT NO. 12667)

CONTAINS CRITICAL ENERGY INFRASTRUCTURE INFORMATION - DO NOT RELEASE

TRANSMISSION LINE AND SUBSTATION RECORD DRAWINGS

MAY 2016

Prepared By:

MWH AMERICAS, INC.



MWH.

now part of



Stantec

350 N. Orleans Street
Chicago, IL 60604



AMERICAN MUNICIPAL POWER, INC.



1111 Schrock Road
Columbus, OH 43229

SCANNING TARGET:

MELDAHL HYDROELECTRIC PROJECT

TRANSMISSION LINE AND SUBSTATION RECORD DRAWINGS

TOTAL OF 56 PAGES FILED UNDER SEAL