

BEFORE THE
OHIO POWER SITING BOARD

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In The Matter Of:)	
The Application of American Transmission)	Case No. 11-4152-EL-BSB
Systems, Incorporated for a Certificate of Environmental)	
Compatibility and Public Need for the Construction)	
Of the Fulton Substation Project)	

MOTION TO SEAL PORTIONS OF RECORD OF THESE PROCEEDINGS

Applicant American Transmission Systems, Incorporated ("ATSI") hereby moves the Ohio Power Siting Board ("OPSB" or "Board") for an order sealing certain confidential trade secrets and critical energy infrastructure information ("CEII") that relate to, supplement and are referenced in the Application in this matter. ATSI requests that that Board maintain as confidential 16 diagrams that are discussed in general in the Need Section of the Application because the diagrams contain confidential load flow data that is both confidential business information and critical energy infrastructure information. Pursuant to OAC 4906-7-07(H)(4), ATSI requests that the Board or an Administrative Law Judge issue an order sealing indefinitely these diagrams to protect confidential trade secret and critical energy infrastructure information from public disclosure. Pursuant to Admin. Code. Rule 4906-7-07(H)(4)(b), three copies of the un-redacted load flow diagrams are included with this motion and are identified as confidential trade secret and critical energy infrastructure information in the enclosed sealed envelope. A Memorandum in Support, as required by Admin. Code Rule 4906-7-07(H)(4)(c), is also attached.

This is to certify that the images appearing are an
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Respectfully submitted,

A handwritten signature in black ink, appearing to read "Chris Schraff", written over a horizontal line.

Christopher R. Schraff (0023030)

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*Attorneys for Applicants American
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MEMORANDUM IN SUPPORT

MOTION TO SEAL PORTIONS OF RECORD OF THESE PROCEEDINGS

Applicant American Transmission Systems, Incorporated (“ATSI”) has submitted an application for a Certificate of Environmental Compatibility and Public Need for the construction of the Fulton Substation Project, Case. No. 11-4152-EL-BSB. The present electrical system in the Fulton area is reaching its limits, and the proposed 345 kV Substation and the associated 138 kV and 345 kV Transmission Line Connections are needed to reinforce a section of ATSI’s Bulk Electrical System in the western portion of The Toledo Edison Company’s service area. The proposed Fulton Substation will accomplish this objective by the least impactful means possible by using an existing 345 kV transmission line to provide a new Bulk Electric System connection and source to supply the 138 kV transmission line circuit between the Wauseon and Wentworth substations.

Prior to construction of the substation, ATSI must secure from the Board a Certificate of Environmental Compatibility and Public Need. As part of the Application for this Certificate, ATSI has provided a general description of 16 diagrams that contain both trade secret and CEII information to support the technical basis for the need determination. Pursuant to the rules of the Board, in particular Admin. Code Rule 4906-7-07(H), the public version of the Application did

not contain these diagrams. Further, due to the nature of these diagrams, the diagrams are only referenced in the Application rather than a line by line redaction of them, which would effectively render them blank pages. The diagrams are attached to this motion under seal in their un-redacted format.

The diagrams that are subject to this request contain a description of raw load-flow data to support the conclusion that the Project is necessary insure that the transmission system is operated within PJM, FirstEnergy, and NERC planning criteria. The diagrams are either generated by a proprietary and publicly available software from General Electric known as Positive Sequence Load-Flow, or “PSLF,” or are graphical representations of the outputs from the use of that software package. These single-sheet diagrams detailing load-modeling information for the project area contain detailed information on the design, structure, and condition of Applicants’ transmission system, and were generated by the PSLF software. In the past, when the Public Utilities Commission of Ohio has reviewed similar documents and data, including diagrams based on outputs from the GE PSLF software, such documents were determined to be trade secrets and placed under seal. See Entry (Apr. 24, 2000), Case Nos. 99-1658-EL-ETP; 99-1659-EL-ATA; 99-1660-EL-ATA; 99-1661-EL-AAM; 99-1662-EL-AAM; 00-1663-EL-UNC; 99-1687-EL-ETP; 99-1688-EL-AAM; 99-1869-EL-ATA; and 00-02-EL-ETP (Electric Transition Plans of CG&E, DP&L, and Allegheny Power). The Power Siting Board has also routinely concluded that these exact types of load flow diagrams are both trade secrets and CEII. See e.g., *Entry ordering that the motion by the Companies for continued protective treatment of information filed on September 28, 2007, November 8, 2007, and November 26, 2007 be granted for a period of 36 months until April 6, 2014* (March 17, 2011), Case No. 07-0717-BTX.

As can be seen in the Affidavit from Mr. Donald Morrison, the raw load-flow data and data concerning the design, construction, and condition of the transmission system in the diagrams is both trade secret information and CEII that is subject to confidential treatment pursuant to directives from the Federal Energy Regulatory Commission (“FERC”). In addition to detailing the design, construction and condition of the transmission system in the Project area, the information could be used to put FirstEnergy at a competitive disadvantage in a market-based system for the production and transmission of electric power.

Admin. Code Rule 4906-7-07(H)(4) provides, in pertinent part:

Upon motion by any party of 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 an 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 consistent with the purposes of Title 49 of the Revised Code.

(Emphasis added)

A “trade secret” is defined by the Uniform Trade Secrets Act, as set forth in Ohio Revised Code §1333.61(D) to mean:

...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.

The raw power flow data meets the definition of a “trade secret” under Section 1331.61(D) of the Revised Code because it contains proprietary data on the design, structure and condition of the transmission system owned and operated by ATSI. It is therefore reasonable under these circumstances to maintain its secrecy as a trade secret. *See, Affidavit of Donald P. Morrison, P.E.*

ATSI's industrial customers' load data is also contained in the data and diagrams. If this information is publicly available and subject to dissemination, it could be possible for competitors of ATSI's industrial customers to determine, among other things, certain aspects of Applicants' customers production capabilities and certain elements of production costs. *See, Affidavit of Donald P. Morrison, P.E.* There is a considerable amount of value to ATSI and its customers in limiting the dissemination of this type of data and diagrams. *See, Affidavit of Donald P. Morrison, P.E.* This is exactly the type of information that is a trade secret.

It is also important to note that ATSI has invested a significant amount of effort in controlling access to the type of data and diagrams filed under seal in this case. The load data and diagrams are also not shared internally with other parts of FirstEnergy. *See, Affidavit of Donald P. Morrison, P.E.* The data and modeling are used on a continuing basis throughout ATSI's transmission system by a dedicated staff of transmission and distribution system engineers.

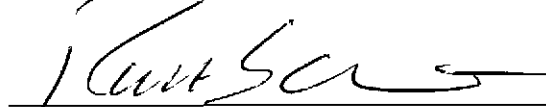
In addition to being trade secrets, the diagrams also include CEII. Following the terrorist attacks of September 11, 2001, the FERC began a detailed review and reassessment of the public availability of energy infrastructure information. Following this formal review and rulemaking process, FERC issued 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 on Information Act (“FOIA”), 5 U.S.C. §522. In this rulemaking, FERC defined CEII as information about proposed or existing infrastructure that “relates to the production, generation, transportation, transmission or distribution of energy” that could be useful to a person in planning an attack on critical infrastructure and is exempt from disclosure under FOIA. 18 C.F.R. §388.113(c)(1). In discussing the types of information that would fall under this definition, FERC specifically noted that transmission system 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. The type of transmission system maps and diagrams typically found in Part 3 of FERC Form No. 715 are very similar to those filed under seal in this matter. *See, Affidavit of Donald P. Morrison, P.E.* The data and diagrams filed under seal in this matter are CEII. *See, Affidavit of Donald P. Morrison, P.E.*

The review of the procedures for the protection of CEII that began in 2001, has caused both state and federal regulators to look more closely at the requirements for disclosure of energy infrastructure information. At FirstEnergy and its subsidiaries including ATSI, this review resulted in the company routinely seeking confidential status for CEII following the submission of the 2002 Long Term Forecast, Case No. 02-504-EL-FOR. A more careful approach to protecting this information seemed self-evident following the attacks of September 11, 2001 and FirstEnergy has filed information related to the operation and configuration of its transmission system under seal since 2003. *See, e.g.* FirstEnergy’s 2003 Long Term Forecast Report, Case. No. 03-504-EL-FOR; *Entry*, July 22, 2003, Case No. 03-504-EL-FOR (Order granting request for confidentiality).

Because the diagrams and data are CEII and trade secrets, it is appropriate for the Board to issue an Order sealing this information to protect it from public disclosure. ATSI requests that the Board or the Administrative Law Judge issue such an Order as expeditiously as possible and that pending a ruling on this motion that the diagrams be maintained as confidential.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Chris Schraff', is written over a horizontal line.

Christopher R. Schraff (0023030)

Robert J. Schmidt, Jr. (0062261)

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*Attorneys for Applicant American Transmission
Systems, Incorporated*


CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing "Motion To Seal Portions of the Record of These Proceedings" was served upon the following persons by mailing a copy, postage prepaid, on September 26, 2012, addressed to:

Katie Stenman, ALJ
Legal Department
Public Utilities Commission of Ohio
180 E. Broad Street, 12th Floor
Columbus, OH 43215

Bill Wright, Section Chief
Office of the Attorney General of Ohio
Public Utilities Section
180 East Broad Street
Columbus, Ohio 43215-3793

Klaus Lambeck, Chief
Facilities, Siting & Environmental Analysis Division
Ohio Power Siting Board
180 East Broad Street
Columbus, Ohio 43266-0573


Robert J Schmidt

ATTACHMENT A
AFFIDAVIT OF DONALD P. MORRISON

BEFORE THE
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**AFFIDAVIT OF DONALD P. MORRISON
MANAGER, PLANNING**

ENERGY DELIVERY PLANNING AND PROTECTION

FIRSTENERGY SERVICE COMPANY

I, Donald P. Morrison state the following:

1. I am an employee of FirstEnergy Service Company. I have been employed by FirstEnergy since February 1992.
2. My current position with FirstEnergy is Manager, Planning for Energy Delivery Planning and Protection. In this capacity, I manage projects related to transmission planning and energy delivery.
3. I have been in this position since April 2011. Prior to becoming Manager, I was supervisor of Planning from December 2006 until April 2011.
4. As part of my duties, I supervise the planning and energy delivery aspects of transmission projects, including the modeling of various conditions of the transmission system as part of the review of projects related to the delivery of electric service to new and expanded industrial customers.
5. In my current position I am responsible for maintaining the confidentiality of various types of trade secret information as well as critical energy infrastructure information ("CEII") as that term is defined at 18 C.F.R. §388.113(C).
6. It is the policy of FirstEnergy and all of its subsidiaries to prevent to the greatest extent possible the public disclosure of either trade secret or CEII.
7. It is the internal policy of FirstEnergy and all of its subsidiaries to limit the internal distribution of trade secret and CEII information that relates to the design, operation, and

capacity of both the transmission and distribution systems to only those divisions and individuals that need the information for purposes of their job duties.

8. I have reviewed the 16 diagrams filed by American Transmission Systems, Incorporated under seal with the Ohio Power Siting Board in the proceeding captioned above for a Certificate of Environmental Compatibility and Public Need for the construction of the Fulton Substation Project.

9. The raw power flow data was provided in a format that uses a proprietary software package from General Electric. I have confirmed that this software package, known in the industry as PSLF, is available for sale to members of the general public.

10. The one line diagrams submitted under seal in these proceedings were prepared either directly from the PSLF software package or by graphically representing the outputs from the PSLF software package.

11. The raw power flow data as well as the one line diagrams are similar, but not identical, to data and diagrams submitted to the Ohio Public Utilities Commission in FirstEnergy's Long Term Forecasts in that the diagrams submitted in this matter were for the specific area of the project and the facilities in close proximity.

12. The raw power flow data as well as the one line diagrams are similar, but not identical, to data and diagrams submitted to the Federal Energy Regulatory Commission ("FERC") as part of FirstEnergy's FERC Form No. 715 submittals in that the diagrams submitted in this matter were for the specific area of the project and the facilities in close proximity. The data and one line diagrams are considered transmission system maps and diagrams required to be submitted in Part 3 of FERC Form No. 715.

13. The raw power flow data as well as the one line diagrams submitted in this case are critical energy infrastructure information.

14. It is the policy of FirstEnergy and all of its subsidiaries to seek confidential treatment for CEII in all regulatory proceedings.

15. The raw power flow data as well as the one line diagrams submitted in this case contain trade secret information. The information is trade secret because it can be used by FirstEnergy's competitors to learn about existing and projected issues on FirstEnergy's transmission and distribution system. *This type of information can be used by FirstEnergy's competitors to place FirstEnergy at a competitive disadvantage when making trades in the electric energy and transmission markets.*

16. The raw power flow data as well as the one line diagrams submitted in this case are also trade secrets because they reflect FirstEnergy's internal planning process and policies.

17. The raw power flow data as well as the one line diagrams submitted in this case are also trade secrets because they contain details about specific ratepayer/customer peak usage,

load shapes, actual usage, and potential plans for future expansion at customer sites. This information could be used to put FirstEnergy's customers at a competitive disadvantage.

Donald P. Morrison

Donald P. Morrison
Manager, Planning
FirstEnergy Service Company

State of Ohio)
) ss
County of Summit)

Sworn and subscribed before me this 25th day of September, 2012.

Kathleen Anne Grant

Notary Public

COLUMBUS/1647036v.1

Kathleen Anne Grant
Resident Summit County
Notary Public, State of Ohio
My Commission Expires: 11/08/2014