

BEFORE

OHIO POWER SITING BOARD

In the Matter of the Application of)
the City of Hamilton and American)
Municipal Power, Inc., for a Certificate of) Case No. 10-2439-EL-BSB
Environmental Compatibility 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) Case No. 10-2440-EL-BTX
Environmental Compatibility and Public)
Need for the Construction of a)
Transmission Line in Franklin and)
Washington Townships.)

ENTRY

The administrative law judge finds:

- (1) On May 4, 2011, the city of Hamilton, Ohio, and American Municipal Power, Inc. (AMP) (collectively, Applicants), filed applications for certificates of environmental compatibility and public need (certificate) to construct a 138-kilovolt transmission line in Case No. 10-2440-EL-BTX (Transmission Line Case) and a substation in Case No. 10-2439-EL-BSB (Substation Case).
- (2) On November 28, 2011, the Ohio Power Siting Board (Board) issued its Opinion, Order, and Certificates (Order) in the Transmission Line Case and Substation Case that approved a stipulation and granted the applications for certificates to construct the transmission line and substation projects, subject to 50 conditions.
- (3) Condition 38 of the Order provides, in pertinent part: “[w]ithin 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.”
- (4) On May 24, 2016, AMP filed a motion for protective order of proprietary and confidential critical energy infrastructure

information (CEII) contained in its transmission line and substation record drawings (As-built Drawings). In its motion, AMP explains that it has filed the As-built Drawings in satisfaction of Condition 38 of the Order under seal pursuant to Ohio Adm.Code 4906-7-07(H)(4)(b), concurrently with the filing of the motion. AMP specifies that the As-built Drawings contain detailed diagrams and the location of AMP's transmission system, including topography mapping, engineering specifications, details on structural integrity of apparatus, and the specific location of the transmission line, and that openly discussing or disseminating this information presents security risks.

- (5) AMP asserts that the As-built drawings constitute CEII and are subject to confidential treatment pursuant to the rules of the Federal Energy Regulatory Commission (FERC), specifically 18 C.F.R. 388.113(c)(1). AMP notes that FERC has specifically found that transmission system and substation maps and diagrams used by utilities for transmission planning which are submitted with FERC Form No. 715 are CEII, citing FERC Order No. 630, paragraph 34. Additionally, AMP states that restricting access to the As-built Drawings is consistent with these concerns, is necessary to prevent disclosure of CEII, and is consistent with previous findings of the Board, citing *In re Application of American Transmission Systems*, Case No. 11-5855-EL-BSB, et al., Opinion, Order and Certificates (March 26, 2012). Finally, AMP requests an Order sealing indefinitely the As-built Drawings to protect them from public disclosure.
- (6) Ohio Adm.Code 4906-2-21(D) 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 an 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.
- (7) The ALJ has reviewed the information covered by AMP'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 CEII, as defined by 18 C.F.R. 388.113(c)(1). 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 R.C. 1333.61(D), as well as the six-factor test set forth by the Supreme Court of Ohio, the ALJ finds that the information covered by the motion contains trade secret information and CEII. *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). 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 AMP's motion for protective order regarding documents filed under seal on May 24, 2016, should be granted.

- (8) Ohio Adm.Code 4906-2-21(F) provides that, unless otherwise ordered, protective orders granted pursuant to Ohio Adm.Code 4906-2-21 automatically expire after 24 months. Ohio Adm.Code 4906-2-21(F) further provides, however, that exceptions may be made for motions seeking to protect CEII. Here, the ALJ finds that it is reasonable and consistent with previous rulings on CEII to waive the standard 24-month protective order period and extend protective treatment indefinitely, until the Commission orders otherwise. Therefore, until the Commission orders otherwise, the docketing division should maintain, under seal, the information filed confidentially on May 24, 2016.
- (9) If the Commission believes the information should no longer be provided protective treatment, prior to the release of the information, the Applicants will be notified and given an opportunity, in accordance with Ohio Adm.Code 4906-2-21(F), to file motions to extend the protective order.

It is, therefore,

ORDERED, That the motion for protective treatment of information filed on May 24, 2016, be granted. It is, further,

ORDERED, That the Commission's docketing division maintain, under seal, the information filed on May 24, 2016, indefinitely, until otherwise ordered by the Commission. It is, further,

ORDERED, That a copy of this Entry be served upon each party of record.

OHIO POWER SITING BOARD

/s/ Mandy Willey Chiles

By: Mandy Willey Chiles
Administrative Law Judge

jrj/sc

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in

Case No(s). 10-2439-EL-BSB, 10-2440-EL-BTX

Summary: Administrative Law Judge Entry granting motion for protective treatment of information that was filed on May 24, 2016 and to maintain under seal the information, indefinitely, until otherwise ordered by the Commission; electronically filed by Vesta R Miller on behalf of Mandy Willey Chiles, Administrative Law Judge, Ohio Power Siting Board