

**FILE**

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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PUCO

In the Matter of the Application )  
of Columbus Southern Power Company and )  
Ohio Power Company for Authority to )  
Recover Costs Associated with the )  
Construction and Ultimate Operation of an )  
Integrated Gasification Combined Cycle )  
Electric Generating Facility. )

Case No. 05-376-EL-UNC

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**MEMORANDUM CONTRA MOTIONS OF COLUMBUS SOUTHERN  
COMPANY/OHIO POWER COMPANY AND GE/BECHTEL TO EXTEND  
PROTECTIVE ORDER**

**BY  
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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**I. INTRODUCTION**

The Office of the Ohio Consumers' Counsel ("OCC") hereby responds to Columbus Southern Power Company's and Ohio Power Company's Motion to Extend Protective Order ("AEP Motion"), filed on August 23, 2007, as well as General Electric Company, GE Energy (USA) LLC, Bechtel Corporation, and Bechtel Power Corporation's Motion to Extend This Commission's April 10, 2006 Protective Order ("GE/Bechtel Motion," collectively with the AEP Motion, "Motions to Extend"), filed on August 27, 2007. By entry dated September 7, 2007, OCC was granted a four-day extension, until September 11, 2007, to file a memorandum contra to the AEP Motion. Accordingly, OCC's Memorandum Contra Motions to Extend is timely filed pursuant to Ohio Adm. Code 4901-1-12(B)(1).

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## II. LAW AND ARGUMENT

The information sought to be protected should be made public. In support of OCC's argument, OCC incorporates the arguments and law stated in OCC's Memorandum Contra Motions of Columbus Southern Company/Ohio Power Company and GE/Bechtel to Maintain Documents Under Seal<sup>1</sup> and the arguments in OCC's Application for Rehearing.<sup>2</sup>

The Motions to Extend also fail to satisfy the Public Utility Commission of Ohio's ("Commission" or "PUCO") requirements pursuant to Ohio Adm. Code 4901-1-24(F):

A party wishing to extend a protective order beyond eighteen months shall file an appropriate motion at least forty-five days in advance of the expiration date of the existing order. The motion shall include a *detailed discussion* of the need for continued protection from disclosure.<sup>3</sup>

Neither of the Motions to Extend provides a "detailed discussion of the need for continued protection from disclosure," instead relying heavily upon the Commission's initial approval of a protective order.<sup>4</sup> The AEP Motion rests its argument on three cursory affidavits in which it is stated that earlier statements "remain true today."<sup>5</sup> The GE/Bechtel Motion merely incorporates the cursory statements contained in an earlier affidavit and the statement by counsel for GE/Bechtel that "the sensitive nature . . . has not changed over

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<sup>1</sup> *In re AEP's IGCC Proposal*, Case No. 05-376-EL-UNC, Memorandum Contra Motions of Columbus Southern Company/Ohio Power Company and GE/Bechtel to Maintain Documents Under Seal (August 9, 2005).

<sup>2</sup> *In re AEP's IGCC Proposal*, Case No. 05-376-EL-UNC, OCC Application for Rehearing at 25-28 (May 10, 2006).

<sup>3</sup> Emphasis added.

<sup>4</sup> See, e.g., AEP Motion at 3 ("same as considered by the Commission in its April 10, 2006, Opinion and Order") and GE/Bechtel Motion at 3 ("PUCO has already ruled").

<sup>5</sup> AEP Motion, Exhibit 1 at ¶4, Exhibit 2 at ¶2, and Exhibit 3 at ¶2.

time.”<sup>6</sup> All the earlier statements were contained in conclusory affidavits that did not provide the detail upon which the Commission should have concluded that information would be protected from public disclosure.<sup>7</sup> Repeating those statements by reference (including the statement by counsel for Movant GE/Bechtel) fails to provide the detail that is required pursuant to Ohio Adm. Code 4901-1-24(F) to support an extension of a protective order.

Movants bear the burden to prove that the Commission should keep the information from the public. Pursuant to Ohio Adm. Code 4901-1-27(B)(7)(e), “the party requesting such protection shall have the burden of establishing that such protection is required. The Movants have not provided sufficient detail and proof that all the information should be protected for an additional period of time.

According to the Commission’s rules, orders to keep information from the public “shall minimize the amount of information protected from public disclosure.”<sup>8</sup> The Movants have not sufficiently minimized the information to be kept from public disclosure. The Movants, especially GE/Bechtel, propose to continue the redaction of entire documents instead of taking steps to minimize the information that is withheld from public disclosure.

The time periods over which the Motions to Extend would apply are also inappropriate. A detailed review of the AEP Motion reveals that it is actually a memorandum in support without the motion required by Ohio Adm. Code 4901-1-12(A). The AEP Motion does not designate a time period for the desired extension. The

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<sup>6</sup> GE/Bechtel Motion at 4.

<sup>7</sup> Conclusory statements do not provide the evidence needed to demonstrate that material contains trade secret information. See, e.g., *Besser v. Ohio State University* (August 9, 2000), 89 Ohio St. 3d 396, 378.

<sup>8</sup> Ohio Adm. Code 4901-1-24(D).

GE/Bechtel Motion seeks an *indefinite* extension to the protective order.<sup>9</sup> An *indefinite* extension is inappropriate for an initial protective order that covered eighteen months based upon the mere representation by counsel that the sensitive nature of the GE/Bechtel information is unchanged.

The Ohio Supreme Court has adopted the following factors in analyzing a trade secret claim:

(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.<sup>10</sup>

As to the fourth factor adopted by the Ohio Supreme Court, the information may not have the same value to the holder in having information as against competitors after eighteen months, and may lose even more value and/or become outdated as time progresses. The Movants have not met their burden of proof, and the Motions to Extend should be denied. In the alternative to denying the Motions to Extend, any additional protection should not exceed six months.

Legislation regarding the regulation of electric utilities, currently under extensive discussion,<sup>11</sup> may affect the “value” of information that is subject to the protective order. Further, legislation may create a regulatory structure under which the collection of power

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<sup>9</sup> GE/Bechtel Motion at 1 and 5.

<sup>10</sup> *Besser v. Ohio State University* (August 9, 2000), 89 Ohio St. 3d 396, 399-400.

<sup>11</sup> See, e.g., “Strickland Announces Energy Principles,” [www.governor.ohio.gov/News/May2007/News5107/tabid/268/Default.aspx](http://www.governor.ohio.gov/News/May2007/News5107/tabid/268/Default.aspx) (May 1, 2007).

plant costs from customers is considered by the PUCO in a process that is regulated.

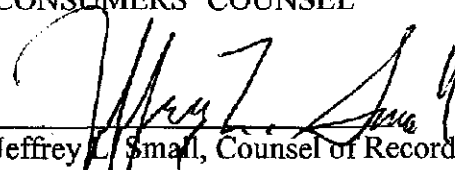
Greater PUCO involvement would be associated with a greater need for transparency and public scrutiny of utility proposals regarding power plants that will serve and be paid for by Ohioans. A lengthy extension to the protective order is particularly inappropriate under these circumstances.

### **III. CONCLUSION**

For the reasons listed above, the Movants have not met the burden of proof required of them by the PUCO's Rule 27. Moreover, the Movants have not minimized the information they propose to be kept from public disclosure, contrary to the PUCO's Rule 24. The Motions to Extend should therefore be denied. In the alternative, the information should not be granted protection for any additional period greater than six months.

Respectfully submitted,

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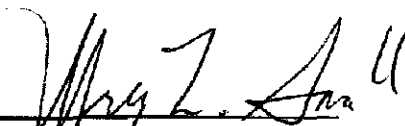


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## **CERTIFICATE OF SERVICE**

It is hereby certified that a true copy of the foregoing pleading was served via electronic mail and/or regular U.S. mail this 11<sup>th</sup> day of September, 2007.

  
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