

THE PUBLIC UTILITIES COMMISSION OF OHIO

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 OPERATION OF AN INTEGRATED
GASIFICATION COMBINED CYCLE
ELECTRIC GENERATION FACILITY.

CASE No. 05-376-EL-UNC

ENTRY

Entered in the Journal on November 1, 2016

{¶ 1} Ohio Power Company¹ d/b/a AEP Ohio (AEP Ohio or the Company) is an electric distribution utility as defined in R.C. 4928.01(A)(6) and a public utility as defined in R.C. 4905.02, and, as such, is subject to the jurisdiction of this Commission.

{¶ 2} On March 18, 2005, AEP Ohio filed an application for authority to recover \$23.7 million associated with the cost to design, construct and operate an integrated gasification combined cycle (IGCC) electric generation facility to be built in Meigs County, Ohio (Great Bend Facility).

{¶ 3} On April 10, 2006, the Commission approved AEP Ohio's application to establish a mechanism to recover Phase 1 costs related to the design and construction of the Great Bend Facility on the premise that construction of the IGCC facility was necessary for AEP Ohio to fulfill its obligation as the provider of last resort (POLR). The Commission also affirmed the attorney examiner's ruling to grant the requests of AEP Ohio and General Electric Company, GE Energy (USA), LLC, Bechtel Corporation and Bechtel Power Corporation (jointly, GE/Bechtel) for protective treatment of certain documents which included trade secrets, pursuant to R.C. 1333.61(D), and critical energy infrastructure information (CEII), as defined by the Federal Energy Regulatory

¹ On March 7, 2012, the Commission confirmed and approved the application to merge Columbus Southern Power Company into Ohio Power Company. *In re Columbus Southern Power Company and Ohio Power Company*, Case No. 10-2376-EL-UNC, Entry (Mar. 7, 2012).

Commission. GE/Bechtel are vendors with whom AEP Ohio contracted to provide certain services in relation to the engineering, design and construction of the IGCC facility. *In re AEP Ohio*, Case No. 05-376-EL-UNC (*Great Bend Case*), Opinion and Order (Apr. 10, 2006) at 9-11. Accordingly, the Commission directed that the documents afforded protective treatment remain under seal for 18 months from the date of the Order, until October 10, 2007.

{¶ 4} Subsequently, AEP Ohio or GE/Bechtel have filed several motions to extend the protective order which have been granted. *Great Bend Case*, Entry (Oct. 11, 2007); Entry (Apr. 29, 2009); Entry (Mar. 2, 2011); and Entry (Sept. 11, 2013). The current protective order expired on October 10, 2016.

{¶ 5} Pursuant to R.C. 4903.10, applications for rehearing of the Opinion and Order were filed by several parties to the proceeding, including Industrial Energy Users Ohio (IEU).

{¶ 6} On June 28, 2006, the Commission issued its Entry on Rehearing, denying the issues raised in the applications for rehearing and requests for clarification. *Great Bend Case*, Entry on Rehearing (June 28, 2006). The Commission did, however, clarify the conditions of its approval of AEP Ohio's Great Bend Facility application emphasizing that: (a) all Phase 1 costs to construct the proposed IGCC facility would be subject to audit(s) to determine whether such expenditures were reasonable and prudently incurred; and (b) if the proposed IGCC facility was not constructed and in operation within five years after the date of the Entry on Rehearing, all Phase 1 charges collected must be refunded to Ohio ratepayers with interest. *Great Bend Case*, Entry on Rehearing (June 28, 2006) at 16.

{¶ 7} The Commission's decision in the *Great Bend Case* was appealed to the Ohio Supreme Court.

{¶ 8} By decision issued March 13, 2008, the Court affirmed, in part, reversed, in part, and remanded the *Great Bend Case* to the Commission. The Court concluded that the record did not support the Commission's regulation of a generation facility for distribution-ancillary services in support of the Company's POLR obligation and remanded the case for further development of the record. *Indus. Energy Users-Ohio v. Pub. Util. Comm.*, 117 Ohio St.3d 486, 2008-Ohio-990, ¶ 31- ¶ 33. The Court further declined to rule upon appellants' request for a refund of costs already collected from AEP Ohio's customers, stating that the matter was being remanded for further development of the record and noting that the Entry on Rehearing included a conditional refund provision that remained in effect. *Indus. Energy Users-Ohio v. Pub. Util. Comm.*, 117 Ohio St.3d 486, 2008-Ohio-990, ¶ 36.

{¶ 9} By Entry issued on August 11, 2014, a remand procedural schedule was adopted, including an evidentiary hearing scheduled to commence on December 8, 2014.

{¶ 10} The evidentiary hearing was called on December 8, 2014, and continued, to allow the parties additional time to negotiate a settlement of the issues on remand.

{¶ 11} On December 22, 2014, a Joint Stipulation and Recommendation (Stipulation) was filed in the case, purportedly resolving all the issues raised on remand. The Stipulation was not opposed by any party to the remand proceeding.

{¶ 12} On February 11, 2015, the Commission approved and adopted the Stipulation. *Great Bend Case*, Entry on Remand (Feb. 11, 2015). In the Entry on Remand, the Commission also granted a motion for protective treatment of Ex. KMM-2, an attachment to IEU Ex. 2B, filed on November 14, 2014, on the basis that the exhibit contained confidential, proprietary and trade secret information in compliance with the requirements of Ohio Adm.Code 4901-1-24 and R.C. 1333.61(D). Consistent with Ohio Adm.Code 4901-1-24, the protective order prohibited the public disclosure of Ex. KMM-

2 for 24 months from the date of the Entry on Remand, February 11, 2017. *Great Bend Case*, Entry on Remand (Feb. 11, 2015) at 5-6.

{¶ 13} On October 11, 2016, GE/Bechtel filed a motion to extend its protective orders for an additional 36 months, until October 10, 2019. First, GE/Bechtel requests that the Commission continue to maintain under seal, consistent with prior orders approving such motions, GE/Bechtel's financial and technical information in redacted exhibits and testimony filed by GE/Bechtel on September 1, 2005. Second, GE/Bechtel notes that consistent with the Entry on Remand, its protective order regarding Exhibit KMM-2 is scheduled to expire on February 11, 2017. GE/Bechtel requests for administrative efficiency, that the protective order for Exhibit KMM-2 be extended, consistent with the prior protective orders regarding its financial and technical information. GE/Bechtel submits that the IGCC confidential information and Exhibit KMM-2 include financial and technical information relative to its association with AEP Ohio for the construction of an IGCC facility. GE/Bechtel argues, as attested to in the affidavits previously provided and the affidavits attached to the current motion for an extension of the protective order, that the information protected under seal meets the requirements of a trade secret, pursuant to R.C. 1333.61(D). GE/Bechtel further states that the information, unredacted documents and transcripts continue to be highly valuable information to its competitors and GE/Bechtel continues to stringently protect the secrecy of the information. Specifically as to Exhibit KMM-2, GE/Bechtel states that the information is the product of original research and development, has been kept confidential and, as a result, retains substantial economic value to GE/Bechtel by maintaining its confidentiality. According to GE/Bechtel, it would be costly and time-consuming for third parties to replicate the information on their own. As such, GE/Bechtel asserts public disclosure of Exhibit KMM-2 would significantly reduce if not eliminate the value of the information and cause harm to GE/Bechtel. Finally, GE/Bechtel asserts that the IGCC confidential information and Exhibit KMM-2 will continue to be confidential for an indefinite period; however, to be consistent with the

Commission's policies regarding trade secret information, GE/Bechtel requests that the protective orders be extended for a minimum of 36 months, until at least October 10, 2019.

{¶ 14} No memorandum contra GE/Bechtel's motion to extend the orders for protective treatment was filed.

{¶ 15} Pursuant to Ohio Adm.Code 4901-1-24, to be granted an extension of a protective order the applicant must comply with two requirements: timely file the motion and provide a detailed explanation stating why the information requires continued protective treatment. The attorney examiner finds that GE/Bechtel has presented sufficient reason to extend their respective protective orders. The previous protective orders established that the protected documents include information which is entitled to protective treatment. *Great Bend Case*, Opinion and Order (Apr. 10, 2006) at 9-11; Entry on Remand (Feb. 11, 2015) at 5-6. GE/Bechtel has presented reasonable arguments that the protected information continues to be valuable, as against their respective competitors, and the protected information has not been made public. As such, the protected information retains a significant value to GE/Bechtel. Accordingly, the attorney examiner finds the protective orders should be extended.

{¶ 16} GE/Bechtel's motions to extend protective treatment have previously been granted for a period of three years. *Great Bend Case*, Entry (Mar. 2, 2011). While Ex. KMM-2 was initially granted protective treatment for two years, until February 11, 2017, for administrative efficiency, all the documents for which GE/Bechtel has been granted protective treatment should be placed on the same schedule. Accordingly, the attorney examiner consolidates the protective orders and grants the motion for an extension of the protective orders for three years, until October 10, 2019.

{¶ 17} It is, therefore,

{¶ 18} ORDERED, That GE/Bechtel's motion to extend the protective orders be granted. Accordingly, the Docketing Division shall maintain under seal the information granted protective treatment as specified in this Entry, until October 10, 2019. It is, further,

{¶ 19} ORDERED, That a copy of this Entry be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

/s/ Greta See

By: Greta See
Attorney Examiner

JRJ/dah

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in

Case No(s). 05-0376-EL-UNC

Summary: Attorney Examiner Entry orders GE/Bechtel's motion to extend the protective orders be granted. Accordingly, the Docketing Division shall maintain under seal the information granted protective treatment as specified in this Entry, until October 10, 2019. Entry electronically filed by Debra Hight on behalf of Greta See, Attorney Examiner.