## BEFORE

## THE PUBLIC UTILITIES COMMISSION OF OHIO


#### Abstract

In the Matter of the Application of Columbus Southern Power Company and ) Ohio Power Company for Authority to ) Recover Costs Associated with the Ultimate ) Case No. 05-376-EL-UNC Construction and Operation of an Integrated ) Gasification Combined Cycle Electric Generation Facility.


ENTRY

The Attorney Examiner finds:
(1) By Opinion and Order issued in this case on April 10, 2006 (Order), the Commission, among other things, affirmed the requests of Columbus Southern Power Company and Ohio Power Company (jointly, AEP-Ohio or Companies) and General Electric Company, GE Energy (USA), LLC, Bechtel Corporation and Bechtel Power Corporation (jointly, GE/Bechtel) for protective treatment of certain documents. GE/Bechtel are vendors with whom AEP-Ohio contracted to provide certain services in relation to the engineering, design and construction of the proposed integrated gasification combined cycle (IGCC) facility at issue in this case. In the Order, the Commission found that the documents included trade secret information as defined in Section 1333.61(D), Revised Code. As such, the Commission reasoned that the trade secrets and testimony about the trade secrets are exceptions to Section 149.43(A), Revised Code. Section 149.43, Revised Code, essentially states that all proceedings of the Commission and all documents and records in its possession are public records, with certain limited exceptions, not inconsistent with the purposes of Title 49 of the Revised Code. Accordingly, the Commission affirmed the Attorney Examiner's ruling and directed that the documents remain under seal for 18 months from the date of the Order, until October 10, 2007.
(2) The requests of AEP-Ohio and GE/Bechtel to extend the protective order scheduled to expire on October 10, 2007, was granted pursuant to entry issued October 11, 2007. The current protective order expired on April 11, 2009.

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(3) On February 23, 2009, AEP-Ohio filed a motion to further extend the protective order. The motion includes affidavits from American Electric Power Service Corporation (AEP-SC), Sargent \& Lundy (S\&L) and Battelle Memorial Institute (Battelle) in support of the original motion for protective order and the current motion to extend the protective order. AEPOhio notes that the Companies' request for protective treatment in this case included only a portion of four exhibits (OCC Exs. 6 and 7, OEG Ex. 3 and IEU Ex. 8) and redacted versions of the protected exhibits are part of the public record. AEP-Ohio states that the protected documents refer to the site selection analyses performed in the Eastern State Site Selection Study prepared by S\&L and the Site Screening Analysis for Geologic Carbon Sequestration Suitability conducted by Battelle. AEP-Ohio states that the materials deserve continued protection as represented in the affidavits filed by the Companies, S\&L and Battelle on August 8, 2005. AEP-Ohio argues that the affidavits establish that: (a) the protected site evaluation data, ranking criteria, weighted values used and total weighted scores for the sites studied and includes S\&L's or Battelle's evaluation methodology; (b) the protected information is treated as confidential by S\&L or Battelle and is not released in the public domain; (c) the protected information represents S\&L's or Battelle's work product and has commercial value to each of them; (d) the protected information could be used by S\&L's or Battelle's respective competitors as a basis for providing similar services to other clients; and (e) Battelle and/or S\&L will suffer competitive harm if the information is released into the public domain or treated in a non-confidential manner.
(4) As to the site selection and carbon sequestration studies, AEPOhio contends that the list of sites in the reports is not in the public domain as identification of all the sites is strategically important to AEP-Ohio and its affiliates within the American Electric Power Corporation (AEP system) for future expansion plans. According to AEP-Ohio, knowledge of the sites by competitors could potentially affect AEP system's plans to use such sites for power facilities in the future. The sites listed in the studies also include development activities by nonaffiliated entities with which AEP system has a non-disclosure agreement concerning proposed projects. AEP-Ohio states that the disclosure of the scoring of the individual sites, relative to
one another, will likely harm AEP system and other nonaffiliated entities by putting them at a competitive disadvantage in any negotiations to sell low ranking sites. Finally, AEP-Ohio states that AEP system has maintained the confidentiality of the reports and the reports have not been released to third parties without the execution of a nondisclosure agreement. AEP-Ohio concludes that the law, on which the original motion for protective order was granted by the Commission, affirmed on rehearing, and extended, is the same and, therefore, as a matter of law, the information is still entitled to protection from public disclosure. AEP-Ohio contends that the information will remain commercially valuable for a prolonged period and, therefore, requests that the protective order be extended for a period of four years.
(5) Finally, AEP-Ohio states that, although this motion for an extension does not include information submitted by GE/Bechtel, AEP-Ohio supports GE/Bechtel's request for a protective order. AEP-Ohio states that it has concerns about the chilling effect a ruling not to extend the protective order could have on the willingness of vendors to share confidential information with AEP-Ohio/AEP system and its affiliates, as well as other Ohio utilities.
(6) On February 25, 2009, GE/Bechtel also filed a motion to extend its protective order for an additional 48 months. GE/Bechtel submits that the documents under protective order 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 affidavit attached to the current extension request, that the information protected under seal meets the requirements of a trade secret, pursuant to Section 1333.61(D), Revised Code. GE/Bechtel further states that the information continues to be highly valuable information to its competitors and the company continues to protect the secrecy of the information. GE/Bechtel, therefore, request that the protective order be extended.
(7) As noted, the information at issue has already been granted protective treatment in this case and there is no need to review the initial process by which AEP-Ohio and GE/Bechtel were
granted protective treatment. Rule 4901-1-24(F), Ohio Administrative Code (O.A.C.), provides, in relevant part:

A party wishing to extend a protective order beyond the 18 months shall file an appropriate motion at least 45 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.
(8) Thus, pursuant to Rule 4901-1-24, O.A.C., 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. AEP-Ohio and GE/Bechtel have presented sufficient reason to extend their respective protective orders. The Order established that the protected information constitutes trade secret, confidential information which was entitled to protective treatment. AEP-Ohio and GE/Bechtel have presented reasonable arguments that the protected information continues to retain some value, as against their respective competitors and the protected information has not been made public. The Attorney Examiner notes, for example, that the site selection study specifically includes information as to numerous sites throughout the eastern United States and an evaluation of each site and that the IGCC process continues to be an evolving technology. As such, the protected information retains a significant share of its value to AEP-Ohio, and its third party vendors, S\&L, Battelle and GE/Bechtel; in the design and engineering of the proposed IGCC facility. Accordingly, the protective orders should be extended.
(9) AEP-Ohio and GE/Bechtel request that the protective order be extended for four years, until April 10, 2013. AEP-Ohio and GE/Bechtel argue, as they have previously, that the information will retain its value for many years.
(10) It is the Commission's long-standing policy to grant protective orders for a period of 18 months. The parties have requested a four-year protective period based on their assertions that the information will retain its value for many years. While it may be true that the protected information will retain its value, the longer the protective period, the more likely it is that the
protective order will protect information that has lost its value. With the passage of time and changing circumstances, it is likely that the information these parties seek to protect will become stale and lose its value to their competitors and shortterm review of the protective order decreases the likelihood of protecting stale, valueless information. The parties have failed to provide sufficient reason to justify extending the protective order beyond 18 months to four years. Accordingly, AEPOhio's and GE/Bechtel's motions for extension of the protective orders granted in this case are approved for an additional 18 months from the date the current protective orders expired, until on October 11, 2010.

It is, therefore,
ORDERED, That AEP-Ohio's and GE/Bechtel's requests to extend the protective orders are granted. Accordingly, the Docketing Division shall maintain under seal the information granted protective treatment in this case for an additional 18 months from the date the current protective order expired, October 11, 2010. It is, further,

ORDERED, That a copy of this entry be served upon all parties of record in this case.

THE PUBLIC UTILITIES COMMISSION OF OHIO

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Entered in the Journal
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Renee J. Jenkins
Secretary

