

BEFORE

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) 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 on April 10, 2006 (Order), the Commission, among other things, affirmed the Attorney Examiner's ruling to grant the requests of Columbus Southern Power Company (CSP) and Ohio Power Company (OP) (jointly, AEP-Ohio)¹ and General Electric Company, GE Energy (USA), LLC, Bechtel Corporation and Bechtel Power Corporation (jointly, GE/Bechtel) for protective treatment of certain documents containing trade secrets, pursuant to Section 1333.61(D), Revised Code, and critical energy infrastructure information (CEII), as defined by the Federal Energy Regulatory Commission. GE/Bechtel are vendors with whom AEP-Ohio contracted to provide certain services in relation to the engineering, design and construction of an integrated gasification combined cycle (IGCC) facility. Accordingly, the Commission directed that the documents at issue remain under seal for 18 months from the date of the Order, until October 10, 2007.
- (2) By entries issued October 11, 2007, April 29, 2009, and March 2, 2011, the requests of AEP-Ohio and GE/Bechtel to extend the protective orders were granted. The protective orders are currently scheduled to expire on October 10, 2013.
- (3) On August 22, 2013, GE/Bechtel filed a motion to extend its protective order for at least an additional 36 months.

¹ By entry issued March 7, 2012, in *In the Matter of the Application of Ohio Power Company and Columbus Southern Power Company for Authority to Merge and Related Approvals*, Case No. 10-2376-EL-UNC, the Commission confirmed and approved AEP-Ohio's application to merge CSP into OP.

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 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 Section 1333.61(D), Revised Code. GE/Bechtel further states that the unredacted documents and transcripts continue to be highly valuable information to its competitors and GE/Bechtel continues to protect the secrecy of the information. GE/Bechtel, therefore, requests that the protective order be extended.

- (4) On August 23, 2013, AEP-Ohio also filed a motion to further extend the protective treatment regarding a portion of four exhibits (OCC Exs. 6 and 7, OEG Ex. 3 and IEU Ex. 8). AEP-Ohio states that the documents refer to the site selection analyses performed in the Eastern State Site Selection Study prepared by Sargent & Lundy (S&L) and the Site Screening Analysis for Geologic Carbon Sequestration Suitability conducted by Battelle Memorial Institute (Battelle). AEP-Ohio's motion includes affidavits from American Electric Power Service Corporation, S&L and Battelle in support of the original motion for protective order and the current motion to extend the protective order. AEP-Ohio states that the materials deserve continued protection as represented in the original affidavits filed by AEP-Ohio, S&L and Battelle on August 8, 2005, and the current motion to extend protective treatment. AEP-Ohio argues that the affidavits establish that: (a) the protected information contains 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 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. In regard to the site selection and carbon sequestration studies, AEP-Ohio

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 non-affiliated 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 non-affiliated 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 non-disclosure 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 Commission extend the protective order for a four-year period.

Furthermore, AEP-Ohio endorses GE/Bechtel's motion to extend its protective order based on AEP-Ohio's concern regarding the willingness of vendors to share confidential information with the electric utility in the future and the effect an adverse ruling on the request for an extension of the protective order would have on Ohio's utility industry's ability to work with vendors.

- (5) No memorandum contra the motions to extend the orders for protective treatment were filed.
- (6) Pursuant to Rule 4901-1-24, Ohio Administrative Code (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 documents include trade secrets and CEII; information which is 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. 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. Accordingly, the protective orders should be extended.

- (7) GE/Bechtel and AEP-Ohio argue, as they have previously, that their protective orders should be extended for at least 36 months or four years, respectively. GE/Bechtel and AEP-Ohio argue that the protected information will retain its value for many years.
- (8) Rule 4901-1-24, O.A.C., provides that unless otherwise ordered, protective orders automatically expire after 18 months. In this case, GE/Bechtel and AEP-Ohio ask that the Commission again grant their requests for protective treatment for at least three years or four more years due to the fact that the information continues to retain value as against their respective competitors. Recognizing the dynamic nature of the trade secrets and CEII at issue in this instance, in the March 2, 2011, entry, the Attorney Examiner waived the standard 18-month protective order period and extended the protective period to 36 months. AEP-Ohio has failed to provide sufficient reason to justify extending the protective order beyond 36 months to 48 months. For the same reasons discussed in the March 2, 2011, entry, AEP-Ohio's and GE/Bechtel's motions for an extension of the protective orders should be granted for a period of 36 months from the date the current protective orders expire. Accordingly, the protective orders granted in accordance with this entry to AEP-Ohio and GE/Bechtel should be extended until October 10, 2016.

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 36 months from the date the current protective orders expire, until October 10, 2016. It is, further,

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

THE PUBLIC UTILITIES COMMISSION OF OHIO

s/ Greta See

By: Greta See
Attorney Examiner

jrj/vrm

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in

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

Summary: Attorney Examiner Entry ordering 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 36 months from the date the current protective orders expire, until October 10, 2016; electronically filed by Vesta R Miller on behalf of Greta See, Attorney Examiner, Public Utilities Commission of Ohio