

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

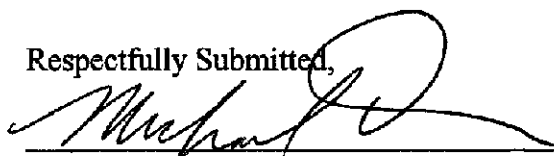
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PUCO

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

GENERAL ELECTRIC COMPANY, GE ENERGY (USA), LLC, BECHTEL CORPORATION, AND BECHTEL POWER CORPORATION'S MOTION TO EXTEND THIS COMMISSION'S OCTOBER 11, 2007 PROTECTIVE ORDER

Comes now General Electric Company, GE Energy (USA), LLC, Bechtel Corporation, and Bechtel Power Corporation (together "GE/Bechtel"), and request the Public Utilities Commission of Ohio ("PUCO") to extend the protective order issued by the PUCO an additional forty-eight (48) months from April 11, 2009, the date upon which the current protection order entered by this Commission will expire. The reasons supporting this Motion are provided in the attached Memorandum in Support.

Respectfully Submitted,



Michael D. Dortch (0043897)
KRAVITZ, BROWN & DORTCH, LLC
65 East State Street, Suite 200
Columbus, Ohio 43215
Tel: 614-464-2000
Fax: 614-464-2002
E-mail: mdortch@kravitzllc.com
Attorneys for
GENERAL ELECTRIC COMPANY, GE
ENERGY (USA), LLC, BECHTEL
CORPORATION, AND BECHTEL POWER
CORPORATION

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MEMORANDUM IN SUPPORT

I. INTRODUCTION

General Electric Company, GE Energy (USA), LLC, Bechtel Corporation, and Bechtel Power Corporation (“GE/Bechtel”) filed a motion to intervene in this matter for the limited purpose of protecting confidential information that belongs to the two of them on June 22, 2005. (Opinion and Order, Apr. 10, 2006, at 6.) On August 8, 2005, GE/Bechtel moved for a protective order in an effort to maintain the confidentiality of certain information found within exhibits submitted in this matter and the testimony deduced therefrom. On August 9, 2005, after an in camera review of the documents at issue, the Attorney Examiners ruled that certain information provided to the Ohio Consumers’ Counsel (“OCC”) by GE/Bechtel pursuant to a protective agreement contained trade secrets and/or confidential or proprietary information, the disclosure of which would violate Ohio law. (Opinion and Order, Apr. 10, 2006, at 7.)

At the conclusion of hearings in this matter, GE/Bechtel was ordered to review the confidential documents admitted into evidence and to redact therefrom the portions containing trade secrets and confidential and/or proprietary information, and to then file the redacted documents in the public record. GE/Bechtel complied with this Commission's Order by filing its redacted version of the documents and transcript on September 1, 2005. (Opinion and Order, Apr. 10, 2006, at 7.)

In its April 10, 2006 Opinion and Order, the PUCO firmly rejected claims that the unredacted versions of the documents and transcript should be released. Specifically, the PUCO held, “[W]e find that the record in this case supports the Attorney Examiners’ ruling that the documents filed under seal included proprietary trade secret information,” and that the release of such documents would violate Ohio law. (Opinion and Order, Apr. 10, 2006, at 10-11.)

Accordingly, the PUCO held that “the Attorney Examiners’ ruling and the confidential record developed in this case are consistent with the Ohio public records law and Title 49.” (Opinion and Order, Apr. 10, 2006, at 11.) As such, the protected documents and transcript were ordered to remain protected from disclosure for a period of eighteen (18) months after the April 10, 2006 Opinion and Order was issued.

On October 11, 2007, upon separate motions by GE/Bechtel and AEP, the PUCO ordered an extension of the protective order for an additional eighteen (18) months. (Opinion and Order, Oct. 11, 2007, at 8.) The October 11, 2007 Opinion and Order is now set to expire on April, 11, 2009.

II. LAW AND ARGUMENT

Pursuant to Ohio Administrative 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.

GE/Bechtel respectfully files this timely motion for the purpose of extending the protective order issued on October 11, 2007 for an additional forty-eight (48) months.

GE/Bechtel submits that on September 1, 2005, it filed several exhibits and a portion of the transcript that were redacted to protect its confidential information in compliance with the PUCO’s order. GE/Bechtel respectfully submits that the unredacted versions of its exhibits and transcript continue to contain trade secrets and confidential and/or proprietary information, and that the release of this information would violate Ohio law.

Indeed, as noted by the PUCO in its April 10, 2006 Opinion and Order, Ohio’s public records law exempts from disclosure “[r]ecords the release of which is prohibited by state or federal law.” R.C. § 149.43(A)(v). In this case, the PUCO has already determined that the

protected information contains GE/Bechtel's "proprietary trade secret information." (Opinion and Order, Apr. 10, 2007 at 9.) The PUCO confirmed this ruling in its October 11, 2007 Opinion and Order. (Opinion and Order, Oct. 11, 2007, at 7.) "The Commission has previously established that the protected information constitutes trade secret, confidential information." (Opinion and Order, Oct. 11, 2007, at 7.) The PUCO ruled that the information retained value to GE/Bechtel and that "the protective order should be extended." (Opinion and Order, Oct. 11, 2007, at 7.) Specifically, the protected documents and transcript pertain to GE/Bechtel's financial and technical involvement in Columbus Southern Power Company's and Ohio Power Company's (hereinafter the "Companies") prospective construction of an IGCC electric generation facility in Ohio.

The confidential nature of GE/Bechtel's financial and technical involvement with IGCC remains unchanged. GE/Bechtel continues to stringently guard this information because of their competitors' interest in the highly valuable nature of the information. As noted in the Affidavits of Allan J. Connolly, General Manager of GE's gasification and technology division, and Lance Murray, Assistant Project Manager for Bechtel, the protected information encompasses the following:

- a. Information that discloses a process, method, or apparatus, including supporting data and analyses, where GE's and Bechtel's prevention of its use by GE's and Bechtel's competitors without license from GE or Bechtel constitutes a competitive economic advantage over other companies;
- b. Information which, if used by a competitor, would reduce the competitor's expenditure of resources or improve its competitive position in the design, manufacture, shipment, installation, assurance of quality, or licensing of a similar product;
- c. Information which reveals cost or price information, production capacities, budget levels, or commercial strategies of GE and/or Bechtel, their customers, or their suppliers;

- d. Information which reveals aspects of past, present, or future GE and/or Bechtel customer-funded development plans and programs, of potential commercial value to GE and/or Bechtel;
- e. Information which in isolation may not disclose proprietary information, but which, when analyzed in the aggregate by a knowledgeable and skilled party would reveal a significant amount of proprietary information;
- f. Information which discloses patented matters and/or patentable subject matter for which it may be desirable to obtain patent protection.

Pursuant to R.C. § 1133.61(D), "trade secret" is defined as follows:

[I]nformation, including the whole or any portion or phase of any scientific or technical information, design, process, procedure, formula, pattern, compilation, program, device, method, technique, or improvement, or any business information or plans, financial information, or listing of names, addresses, or telephone numbers, that satisfies both of the following:

- (1) It derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use.
- (2) It is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

As noted by the PUCO in its April 10, 2006 Opinion and Order and confirmed in the PUCO's October 11, 2007 Opinion and Order, GE/Bechtel's protected information satisfies the mandates of § 1133.61(D). As shown by the attached affidavits of Monte R. Atwell and Amos A. Avidan, the technological and financial trade secrets maintain their independent economic value, and GE/Bechtel continues to maintain the secrecy of the information. GE/Bechtel respectfully submits to the PUCO that this information is just as valuable to GE/Bechtel as it was on June 22, 2005 when GE/Bechtel first moved to intervene in this matter.

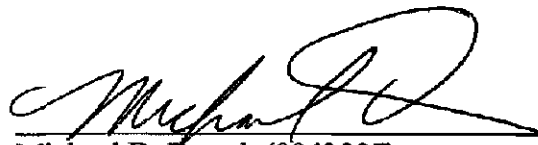
In its October 11, 2007 Opinion and Order, the PUCO denied GE/Bechtel's request for an indefinite extension, choosing instead to review the protected status of the trade secret

information after another eighteen months had passed. (Opinion and Order, October 11, 2007, at 8.) GE/Bechtel respectfully submits to the PUCO that the sealed information remains confidential and the information will continue to be confidential for an indefinite period. Consistent with the PUCO's interest in periodically reviewing the status of trade secret information within its possession and GE/Bechtel's continued concern with the protection of the information at issue in this case, however, GE/Bechtel requests that the PUCO lengthen the period of periodic review to a minimum of forty-eight (48) months, if not longer.

III. CONCLUSION

Pursuant to O.A.C. § 4901-1-24(F), GE/Bechtel respectfully requests the PUCO to extend the protective order issued in its October 11, 2007 Opinion and Order for an additional forty-eight (48) months.

Respectfully Submitted,



Michael D. Dortch (0043897)
KRAVITZ, BROWN & DORTCH, LLC
65 East State Street, Suite 200
Columbus, Ohio 43215
Tel: 614-464-2000
Fax: 614-464-2002
E-mail: mdortch@kravitzllc.com

Attorneys for
GENERAL ELECTRIC COMPANY, GE
ENERGY (USA), LLC, BECHTEL
CORPORATION, AND BECHTEL POWER
CORPORATION

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served electronically upon parties, their counsel, and others through use of the following e-mail addresses this 24th day of February 2009.

Marvin Resnik, Esq.
Sandra K. Williams, Esq.
American Electric Power Service Corp.
1 Riverside Plaza
Columbus, OH 43215

Daniel Conway, Esq.
Porter Wright Morris & Arthur LLP
41 South High Street
Columbus, OH 43215

Samuel C. Randazzo, Esq.
Lisa McAlister, Esq.
McNees, Wallace & Nurick
21 East State Street, 17th Floor
Columbus, OH 43215

Joseph Condo, Esq.
Calpine Corporation
250 Parkway Drive, Suite 380
Lincolnshire, IL 60069

Evelyn R. Robinson, Esq.
Green Mountain Energy Company
5450 Frantz Road, Suite 240
Dublin, OH 43016

David C. Rinebolt, Esq.
Ohio Partners for Affordable Energy
337 South Main Street, 4th Floor, Suite 5
P.O. Box 1793
Findlay, OH 45839-1793

M. Howard Petricoff, Esq.
Vorys, Sater, Seymour & Pease, LLP
52 East Gay Street, P.O. Box 1008
Columbus, OH 43216-1008

Jeffrey L. Small, Esq.
Ohio Consumer's Counsel
10 West Broad Street
Suite 1800
Columbus, OH 43215

Thomas McNamee, Esq.
Attorney General's Office
Public Utilities Section
180 East Broad Street, 9th Floor
Columbus, OH 43215

Kathy Kolich, Esq.
FirstEnergy Corp.
76 South Main Street
Akron, OH 44308

David Boehm, Esq.
Michael Kurtz, Esq.
Boehm, Kurtz & Lowery
36 East Seventh Street, Suite 1510
Cincinnati, OH 45202

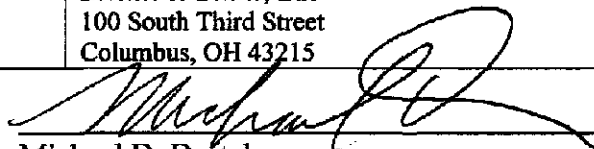
Thomas L. Rosenberg, Esq.
Jessica Davis, Esq.
Roetzel & Andress LPA
National City Center
155 E. Broad Street, 12th Floor
Columbus, OH 43215

William A. Adams, Esq.
Dane Stinson, Esq.
Bailey Cavalieri LLC
10 West Broad Street, Suite 2100
Columbus, OH 43215

Thomas Lodge, Esq.
Carolyn Flahive, Esq.
Thompson, Hine LLP
One Columbus
10 West Broad Street, Suite 700
Columbus, OH 43215

John W. Bentine, Esq.
Chester Willcox & Saxbe
65 East State Street, Suite 1000
Columbus, OH 43215

Thomas J. O'Brien, Esq.
Sally W. Bloomfield, Esq.
Bricker & Eckler, LLP
100 South Third Street
Columbus, OH 43215


Michael D. Dortch

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Case No. 05-376-EL-UNC

AFFIDAVIT OF MONTE R. ATWELL

STATE OF TEXAS

SS:

COUNTY OF HARRIS

The undersigned, Monte R. Atwell, deposes and says that:

1. This affidavit is based upon my personal knowledge.
2. My name is Monte R. Atwell. I am employed by General Electric Company, by and through its GE Energy Division and GE Energy (USA) LLC (collectively, "GE").
3. I am a General Manager, and have been delegated the function of reviewing the information for which a protective order is sought in this proceeding.
4. In making this request for protection from disclosure of proprietary information of which it is the owner or licensee, GE relies upon the exemption from disclosure set forth in the Freedom of Information Act ("FOIA"), 5 USC Sec. 552(b)(4), and the Trade Secrets Act, 18 USC Sec. 1905, for "trade secrets and commercial or financial information obtained from a person and privileged or confidential" (Exemption 4) and under Ohio law in R.C. § 1333.61- .69. The material for which protection from disclosure is here sought is all "confidential commercial information," and some portions also qualify under the narrower definition of "trade secret," within the meanings assigned to those terms for purposes of FOIA Exemption 4, and R.C. § 1333.61(D).
5. I have reviewed the affidavit of Allan J. Connolly, which was submitted to this Commission on behalf of GE with the original Motion for a Protective Order. Mr. Connolly's affidavit arises from the same case, and concerns the same proprietary and confidential information, as the current matter before the Commission.

6. After review of Mr. Connolly's affidavit, Mr. Connolly's factual assertions in Paragraphs 5 – 12 regarding the proprietary and confidential nature of the information sought protected from public disclosure remains accurate and truthful. I reiterate Paragraphs 5 – 12 of Mr. Connolly's affidavit into my affidavit. GE remains vigilant in protecting this information from public disclosure.

I declare under penalty of perjury that the foregoing affidavit and the matters stated therein are true and correct to the best of my knowledge, information, and belief.

By: Monte R. Atwell

Monte R. Atwell

Sworn to and subscribed before me this 19 day of February, 2009.

Kathleen Carnahan
Notary Public, State of Texas
Commission Expires: May 6, 2010



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AFFIDAVIT OF AMOS A. AVIDAN

STATE OF Texas
SS:
COUNTY OF Harris

The undersigned, Amos A. Avidan, deposes and says that:

1. This affidavit is based upon my personal knowledge.
2. My name is Amos A. Avidan. I am employed by Bechtel Oil, Gas and Chemicals, Inc., an affiliate of Bechtel Corporation (collectively, "Bechtel"). Bechtel Corporation, together with General Electric Company, through its GE Energy Division ("GE"; GE and Bechtel Corporation are collectively the "Alliance"), continue to work together to develop and construct integrated gasification combined-cycle facilities.
3. I am a Senior Vice President, and have been delegated the function of reviewing the information for which a protective order is sought in this proceeding.
4. In making this request for protection from disclosure of proprietary information of which it is the owner or licensee, Bechtel relies upon the exemption from disclosure set forth in the Freedom of Information Act ("FOIA"), 5 USC Sec. 552(b)(4), and the Trade Secrets Act, 18 USC Sec. 1905, for "trade secrets and commercial or financial information obtained from a person and privileged or confidential" (Exemption 4) and under Ohio law in R.C. § 1333.61-.69. The material for which protection from disclosure is here sought is all "confidential commercial information," and some portions also qualify under the narrower definition of "trade secret," within the meanings assigned to those terms for purposes of FOIA Exemption 4, and R.C. § 1333.61(D).

5. I have reviewed the affidavit of Lance Murray, which was submitted to this Commission on behalf of Bechtel with the original Motion for a Protective Order. Mr. Murray's affidavit arises from the same case, and concerns the same proprietary and confidential information, as the current matter before the Commission.
6. After review of Mr. Murray's affidavit, Mr. Murray's factual assertions in Paragraphs 5 – 12 regarding the proprietary and confidential nature of the information sought protected from public disclosure remains accurate and truthful. I reiterate Paragraphs 5 – 12 of Mr. Murray's affidavit into my affidavit. Bechtel remains vigilant in protecting this information from public disclosure.

I declare under penalty of perjury that the foregoing affidavit and the matters stated therein are true and correct to the best of my knowledge, information, and belief

By: Arno Anich
SENIOR VICE PRESIDENT

Sworn to and subscribed before me this 25th day of February, 2009.

Josephine Romine
Notary Public, State of Texas
Commission Expires: 03/24/2012

