

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 Ultimate Operation	)	
of an Integrated Gasification Combined	)	
Cycle Electric Generation Facility	)	

---

**OHIO POWER COMPANY'S  
MOTION FOR PROTECTIVE ORDER**

---

Ohio Power Company (“AEP Ohio”), pursuant to Rule 4901-1-24(D) of the Ohio Administrative Code (O.A.C.), respectfully requests that the Public Utilities Commission of Ohio (“Commission”) issue a protective order keeping confidential Exhibit KMM-2 to the testimony of Industrial Energy Users – Ohio (“IEU”) witness Kevin M. Murray, which is a subject of the motion for protective order that IEU filed on November 6, 2014,<sup>1</sup> and which contains confidential and proprietary scope of work information that GE/Bechtel prepared in connection with a FEED study those entities conducted regarding an IGCC facility that AEP Ohio affiliate Appalachian Power Company previously contemplated constructing in West Virginia.

The reasons supporting this motion (and also supporting IEU’s motion) are set forth in the accompanying Memorandum in Support.

---

<sup>1</sup> IEU’s motion also seeks to keep confidential certain excerpts of Mr. Murray’s direct testimony – specifically, page 8, lines 6 through 10; page 9, lines 5 through 9 and 13 through 17; and page 11, lines 6 through 11. After reviewing those excerpts, AEP Ohio has determined that they do not contain confidential information. For this reason, and as set forth in this Motion, AEP Ohio seeks to keep confidential only the document attached to Mr. Murray’s testimony as Exhibit KMM-2.

Respectfully submitted,

/s/ Christen M. Blend

---

Daniel R. Conway  
(Counsel of Record)  
Christen M. Blend  
Porter, Wright, Morris & Arthur  
41 South High Street  
Columbus, Ohio 43215  
Telephone: (614) 227-2270/2086  
Fax: (614) 227-2100  
Email: dconway@porterwright.com  
cblend@porterwright.com

Yazen Alami  
American Electric Power Service  
Corporation  
1 Riverside Plaza, 29th Floor  
Columbus, Ohio 43215  
(614) 716-2920  
Fax: (614) 716-2950  
Email: yalami@aep.com

**Attorneys for Ohio Power Company**

## **MEMORANDUM IN SUPPORT**

Ohio Power Company (“AEP Ohio”) requests that the Public Utilities Commission of Ohio (“Commission”) issue a protective order keeping confidential Exhibit KMM-2 to the testimony of Industrial Energy Users – Ohio (“IEU”) witness Kevin M. Murray that IEU filed under seal on November 6, 2014.

Rule 4901-1-24(D) of the Ohio Administrative Code provides that the Commission or certain designated employees may issue an order to protect the confidentiality of information contained in documents filed with the Commission’s Docketing Division, to the extent that state or federal law prohibits the release of the information and where non-disclosure of the information is not inconsistent with the purposes of Title 49 of the Revised Code.

The criteria used to determine what the Commission should keep confidential is well established, and the Commission also long ago recognized its statutory obligation to protect trade secrets:

The Commission is of the opinion that the “public records” statute must also be read *in pari materia* with Section 1333.31, Revised Code (“trade secrets” statute). The latter statute must be interpreted as evincing the recognition, on the part of the General Assembly, of the value of trade secret information.

*In re: General Telephone Co.*, Case No. 81-383-TP-AIR (Entry, February 17, 1982). Likewise, the Commission has facilitated the protection of trade secrets in its rules. *See* O.A.C. § 4901-1-24(A)(7). Ohio’s version of the Uniform Trade Secrets Act defines “trade secret” to mean:

information, 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.

R.C. § 1333.61(D).

This definition clearly reflects the state policy favoring the protection of trade secrets such as the information that is the subject of this motion. Courts of other jurisdictions have held that not only does a public utilities commission have the authority to protect the trade secrets of the companies subject to its jurisdiction, the trade secrets statute creates a duty to protect them. *New York Tel. Co. v. Pub. Serv. Comm. N.Y.*, 56 N.Y. 2d 213 (1982). Indeed, for the Commission to do otherwise would be to negate the protections the Ohio General Assembly has granted to all businesses through the Uniform Trade Secrets Act. The Commission has previously carried out its obligations in this regard in numerous proceedings. *See, e.g., Elyria Tel. Co.*, Case No. 89-965- TP-AEC (Finding and Order, September 21, 1989); *Ohio Bell Tel. Co.*, Case No. 89-718-TP-ATA (Finding and Order, May 31, 1989); *Columbia Gas of Ohio, Inc.*, Case No. 90-17-GA-GCR (Entry, August 7, 1990).

The Supreme Court of Ohio has directed that the following factors be considered in recognizing a trade secret:

(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.

*State ex rel. The Plain Dealer v. Ohio Dept. of Ins.*, 80 Ohio St.3d 513,524-525 (1997).

Applying these factors to the information contained in Exhibit KMM-2 to IEU witness Murray's testimony demonstrates that protection from disclosure is appropriate. As noted above, the exhibit contains confidential, proprietary, and competitively sensitive information created by GE/Bechtel prepared in connection with a FEED study those entities conducted regarding an IGCC facility that AEP Ohio affiliate Appalachian Power Company previously contemplated constructing in West Virginia. The information is the product of original research and development by GE/Bechtel, has been kept confidential, and, as a result, retains substantial economic value to GE/Bechtel by being kept confidential. It would be costly and time-consuming for third parties to replicate the information on their own. Allowing unfettered public access to the information would give third parties inappropriate access to competitively sensitive business information about GE/Bechtel. Accordingly, release of Exhibit KMM-2 to the public would significantly reduce, if not eliminate, the value that the information has by being kept confidential and, thus, would cause harm to GE/Bechtel.

For the reasons provided above, AEP Ohio respectfully requests that the Commission grant its motion and IEU's motion for protective order to maintain the confidentiality of the information contained in Exhibit KMM-2 to the direct testimony of IEU witness Kevin M. Murray by ordering that the exhibit be kept under seal.

Respectfully submitted,

/s/ Christen M. Blend

Daniel R. Conway  
(Counsel of Record)  
Christen M. Blend  
Porter, Wright, Morris & Arthur  
41 South High Street

Columbus, Ohio 43215  
Telephone: (614) 227-2270/2086  
Fax: (614) 227-2100  
Email: dconway@porterwright.com  
cblend@porterwright.com

Yazen Alami  
American Electric Power Service  
Corporation  
1 Riverside Plaza, 29th Floor  
Columbus, Ohio 43215  
(614) 716-2920  
Fax: (614) 716-2950  
Email: yalami@aep.com

**Attorneys for Ohio Power Company**

## **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was served by e-mail upon counsel for all parties of record in this case, on this 19th day of November, 2014.

/s/ Christen M. Blend

Christen M. Blend

Samuel C. Randazzo  
Frank P. Darr  
Matthew R. Pritchard  
McNees Wallace & Nurick LLC  
21 East State Street, 17<sup>th</sup> Floor  
Columbus, Ohio 43215  
sam@mwncmh.com  
fdarr@mwncmh.com  
mpritchard@mwncmh.com

Maureen R. Grady  
Michael J. Schuler  
Joseph P. Serio  
Assistant Consumers' Counsel  
Office of the Ohio Consumers' Counsel  
10 West Broad Street, Suite 1800  
Columbus, Ohio 43215  
Maureen.grady@occ.ohio.gov  
Michael.schuler@occ.ohio.gov  
Joseph.serio@occ.ohio.gov

David F. Boehm  
Michael L. Kurtz  
Boehm, Kurtz & Lowry  
36 East Seventh Street, Suite 1510  
Cincinnati, OH 45202  
dboehm@BKLLawfirm.com  
mkurtz@bkllawfirm.com

Michael D. Dortch  
Kravitz Brown & Dortch LLC  
145 E. Rich St.  
Columbus, OH 43215  
mdortch@kravitzllc.com

M. Howard Petricoff  
Vorys, Sater, Seymour and Pease LLP  
52 East Gay Street  
P.O. Box 1008  
Columbus, OH 43216-1008  
mhpeticoff@vorys.com

David C. Rinebolt  
Ohio Partners for Affordable Energy  
231 West Lima Street  
PO Box 1793  
Findlay OH 45839-1793  
drinebolt@ohiopartners.org

Joseph M. Clark  
Direct Energy Services, LLC  
21 East State Street, 19th Floor  
Columbus, OH 43215  
joseph.clark@directenergy.com

Thomas L. Rosenberg  
Jessica L. Davis  
Roetzel & Andress, LPA  
National City Center  
155 East Broad St., 12th Floor  
Columbus, OH 43215  
trosenberg@ralaw.com  
jdavis@ralaw.com

John W. Bentine  
Senior VP/General Counsel  
American Municipal Power, Inc.  
1111 Schrock Road, Suite 100  
Columbus, OH 43229  
jbentine@amppartners.org

Mark S. Yurick  
Taft Stettinius & Hollister LLP  
65 East State Street, Suite 1000  
Columbus, OH 43215-4213  
myurick@taftlaw.com

Rebecca L. Hussey  
Carpenter Lipps & Leland LLP  
280 Plaza, Suite 1300  
280 North High Street  
Columbus, Ohio 43215  
hussey@carpenterlipps.com

Sally W. Bloomfield  
Thomas J. O'Brien  
Bricker & Eckler LLP  
100 South Third Street  
Columbus, Ohio 43215  
sbloomfield@bricker.com  
tobrien@bricker.com

Thomas McNamee  
Assistant Attorney General  
Public Utilities Section  
180 East Broad Street  
Columbus, OH 43215  
thomas.mcnamee@puc.state.oh.us



**This foregoing document was electronically filed with the Public Utilities**

**Commission of Ohio Docketing Information System on**

**11/19/2014 4:03:24 PM**

**in**

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

Summary: Motion Ohio Power Company's Motion for Protective Order electronically filed by Ms. Christen M. Blend on behalf of Ohio Power Company