

FILE

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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)	

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 PUCO

GENERAL ELECTRIC COMPANY, GE ENERGY (USA), LLC, BECHTEL CORPORATION, AND BECHTEL POWER CORPORATION'S MOTION TO EXTEND PROTECTIVE ORDERS

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" or "Commission") enter a protective order keeping confidential:

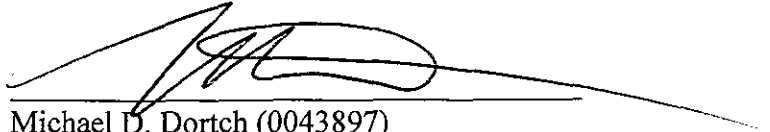
(1) GE/Bechtel's financial and technical information relative to its association with AEP-Ohio for the construction of an Integrated Gasification Combined Cycle ("IGCC") facility that was redacted from the exhibits and transcript excerpts GE/Bechtel filed on September 1, 2005; and

(2) Exhibit KMM-2 to the testimony of Industrial Energy Users – Ohio witness Kevin M. Murray, filed on November 6, 2014, which contains additional propriety and confidential information regarding the IGCC plans. GE/Bechtel respectfully requests that the Commission enter an order protecting these items for a thirty-six (36) month period beginning on October 10, 2016, and expiring on October 10, 2019. The reasons supporting this Motion are provided in the attached Memorandum in Support.

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Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'MD', is written over a horizontal line. The signature is stylized and extends slightly above and below the line.

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

MEMORANDUM IN SUPPORT

I. INTRODUCTION

On July 22, 2005, 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 them. (Opinion & Order, Apr. 10, 2006, at 4 (“2006 Opinion & Order”).) In response to GE/Bechtel’s motions for protective orders, the Commission issued: (1) one series of orders protecting GE/Bechtel’s financial and technical information found within the redacted portions of the exhibits and testimony excerpts GE/Bechtel filed on September 1, 2005 in this matter concerning its association with AEP-Ohio for the construction of an Integrated Gasification Combined Cycle (“IGCC”) facility (the “IGCC Confidential Information”); and (2) an order protecting Exhibit KMM-2 to the testimony of Industrial Energy Users – Ohio witness Kevin M. Murray (“Exhibit KMM-2”) filed on November 6, 2014, which contains additional information regarding the IGCC facility. Because these items continue to constitute confidential trade secrets, GE/Bechtel respectfully requests that the Commission extend these orders that are soon-to-expire for a thirty-six (36) month period beginning on October 10, 2016, and expiring on October 10, 2019, months.

II. PROCEDURAL BACKGROUND

The IGCC Confidential Information is protected by an order that expires on October 10, 2016. Exhibit KMM-2 is protected by an order that does not expire until February 11, 2017. To promote administrative efficiency, GE/Bechtel seeks to extend both protective orders at the same time through this Motion.

A. The IGCC Confidential Information

On August 8, 2005, GE/Bechtel moved for a protective order to maintain the confidentiality of the IGCC Confidential Information. On August 9, 2005, after an *in camera* review of the documents at issue, the Attorney Examiners ruled that the IGCC Confidential Information, which GE/Bechtel had provided to the Ohio Consumers' Counsel ("OCC") pursuant to a protective agreement, constituted trade secrets and/or confidential or proprietary information, the disclosure of which would violate Ohio law. (2006 Opinion and Order, at 7.)

In the 2006 Opinion & Order, the Commission firmly rejected claims that the IGCC Confidential Information should be released. The Commission held that "we 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. (2006 Opinion & Order, 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." (2006 Opinion & Order, at 11.) As such, the IGCC Confidential Information was ordered to remain protected from disclosure for a period of eighteen (18) months after the 2006 Opinion and Order was issued.

On October 11, 2007, April 29, 2009, and March 2, 2011, upon separate motions by GE/Bechtel and AEP, the PUCO ordered extensions of the protective order for a total of nine years. (Opinion and Order, Oct. 11, 2007, at 8 (the "2007 Opinion & Order"); Opinion and Order, April 29, 2009, at 10 (the "2009 Opinion & Order"); Opinion and Order, March 2, 2011, at 4 (the "2011 Opinion & Order"); Entry, September 11, 2013, at 4–5 ("2013 Entry").) Under the 2013 Entry, protection of the IGCC Confidential Information is set to expire on October 10, 2016.

B. The Order Protecting Exhibit KMM-2

On November 19, 2014, GE/Bechtel and AEP moved to protect Exhibit KMM-2, which Industrial Energy Users-Ohio filed with the Commission on November 6, 2014. Exhibit KMM-2 contains confidential and proprietary scope of work information that GE/Bechtel prepared in connection with an FEED study those entities conducted regarding the IGCC facility. Through its February 11, 2015 Order on Remand (“2015 Order on Remand”), the Attorney Examiner granted Exhibit KMM-2 confidential treatment until February 11, 2017.

III. 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 motion to extend the protective orders effective October 10, 2013, and February 11, 2015, for a thirty-six (36) month period beginning on October 10, 2016, and expiring on October 10, 2019. GE/Bechtel submits that the IGCC Confidential Information and Exhibit KMM-2 continue to constitute trade secrets and confidential and/or proprietary information, and that the release of this information would violate Ohio law. As noted by the PUCO in the 2006 Opinion & Order, Ohio’s public records law exempts from disclosure “[r]ecords the release of which is prohibited by state or federal law.” O.R.C. § 149.43(A)(v). In this case, “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.” (2009 Opinion & Order, at 7.)

The confidential nature of the IGCC Confidential Information and Exhibit KMM-2 remains unchanged. GE/Bechtel continues to stringently guard this information because of their

competitors' interest in the highly valuable nature of the information. The affidavits of Allan J. Connolly, General Manager of GE's gasification and technology division, and Lance Murray, Assistant Project Manager for Bechtel, describe that 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 of 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 O.R.C. § 1133.61 (D), "trade secret" is defined as follows:

[I]nformation including the whole or any portion of 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 its 2006 Opinion and Order and confirmed in the 2007 Opinion & Order, the 2009 Opinion & Order, the 2010 Opinion & Order, the 2013 Entry, and the 2015 Entry on Remand, GE/Bechtel's protected information satisfies the mandates of R.C. § 1133.61(D). The previously submitted affidavits of Monte R. Atwell and Amos A. Avidan, state that the technological and financial trade secrets maintained their independent economic value, and GE/Bechtel continued 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 addition, Exhibit KMM-2 contains information that 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.

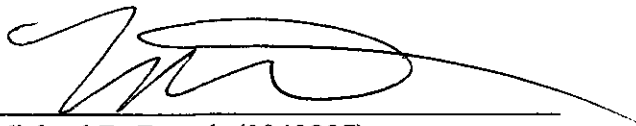
GE/Bechtel respectfully submits to the PUCO that the IGCC Confidential Information and Exhibit KMM-2 remain confidential and the information will continue to be confidential for an indefinite period, and Brian Hartman of Bechtel and Conrad Henry of GE have sworn to the continued confidential nature of the information in the attached affidavits. However, in attempting to be consistent with the PUCO's interest in periodically reviewing the status of trade

secret information within its possession, GE/Bechtel requests that the PUCO lengthen the period of periodic review to a minimum of thirty-six (36) months, if not longer.

IV. CONCLUSION

Pursuant to O.A.C. § 4901-1-24(F), GE/Bechtel respectfully request that the PUCO extend the protective orders issued in its 2013 Entry and 2015 Entry on Remand for a thirty-six (36) month period beginning on October 10, 2016, and expiring on October 10, 2019.

Respectfully Submitted,



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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 this 11th day of October, 2016.

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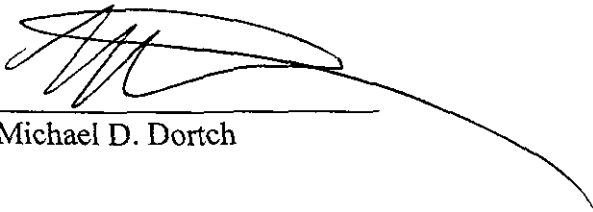
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Michael D. Dortch

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Cycle Electric Generating Facility)

AFFIDAVIT OF BRIAN HARTMAN

STATE OF VIRGINIA

SS:

COUNTY OF FAIRFAX

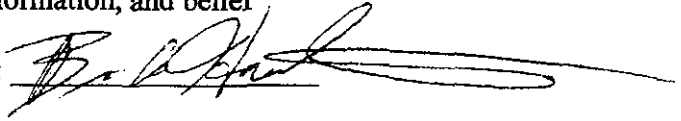
The undersigned, Brian Hartman, deposes and says that:

1. This affidavit is based upon my personal knowledge.
2. My name is Brian Hartman. I am employed by Bechtel Corporation, the parent company of Bechtel Power Corporation (collectively, "Bechtel"). Bechtel Corporation, together with General Electric Company, through its GE Energy Division, continue to work together to develop and construct integrated gasification combined-cycle facilities.
3. I am a Principal Vice President of Bechtel Power Corporation, 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 U.S.C. § 552(b)(4), and the Trade Secrets Act, 18 U.S.C. § 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

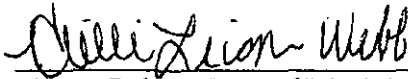
arises from the same case, and concerns the same proprietary and confidential information, as the current matter before the Commission.

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 remain 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.
7. In addition, the statements contained in Mr. Murray's affidavit are equally applicable to the information contained in Exhibit KMM-2 to the testimony of Industrial Energy Users – Ohio witness Kevin M. Murray, filed on November 6, 2014, in this proceeding, which exhibit contains propriety and confidential information regarding the IGCC plans.

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: 
Brian Hartman

Sworn to and subscribed before me this 11th day of October, 2016.


Notary Public, State of Virginia
Commission Expires: Nov 30, 2020

HEIDI LEIGH WEBB
NOTARY PUBLIC
REGISTRATION # 7699057
COMMONWEALTH OF VIRGINIA
MY COMMISSION EXPIRES
NOVEMBER 30, 2020

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AFFIDAVIT OF CONRAD HENRY

STATE OF TEXAS

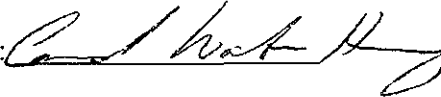
COUNTY OF HARRIS

The undersigned, Conrad Henry, deposes and says that:

1. This affidavit is based upon my personal knowledge.
2. My name is Conrad Henry. I am employed by General Electric Company, by and through its GE Power Division and GE Energy (USA) LLC (collectively, "GE").
3. I am a Senior Engineering Manager – GE Power, 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 U.S.C. § 552(b)(4), and the Trade Secrets Act, 18 U.S.C. § 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).
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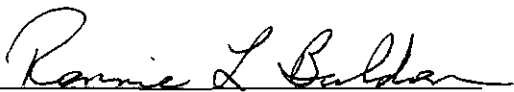
6. After review of Mr. Connolly's affidavit, Mr. Connolly's factual assertions in Paragraphs 5 – 12 regarding the proprietary and confidential nature of the information sought protected from public disclosure remain accurate and truthful. I reiterate Paragraphs 5 – 12 of Mr. Connolly's affidavit into my affidavit. GE remains vigilant in protecting this information from public disclosure.
7. In addition, the statements contained in Mr. Connolly's affidavit are equally applicable to the information contained in Exhibit KMM-2 to the testimony of Industrial Energy Users – Ohio witness Kevin M. Murray, filed on November 6, 2014, in this proceeding, which exhibit contains propriety and confidential information regarding the IGCC plans.

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: 

Conrad Henry

Sworn to and subscribed before me this 11th day of October, 2016.


Notary Public, State of Texas
Commission Expires: Feb 25, 2018

