UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

FEB 18 2015

OFFICE OF
GENERAL COUNSEL

BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED

Re: Freedom of Information Act EPA-HQ-2013-008604 (Appeal HQ-APP-2013-000391); Final Confidentiality Determination

Dear Business Submitter:

In your response to the *2010 Questionnaire for the Steam Electric Power Generating Effluent Guidelines* ("*Questionnaire*"), your company asserted a claim(s) of confidentiality for response(s) to specific *Questionnaire* questions ("information") that is responsive to the above-referenced Freedom of Information Act ("FOIA") request to the United States Environmental Protection Agency ("EPA" or "Agency").

Between June and November 2014, the EPA requested that you substantiate your claim(s) of confidentiality ("request for substantiation"). Because you submitted a timely response to EPA's request to substantiate your confidentiality claim(s) ("substantiation") and did not waive your claim(s), the Agency completed a final confidentiality determination for your claim(s). This confidentiality determination applies to all companies that provided a substantiation to EPA's request for substantiation. The attached appendices provide references to specific plants. I have carefully considered the information claimed as confidential business information ("CBI"), your substantiation, and other relevant information. For the reasons stated below, I find that part of the information claimed as business confidential is entitled to confidential treatment. See Appendices A and B (enclosed). I have also determined that part of the information claimed as business confidential is not entitled to confidential treatment. See Appendix C (enclosed).

DISCUSSION

Exemption 4 of the FOIA exempts from disclosure "trade secrets and commercial or financial information obtained from a person and privileged or confidential." 5 U.S.C. § 552(b)(4). In order for information to meet the requirements of Exemption 4, the EPA must find that the information is either (1) a trade secret; or (2) commercial or financial information obtained from a person and privileged or confidential.

Initial Considerations

EPA's regulations at 40 C.F.R. § 2.208 state that, in order for business information to be entitled to confidential treatment, the Agency must have determined that, inter alia:

> (1) The business has asserted a claim of confidentiality and that claim has not expired, been waived, or been withdrawn;
> (2) The business has shown that it has taken reasonable measures to protect the confidentiality of the information, and that it intends to continue to take such measures;
> (3) The information is not, and has not been, reasonably obtainable by a third party without the business' consent through legitimate means; and
> (4) No statute specifically requires disclosure of the information.

In your substantiation, you stated that you sought confidential treatment for the information a specific period, that no interceding events have negated your previous claim, and that the information has not become stale. In EPA's analysis of this matter, I have not found any reason to doubt these assertions by the business submitters. As a result, I will determine whether or not the information meets the definition of trade secret or CBI.

I. TRADE SECRET

The definition of "trade secret" under the FOIA is limited to "a secret, commercially valuable plan, formula, process, or device that is used for the making, preparing, compounding, or processing of trade commodities and that can be said to be the end product of either innovation or substantial effort." Public Citizen Health Research Group v. FDA, 704 F. 2d 1280, 1288 (D.C. Cir. 1983). This definition requires that there be a "direct relationship" between the information and the production process. Id. You have neither asserted a claim that any of the information at issue is a trade secret, nor have you explained how the Agency's release of any of this information would identify a plan, formula, process, or device. Thus, you have not demonstrated how disclosure of any of the information at issue would identify or reveal a trade secret. Consequently, I find that none of the information constitutes a trade secret.

II. CONFIDENTIAL BUSINESS INFORMATION

If the information does not reveal a trade secret, it may still be exempt from release under Exemption 4 of the FOIA if it is CBI, i.e., "commercial or financial information obtained from a person and privileged or confidential." 5 U.S.C. § 552(b)(4). I discuss each element in turn.

The terms "commercial" or "financial," for purposes of Exemption 4 of the FOIA, "should be given their ordinary meanings." Public Citizen, 704 F.2d at 1290 (citing Washington Post Co. v. HHS, 690 F.2d 252, 266 (D.C. Cir. 1982)). The information at issue relates to a business, thereby meeting the ordinary definition of "commercial."

Since business submitters meet the definition of the term "person," as defined by EPA's regulations at 40 C.F.R. § 2.201(a), the information was "obtained from a person" as required by Exemption 4 of the FOIA.

Finally, in order to qualify as CBI, the information must be "privileged or confidential." You have claimed this information to be confidential, but you have not claimed this information to be privileged. The Agency has no indication that the information is subject to a common-law privilege and will therefore limit its discussion to the issue of confidentiality. Information submitted to the Government on a voluntary basis "is 'confidential' for the purpose of Exemption 4 if it is of a kind that would customarily not be released to the public by the person from whom it was obtained." Critical Mass Energy Project v. Nuclear Regulatory Commission, 975 F.2d 871, 879 (D.C. Cir. 1992) (en banc), cert. denied, 507 U.S. 984 (1993). Information that is required to be submitted to the Government is confidential if its "disclosure would be likely either '(1) to impair the Government's ability to obtain necessary information in the future; or (2) to cause substantial harm to the competitive position of the person from whom the information was obtained.'" Critical Mass, 975 F.2d at 878 (quoting National Parks and Conservation Association v. Morton, 498 F.2d 765, 770 (D.C. Cir. 1974) (footnote omitted).

A. *Voluntary Information*

A number of companies claimed that a portion their information was submitted voluntarily to the Agency because it was not required by the *Questionnaire*. Under EPA's regulations at 40 C.F.R. § 2.201(i), voluntarily submitted information consists of business information the submission of which the EPA had no statutory or contractual authority to require, as well as business information the submission of which was not prescribed by statute or regulation as a condition of obtaining some benefit (or avoiding some disadvantage) under a regulatory program of general applicability.

With respect to certain additional information not required by the *Questionnaire*, the Agency did not exercise its authority to require the additional information. This includes information that was submitted in Parts A, B, C, D, E, and F's Comments Sections or in the comment portions of specific question. Nor was the submission of the information a condition of obtaining some benefit or avoiding some disadvantage under an Agency regulatory program. Therefore, I conclude that the additional information was submitted to the Agency voluntarily. Appendix A of this determination provides a list of information that was deemed to be voluntarily submitted. See Appendix A "Voluntary Information Entitled to Confidential Treatment" ("Appendix A").

Not Customarily Disclosed

Information that is voluntarily submitted to the Agency must be withheld under Exemption 4 of the FOIA if "it is of a kind that would customarily not be released to the public." Critical Mass, 975 F.2d at 879. The Agency's review must be objective and "must meet the burden of proving the provider's custom." Id. Courts have not articulated a clear standard for whether information has been customarily disclosed to the public, but they do offer guidance. Information that has been previously disclosed may nonetheless receive Exemption 4 protection

as long as the submitter has not made the kind of information being claimed as CBI available to the general public. Center for Auto Safety, 244 F.3d at 151-53.

A number of plants claimed that the additional information provided in their responses, as referenced in Appendix A, is neither customarily disclosed nor available to the general public. In its analysis of this matter, the EPA has not found any reason to doubt these assertions by the plants. Therefore, I find that the subset of plants has not customarily disclosed the information, and accordingly the information is entitled to confidential treatment. See Appendix A.

B. *Required Information*

For a submission to be considered required, an agency must possess the authority to require submission of information to the agency and must exercise this authority. National Parks, 498 F.2d at 770; Center for Auto Safety v. NHTSA, 244 F.3d 144, 149 (D.C. Cir. 2001); Parker v. Bureau of Land Management, 141 F. Supp. 2d 71, 77-79, 78 n.6 (D.D.C. 2001); see also, Critical Mass, 975 F.2d at 880. The information was collected expressly pursuant to EPA's authority under Section 308 of the Clean Water Act, Federal Water Pollution Control Act, 33 U.S.C. § 1318. *See Questionnaire for the Steam Electric Power Generating Effluent Guidelines, General Instructions* at 2.

Because the EPA not only has the authority to require submission of the information, but also has exercised its authority, the Company's submission of the information was required. The Agency must now determine whether the information is confidential. As discussed above, the test for confidentiality of commercial or financial information that is required to be submitted to the Government is governed by National Parks, 498 F.2d at 770. Under the National Parks test, commercial or financial information that is required to be submitted to the Government is "confidential" if "disclosure of the information is likely to have either of the following effects: (1) to impair the Government's ability to obtain necessary information in the future; or (2) to cause substantial harm to the competitive position of the person from whom the information was obtained." Id. at 770 (footnote omitted).

1. Impairment Prong

In addressing impairment to the Government's ability to obtain necessary information that is required to be submitted in the future, the inquiry focuses on the likelihood that the Government will receive accurate information from the submitter. In other words, "[i]f the government can enforce the disclosure obligation, and if the resultant disclosure is likely to be accurate, that may be sufficient to prevent any impairment" of the government's ability to obtain information in the future. Washington Post, 690 F.2d at 268.

Section 308 of the Clean Water Act ("CWA"), 33 U.S.C. § 1318, provides the EPA authority to require the owner or operator of any point source to provide information that the Agency may reasonably require for the development of effluent limitations and standards. The EPA sent a survey to steam electric plants in 2010, pursuant to its section 308 authority, in order to collect information necessary for the development of revisions to the steam electric effluent guidelines, such as costs and the availability of pollutant control technologies. *See* 33 U.S.C. §§

1311(b), 1314(b). According to the *Questionnaire,* failure to respond, late filing, or failure to comply with the *Questionnaire* may result in fines, civil penalties, and other sanctions provided by law.

Although the EPA can enforce the obligation to submit accurate information, impairment may occur to EPA's overall effluent guidelines program as a result of disclosure of certain information claimed as CBI. For example, if companies believed that the Agency was likely to disclose their confidential information, they may delay in providing such information and risk enforcement actions. This could seriously disrupt the Agency's ability to promulgate future effluent guidelines in a timely manner. This could have severe consequences for rulemakings, like the steam electric effluent guidelines, which have a court-ordered deadline. Currently, the Agency is under a consent decree to sign a decision taking final action pertaining to revisions to the steam electric effluent guidelines by September 30, 2015. Further, even where no consent decree obligation exists, it is in the public interest for the Agency to have accurate information upon which to base its regulatory decisions.

Furthermore, in its response to the *Questionnaire*, a number of the companies voluntarily provided more information than what the EPA required. This information was used to help the Agency better understand the plants' survey responses. If the Agency were to release this information, then submitting entities would not provide such valuable information in the future. See Parker v. Bureau of Land Mgmt., 141 F. Supp. 2d 71, 81 (D.D.C. 2001).

Finally, during development of effluent guidelines, as is the case with the steam electric effluent guidelines, the Agency often receives information claimed as CBI from organizations and entities that are not necessarily required to provide such information to the Agency. The EPA may then use this information to assess the technological availability or economic achievability of various pollutant control technologies, as well as to help estimate pollutant loads. *See* 33 U.S.C. §§ 1311(b), 1314(b). These entities may give the Agency relevant information only on the condition that it be kept confidential. If the companies believed that the Agency would not treat other company's CBI claims seriously, then they would be less likely to provide such valuable information to begin with.

For these reasons, if the Agency released the information listed in Appendices A and B "Required Information Entitled to Confidential Treatment" ("Appendix B") which was claimed as CBI from the plants, then it is likely that the Agency's ability to receive critical and timely information for effluent guidelines rulemakings would be seriously impaired.[1] Therefore, I find that disclosure of any of this information would impair the Government's ability to collect that information from both owners or operators of any point source, as well as other entities in the future.

[1] The impairment analysis applies to the responses listed in Appendices A and B of this confidentiality determination. The EPA would not be impaired from receiving the type of basic information as described in Appendix C "Required Information Not Entitled to Confidential Treatment" ("Appendix C").

2. Substantial Harm to the Business's Competitive Position

As set forth in EPA's regulations at 40 C.F.R. § 2.208, required business information is entitled to confidential treatment if:

> The business has satisfactorily shown that disclosure of the information is likely to cause substantial harm to the business's competitive position.

To meet the competitive harm test, it is not enough to show that the release of the information would likely cause *any* potential for competitive harm. Rather, you must demonstrate a likelihood of *substantial* competitive harm in order to overcome FOIA's strong presumption of disclosure. CNA Financial Corp. v. Donovan, 830 F.2d 1132, 1152 (D.C. Cir. 1987), cert. denied, 485 U.S. 977 (1988).

As set forth in the request for substantiation, in order to support a claim for confidential treatment, you must discuss with specificity why release of the information is likely to cause substantial harm to your competitive position. Further, you must explain the nature of these harmful effects, why they should be viewed as substantial, and the causal relationship between disclosure and such harmful effects. In addition, you must explain how your competitors could make use of this information to your detriment.

After careful consideration of all plants arguments, I find that a number of companies have demonstrated that a likelihood of substantial competitive harm would likely result from publicly releasing the information listed in Appendix B. Conferring a competitive advantage is not the desired purpose of the FOIA. Worthington Compressors, Inc. v. Costle, 662 F.2d 45, 51-53 (D.C. Cir. 1981). Exemption 4 of the FOIA protects those who are required to submit commercial or financial information to a Government agency from the competitive disadvantages that may result from public disclosure. Id. The Company has adequately shown that the information is highly sensitive to its commercial operations and that the release of the information would place it at a competitive disadvantage, thereby causing substantial harm to its competitive position. I, therefore, find that release of the requested information would likely result in unacceptable present and future practical and financial benefits to your competitors, and that the Company would likely suffer substantial competitive injury as a result. For the specific reasons expressed in Appendix B, I have determined that a subset of the required information in Appendix B is entitled confidential treatment. See Appendix B.

Pursuant to EPA's regulations at 40 C.F.R. §§ 2.204(f)(6) and 2.204(f)(9), the appropriate EPA program office has been consulted about whether your claim of confidentiality is valid. For information found to be CBI, the EPA program office supports companies' assertions that they face actual competition and would likely suffer significant competitive injury if the information were not kept confidential. In sum, because you have explained specifically how disclosure of the information would likely cause substantial competitive harm to your company, you have supported your claim, and the information in Appendix B is confidential under Exemption 4 of the FOIA.

Please be aware, the EPA is currently in litigation with the FOIA requesters, Environmental Integrity Project, Sierra Club, and Earthjustice. See Environmental Integrity Project, et al. v. EPA, No. 1:14-cv-01282 (D.D.C.). In the Complaint, the Plaintiffs argue that the EPA unlawfully withheld certain information claimed as CBI. Pursuant to 40 C.F.R. § 2.214(b), if the FOIA requesters continue to sue the Agency's withholdings under Exemption 4, the EPA will (1) notify each affected business; (2) where necessary to prepare EPA's defense, call upon the affected business to furnish assistance. Additionally, the EPA will not oppose a motion by any affected business to intervene as a party to the suit under rule 24(b) of the Federal Rules of Civil Procedure.

I also find that a number of companies have not demonstrated how disclosure of a subset of information in Appendix C "Required Information Not Entitled to Confidential Treatment" ("Appendix C") is likely to cause substantial harm to a plant's competitive position. For example, a number of the responses claimed as CBI included responses to "yes" or "no" questions about the existence of a type of wastewater treatment system. Although those plants assert that release of the information claimed as confidential would likely result in substantial harm, the plants do not explain how the release of this subset of information would likely result in substantial competitive harm. Thus, for the specific reasons in Appendix C, I have determined that a subset of the required information is not entitled confidential treatment.

CONCLUSION

I find that the information listed in Appendices A and B is entitled to confidential treatment. Therefore, this information must be withheld under Exemption 4 of the FOIA. I also find that the information claimed as confidential and listed in Appendix C is not a trade secret or CBI and, therefore, is not within the scope of Exemption 4 of the FOIA. Pursuant to EPA's regulations at 40 C.F.R. § 2.205(f), this constitutes the final EPA determination concerning your business confidentiality claim. This determination may be subject to judicial review under 5 U.S.C. §§ 701 et seq.

In response to the above-referenced FOIA Request EPA-HQ-2013-008604 (Appeal HQ-APP-2013-000391), the EPA will release the information listed in Appendix C to the FOIA requestor on the tenth working day after the date of your receipt of this determination, unless the EPA Office of General Counsel has first been notified of your commencement of an action in federal court (1) to obtain judicial review of this determination and (2) to obtain preliminary injunctive relief against disclosure. Even if you have commenced an action in federal court, the EPA may make this information available to the public if the court refuses to issue a preliminary injunction or upholds this determination. In addition, the EPA may make this information available to the public, after reasonable notice to you, whenever it appears to the Agency that you are not taking appropriate measures to obtain a speedy resolution of the action.

Should you have any questions concerning this matter, please call Quoc Nguyen at (202) 564-6343.

Sincerely,

Kevin Miller
Assistant General Counsel
General Law Office

cc: Robert K. Wood, Director of the Engineering & Analysis Division, Office of Water
Jan Matuszko, Engineering & Analysis Division, Office of Water

APPENDIX A – VOLUNTARY INFORMATION ENTITLED TO CONFIDENTIAL TREATMENT

Part A. Steam Electric Power Plant Operations

Part A Comments Section
The following plants claimed responses to the Comments Section of Part A as CBI and substantiated their claims: 7175, 7186, and 9373.

Plants provided additional information in Part A's Comment Section which was not required by the *Questionnaire*. Plants also asserted that disclosure would provide competitors insight into their operating model and business strategy, which would cause substantial competitive harm to their operations, and this information is customarily not disclosed to the public.

Part B: Flue Gas Desulfurization (FGD) Systems

Comment Section for B3-1. Question B3-1 requested FGD additive information and the purpose of the additive.

The following plants claimed responses to the B3-1 comments as CBI and substantiated their claims: 2250, 8661, and 3597.

Plants claimed that a competitor could use knowledge of chemical data to determine plant variable costs, leading to unit dispatch costs. The level of detail provided by the plants was not required by the *Questionnaire*. Furthermore, this information is not customarily disclosed to the public.

Comment Section for B4-19. Question B4-19 requests what parameters affect the ability of the FGD solids to be marketed, sold, or given away.

The following plants claimed responses to the B4-19 comments as CBI and substantiated their claims: 3597 and 8661.

Plants claimed that release of this information allow competitors to undercut deals that the company has with beneficial use vendors. The level of detail provided by the plants was not required by the *Questionnaire*. Release of information affects the plant's ability to market its FGD solids could lead to competitive disadvantage. Further this information is customarily not disclosed to the public

Comment Section for B4-22. Question B4-22 requests information about total costs incurred to remove or dispose of FGD solids from 2006 to 2009.

Plant 14 claimed its response to B4-22 was CBI and substantiated its CBI claims.

The plant stated that release of operation and maintenance ("O&M") information provided in its response could allow competitors to determine plant variable costs and then unit dispatch costs, which could lead to substantial competitive harm. The information provided by B4-22 was included in the comments section of the *Questionnaire*. The plant provided a level of detail that was not requested by the *Questionnaire*. Furthermore, it is related to cost information and this information could potentially harm competitive advantage of the plant.

Part B Comments Section
The following plants claimed responses to the Comments Section of Part B as CBI and substantiated their claims: 7175.

Companies provided additional information in Part B's Comment Section which was not required by the *Questionnaire*. Companies asserted that disclosure would provide competitors insight into their operating model and business strategy, which would cause substantial competitive harm to their operations, and this information is customarily not disclosed to the public. Furthermore, plants stated that the additional information on the FGD systems information was developed over many years of competitive business experience and business relationships with third-party engineering and construction firms, and are commercially valuable processes. Disclosing this information would allow competitors to implement their own processes without similar investment. Disclosure would also breach vendor confidentiality agreements/provisions, and accordingly jeopardize relationships with those vendors.

PART C: ASH HANDLING

C2-14. Question C2-14 asks whether dry fly ash handling was installed as a retrofit to the steam electric generating unit, and if so, when did the plant build the retrofit, how much shutdown time was required to get the system on line, and was the generating unit outages required to bring the dry fly ash handling system on line.

Plant 8395 claimed its response to Question C2-14 as CBI and substantiated its claim. The EPA determined that the comments provided in response by this plant give details on costs and other information under the comments section not specifically requested. The plant explained that releasing the information would provide competitors an understanding of company pricing and operating expenses and would provide them with an unfair advantage in negotiating similar or identical services. Additionally, costs are for a partial upgrade which would be misleading if released.

Comments Section for C3-36. Question C3-36 requests plants to attach a block diagram that shows the entire bottom ash handling system operations for the generating unit.

Plant 8395 provides additional information under the comments section not specifically requested. Releasing the information that is customarily not disclosed would provide competitors an understanding of company pricing and operating expenses and would provide them with an unfair advantage in negotiating similar or identical services.

Part C Comments Section
The following plants claimed responses to the Comments Section of Part C as CBI and substantiated their claims: 7175, 7186, 6914, 9373, 7651, 2966, and 6176.

Companies provided additional information in Part C's Comment Section which was not required by the *Questionnaire*. Plants asserted that disclosure would provide a competitor with insight into a company's operating model and business strategy. Furthermore, disclosure of information regarding ash compositions and qualities would allow competitors to compete for the same ash handling services that a company requires. Also, disclosure of ash financial information would allow handling contractors to gain unfair negotiation or bargaining power. For example, disclosure of preliminary cost estimate for a dry fly ash conversion would reveal a company's costs of procuring materials, supplies and labor, and also the Company's process for evaluating capital projects, which would cause substantial competitive harm. Disclosure would also breach vendor confidentiality agreements/provisions, and accordingly jeopardize relationships with those vendors. Finally, this information is not customarily disclosed to the public.

PART D: POND/IMOUNDMENT SYSTEMS AND OTHER WASTEWATER TREATMENT OPERATIONS

Part D Comments Section

The following plants claimed responses to the Comments Section of Part D as CBI and substantiated their claims: 9373 and 7186.

Companies provided additional information in Part D's Comment Section which was not required by the *Questionnaire*. Plants asserted that disclosure would provide a competitor with insight into a company's operating model and business strategy and cause substantial competitive harm. Furthermore, this information is not customarily disclosed to the public.

PART F: MANAGEMENT PRACTICES FOR PONDS/IMPOUNDMENTS AND LANDFILLS

Comment Section for F2-10. Question F2-10 asks plants to indicate which monitoring measures or inspections are performed on the pond/impoundment unit by the plant and or/its engineering contractors, the frequency of monitoring, and the average number of hours spent each year performing monitoring activities.

Question F2-10 requests information about what types of monitoring practices occur at the plant, and not the monitoring data. The response to this question does not include effluent monitoring data. Plant 1695 claimed its response to Question F2-10's comment section as CBI and substantiated its claim. The information the plant is claiming as CBI was provided in the comments section of the question. Its response to Question F2-10 included information resulting from self-critical evaluations of ponds. Releasing this information would provide competitors with information about the plant's business practices and methodologies.

APPENDIX B – REQUIRED INFORMATION ENTITLED TO CONFIDENTIAL TREATEMENT

Part A. Steam Electric Power Plant Operations

A5-3. Question A5-3 requests a water balance diagram for plant that shows all sources of water, plant process operations, process wastewaters generated, and how they are handled/treated, flow rates of all water streams, and all outfalls at the plant.

The following plants claimed responses to A5-3 as CBI and substantiated their claims: 5732, 2550, 8661, 6419, 3196, 2079, 4585, 4598, 4242, 14, 8213, 3597, 8308, 4543, 7925, 9475, 263 and 3123.

Multiple plants have claimed their responses to Question A5-3 as CBI. This question requests detailed operational information about the plant that is only publicly available if the plant decides to release it. I have determined that this type of detailed operational information may provide competitive disadvantage to the plant.

Companies provided diagrams that contain information directly or indirectly related to the design standards and technical processes, actual and projected unit availability, and other information of sensitive and competitive nature. Companies claim that competitors could use the information to draw conclusions about dispatch costs, which may lead to competitive harm. Furthermore, multiple plants have indicated that this type of detailed operational information about the plant is only publicly available if the company releases it, which they do not.

Part B: Flue Gas Desulfurization (FGD) Systems

B4-3. Question B4-3 requests the maximum design chlorides concentration for the FGD system and which specific equipment unit determines the concentration. It also requests materials for the construction of the FGD equipment that determine the maximum design concentration.

B4-4. Question B4-4 requests which FGD parameters that are used to determine when the FGD slurry is blown down the FGD system.

B4-5. For sources that may be used as a source of FGD reagent preparation water or absorber make-up water, Question B4-5 requests the maximum chlorides concentration and the maximum solids percentage that is acceptable.

B4-6. Question B4-6 requests the typical flow rate, duration, and frequency of the mist eliminator wash water for the FGD system for calendar year 2009.

B4-7. Question B4-7 requests flow rate, duration, and frequency of the FGD reagent preparation water for the FGD system for calendar year 2009.

B4-8. Question B4-8 requests typical flow rate, duration, and frequency of the FGD reagent slurry for the FGD system for calendar year 2009.

B4-9. Question B4-9 requests the typical flow rate, duration, and frequency of the absorber make-up water for the FGD system for calendar year 2009.

In response to Questions B4-3, B4-4, B4-5, B4-6, B4-7, B4-8, and B4-9, plant 6914 provided detailed operational information that could provide substantial advantageous information to its competitors. When viewing its responses to questions about flow rate, duration, and frequency of FGD systems collectively with other publicly available data, release of this information would reveals the configuration, design parameters, capacity and effectiveness of the plant. FGD systems information was developed over many years of competitive business experience and business relationships with third-party engineering and construction firms, and represent commercially valuable processes. Disclosing this information would allow competitors to implement their own processes without similar investment. Disclosure would also breach vendor confidentiality agreements/provisions, and accordingly jeopardize relationships with those vendors.

B4-18. Question B4-18 requests the typical, maximum, and minimum chlorides concentration of the FGD solids produced by the FGD system in calendar year 2009.

The following plants claimed responses to B4-18 as CBI and substantiated their claims: 3196 and 6914.

The information requested involved information of FGD solids, and this information is related to the marketability of ash. Plants claimed that release of information of FGD solids allow competitors to undercut deals that the companies have with beneficial reuse vendors. Furthermore, FGD systems information was developed over many years of competitive business experience and business relationships with third-party engineering and construction firms, and represent commercially valuable processes. Disclosing this information would allow competitors to implement their own processes without similar investment. Disclosure would also breach vendor confidentiality agreements/provisions, and accordingly jeopardize relationships with those vendors.

B5-2. Question B5-2 requests information for each wet FGD system that the plant operates.

B5-3. Question B5-3 requests the typical chlorides and solids concentrations of the untreated FGD scrubber purge (or wastewater discharge) transferred to the wastewater treatment system.

In response to Questions B5-2 and B5-3, plant 6914 provided detailed operational information that could provide substantial advantageous information to its competitors. When viewing its responses to questions about flow rate, percentages of solids of FGD solids exiting the absorber, duration, and frequency of FGD systems collectively with other publicly available data, this information reveals the configuration, design parameters, capacity and effectiveness of the plant. FGD systems information was developed over many years of competitive business experience and business relationships with third-party engineering and construction firms, and represent commercially valuable processes. Disclosing this information would allow competitors to implement their own processes without similar investment. The information requested involved information of FGD solids, and this information is related to the marketability of ash.

B6-2. Question B6-2 requests all monitoring data for untreated FGD scrubber purge (or slurry discharge). It also requests the plants to identify the FGD systems and steam electric generating units associated with the FGD scrubber purge (or slurry discharge) monitoring data.

The following plants claimed responses to B4-18 as CBI and substantiated their claims: 2244, 7651, 928, 4599, 6634, and 1493.

Responses to Question B6-2 includes information associated with internal monitoring points. This information represents FGD scrubber purge prior to any treatment or commingling, and the information does not include any outfall data. Thus, the Agency determined that the responses claimed as CBI and substantiated did not include any effluent data. Plants claimed that certain FGD systems information was developed over many years based on the experience of employees and business relationships with third-party engineering and construction firms, and are commercially valuable processes. Disclosing this information would allow competitors to implement their own processes without similar investment. Disclosure would also breach of vendor confidentiality agreements/provisions with third parties, and accordingly jeopardize relationships with those vendors.

Part C Ash Handling

C2-1. Question C2-1 requests fly ash handling information for each steam electric generating unit.

The following plants claimed responses to Question C2-1 as CBI and substantiated their claims: 7186, 6914, 7175, 8250, and 9373.

Plants explained that release of this information would provide valuable information to competitors that they may use to discern specific plants' capacities and limitations, and then leverage such information to their advantage. Further, disclosure of information regarding ash compositions and qualities would allow competitors to compete for the same ash handling services that other companies require. Disclosure of ash financial information would allow handling contractors to gain unfair negotiation of bargaining power. Disclosure would also breach vendor confidentiality agreements and provisions, and accordingly jeopardize relationships with those vendors. Other plants indicated that release of information would allow competitors to determine the end use customers and sales price for the products, placing the company at a competitive disadvantage because a considerable amount of time and expense went to researching and developing the alternative uses. If the company loses one of the customers, it would affect their ability to dispose of ash in an environmentally friendly manner.

C2-11. Question C2-11 requests information indicating why fly ash from steam electric generating unit was conveyed both wet and dry in 2009.

Plant 6914 claimed its response to Question C2-11 as CBI and substantiated its claim. Plant 6914's response provides detailed information about ash handling systems, and this information could be used by ash handling contractors in negotiations. Disclosure of information regarding

ash compositions and days the ash handling systems were operating would allow competitors to compete for the same ash handling services that the plant requires. Disclosure of ash financial information would also allow handling contractors to gain unfair negotiation or bargaining power. Disclosure would also breach vendor confidentiality agreements/provisions, and accordingly jeopardize relationships with those vendors.

C2-16. Question C2-16 requests information about changes that were required to retrofit (for a retrofit to an existing dry system, an installation of a dry system, or a complete conversion from wet to dry).

Plant 6914 claimed its response to Question C2-16 as CBI and substantiated its claim. The plant provided detailed information about the type of changes that plants may have incurred for retrofits. In addition, the plant provided information on ash disposal practices. Knowledge of this information enables competitors to more accurately estimate cost incurred by the plant and could also be used by ash handling contractors in negotiations. Disclosure of information regarding ash compositions and qualities would allow competitors to compete for the same ash handling services that a plant requires. Disclosure would also breach vendor confidentiality agreements/provisions, and accordingly jeopardize relationships with those vendors.

C2-19. Question C2-19 requests cost estimates that have been developed if the plant is in the process of installing, or planning to install, a dry fly ash handling system by December 2020.

The following plants claimed responses to Question C2-1 as CBI and substantiated their claims: 6005, 14, and 3309.

Plants explained that release of responses will allow competitor access to costs of various capital projects, studies, and forward-looking information about projects will allow them to compete more effectively against the company submitting the information. Document contains information directly or indirectly related to design standards and technical processes, actual and projected unit availability, and other information of competitive nature. Competitors could use this information to draw conclusions about dispatch costs and lead to substantial competitive harm. Vendor access to costs of various capital projects will result in upward pressure on the company's costs. Competitor access to generating equipment operating characteristics will provide precise understanding of a plant's business strategies, allowing them to be more completive with the company. Disclosure would also breach vendor confidentiality agreements/provisions, and accordingly jeopardize relationships with those vendors. For example, a breach in vendor confidentiality may cause vendors to choose not to bid on projects because confidentiality would not be assured, and impede the ability to attract competitive bids.

C2-20. Question 2-20 requests plants to describe the modifications that will be required to install the dry fly ash handling systems.

The following plants claimed responses to Question C2-20 as CBI and substantiated their claims: 1402 and 14.

The responses provided detailed information about changes that plants may have incurred for retrofits for fly ash handling system. In addition, responses provide information on ash disposal practices. Knowledge of this information enables competitors to more readily estimate cost incurred by the plant and could also be used by ash handling contractors in negotiations. Plants explain that disclosing details about planned construction and future use of a plant's wastewater treatment plants, impoundments, and landfills could provide advantage to competitors. The plans could convey information about the planned capital requirements that are reflected in the prices bid into certain markets. Further, responses may contain information directly or indirectly related to design standards and technical processes, actual and projected unit availability, and other information of competitive nature. Competitor could use to draw conclusions about dispatch costs and lead to substantial competitive harm.

C2-22. If plants are in the process of installing or planning to install a dry fly ash handling system, Question C2-22 asks whether cost estimates been obtained/developed since January 1, 1995 for such conversion/installation.

The following plants claimed responses to Question C2-22 as CBI and substantiated their claims: 6005, 2314, and 7651.

Responses provided information related to costs of installing a dry fly ash handling system, which could potentially allow competitors to draw conclusions about dispatch costs and lead to competitive harm. For example, competitor access to costs of various capital projects, studies, and forward-looking information about projects will allow them to compete more effectively with the plants who submitted information to the EPA. Also, vendor access to costs of various capital projects will result in upward pressure on plants' installation costs. Disclosure of preliminary cost estimate for a dry fly ash conversion would reveal a plant's costs of procuring materials, supplies and labor, and also a company's process for evaluating capital projects, which would cause substantial competitive harm. Other plants explained that release of the cost information would allow competitors to calculate the additional cost per MW to the station for fly ash conversion, which affects a plant's cost of production and the cost of electricity that it competes against all other electricity producers in the certain markets. Additionally, release would break the contractual obligation the company has with its vendor and would harm the vendor's competitive position, as well as jeopardize the plant's relationships with those vendors.

C2-25. For each storage destination, Question C2-25 requests information about the distance the fly ash is transported from the generating unit to intermediate storage or from immediate storage to the final disposal/destination , the amount of fly ash transported in 2009, and the percent of moisture of the fly ash entering storage, if transported dry.

The following plants claimed responses to Question C2-25 as CBI and substantiated their claims: 7186, 7175, 8250, 9373, and 8395.

Plants explained that release of this information would provide valuable information to competitors that they may use to discern plant' capabilities and limitations, and then leverage such information to their advantage. Release of the information would allow also competitors to determine the end use customers and sales price for the products, placing the company at a

competitive disadvantage because a considerable amount of time and expense went to researching and developing the alternate uses and if the company loses one of the customers, it would affect their ability to dispose of ash in an environmentally beneficial manner. Further, releasing the information would provide competitors an understanding of company pricing and operating expenses and would provide them with an unfair advantage in negotiating similar or identical services.

C2-28. Question C2-28 asks whether the plant market, sell, and/or give away fly ash from the dry ash handling system, and if so, requests the plant to provide the tons of fly ash marketed, sold, and/or given away, gross revenue generated, and percent moisture of the fly ash for years 2005, 2007, and 2009.

The following plants claimed responses to Question C2-28 as CBI and substantiated their claims: 7186, 583, 5740, 2784, 2334, 5355, 6914, 5126, 2079, 5318, 7276, 1695, 1097, 5949, 3978, 4242, 4706, 7175, 6848, 2445, 4711, 8250, 2920, 217, 9161, 9373, 8405, 1634, 3157, 4876, 7434, 3597, 8308, 4083, 4543, 6933, 3709, 376, 9420, 6635, 6283, 3015, 2317, 1671, 9391, 3989, 5992, 6377, 5279, 4547, 9047, 7582, 9475, 3464, 103, 3123, 6176, and 6739.

Disclosing volume and prices for ash sales provides an advantage to competitors who also produce these products by providing competitors with an advantage in bids for future beneficial reuse contracts or projects in the beneficial ash reuse marketplace. Release of the information would allow competitors to undercut plant's sales price, resulting in revenue loses. Release of revenues from sales of fly ash or bottom ash will jeopardize a company's ability to market fly ash and bottom ash. Disclosure would also breach confidentiality agreements/provisions between the plant and the company that purchases the ash, and accordingly jeopardize relationships with those vendors and impair the company's ability to enter into similar contracts in the future.

C2-29. Question C2-29 asks whether the plant markets, sells, and/or gives away fly ash from the wet ash handling system, and if so, requests the plant to provide the tons, on a dry basis, of fly ash transported by wet sluicing and the gross revenue generated for each destination.

The following plants claimed responses to Question C2-29 as CBI and substantiated their claims: 5570, 3265, 9161, 4, 263, and 3123.

Disclosing volume and prices for ash sales provides an advantage to competitors who also produce these products and could compete with the submitting company to supply the same purchases. Release of the information would allow competitors to undercut company's sales price, resulting in revenue loses. Release would allow competitors to undercut deals that the company has with beneficial reuse vendors.

C2-30. Question C2-30 request the plants to identify the major components of the conveyance portion of the fly ash handling system, in particular those components that represent a significant portion of the capital or O&M costs for the system. The question also asks to provide the type of component, the number of each type of component in the system, and the total system capacity of each type of unit component.

The following plants claimed responses to Question C2-30 as CBI and substantiated their claims: 7175, 14, 9373, and 8395.

Responses to Question C2-30 provide detailed operational information, some of which is directly related to cost, that would potentially provide advantageous information to its competitors, especially during the bidding process for future projects and O&M. Releasing the information would provide competitors an understanding of company pricing and operating expenses and would provide them with an unfair advantage in negotiating similar or identical services.

C2-34. Question C2-34 requests plants to provide costs incurred for the fly ash conveyance system since January 1, 2000, both for the conveyance as originally installed and for any modifications to the conveyance. The question also requests all direct and indirect conveyance costs for specific items.

The following plants claimed responses to Question C2-34 as CBI and substantiated their claims: 4011, 6005, 4679, 7175, 9373, 8395, 9370, 4690, and 6176.

Disclosure of plants responses to C2-34 would give competitors of a company and/or its ash contractors and vendors a competitive advantage in bids for future beneficial reuse contracts or project in the beneficial ash reuse marketplace. Disclosure would also breach confidentiality agreements/provisions between the plant and the company that purchases the ash, and accordingly jeopardize relationships with those vendors and impair the company's ability to enter into similar contracts in the future.

C2-35. Question C2-35 asks whether all major components of the conveyance portion of the fly ash handling system are included in the capital costs, to explain what system components are included in the capital costs, and identify the key components of the conveyance portion of the fly ash handling system that are not included in the capital costs.

The following plants claimed responses to Question C2-35 as CBI and substantiated their claims: 7175 and 9373.

Plants' responses to Question C2-35 provide detailed operational information, some of which is directly related to cost, that would potentially provide advantageous information to its competitors. For example, release of this information would provide valuable information to competitors that they may use to discern plants' capabilities and limitations, and then leverage such information to their advantage.

C2-36. Question C2-36 requests plants to provide annual (2009) O&M cost data for the fly ash conveyance system, and if actual data is are not readily available, provide best engineering estimates and how the method for calculating the estimate.

The following plants claimed responses to Question C2-36 as CBI and substantiated their claims: 2550, 6005, 4242, 7175, 9373, 3597, 9370, 4690, 263, and 6176.

Responses to Question C2-36 contain information directly or indirectly related to O&M and variable costs. Disclosure of fly ash handling costs would provide competitors and vendor's competitors with information that could be used to gain unfair advantage in future procurements for future projects and O&M. Disclosure would also breach confidentiality agreements/provisions between the plant and the company that purchases the ash, and accordingly jeopardize relationships with those vendors and impair the company's ability to enter into similar contracts in the future.

C2-39. Question C2-39 requests plants to identify the major components of the intermediate stage portion of the fly ash handling system, in particular those components that represent a significant portion of the capital or O&M costs for the systems. Plants are asked to provide specific information about the major components.

The following plants claimed responses to Question C2-39 as CBI and substantiated their claims: 7175, 14, and 9373.

Responses to Question C2-39 contain information directly or indirectly related to O&M and variable costs. Disclosure of fly ash handling costs would provide competitors and vendor's competitors with information that could be used to gain unfair advantage in future procurements for future projects and O&M.

C2-40. Question C2-40 requests plants to list all the major components of the intermediate storage destination that a contract constructed/installed at the contractor's expense (and not at the plant's expense).

C2-41. Question C2-41 requests plants to list all of the operation and maintenance activities associated with this intermediate destination that a contractor overseas at the contractor's expense.

Plant 8395 claimed its responses to Questions C2-40 and C2-41 as CBI and substantiated its claims. The plant stated that release would cause substantial competitive harm because the released information would provide competitors an understanding of a company pricing and operating expenses, which would result in an unfair advantage in negotiating similar or identical services. Additionally, costs are for a partial upgrade which would be misleading if released.

C2-42. Question C2-42 requests cost data for the intermediate storage destination and include all intermediate storage costs, including costs for components and control systems, pads and foundations, and all other ancillary equipment.

The following plants claimed responses to Question C2-42 as CBI and substantiated their claims: 7175, 217, 9373, 3095, 9370, 4690, and 6176.

Disclosure of fly ash handling costs would provide competitors and vendor's competitors with information that could be used to gain unfair advantage in future procurements. For example, disclosure of costs for intermediate storage of fly ash would reduce a company's ability to negotiate a favorable price for modifications to and maintenance of its fly ash system.

Disclosure would also breach confidentiality agreements/provisions between the plant and the company that purchases the ash, and accordingly jeopardize relationships with those vendors and impair the company's ability to enter into similar contracts in the future.

C2-43. Question C2-43 asks whether all major components of the intermediate storage destination include all capital costs reported and explain what system components are included in the capital costs. It also asks to identify key components intermediate storage destination that are not included in the capital costs.

The following plants claimed responses to Question C2-43 as CBI and substantiated their claims: 7175 and 9373.

Releasing the responses to Question C2-43 would cause substantial competitive harm by providing competitors an understanding of a company's pricing and capital expenses. For example, competitors could use the information to discern plants' capabilities and limitations, and then leverage such information to their advantage.

C2-44. Question C2-44 requests annual O&M costs for the intermediate storage destination and provide the best engineering estimates when actual data are not readily available.

The following plants claimed responses to Question C2-44 as CBI and substantiated their claims: 2550, 4242, 7175, 14, 9373, 3597, 3095, 9370, 4690, 263, and 6176.

Responses to Question C2-44 contain information directly or indirectly related to O&M and variable costs. Disclosure of fly ash handling costs would provide competitors and vendor's competitors with information that could be used to gain unfair advantage in future procurements. Disclosure would also breach confidentiality agreements/provisions between the plant and the company that purchases the ash, and accordingly jeopardize relationships with those vendors and impair the company's ability to enter into similar contracts in the future.

C2-52. Question C2-52 requests annual O&M costs data for the transport/disposal of the collected fly ash from ash handling systems.

The following plants claimed responses to Question C2-52 as CBI and substantiated their claims: 2079 and 3597.

Responses to Question C2-52 contain information about annual O&M and variable costs for transporting and disposing collected fly ash from fly ash handling systems. Disclosure of fly ash handling costs would provide competitors and vendor's competitors with information that could be used to gain unfair advantage in future procurements. Disclosure would also breach confidentiality agreements/provisions between the plant and the company that purchases the ash, and accordingly jeopardize relationships with those vendors and impair the company's ability to enter into similar contracts in the future.

C3-2. Question 3-2 requests type of bottom ash handling system, amount of bottom ash produced, typical percent of moisture of bottom ash, design ash handling rate, number of days

ash was handled, and loss on ignition of bottom ash produced for each steam electric generating unit.

The following plants claimed responses to Question C3-2 as CBI and substantiated their claims: 6914 and 8250.

The question requests detailed information about ash handling systems and this information could be used by ash handling contractors in negotiations. For example, disclosure of information regarding ash compositions and qualities would allow competitors to compete for the same ash handling services that the company uses. Disclosure of ash financial information would allow handling contractors to gain unfair negotiation or bargaining power. Release of the information would also allow competitors to determine the end use customers and sales price for the products, placing the company at a competitive disadvantage because a considerable amount of time and expense went to researching and developing the alternate uses and if the company loses one of the customers, it would affect their ability to dispose of ash in an environmentally beneficial manner. Disclosure would also breach confidentiality agreements/provisions, and accordingly jeopardize relationships with those vendors and impair the company's ability to enter into similar contracts in the future.

C3-8. Question C3-8 asks plants to provide solids removal information, on a dry ton basis, for the wet ash sluice systems, including solids removal, bottom ash disposal, amount of solids disposed, and typical percent of moisture in bottom ash disposed.

The following plants claimed responses to Question C3-8 as CBI and substantiated their claims: 7175, 8250, and 9373.

The question requests detailed information about ash handling systems and this information could be used by ash handling contractors in negotiations. For example, release of the information would allow competitors to determine the end use customers and sales price for the products, placing the company at a competitive disadvantage because a considerable amount of time and expense went to researching and developing the alternate uses and if the company loses one of the customers, it would affect their ability to dispose of ash in an environmentally beneficial manner. Furthermore, release of this information would provide valuable information to competitors that they may use to discern plants' capabilities and limitations, and then leverage such information to their advantage.

C3-15. Question C3-15 requests plants to identify the destination(s) for wet and dry bottom ash transferred from the hopper(s) to this steam electric generating unit and to provide the distribution of the wet and dry ash by destination and whether the storage identified is an intermediate or final destination.

The following plants claimed responses to Question C3-15 as CBI and substantiated their claims: 7175 and 9373.

Question C3-15 requests plants to provide information related to how the plant's stored dry and wet conveyed bottom ash is transferred from the hopper(s) of the steam electric generation unit.

In addition, it request information related to the distribution of the wet and dry bottom ash by destination and whether the storage identified is an intermediate or final destination. Responses to Question C3-15 provide detailed operational information (e.g. percentage of dry and wet conveyed bottom ash) that would potentially provide advantageous information to its competitors and cause substantial competitive harm because release of this information would provide valuable information to competitors that they may use to discern a plant's capabilities and limitations, and then leverage such information to their advantage in future bidding processes.

C3-29. Question C3-29 asks if the plant is not in the process of installing or planning to install a dry bottom ash handling system, have cost estimates been obtained for such conversation. If so, the question also requests all bid proposals and documentation.

The following plants claimed responses to Question C3-15 as CBI and substantiated their claims: 4011, 6005, 2079, and 2268.

The question requests all bid proposals and documentation related to installing or planning to install dry bottom ash handling system. Disclosure of responses would give competitors of the company and/or its ash contractors and vendor a competitive advantage in bids for future beneficial reuse contracts or project in the beneficial ash reuse marketplace. Competitor access to generating equipment operating characteristics will provide precise understanding of a company's business strategies, allowing them to compete more effectively with the company. Disclosure would also breach confidentiality agreements/provisions, and accordingly jeopardize relationships with those vendors and impair the company's ability to enter into similar contracts in the future.

C3-32. For each storage destination, Question C3-32 requests plants to provide the distance the bottom ash is transported from the generating unit to intermediate storage or from intermediate storage to final disposal/destination, the amount of bottom ash transported, and the percent moisture of the bottom ash entering in the storage. The question also seeks information about how the bottom ash is transported, and if the bottom ash is sold to more than one destination, what is the average percent moisture for all bottom ash sold.

The following plants claimed responses to Question C3-32 as CBI and substantiated their claims: 8750, 7175, 8250, and 9373.

Responses to Question C3-32 provide detailed operational information, which provide competitors with an advantage in the market and allow them to undercut a plant's position on future contracts. Release of the information would allow competitors to determine the end use customers and sales price for the products, placing the company at a competitive disadvantage because a considerable amount of time and expense went to researching and developing the alternate uses and if the company loses one of the customers, it would affect their ability to dispose of ash in an environmentally beneficial manner. Release of this information would also provide valuable information to competitors that they may use to discern a plants' capabilities and limitations, and then leverage such information to their advantage.

C3-33. Question C3-33 asks whether the plant market, sell, and/or give away dry bottom ash from the dry ash handling system. If so, it also asks how much (per ton) and the gross revenue generated for 2005, 2007, and 2009.

The following plants claimed responses to Question C3-33 as CBI and substantiated their claims: 2334, 1097, 7175, 8250, 2920, 249, 217, 1634, 3157, 376, 9420, and 5279.

Question C3-33 requests gross revenue generated from marking, selling, and/or giving away dry bottom ash. Disclosure of the amount of and revenue generated by fly ash and bottom ash would improve competitors' understanding of plant operation and financial position and gain unfair knowledge of pricing. Specifically, release would allow competitors to undercut deals that the company has with beneficial reuse vendors by reducing the competitor's sales price, resulting in revenue loses to the submitting company. Disclosure would also breach confidentiality agreements/provisions, and accordingly jeopardize relationships with those vendors who purchase ash and impair the company's ability to enter into similar contracts in the future.

C3-34. Question 3-34 asks whether the plant market, sell, and/or give away wet bottom ash from the wet handling system. If so, it also asks how much (per ton) and the gross revenue generated for 2005, 2007, and 2009.

The following plants claimed responses to Question C3-34 as CBI and substantiated their claims: 5872, 5570, 5740, 2784, 8661, 2334, 2269, 3265, 5126, 7727, 8750, 7276, 1402, 5949, 4706, 7175, 14, 4711, 8250, 217, 9161, 9373, 2149, 8405, 1634, 3157, 3597, 6689, 8308, 4083, 4543, 6933, 3709, 771, 5283, 6635, 6283, 3015, 3095, 124, 2317, 1671, 9391, 6984, 9047, 4, 3464, 263, 3123, and 6176.

Question C3-34 requests gross revenue generated from marking, selling, and/or giving away wet bottom ash. Disclosure of the amount of and revenue generated by fly ash and bottom ash would improve competitors' understanding of plant operation and financial position and gain unfair knowledge of pricing. Specifically, release would allow competitors to undercut deals that the company has with beneficial reuse vendors by reducing the competitor's sales price, resulting in revenue loses to the submitting company. Disclosure would also breach confidentiality agreements/provisions, and accordingly jeopardize relationships with those vendors who purchase ash and impair the company's ability to enter into similar contracts in the future.

C3-38. Question C3-38 asks plants to list all of the operation and maintenance activities of this bottom ash conveyance system that a contractor oversees at the expense of the contractor's expense.

Plant 8750 claimed its response to Question C3-38 as CBI and substantiated its claim. Releasing the information about operational and maintenance activities would provide competitors an understanding of company services conducted by the contractors and would provide them with an unfair advantage in negotiating similar or identical services with the same contractors. Disclosure would also breach confidentiality agreements/provisions, and accordingly jeopardize relationships with those contractors and impair the company's ability to enter into similar contracts in the future.

C3-39. Question C3-39 requests all capital costs incurred since January 1, 2000, for the bottom ash conveyance system, both for the conveyance as originally installed and for any modifications to the conveyance, including all conveyance costs for components, control systems, pads, and foundations.

The following plants claimed responses to Question C3-39 as CBI and substantiated their claims: 8750, 249, 1634, and 6176.

The question seeks all capital costs incurred for the bottom ash conveyance system. Release of this information could allow competitors to predict services required and, in conjunction with other operational and cost information, allow vendors to issue above market bids. For example, disclosing specific generation costs could undermine the plant's competitive position in power market and detract from obtaining best bids for future similar retrofits. Disclosure would also breach confidentiality agreements/provisions, and accordingly jeopardize relationships with those vendors and impair the company's ability to enter into similar contracts in the future.

C3-41. Question C3-41 requests all annual (2009) O&M costs data for the bottom ash conveyance system if it began operating or was converted on or after January 1, 2000. It also requests best engineering estimates when actual data are not available.

The following plants claimed responses to Question C3-41 as CBI and substantiated their claims: 8750 and 6176.

The plants' responses to Question C3-41 include O&M cost data, the release of which would cause substantial competitive harm to the plants. This operational cost information could be used to predict services required and, in conjunction with other operational and cost information, allow vendors to issue above market bids. Disclosure could also breach confidentiality agreements/provisions, and accordingly jeopardize relationships with those vendors and impair the company's ability to enter into similar contracts in the future.

PART D: POND/IMOUNDMENT SYSTEMS AND OTHER WASTEWATER TREATMENT OPERATIONS

D2-3. If a plant has been involved with any ash or FGD wastewater treatment studies (pilot or full scale), Question D2-3 requests a summary and/or report describing the study including internal and published reports.

The following plants claimed responses to D2-3 as CBI and substantiated their claims: 86616118, 3265, 5318, 1402, 9161, 9325, 771, 6283, 2268, 1381, 2244, 6370, 3597, and 9475

Responses to Question D2-3 include technical details and analyses in reports that are commercially and competitively valuable, and disclosure would allow competitors to extrapolate commercially valuable information without cost. Some information contains specific information between a company and its vendors related to internal pilot tests. Reports contain information directly or indirectly related to design standards and technical processes, operational

costs, operational procedures and limitations, actual and projected unit availability, and other competitive information. Competitor could determine O&M costs, estimates of future capital needs, and unit availability. This could be used to estimate dispatch costs, which could lead to competitive harm. Disclosure could also breach confidentiality agreements/provisions, and accordingly jeopardize relationships with those vendors and impair the company's ability to enter into similar contracts in the future.

Responses to Question D2-3 also include a copyrighted EPRI report underwritten by several companies regarding the effectiveness of treatment techniques and technical details and analyses in reports. Plants claimed this information is commercially and competitively valuable and available only for purchase, the disclosure of which would create competitive harm as competitors would receive this information without cost. I have determined that the EPRI report is not CBI and should be handled in accordance with copyright and licensing requirements. Since the EPA does not have a license to release this information, the information will still be withheld. However, if the FOIA requester is interested in obtaining this information, the EPA will provide the necessary citations and references to the requester.

D2-4. Question D2-4 requests plants to list any ash or FGD treatment technologies that have been studied by the plant that are not covered in previous questions.

The following plants claimed responses to D2-4 as CBI and substantiated their claims: 1236, 4543, and 2224

Responses to Question D2-4 include technical details and analyses in reports that are commercially and competitively valuable, and disclosure would allow competitors to extrapolate commercially valuable information without cost. Reports contain information directly or indirectly related to design standards and technical processes, operational costs, operational procedures and limitations, actual and projected unit availability, and other competitive information. Competitor could determine O&M costs, estimates of future capital needs, and unit availability. Disclosure could also breach confidentiality agreements/provisions, and accordingly jeopardize relationships with those vendors and impair the company's ability to enter into similar contracts in the future.

A number of plants stated that their responses include a copyrighted EPRI report underwritten by several companies regarding the effectiveness of treatment techniques and technical details and analyses in reports, which are commercially and competitively valuable and available only for purchase, the disclosure of which would create competitive harm as competitors would receive this information without cost. I have determined that the EPRI report is not CBI and should be handled in accordance with copyright and licensing requirements. Since the EPA does not have a license to release this information, the information will still be withheld. However, if the FOIA requester is interested in obtaining this information, the EPA will provide the necessary citations and references to the requester.

D3-1. Question D3-1 asks plants to include a detailed block diagram that shows the pond/impoundment system or wastewater treatment system operations, the process wastewaters that currently enter or are planned to enter the pond/impoundment system or wastewater

treatment system, and the ultimate destinations of the pond/impoundment system or wastewater treatment system effluents.

The following plants claimed responses to D3-1 as CBI and substantiated their claims: 2550, 8661, 6419, 3196, 2079, 4585, 4598, 4242, 14, 8213, 3597, 8308, 7925, 9475, 263, and 3123.

Responses to Question D3-1 contain detailed information that directly or indirectly relate to design standards and technical processes, operational costs, operational procedures and limitations, actual and projected unit availability, and other information. The release of this information would allow competitors to draw conclusions about dispatch costs and lead to substantial competitive harm to the plants who submitted information to the EPA.

D4-3. Question D4-3 requests plants to provide the pond/impoundment unit's volume, surface area, bottom and top elevation, freeboard height, maximum height of berms and dams above the surrounding grade, and the total quantity of solids placed in the pond/impoundment when it was originally built or planned/designed, at its current status, and its expected end of life.

The following plants claimed responses to D4-3 as CBI and substantiated their claims: 6118, 3196, 5318, 1402, 1695, 8075, 4706, 9161, 2149, 6635, 1671, 6739, 771, and 9480.

The EPA found CBI claims on the responses that included surface area, current volume, and height of the pool was not CBI. See Appendix C, D4-3.

Other portions of responses that contain plants' information about a pound/impoundment unit's bottom elevation, top elevation, freeboard height, and solids placed in pond, dimensional data for original build, or expected end of life is found to be CBI. This information reveals the extent of use of the ponds, which could convey information about the frequency with which activities like dredging, closure, or expansion may need to occur. Releasing such information would affect bids to power markets and cause substantial competitive harm to the plants who submitted information to the EPA.

Responses also contain information directly or indirectly related to design standards and technical processes, operational costs, operational procedures and limitations, actual and projected unit availability, information resulting from self-critical evaluations of ponds, and other information of competitive nature. The release of such information would allow competitors to draw conclusions about dispatch costs and would negatively impact a plant's business advantages, environmental reputation, and ability to compete.

D5-2. Question D5-2 asks plants to list all wastewater treatment units comprising the wastewater treatment system, including units that are under construction/installation, or planned to be under construction/installation, by December 2020. It also requests specific information about the wastewater treatment unit.

The following plants claimed responses to D5-2 as CBI and substantiated their claims: 8661, 7175, 9373 and 3196.

Responses to Question D5-2 contain information directly or indirectly related to design standards and technical processes, operational procedures and limitations, and other information of competitive nature. Release of such information, including future plans, allows competitors to determine variable costs and dispatch costs and lead to competitive harm and cause substantial competitive harm to a plant. Furthermore, releasing information about planned projects or installation of certain equipment by a certain date provides a competitive disadvantage to a plant because competitors could use that information to anticipate a plant's strategic position or future operation of a given facility. Public knowledge of the equipment's existence or planned existence may be utilized by competitors for their own planning or strategic purposes to disadvantage of a plant.

D5-3. Question D5-3 requests the design flow rate of the wastewater treatment system, as well as other information related to the flow rate.

Plant 3196 claimed its response to D5-3 as CBI and substantiated its claim. This question requests detailed operational information that is not available unless a plant makes it publicly available. Plant 3196 explains its response provides information that directly or indirectly relate to design standards and technical processes, operational costs, operational procedures and limitations, and other information of competitive nature.

D5-10. Question D5-10 request information about any bid proposals and/or engineering reports that were prepared since January 1995 for the wastewater treatment system.

The following plants claimed responses to D5-10 as CBI and substantiated their claims: 2550, 8661, 3196, 2079, 14, 3597, 8308, 3265, 1402, 9161, 1236, 4543, 5318, 771, 3709, 6283, and 3095

Responses to Question D5-10 contain sensitive and proprietary cost proposal data for the installation of a wastewater treatment system, as well as capital and maintenance costs. Release of such information would cause substantial competitive harm to the vendor because competitors could use it to formulate their own plans and pricing for a wastewater treatment system. Competitors could also use information about the incurred or planned capital requirements to determine how those prices affect price bids into the power markets.

Responses also contain an engineering report and bid proposal. Disclosure of such information to a competitor would enable the vendor's competitors to undercut future work, potentially causing the vendor to lose work or be compensated less for work. Disclosure could also breach confidentiality agreements/provisions, and accordingly jeopardize relationships with those vendors and impair the company's ability to enter into similar contracts in the future.

D5-13. Question D5-13 asks whether the plant add chemicals to any wastewater treatment units in 2009, and if so, requests information about which chemicals were used, purpose, and amounts used.

The following plants claimed responses to D5-13 as CBI and substantiated their claims: 2550, 8661, 3196, 2079, 8308, 7175, and 9373.

Responses to Question D5-13 included detailed information in Table D13, which include what type of chemicals are included in wastewater treatment units, the trade name, manufacturer, purpose for inclusion, dosage, and concentrations. Release of this information would allow competitors to determine a plant's variable costs, including dispatch costs, and operating capabilities and limitations that would lead to substantial competitive harm to the plant.

D6-2. Question D6-2 asks for annual O&M cost data for each pond/impoundment system that includes at least one pond/impoundment and/or wastewater treatment system that began operating at the plant on or after January 1, 2000. The question also requests 2009 annual costs, rate, and staffing and consumption figures.

The following plants claimed responses to D6-2 as CBI and substantiated their claims: 2550, 8661, 3265, 3196, 2079, 1402, 4679, 14, 9161, 3597, 8395, 8308, 1236, 4543, 771, 4547, 263, and 6176.

Responses to Question D6-2 contain competitively negotiated terms, conditions, and prices provided in aggregated project-specific cost information. Release of this information could cause substantial competitive harm because that information could be used by contractors, vendors, and suppliers to adjust proposals to higher amounts for future planned activities. Because service providers, contractors, or labor unions could use the information to bargain for higher contract prices or wages and the ability of plants to negotiate favorable prices for modifications to and maintenance of their systems, plants submitting information would face substantial competitive harm. Further, disclosing capital costs and operating expenses at wastewater treatment systems would provide competitors an advantage in the power markets. Competitors could convey information about the incurred or planned capital requirements that are reflected in the prices bid into the power markets.

D6-3. Question D6-3 asks for cost data only for pond/impoundment and/or wastewater treatment system that began operating at the plant on or after January 1, 2000.

The following plants claimed responses to D6-3 as CBI and substantiated their claims: 8661, 8395, 4547, 6176, 3087 and 864.

Responses to Question D6-3 contain confidential capital cost information from vendors for FGD wastewater treatment systems. Release of such information would allow vendor's competitor to formulate its own plan and pricing for FGD wastewater treatment to undercut the vendor and cause competitive harm. Release of capital cost data would also provide competitors an unfair advantage by allowing competitors to negotiate lower prices to install, modify, and maintain similar systems.

PART E: WASTES FROM CLEANING METAL PROCESS EQUIPMENT

E2-1. Question E2-1 requests information about a typical cleaning event for each type of cleaning operation that uses chemical compounds on metal process equipment associated with fossil – or nuclear-fuel steam electric generating units.

Plant 3196 claimed its response to Question E2-1 as CBI and substantiated its claims. Responses to the Questions include types of chemical used, what type of cleaning occurs, volume of metal cleaning waste and other aspects of cleaning metal process equipment. Release of this information would allow competitors to determine variable costs, including dispatch costs, which would lead to competitive harm. Its responses to the questions provide detailed operational information that would allow insight into the plant's cleaning methodologies.

PART F: MANAGEMENT PRACTICES FOR PONDS/IMPOUNDMENTS AND LANDFILLS

F3-3. Question F3-3 asks whether the plant's landfill closed, and if so, provide date it was closed. If not, then list the year the landfill's expected end of life, the expected surface area, and volume and height of stored materials at its expected end of life.

The following plants claimed responses to F3-3 as CBI and substantiated their claims: 4706, 4543, and 6635.

Responses to Question F3-3 include the capacity, dimensions, and extent of use of landfills, which could convey information about the frequency with which activities like dredging, closure, or expansion may need to occur. Releasing the frequency of such activities substantially harms the competitive advantage of a plant by revealing operating expenses and capital requirements that are reflected in pricing bids to power markets.

F3-7. Question F3-7 requests the total cost associated for any expansion(s) since January 1, 2000, and include costs associated with the leachate system, if included as part of the landfill, in the costs provided.

The following plants claimed responses to F3-7 as CBI and substantiated their claims: 1402 and 6176.

Responses to Question F3-7 include the capacity, dimensions, and extent of use of landfills, which could convey information about the frequency with which activities like dredging, closure, or expansion may need to occur. Releasing the frequency of such activities substantially harms the competitive advantage of a plant by revealing operating expenses and capital requirements that are reflected in pricing bids to power markets. Disclosure also negatively affects each plant's ability to negotiate favorable prices for modifications to and maintenance of its system.

APPENDIX C – REQUIRED INFORMATION NOT ENTITLED TO CONFIDENTIAL TREATMENT

PART A: STEAM ELECTRIC POWER PLANT OPERATIONS

A11-2. Question A11-2 requests plant to provide a description of a full-scale and pilot scale carbon capture system processes and provide a general description of the system.

Plant 6283 claimed its response to Question A11-2 as CBI. The information submitted is a diagram from a copyrighted EPRI report available only via purchase. Disclosing this report would cause EPRI financial harm and would unfairly reward competitors who have not financially invested in the research. However, this information is not CBI, and should be handled in accordance with copyright licensing requirements. Since the EPA does not have a license to release this information, the information will still be withheld. However, if the FOIA requester is interested in obtaining this information, it will provide the necessary citations and references to the requester.

PART B: FLUE GAS DESULFURIZATION (FGD) SYSTEMS

B4-2. Question B4-2 requests plants to provide operating concentration range of chlorides within the FGD scrubber absorber.

Plant 6914 claimed its response to Question B4-2 as CBI. This question requests information related to the concentration ranges of chlorides in the FGD scrubber. It does not provide any operational information that enables a competitor to determine how this is achieved, nor does the information on chlorides in the scrubber relate directly to the marketability of the solids.

B6-1. Question B6-1 asks whether the plant collected monitoring data for untreated FGD scrubber purge in the 12 months prior to receiving the *Questionnaire.*

Plants 2244, 4599, and 1493 claimed their response to Question B4-2 as CBI. This question is a yes or no response about whether or not the plant collected monitoring data for an internal stream. It does not request any specific information about the monitoring data. Thus, knowledge that the plant collected this data does not provide any disadvantage to the plant competitive position.

PART D: POND/IMOUNDMENT SYSTEMS AND OTHER WASTEWATER TREATMENT OPERATIONS

D4-3. Question D4-3 requests plants to provide the pond/impoundment unit's volume, surface area, bottom and top elevation, freeboard height, maximum height of berms and dams above the surrounding grade, and the total quantity of solids placed in the pond/impoundment when it was originally built or planned/designed, at its current status, and its expected end of life.

The following plants claimed responses to D4-3 as CBI and substantiated their claims: 6118, 3196, 5318, 1402, 1695, 8075, 4706, 9161, 2149, 6635, 1671, 6739, 771, and 9480.

The EPA determined that a portion of the responses that included surface area, current volume, and height of the pool was not CBI. On March 3, 2010, the EPA found this same information was not entitled confidential treatment. In that decision, the EPA determined that this type of information is already publicly available, and release of this information would not cause substantial completive harm. For example, the EPA consistently releases surface area, current volume, and height of the pool/impoundment unit for steam electric generating plants at http://www.epa.gov/waste/nonhaz/industrial/special/fossil/surveys/index.htm. Thus, this information is not entitled confidential treatment.

D5-1. Question D5-1 asks the plant if it had previously identified a wastewater treatment system.

Plants 7175 and 9373 asserted their responses to Question D5-1 as CBI. This is a yes or no question generically about any planned upgrades at the plant. Knowledge of whether or not the plant may do any type of upgrades without knowing more details on the upgrades does not provide any competitive advantage.

D6-1. Question D6-1 asks whether any ponds/impoundments and/or wastewater treatment systems begin operating after January 1, 2000.

Plants 7175 and 9373 asserted their responses to Question D6-1 as CBI as CBI and substantiated its claim. This is a yes or no question generically that generically asks if any ponds and treatment systems began operation after January 2000. The plant did not explain how answering yes or no about the existence of any ponds/impoundments and/or wastewater systems operating after 2000 would provide a competitive disadvantage because the response provides not information about the company's strategic position or future operation of the plant.