

FILE

8

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

RECEIVED-DOCKETING DIV

AUG -4 PM 4: 53

In the Matter of the Application of)
Columbus Southern Power Company)
And Ohio Power Company to Adjust)
Their Economic Development Cost)
Recovery Rider Rates.)

PUCO

Case No. 10-1072-EL-RDR

**MOTION OF ERAMET MARIETTA, INC. FOR PROTECTIVE ORDER AND
MEMORANDUM IN SUPPORT**

Lisa G. McAlister
Thomas L. Froehle
MCNEES WALLACE & NURICK LLC
21 East State Street, 17th Floor
Columbus, OH 43215-4228
Telephone: (614) 469-8000
Telecopier: (614) 469-4653
lmcaster@mwncmh.com
tfroehle@mwncmh.com

August 4, 2010

Attorneys for Eramet Marietta, Inc.

{C31626: }

This is to certify that the images appearing are an
accurate and complete reproduction of a case file
document delivered in the regular course of business
technician Date processed 8-4-2010

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of)
Columbus Southern Power Company)
And Ohio Power Company to Adjust)
Their Economic Development Cost)
Recovery Rider Rates.)

Case No. 10-1072-EL-RDR

MOTION OF ERAMET MARIETTA, INC. FOR PROTECTIVE ORDER

Pursuant to Rule 4901-1-24, Ohio Administrative Code ("O.A.C."), Eramet Marietta, Inc. ("Eramet") respectfully moves the Public Utilities Commission of Ohio ("Commission") to issue a Protective Order to protect the confidentiality and prohibit the disclosure of the confidential information contained in the update to Columbus Southern Power Company's ("CSP") Economic Development Rider ("EDR") filed by CSP under seal, which are not subject to disclosure and include competitively sensitive and highly proprietary business information comprising of trade secrets. The grounds for this Motion are set forth in the attached Memorandum in Support.

Respectfully Submitted,



Lisa G. McAllister

Thomas L. Froehle

MCNEES WALLACE & NURICK LLC

21 East State Street, 17th Floor

Columbus, OH 43215-4228

Telephone: (614) 469-8000

Telecopier: (614) 469-4653

lmcalister@mwncmh.com

tfroehle@mwncmh.com

Attorneys for Eramet Marietta, Inc.

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of)
Columbus Southern Power Company)
And Ohio Power Company to Adjust)
Their Economic Development Cost)
Recovery Rider Rates.)

Case No. 10-1072-EL-RDR

MEMORANDUM IN SUPPORT

I. INTRODUCTION AND BACKGROUND

On June 15, 2009, Eramet filed an Application before the Commission for a reasonable arrangement with CSP to permit Eramet to upgrade its manufacturing facility in Ohio. On August 5, 2009, Eramet and Staff of the Commission filed a Joint Stipulation and Recommendation resolving the issues in the case ("Stipulation").¹ On October 15, 2009, the Commission issued an Opinion and Order approving the Stipulation with modifications. On March 24, 2010, the Commission issued an Entry on Rehearing denying Applications for Rehearing and upholding its Order approving the Stipulation. On April 26, 2010, CSP filed a Notice of Appeal at the Ohio Supreme Court.

In CSP's Electric Security Plan proceeding (Case Nos. 08-917-EL-SSO) the Commission authorized CSP's Economic Development Cost Recovery Rider ("EDR"), as a percentage, initially set at 0%, multiplied by the customers' distribution charges, to

¹ *In the Matter of the Application for Establishment of a Reasonable Arrangement between Eramet Marietta, Inc. and Columbus Southern Power Company*, Case No. 09-516-EL-AEC, Stipulation and Recommendation (August 5, 2009).

recover economic development amounts authorized by the Commission in reasonable arrangement cases.

On November 13, 2009, CSP sought to increase the EDR based, in part, upon Eramet's estimated usage.² The Commission authorized CSP to adjust its EDR to 10.52701% on January 7, 2010.³

On February 10, 2010, CSP filed a new case requesting that the Commission adjust CSP's EDR.⁴ CSP included actual Eramet-specific information in support of its request, in violation of Rule 4901:1-38-05(E), O.A.C., which states, "Customer information provided to the electric utility to obtain a unique arrangement shall be treated by the electric utility as confidential. The electric utility shall request confidential treatment of customer-specific information that is filed with the commission, with the exception of customer names and addresses." Eramet requested that CSP remove Eramet's information but acknowledged that it was released into the public domain. Eramet and CSP agreed to work together going forward to prevent Eramet's information from being released into the public domain again. Accordingly, CSP contacted Eramet and indicated that it would be updating its EDR.

Eramet's customer-specific information has been clearly marked as confidential and was filed under seal, separate from the redacted, public version of the Eramet-specific schedule.

² *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company to Adjust Their Economic Development Cost Recovery Rider Rates*, Case No. 09-1095-EL-RDR, Application (November 13, 2009).

³ *Id.*, Finding and Order (January 7, 2010).

⁴ *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company to Adjust their Economic Development Cost Recovery Rider pursuant to 4901:1-38-08 (A) (5)*, Ohio Administrative Code, Case No. 10-154-EL-RDR, Application (February 8, 2010).

For the reasons stated below, Eramet respectfully requests that the Commission grant protective treatment of Eramet's customer-specific information included to support CSP's EDR adjustment filed under seal.

II. ARGUMENT

The actual customer usage and actual pricing terms of the Eramet reasonable arrangement schedule filed concurrently with this Motion contain competitively sensitive and highly proprietary business information that constitutes trade secrets under Ohio law and the Commission's rules.

Rule 4901-1-24(D), O.A.C., provides for the issuance of an order that is necessary to protect the confidentiality of information contained in documents filed at the Commission to the extent that state and federal law prohibit the release of such information and where non-disclosure of the information is not inconsistent with the purposes of Title 49 of the Revised Code. State law recognizes the need to protect information that is confidential in nature, as is the actual usage and pricing information contained in the Eramet schedule. The Commission has statutory authority to protect trade secrets.⁵ Additionally, non-disclosure of the actual usage and pricing information will not impair the purposes of Title 49 as the Commission and its Staff will have full access to the confidential information in order to complete their review process.

The information for which protective treatment is sought includes Eramet's actual kilowatt hour ("kWh") usage and the actual prices paid for electricity based upon the actual usage. The actual usage and pricing terms contained within the Eramet schedule are competitively sensitive and highly proprietary business financial information falling within the statutory characterization of a trade secret, as defined by

⁵ See Sections 4901.12 and 4905.07, Revised Code.

Section 1333.61(D), Revised Code. The definition of trade secret contained in Section 1333.61(D), Revised Code, is as follows:

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

(1) It derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use.

(2) It is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

Section 1333.61(D), Revised Code (*emphasis added*).

Clearly, Eramet's actual usage and price information contained within the Eramet schedule is proprietary data and is confidential. Public disclosure of the pricing information would jeopardize Eramet's business position and its ability to compete. Actual customer usage and pricing terms are routinely accorded protected status by the Commission.⁶ The actual usage and price information Eramet seeks to protect derives independent economic value from not being generally known and not being readily ascertainable by proper means by Eramet's competitors. Further, the efforts to protect the confidential pricing information are reasonable under the circumstances. Finally,

⁶ In fact, the Commission has already recognized the confidentiality of the information inasmuch as the Commission granted protective treatment of Eramet's prefiled testimony discussing the same information. Eramet filed a Motion for protective treatment of confidential portions of its testimony on July 29, 2009 and filed the testimony under seal. There were no objections to Eramet's Motion and the Attorney Examiner granted the Motion on August 4, 2009. *In the Matter of the Application for Establishment of a Reasonable Arrangement between Eramet Marietta, Inc. and Columbus Southern Power Company*, Case No. 09-516-EL-AEC, Tr. Vol. I at 7 (August 4, 2009). Similarly, all oral testimony regarding the same information given during the course of the hearing was done so confidentially and two versions of the transcript were provided, the confidential redacted version and the public version. No parties objected to the protective treatment of the information.


Eramet has limited the information for which it seeks protection so as to minimize the information that will not be publicly disclosed.

Additionally, as noted above, Rule 4901:1-38-05(D), O.A.C., requires utilities to treat customer information to obtain a unique arrangement as confidential by requesting confidential treatment of customer-specific information that is filed with the Commission, with the exception of customer names and addresses. It follows that Eramet's customer-specific information regarding its unique arrangement should be treated as confidential.

III. CONCLUSION

Eramet respectfully requests that this Motion for Protective Order be granted for the reasons set forth herein.

Respectfully Submitted,



Lisa G. McAlister

Thomas L. Froehle

MCNEES WALLACE & NURICK LLC

21 East State Street, 17th Floor

Columbus, OH 43215-4228

Telephone: (614) 469-8000

Telecopier: (614) 469-4653

lmcaster@mwncmh.com

tfroehle@mwncmh.com

Attorneys for Eramet Marietta, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Motion of Eramet Marietta, Inc. for Protective Order and Memorandum in Support* was served upon the following parties of record this 4th day of August 2010, via electronic transmission or first class mail, postage prepaid.



Lisa G. McAlister

Steven T. Nourse
American Electric Power Service
Corporation
1 Riverside Plaza, 29th Floor
Columbus, OH 43215
stnourse@aep.com

**ON BEHALF OF AMERICAN ELECTRIC
POWER**