

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of	)	
Ohio Power Company to Adjust The	)	Case No. 13-325-EL-RDR
Economic Development Cost Recovery	)	
Rider Rates	)	

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**MOTION OF GLOBE METALLURGICAL, INC. TO EXTEND  
THE PROTECTIVE ORDER AND MEMORANDUM IN SUPPORT**

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**August 5, 2014**

**Attorneys for Globe Metallurgical, Inc.**

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Pursuant to Rule 4901-1-24, Ohio Administrative Code ("O.A.C."), Globe Metallurgical, Inc. ("Globe") respectfully moves the Public Utilities Commission of Ohio ("Commission") to extend the Protective Order issued on March 27, 2013, in the above-captioned matter in order to protect the confidentiality and prohibit the disclosure of the confidential information contained in the Application of Ohio Power Company ("AEP-Ohio") to adjust its Economic Development Cost Recovery Rider ("EDR") rates filed by AEP-Ohio under seal on February 1, 2013 in this proceeding. The confidential information is not subject to disclosure and includes competitively sensitive and highly proprietary business information comprising trade secrets. The grounds for this Motion are set forth in the attached Memorandum in Support.

Respectfully submitted,

/s/ Matthew R. Pritchard

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**MEMORANDUM IN SUPPORT**

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**I. INTRODUCTION AND BACKGROUND**

On July 16, 2008, AEP-Ohio filed an application for approval of a special arrangement with Globe.<sup>1</sup> On November 12, 2010, the parties filed a stipulation for the Commission's approval, which was supplemented and modified on March 21, 2011. On April 5, 2011, the Commission approved the November 2010 stipulation as modified by the March 2011 filing.

In AEP-Ohio's initial electric security plan ("ESP") proceeding (Case Nos. 08-917-EL-SSO, *et al.*), the Commission authorized AEP-Ohio's EDR to recover economic development amounts authorized by the Commission in reasonable arrangement cases. In the ESP proceeding, the Commission also set the initial level of the rider at zero, to be updated quarterly.<sup>2</sup> The EDR was reauthorized in AEP-Ohio's

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<sup>1</sup> *In the Matter of the Application for Approval of a Contract for Electric Service Between Ohio Power Company and Globe Metallurgical, Inc.*, Case No. 08-884-EL-AEC, Application (July 16, 2008).

<sup>2</sup> *In the Matter of the Application of Columbus Southern Power Company for Approval of an Electric Security Plan; an Amendment to its Corporate Separation Plan; and the Sale or Transfer of Certain Generating Assets*, Case Nos. 08-917-EL-SSO, *et al.*, Opinion and Order at 47-48 (Mar. 18, 2009).

second ESP proceeding.<sup>3</sup> The rider is calculated as a percentage of a customer's distribution charges. On February 1, 2013, AEP-Ohio initiated this quarterly update case and filed an Application requesting that the Commission adjust AEP-Ohio's EDR. AEP-Ohio's February 1, 2013 Application contains Globe's customer-specific information that was clearly marked as confidential and was filed under seal, separate from the redacted public version of the Globe-specific schedule. The Commission granted Globe's Motion to Intervene and Globe's Motion for Protective Order, finding Globe's customer-specific information constituted a trade secret in an Order dated March 27, 2013.<sup>4</sup> In its Order, the Commission specified that its Protective Order would extend for a period of 18 months, and specified that should Globe wish to extend the Protective Order it should file a motion requesting an extension at least 45 days before the expiration of the Protective Order.<sup>5</sup>

For the reasons stated below, Globe respectfully requests that the Commission extend its Protective Order for a period of 24 months to protect Globe's confidential customer-specific information included to support AEP-Ohio's revised EDR adjustment.

## **II. ARGUMENT**

The billing information of the Globe reasonable arrangement schedule filed by AEP-Ohio contains competitively sensitive and highly proprietary business information that constitutes trade secrets under Ohio law and the Commission's rules. State law recognizes the need to protect information that is confidential in nature. Accordingly,

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<sup>3</sup> *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan*, Case Nos. 11-346-EL-SSO, *et al.*, Opinion and Order at 66-67 (Aug. 8, 2012).

<sup>4</sup> Finding and Order at 4 (Mar. 27, 2013).

<sup>5</sup> *Id.*

the General Assembly granted the Commission statutory authority to exempt certain documents from disclosure.<sup>6</sup> Pursuant to this statutory grant of authority, the Commission promulgated Rule 4901-1-24, O.A.C. 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.

Trade secrets protected by state law are not considered public records and are therefore exempt from public disclosure.<sup>7</sup> A trade secret is defined by Section 1333.61(D), Revised Code, 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).

The Globe-related information contained within the Globe schedule is competitively sensitive and highly proprietary business and financial information falling

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<sup>6</sup> See Sections 4901.12 and 4905.07, Revised Code.

<sup>7</sup> Section 149.43(A)(1)(v), Revised Code; *State ex rel. The Plain Dealer v. Ohio Dept. of Insurance*, 80 Ohio St. 3d 513, 530 (1997).

within the statutory characterization of a trade secret.<sup>8</sup> The information for which protective treatment is sought includes Globe's billings paid for electricity based upon its actual and estimated usage. Public disclosure of the pricing information would jeopardize Globe's business position and its ability to compete. The actual and projected billing information Globe seeks to protect derives independent economic value from not being generally known and not being readily ascertainable by proper means by Globe's competitors. Additionally, the efforts to protect the confidential pricing information are reasonable under the circumstances. Further, actual customer usage and pricing terms are routinely accorded protected status by the Commission and the Commission accorded such treatment to Globe's information in AEP-Ohio's previous EDR update proceedings.<sup>9</sup> Finally, the Commission has already found in this proceeding that Globe's customer-specified information filed under seal in the confidential version of AEP-Ohio's application was a trade secret and should be afforded protected status.<sup>10</sup>

The non-disclosure of the actual usage and pricing information will not impair the purposes of Title 49 of the Revised Code, as the Commission and its Staff will have full access to the confidential information in order to complete its review process. Because Globe's information constitutes a trade secret, it should be accorded protected status.

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<sup>8</sup> Section 1333.61(D), Revised Code.

<sup>9</sup> *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 Rule 4901:1-38-08(A)(5)*, Ohio Administrative Code, Case No. 11-4570-EL-RDR, Finding and Order at 4 (Oct. 12, 2011); *In the Matter of the Application of Ohio Power Company to Adjust Its Economic Development Cost Recovery Rider Pursuant to Rule 4901:1-38-08(A)(5)*, Ohio Administrative Code, Case No. 12-688-EL-RDR, Opinion and Order at 4-5 (Mar. 28, 2012); *In the Matter of the Application of Ohio Power Company to Adjust Its Economic Development Cost Recovery Rider Pursuant to Rule 4901:1-38-08(A)(5)*, Ohio Administrative Code, Case No. 12-2210-EL-RDR, Opinion and Order at 4-5 (Sept. 29, 2012).

<sup>10</sup> Finding and Order at 4 (Mar. 27, 2013).

### III. CONCLUSION

Globe respectfully requests that this Motion to Extend the Protective Order be granted and the Protective Order extended for a period of 24 months for the reasons set forth herein.

Respectfully submitted,

/s/ Matthew R. Pritchard

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## **CERTIFICATE OF SERVICE**

In accordance with Rule 4901-1-05, Ohio Administrative Code, the PUCO's e-filing system will electronically serve notice of the filing of this document upon the following parties. In addition, I hereby certify that a service copy of the foregoing *Industrial Energy Users-Ohio's Motion of Globe Metallurgical, Inc., to Extend the Protective Order and Memorandum in Support* was sent by, or on behalf of, the undersigned counsel for IEU-Ohio to the following parties of record this 5<sup>th</sup> day of August 2014, *via* electronic transmission.

/s/ Matthew R. Pritchard

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Summary: Motion to Extend the Protective Order electronically filed by Mr. Matthew R. Pritchard on behalf of Globe Metallurgical, Inc.