

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of)	
Globe Metallurgical, Inc. for Approval of a)	
Reasonable Arrangement for its Beverly, Ohio)	Case No. 16-0737-EL-AEC
Plant)	

MOTION FOR PROTECTIVE ORDER

Pursuant to Rule 4901-1-24(D) of the Ohio Administrative Code ("O.A.C."), Globe Metallurgical, Inc. ("Globe") moves for a protective order to keep the confidential, proprietary and trade secret information contained in the Application for a Reasonable Arrangement (filed today in the instant proceeding by Globe) confidential and not part of the public record. The reasons underlying this motion are detailed in the attached Memorandum in Support. Consistent with the requirements of the above-cited Rule, two (2) unredacted copies of the Application for a Reasonable Arrangement have been submitted under seal with confidential information highlighted on pages stamped "Confidential, Proprietary and Trade Secret."

Therefore, Globe respectfully requests that this motion be granted and that the unredacted versions of the Application for a Reasonable Arrangement remain under seal.

Respectfully submitted,

By: /s/ Michael J. Settineri
Michael J. Settineri, Trial Attorney (0073369)
William A. Sieck (0071813)
VORYS, SATER, SEYMOUR AND PEASE LLP
52 East Gay Street
P.O. Box 1008
Columbus, Ohio 43216-1008
Telephone: (614) 464-5462
Fax: (614) 791-5146
Email: mjsettineri@vorys.com
wasieck@vorys.com
Counsel for Globe Metallurgical, Inc.

**MEMORANDUM IN SUPPORT OF
MOTION FOR PROTECTIVE ORDER**

The Public Utilities Commission of Ohio (“Commission”) should protect Globe’s confidential information in this case.

I. Introduction and Background

On April 8, 2016, Globe commenced this case by filing an Application for a Reasonable Arrangement (“Application”), which contains confidential, sensitive, and proprietary operational and financial data, actual and anticipated investment levels, electric use and pricing information, employment figures and plans. This information constitutes trade secret information for which Globe is seeking a protective order.¹

Globe’s Beverly, Ohio plant (the “Beverly Plant”) produces silicon metal and silicon-based specialty alloys for sale and use in a sophisticated and competitive worldwide market. The confidential information contained in the Application, if released to the public, would harm Globe by providing its domestic and international competitors with proprietary information concerning its operations, investment projections, electric use and pricing information, and employment figures and plans at the Beverly Plant.

II. Argument

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

¹ Information for which confidential treatment is sought is redacted in the public version of the application but is bracketed and highlighted in yellow in the confidential version submitted under seal.

law recognizes the need to protect the types of information that are the subject of this motion. The non-disclosure of the information will not impair the purposes of Title 49 because the Commission and its Staff have full access to the information in order to fulfill its statutory obligations. No purpose of Title 49 would be served by the public disclosure of the information.

The need to protect the designated information from public disclosure is clear, and there is compelling legal authority supporting the requested protective order. While the Commission has often expressed its preference for open proceedings, the Commission also long ago recognized its statutory obligations with regard to trade secrets:

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

In re: General Telephone Co., Case No. 81-383-TP-AIR, Entry (February 17, 1982). The Ohio Supreme Court has affirmed the Commission’s protection of trade secret information. *See also Ohio Consumers’ Counsel v. Pub. Util. Comm’n of Ohio*, 121 Ohio St.3d 362, 370, 2009-Ohio-604 ¶ 31 (affirming Commission order designating and redacting certain protected trade secret information). The Commission has facilitated the protection of trade secrets in its rules (Rule 4901-1-24(A)(7), O.A.C.) and has afforded that protection to Globe in prior proceedings.

The definition of a “trade secret” is set forth in the Uniform Trade Secrets Act:

“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. This definition clearly reflects the state policy favoring the protection of trade secrets, such as the sensitive information which is the subject of this motion.

In *State ex rel. The Plain Dealer the Ohio Dept. of Ins.*, 80 Ohio St. 3d 513 (1997), the Ohio Supreme Court adopted a six-factor test to analyze whether information is a trade secret under the statute:

(1) The extent to which the information is known outside the business, (2) the extent to which it is known to those inside the business, i.e., by the employees, (3) the precautions taken by the holder of the trade secret to guard the secrecy of the information, (4) the savings effected and the value to the holder in having the information as against competitors, (5) the amount of effort or money expended in obtaining and developing the information, and (6) the amount of time and expense it would take for others to acquire and duplicate the information.

Id. at 524-525, quoting *Pyromatics, Inc. v. Petruziello*, 7 Ohio App. 3d 131, 134-135 (Cuyahoga County 1983).

Applying these factors to the confidential information Globe seeks to protect, it is clear that a protective order should be granted. The information redacted from the Application contains information regarding Globe's operational and financial data, actual and anticipated investment levels, electric use and pricing information, and employment figures and plans. Such sensitive information is generally not disclosed and Globe takes steps to prevent the disclosure of this information. Its disclosure could give competitors an advantage that would hinder Globe's ability to compete worldwide, especially given the current competitive pricing pressures described in the Application.

Courts of other jurisdictions have held that not only does a public utilities commission have the authority to protect the trade secrets of the companies subject to its jurisdiction, the trade secrets statute creates a duty to protect them. *New York Tel. Co. v. Pub. Serv. Comm. N.Y.*, 56 N.Y.2d 213, 220 (1982) (holding the commission “had an affirmative responsibility to make provision” to protect trade secrets”). The Commission has previously protected information of the type and kind that Globe is asking to have protected here. *See In the Matter of the Application of Ohio Power Company*, Case No. 16-260-EL-RDR, Finding and Order ¶ 10 & 12 (March 31, 2016); *In the Matter of the Application of TimkenSteel Corporation*, Case No. 15-1857-EL-AEC, Opinion and Order, at 6-7 (Dec. 16, 2015); *See In the Matter of the Application of Ohio Power Company*, Case No. 15-279-EL-RDR, Finding and Order ¶ 7, 8 & 10 (March 18, 2015). Indeed, for the Commission to do otherwise would be to negate the protections the Ohio General Assembly has granted to all businesses.

III. Conclusion

For the above reasons, Globe requests that the Commission grant this motion for protective order, and maintain the confidential information in the Application under seal.

Respectfully submitted,

By: /s/ Michael J. Settineri

Michael J. Settineri, Trial Attorney (0073369)

William A. Sieck (0071813)

VORYS, SATER, SEYMOUR AND PEASE LLP

52 East Gay Street

P.O. Box 1008

Columbus, Ohio 43216-1008

Telephone: (614) 464-5462

Fax: (614) 791-5146

Email: mjsettineri@vorys.com

[wasieck@vorys.com](mailto:wasioeck@vorys.com)

Counsel for Globe Metallurgical, Inc.

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

4/11/2016 2:00:28 PM

in

Case No(s). 16-0737-EL-AEC

Summary: Motion Motion for Protective Order electronically filed by Mr. Michael J. Settineri on behalf of Globe Metallurgical, Inc.