

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of )  
Ohio Power Company to Adjust )  
The Economic Development )  
Cost Recovery Rider Rates )

Case No. 12-2210-EL-RDR

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**MOTION OF ERAMET MARIETTA, INC.  
TO EXTEND THE PROTECTIVE ORDER  
AND MEMORANDUM IN SUPPORT**

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**October 21, 2016**

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**MOTION OF ERAMET MARIETTA, INC.  
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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 extend the Protective Order the Commission previously granted on September 26, 2012 and subsequently extended by the Commission on December 8, 2014. Extension of the Protective Order is necessary 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 under seal on August 1, 2012. 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 June 19, 2009, Eramet filed an application before the Commission for a reasonable arrangement with AEP-Ohio to permit Eramet to upgrade its manufacturing facility in Ohio.<sup>1</sup> On August 5, 2009, Eramet and Commission Staff filed a Joint Stipulation and Recommendation resolving the issues in the case ("Stipulation").<sup>2</sup> 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 Opinion and Order approving the Stipulation.

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

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<sup>1</sup> The application, as filed and approved, was between Eramet and Columbus Southern Power Company ("CSP"). However, CSP has since merged with Ohio Power Company and, therefore, all references in this Motion are to the merged company referred to as AEP-Ohio.

<sup>2</sup> *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 (Aug. 5, 2009).

the rider at zero.<sup>3</sup> The EDR was reauthorized in AEP-Ohio's second ESP proceeding.<sup>4</sup> The rider is calculated as a percentage of a customer's distribution charges and is updated semi-annually. On August 1, 2012, AEP-Ohio initiated this update case by filing an Application requesting that the Commission adjust AEP-Ohio's EDR. AEP-Ohio's August 1, 2012 Application contains Eramet's customer-specific information that was clearly marked as confidential and was filed under seal, separate from the redacted public version of the Eramet-specific schedule.

On August 3, 2012, Eramet filed a Motion to Intervene as well as a Motion for Protective Order in this proceeding. On September 26, 2012, the Commission granted both motions. Regarding Eramet's Motion for Protective Order, the Commission stated:

The Commission hereby grants the request for protective treatment of the customer-specific information submitted and notes that the Commission has previously granted protective treatment to the same customer usage and pricing information that is the subject of the pending motions for protective treatment. See, the March 2012 EDR Order; *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. 11-4570-EL-RDR (October 12, 2011); and *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. I at 7 (August 4, 2009).<sup>5</sup>

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<sup>3</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).

<sup>4</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>5</sup> Finding and Order at 5 (Sept. 26, 2012).

The Commission granted protective treatment for an 18-month period, but held that Eramet could extend the protective order if an “appropriate motion is filed at least 45 days in advance of the expiration date seeking to continue protective treatment.”<sup>6</sup>

On February 6, 2014, Eramet filed a Motion to Extend the Protective Order in this proceeding. On December 8, 2014, the Commission granted Eramet’s motion.

Regarding Eramet’s Motion to Extend the Protective Order, the Commission stated:

- (7) Ohio Adm.Code 4901-1-24(F) provides that, unless otherwise ordered, protective orders issued pursuant to Ohio Adm.Code 4901-1-24(D) automatically expire after 24 months. Therefore, confidential treatment shall be extended for an additional 24 months, or until December 8, 2016. Until that date, the Commission’s docketing division should maintain, under seal, the confidential information contained in AEP Ohio’s EDR application filed on August 1, 2012.<sup>7</sup>

For the reasons stated below, Eramet respectfully requests that the Commission grant Eramet’s timely motion and extend protective treatment of Eramet’s customer-specific information included to support AEP-Ohio’s EDR adjustment filed under seal.

## **II. ARGUMENT**

The billing information of the Eramet 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, the General Assembly granted the Commission statutory authority to exempt certain documents from disclosure.<sup>8</sup> Pursuant to this statutory grant of authority, the

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<sup>6</sup> *Id.*

<sup>7</sup> Entry at 3 (Dec. 8, 2014).

<sup>8</sup> See Sections 4901.12 and 4905.07, Revised Code.

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>9</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 Eramet-related information contained within the Eramet schedule remains competitively sensitive and highly proprietary business and financial information falling within the statutory characterization of a trade secret.<sup>10</sup> The information for which protective treatment is sought includes Eramet's billings paid for electricity based upon its actual and estimated usage. Public disclosure of the pricing information would

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<sup>9</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).

<sup>10</sup> Section 1333.61(D), Revised Code.

jeopardize Eramet's business position and its ability to compete. The actual and projected billing 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, actual customer usage and pricing terms are routinely accorded protected status by the Commission and the Commission accorded such treatment to Eramet's information in AEP-Ohio's previous EDR update proceedings and has accorded such treatment to Eramet's information in this proceeding.<sup>11</sup>

The 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 its review process. Because Eramet's

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<sup>11</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. 11-705-EL-RDR, Finding and Order at 3-5 (Apr. 13, 2011); *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, Finding 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, Finding and Order at 4-5 (Sept. 26, 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. 13-325-EL-RDR, Finding and Order at 4 (Mar. 27, 2013); *In the Matter of the Application of Ohio Power Company to Adjust Its Economic Development Cost Recovery Rider Rate*, Case No. 13-1739-EL-RDR, Finding and Order at 4 (Sept. 18, 2013); *In the Matter of the Application of Ohio Power Company to Adjust Its Economic Development Rider Rate*, Case No. 14-193-EL-RDR, Finding and Order at 4-5 (Mar. 26, 2014); *In the Matter of the Application of Ohio Power Company to Adjust Its Economic Development Rider Rate*, Case No. 14-1329-EL-RDR, Finding and Order at 4-5 (Sept. 17, 2014); *In the Matter of the Application of Ohio Power Company to Adjust Its Economic Development Rider Rate*, Case No. 15-279-EL-RDR, Finding and Order at 3-4 (Mar. 18, 2015); *In the Matter of the Application of Ohio Power Company to Adjust Its Economic Development Rider Rate*, Case No. 15-1400-EL-RDR, Finding and Order at 3-4 (Nov. 18, 2015); *In the Matter of the Application of Ohio Power Company to Adjust Its Economic Development Rider Rate*, Case No. 16-260-EL-RDR, Finding and Order at 3-4 (Mar. 31, 2016); *In the Matter of the Application of Ohio Power Company to Adjust its Economic Development Rider Rate*, Case No. 16-1684-EL-RDR, Finding and Order at 4 (Sept. 22, 2016).

information constitutes a trade secret it should be accorded protected status.

### III. CONCLUSION

Eramet respectfully requests that this Motion to Extend the Protective Order be granted 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 *Motion of Eramet Marietta, Inc. to Extend the Protective Order and Memorandum in Support* was sent by, or on behalf of, the undersigned counsel for Eramet Marietta, Inc. to the following parties of record this 21<sup>st</sup> day of October 2016, *via* electronic transmission.

/s/ Matthew R. Pritchard

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Summary: Motion of Eramet Marietta, Inc. to Extend the Protective Order and Memorandum in Support electronically filed by Mr. Matthew R. Pritchard on behalf of Eramet Marietta, Inc.