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. 13-325-EL-RDR

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

Samuel C. Randazzo (Reg. No. 0016386)
(Counsel of Record)
Frank P. Darr (Reg. No. 0025469)
Matthew R. Pritchard (Reg. No. 0088070)
MCNEES WALLACE & NURICK LLC
21 East State Street, 17TH Floor
Columbus, OH 43215
Telephone: (614) 469-8000
Telecopier: (614) 469-4653
sam@mwncmh.com
(willing to accept service by e-mail)
fdarr@mwncmh.com
(willing to accept service by e-mail)
mpritchard@mwncmh.com
(willing to accept service by e-mail)

October 21, 2016

Attorneys for Eramet Marietta, Inc.

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

MOTION OF ERAMET MARIETTA, INC. TO EXTEND THE 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 extend the Protective Order issued on March 27, 2013, and subsequently extended by the Commission on December 8, 2014, 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

Samuel C. Randazzo (Counsel of Record)
(Reg. No. 0016386)
Frank P. Darr (Reg. No. 0025469)
Matthew R. Pritchard (Reg. No. 0088070)
McNees Wallace & Nurick LLC
21 East State Street, 17TH Floor
Columbus, OH 43215
Telephone: (614) 469-8000
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MEMORANDUM IN SUPPORT

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.[1] On August 5, 2009, Eramet and Commission Staff filed a Joint Stipulation and Recommendation resolving the issues in the case ("Stipulation").[2] 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

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[1] 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.

[2] *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).

arrangement cases. In the ESP proceeding, the Commission also set the initial level of the rider at zero, to be updated semi-annually.[3] The EDR was reauthorized in AEP-Ohio's second ESP proceeding.[4] The rider is calculated as a percentage of a customer's distribution charges. On February 1, 2013, AEP-Ohio initiated this semi-annual update case and filed an Application requesting that the Commission adjust AEP-Ohio's EDR. AEP-Ohio's February 1, 2013 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. The Commission granted Eramet's Motion to Intervene and Motion for Protective Order, finding that the customer-specific information constituted a trade secret in an Order dated March 27, 2013.[5] In its Order, the Commission specified that its Protective Order would extend for a period of 18 months, and specified that should Eramet 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.[6]

On August 5, 2014, Eramet filed a Motion to Extend the Protective Order in this proceeding. On December 8, 2014, the Commission granted Eramet's motion. The Commission's Order stated:

> (7) Ohio Adm.Code 4901-1-24(F) provides that, unless otherwise ordered, protective orders issued pursuant to Ohio Adm.Code

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[3] *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).

[4] *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).

[5] Finding and Order at 4 (Mar. 27, 2013).

[6] *Id.*

> 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 February 1, 2013.[7]

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

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.[8] 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.[9] A trade secret is defined by Section

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[7] Entry at 3 (Dec. 8, 2014).

[8] *See* Sections 4901.12 and 4905.07, Revised Code.

[9] 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).

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 is competitively sensitive and highly proprietary business and financial information falling within the statutory characterization of a trade secret.[10] 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 jeopardize Eramet's business position and its ability to compete. The actual and projected billing information Erament seeks to protect derives independent economic value from not being generally known and not being readily ascertainable by proper means by Eramet'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 Eramet's information in AEP-Ohio's

[10] Section 1333.61(D), Revised Code.

previous EDR update proceedings.[11] Finally, the Commission has already found in this proceeding that Eramet's customer-specific information filed under seal in the confidential version of AEP-Ohio's Application was a trade secret and should be afforded protected status.[12]

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 Eramet's information constitutes a trade secret, it should be accorded protected status.

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[11] *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).

[12] Finding and Order at 4 (Mar. 27, 2013).

III. CONCLUSION

Eramet 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

Samuel C. Randazzo (Counsel of Record)
(Reg. No. 0016386)
Frank P. Darr (Reg. No. 0025469)
Matthew R. Pritchard (Reg. No. 0088070)
McNees Wallace & Nurick LLC
21 East State Street, 17TH Floor
Columbus, OH 43215
Telephone: (614) 469-8000
Telecopier: (614) 469-4653
sam@mwncmh.com
fdarr@mwncmh.com
mpritchard@mwncmh.com

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 21st day of October 2016, *via* electronic transmission.

/s/ Matthew R. Pritchard
Matthew R. Pritchard

Steven T. Nourse (Reg. No. 0046705)
Matthew J. Satterwhite (Reg. No. 0071972)
American Electric Power Service Corporation
1 Riverside Plaza, 29th Floor
Columbus, OH 43215
stnourse@aep.com
mjsatterwhite@aep.com

ON BEHALF OF OHIO POWER COMPANY

M. Howard Petricoff (Reg. No. 0008287)
(Counsel of Record)
Michael J. Settineri (Reg. No. 0073369)
52 East Gay Street
P.O. Box 1008
Columbus, Ohio 43216-1008
mhpetricoff@vorys.com
mjsettineri@vorys.com

ON BEHALF OF THE TIMKEN COMPANY

William L. Wright (Reg. No. 0018010)
Chief, Public Utilities Section
Assistant Attorney General
Office of the Attorney General
30 E. Broad St., 16th Floor
Columbus, OH 43215
william.wright@ohioattorneygeneral.gov

ON BEHALF OF THE STAFF OF THE PUBLIC UTILITIES COMMISSION OF OHIO

Sarah Parrot (Reg. No. 0082197)
Public Utilities Commission of Ohio
Legal Department
180 East Broad Street, 12th Floor
Columbus, OH 43215
sarah.parrot@puc.state.oh.us

ATTORNEY EXAMINER

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Case No(s). 13-0325-EL-RDR

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.