

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio)	
Power Company to Adjust The Economic)	Case No. 15-0279-EL-RDR
Development Cost Recovery Rider Rates)	

**MOTION OF TIMKENSTEEL CORPORATION
TO EXTEND PROTECTIVE ORDER
AND MEMORANDUM IN SUPPORT**

Under Rule 4901-1-24(F), Ohio Administrative Code ("O.A.C."), TimkenSteel Corporation ("TimkenSteel") respectfully moves the Public Utilities Commission of Ohio ("Commission") to extend the Protective Order issued March 18, 2015 in this case to keep confidential certain electrical use and billing information contained in Schedule Nos. 2 and 6 to the February 6, 2015 Application of Ohio Power Company ("Ohio Power").

On February 6, 2015, Ohio Power filed an Application to adjust its Economic Development Cost Recovery rider ("EDR") rates.¹ The Application was supported by Schedule Nos. 2-6 containing certain electric billing information of Eramet Marietta, Inc., Globe Metallurgical Inc. and TimkenSteel, filed with redactions and kept under seal.² On March 18, 2015, the Commission granted a protective order applicable to TimkenSteel's confidential electrical use and billing information contained in Schedule Nos. 2 and 6.³ The confidential information includes competitively sensitive and highly proprietary business information comprising trade secrets and should be kept confidential.

¹ *In the Matter of the Application of Ohio Power Company to Adjust The Economic Development Cost Recovery Rider Rates*, Case No. 15-0279-EL-RDR, Application (Feb. 6, 2015).

² *Id.*, Schedules 2-6.

³ *Id.*, Opinion and Order at 4¶ 10 (Mar. 18, 2016).

Moreover, although this motion is filed fewer than 45 days before a March 18, 2017 deadline for expiration of protective treatment, that 45-day deadline should be waived or extended here because there is good cause to extend the protective order and no party will be prejudiced. No party challenged the protective order nor does any party have a right to public access to TimkenSteel's individual customer information. As well, the Commission and its Staff have already decided Ohio Power's Application and retain full access to the confidential information.

The grounds for this Motion are set forth in the attached Memorandum in Support.

Respectfully submitted,

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**MEMORANDUM IN SUPPORT
OF TIMKENSTEEL CORPORATION'S MOTION TO EXTEND PROTECTIVE ORDER**

On April 27, 2011, in Case No. 10-3066-EL-AEC, The Timken Company ("Timken") and Ohio Power Company ("Ohio Power") received approval from the Public Utilities Commission of Ohio ("Commission") of a unique arrangement for Timken's Canton, Ohio facilities. *In the Matter of the Joint Application of The Timken Company and the Ohio Power Company for Approval of a Unique Arrangement for The Timken Company's Canton, Ohio Facilities*, Case No. 10-3066-EL-AEC, Opinion and Order (Apr. 27, 2011). In that case, the Attorney Examiner granted Timken's motion for protective order related to information, including electric usage at Timken's facilities in Stark County, Ohio (the "Stark County Facilities"). *See id.*, Entry at ¶17 (Feb. 11, 2011).

On February 6, 2015, Ohio Power filed an Application, seeking to update its EDR rates. In support and as part of the Application, Ohio Power submitted under seal various schedules. Two of those schedules contain highly proprietary and confidential information as follows:

- Schedule No. 2 contains actual delta revenue amounts (by month) for Timken/TimkenSteel⁴ in 2014 and monthly carrying charges.
- Schedule No. 6 contains detailed information regarding TimkenSteel's actual monthly electric bill, monthly discounts and monthly delta revenue in 2014.

The customer specific information in Schedule Nos. 2 and 6 is confidential, sensitive, and proprietary. TimkenSteel moved to intervene in Ohio Power's EDR update case and for a

⁴ The underlying unique arrangement was originally between Timken and Ohio Power. It was approved by the Commission in Case No. 10-3066-EL-AEC on April 27, 2011. Thereafter, an amendment to the unique arrangement was executed because of a corporate restructuring by Timken, pursuant to which its steel interests would be assigned to TimkenSteel Corporation. The Commission approved that amended unique arrangement in March 2014, and two additional amendments, one on October 29, 2014 and the other on February 3, 2015, all in Case No. 10-3066-EL-AEC.

protective order that its customer specific information in Schedule Nos. 2 and 6 be kept confidential and under seal. The Commission granted TimkenSteel's Motions to Intervene and for a Protective Order, finding that TimkenSteel's customer-specific information constituted a trade secret in an Order dated March 18, 2015.⁵

The Commission specified that the Protective Order would expire after 24-months but that TimkenSteel could file a motion requesting an extension of the Protective Order at least 45 days before the expiration of the Protective Order.⁶ Although this motion is filed fewer than 45 days before a March 18, 2017 deadline for expiration of the Protective Order, that 45-day deadline should be waived or extended here because there is good cause to extend the protective order and no party will be prejudiced.

At its Stark County Facilities, TimkenSteel manufactures specialty steel products that are, and will continue to be, sold in a highly competitive international market. The confidential information contained in Schedule Nos. 2 and 6, if released to the public, would harm TimkenSteel by providing domestic and international competitors with proprietary information concerning the cost and use of electricity at the Stark County Facilities. The need to protect the designated information from public disclosure is clear, and the Commission long 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.

⁵ *In the Matter of the Application of Ohio Power Company to Adjust The Economic Development Cost Recovery Rider Rates*, Case No. 15-0279-EL-RDR, Opinion and Order at 3-4, ¶¶ 8 & 10 (Mar. 18, 2015).

⁶ *Id.* at 4 ¶ 10.

In re: General Telephone Co., Case No. 81-383-TP-AIR, Entry (February 17, 1982). Likewise, the Commission's rules support trade secret protection. *See, e.g.*, Rule 4901-1-24(A)(7), O.A.C.

The Uniform Trade Secrets Act defines a "trade secret":

"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 in Scheduled 2 and 6.

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.

State ex rel The Plain Dealer v. Ohio Dept. of Ins., 80 Ohio St. 3d 513, 524-525 (1997) (citation and quotation omitted).

Applying these factors to the confidential information TimkenSteel seeks to protect, it is clear that the protective order should be extended. The information redacted from Schedule No. 6 contains information regarding the actual monthly electric bill, monthly discounts, and monthly delta revenues for operations at TimkenSteel's Stark County Facilities. Schedule No. 2 contains actual delta revenue data that reflects usage at TimkenSteel's facilities. Such sensitive information is generally not disclosed. Its disclosure could disadvantage TimkenSteel relative to its competitors.

As well, no party will be prejudiced if the protective order is extended. Rule 4901-1-24(D), Ohio Administrative Code ("O.A.C.") provides for the protection of confidential 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. The non-disclosure of TimkenSteel's customer specific information in Schedule Nos. 2 and 6 will not impair the purposes of Title 49. The Commission and its Staff have already decided Ohio Power's Application and retain full access to the confidential information. As well, no party challenged the Protective Order nor does any party have a right to public access to TimkenSteel's individual customer information.

Accordingly, because TimkenSteel's customer information contained in Schedule Nos. 2 and 6 of the Application constitutes a trade secret, TimkenSteel respectfully requests that this

Motion be granted and the Protective Order be extended for a period of 24 months for the reasons set forth herein.

Respectfully submitted,

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CERTIFICATE OF SERVICE

In accordance with Rule 4901-1-05, Ohio Administrative Code, the Commission'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 TimkenSteel Corporation to Extend Protective Order and Memorandum in Support* is being served or on behalf of the undersigned counsel for TimkenSteel Corporation to the following counsel for parties of record *via* electronic transmission on February 16, 2017.

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Summary: Motion Motion of TimkenSteel Corporation to Extend Protective Order and Memorandum in Support electronically filed by Mr. William A Sieck on behalf of TimkenSteel Corporation