

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

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

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Under Rule 4901-1-24(F), 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 March 18, 2015 to protect the confidentiality and prohibit the disclosure of Globe’s confidential information contained in the application filed by Ohio Power Company (“AEP-Ohio”) to adjust its Economic Development Cost Recovery rider (“EDR”) rates filed by AEP-Ohio under seal on February 6, 2015. The confidential information is not subject to disclosure and includes competitively sensitive and highly proprietary business information comprising trade secrets.

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 has challenged the protective order nor does any party have a right to public access to Globe’s individual customer information. As well, the Commission and its Staff have already decided AEP-Ohio’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,

By: /s/ William A. Sieck

Michael J. Settineri (0073369)

William A. Sieck (0071813)

VORYS, SATER, SEYMOUR AND PEASE LLP

52 East Gay Street

P.O. Box 1008

Columbus, Ohio 43216-1008

Phone: (614) 464-5462

Fax: (614) 719-5146

mjsettineri@vorys.com

wasieck@vorys.com

*Counsel for Globe Metallurgical Inc.*

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**MEMORANDUM IN SUPPORT**

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**I. Introduction and Background**

In 2008, the Commission approved a unique arrangement between AEP-Ohio and Globe.<sup>1</sup> The Unique Arrangement was thereafter amended in 2013 and again in 2015.<sup>2</sup> In 2016, the term of the Unique Arrangement was twice extended by the Commission.<sup>3</sup>

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>4</sup> In AEP-Ohio's second and third ESP proceedings, the EDR was reauthorized and is filed semi-annually.<sup>5</sup> The rider is calculated as a percentage of a customer's distribution charges.

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<sup>1</sup> *In re Globe Metallurgical Inc.*, Case No. 08-884-EL-AEC, Finding and Order (July 31, 2008).

<sup>2</sup> See *In re Globe Metallurgical, Inc.* Case No. 13-1170-EL-AEC, Opinion and Order (July 31, 2013); *In re Globe Metallurgical, Inc.*, Case No. 15-327-EL-AEC, Opinion and Order (May 13, 2015).

<sup>3</sup> See *In re Globe Metallurgical Inc.*, Case No. 15-327-EL-AEC, Finding & Order at 2 ¶¶ 5 & 7 (May 25, 2016); *Id.*, Finding & Order at 2-3 ¶¶ 5-9 (June 29, 2016).

<sup>4</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>5</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); *In the Matter of the Application of*

On February 6, 2015, AEP-Ohio initiated this update case and filed an Application requesting that the Commission adjust AEP-Ohio's EDR rates.<sup>6</sup> AEP-Ohio's February 6, 2015 Application contains Globe's customer-specific information in Schedules 2, 2.1 and 2.1a (hereafter, "Schedule No. 2") as well as Schedule Nos. 5 and 5.1 (hereafter together, "Schedule No. 5") that was clearly marked as confidential and was filed under seal, separate from the redacted public version. The Commission granted Globe's motions to intervene and for a protective order, finding that Globe's customer-specific information constituted a trade secret in an Order dated March 18, 2015.<sup>7</sup>

In its Order, the Commission specified that the protective order would extend for a period of 24-months and 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>8</sup> Although this motion is filed fewer than 45 days before a December 8, 2016 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 has challenged the protective order nor does any party have a right to public access to Globe's individual customer information. As well, the Commission and its Staff have already decided AEP-Ohio's application and retain full access to the confidential information.

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*Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to R.C. 4928.143, in the Form of an Electric Security Plan*, Case Nos. 13-2385-EL-SSO, *et al.*, Opinion and Order at 69 (Feb. 25, 2015).

<sup>6</sup> *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).

<sup>7</sup> *Id.*, Opinion and Order at 4¶ 10 (Mar. 18, 2015).

<sup>8</sup> *Id.*

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 in Schedule No. 2 and Schedule No. 5 of AEP-Ohio's application.

**II. Globe's request for an extension of the protective order is reasonable and will not prejudice any party.**

The billing information of the Globe unique arrangement schedule filed in Schedule No. 2 and Schedule No. 5 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>9</sup> Pursuant to this statutory grant of authority, the Commission promulgated Rule 4901-1-24(D), O.A.C., which 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>10</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

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<sup>9</sup> See Sections 4901.12 and 4905.07, Revised Code.

<sup>10</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).

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 Schedule No. 2 and Schedule No. 5 is competitively sensitive and highly proprietary business and financial information falling within the statutory definition of a trade secret.<sup>11</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 usage and pricing information would jeopardize Globe's business position and its ability to compete. The 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. Further, the efforts to protect the confidential pricing information are reasonable under the circumstances. Additionally, 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

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<sup>11</sup> Section 1333.61(D), Revised Code.

EDR update proceedings.<sup>12</sup> Finally, the Commission has already found in this proceeding that Globe'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.<sup>13</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 have already decided AEP-Ohio's application and retain full access to the confidential information. With the application decided and no appeal pending from the Commission's decision to approve the application, no party will be prejudiced by a continuation of protective treatment of the schedules in the application.

Accordingly, because Globe's information in Schedule No. 2 and Schedule No. 5 constitutes a trade secret, it should be accorded continued protected status.

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<sup>12</sup> See, e.g., *In the Matter of the Application of Ohio Power Company to Adjust the Economic Development Cost Recovery Rider Rate*, Case No. 16-1684-EL-RDR, Finding and Order at 4 (Sept. 22, 2016); *In the Matter of the Application of Ohio Power Company to Adjust the Economic Development Cost Recovery Rider Rate*, Case No. 16-260-EL-RDR, Finding and Order at 4 (Mar. 31, 2016); *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 4 (Nov. 18, 2015); *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 4 (Mar. 8, 2015); *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 (Sept. 17, 2014); *In the Matter of the Application of Ohio Power Company to Adjust the Economic Development Cost Recovery Rider Rate*, Case No. 13-1739-EL-RDR, Finding and Order at 4 (Sep. 18, 2013) & Entry at ¶ 5 (Dec. 08, 2014); *In the Matter of the Application of Ohio Power Company to Adjust the Economic Development Cost Recovery Rider Rate*, Case No. 13-0325-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 Pursuant to Rule 4901:1-36-08(A)(5), Ohio Administrative Code*, Case No. 12-2210-EL-ROR, 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. 12-688-EL-RDR, Finding and Order at 4-5 (Mar. 28, 2012); and *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).

<sup>13</sup> *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 4¶ 10 (Mar. 18, 2015).

### III. Conclusion

Globe 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,

By: /s/ William A. Sieck  
Michael J. Settineri (0073369)  
William A. Sieck (0071813)  
VORYS, SATER, SEYMOUR AND PEASE LLP  
52 East Gay Street, P.O. Box 1008  
Columbus, Ohio 43216-1008  
Phone: (614) 464-5462  
Fax: (614) 719-5146  
mjsettineri@vorys.com  
wasieck@vorys.com  
*Counsel for Globe Metallurgical Inc.*



### 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 Globe Metallurgical Inc. to Extend the Protective Order and Memorandum in Support* is being served by or on behalf of the undersigned counsel for Globe Metallurgical Inc. to the following counsel for parties of record on February 23, 2017, via electronic transmission.

/s/William A. Sieck

William A. Sieck

Steven T. Nourse (0046705)  
Matthew J. Satterwhite (0071972)  
American Electric Power Service Corp.  
1 Riverside Plaza, 29th Floor  
Columbus, Ohio 43215  
[stnourse@aep.com](mailto:stnourse@aep.com)  
[mjsatterwhite@aep.com](mailto:mjsatterwhite@aep.com)  
**Attorneys for Ohio Power Company**

Frank P. Darr (0025469)  
Matthew R. Pritchard (0088070)  
McNees Wallace & Nurick LLC  
21 East State Street, 17th Floor  
Columbus, OH 43215-4228  
[fdarr@mwncmh.com](mailto:fdarr@mwncmh.com)  
[mpritchard@mwncmh.com](mailto:mpritchard@mwncmh.com)  
**Attorneys for Eramet Marietta, Inc.**

Sara Parrot (Reg. No. 0082197)  
Greta See  
Public Utilities Commission of Ohio  
Legal Department  
180 E. Broad St., 12<sup>th</sup> Floor  
Columbus, Ohio 43216  
[sarah.parrot@puc.state.oh.us](mailto:sarah.parrot@puc.state.oh.us)  
[greta.see@puc.state.oh.us](mailto:greta.see@puc.state.oh.us)  
**Attorney Examiners**

William L. Wright (Reg. No. 0018010)  
Chief, Public Utilities Section  
Assistant Attorney General  
Office of the Attorney General  
30 E. Broad St., 16<sup>th</sup> Floor  
Columbus, Ohio 43215  
[william.wright@ohioattorneygeneral.gov](mailto:william.wright@ohioattorneygeneral.gov)  
**Attorney for Staff of the Public Utilities  
Commission of Ohio**

Michael J. Settineri (Reg. No. 0073369)  
William A. Sieck (Reg. No. 0071813)  
52 East Gay Street, P. O. Box 1008  
Columbus, Ohio 43216-1008  
[mjsettineri@vorys.com](mailto:mjsettineri@vorys.com)  
[wasieck@vorys.com](mailto:wasieck@vorys.com)  
**Attorney for TimkenSteel Corporation**

Maureen Willis (0020847)  
Office of the Ohio Consumers' Counsel  
10 West Broad Street, Suite 1800  
Columbus, Ohio 43215  
[Maureen.willis@occ.ohio.gov](mailto:Maureen.willis@occ.ohio.gov)  
**Attorney for The Office of the Ohio  
Consumers Counsel**

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