

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

**In the Matter of the Application of TimkenSteel)
Corporation for Approval of a Unique)
Arrangement for the TimkenSteel) Case No. 15-1857-EL-AEC
Corporation's Stark County Facilities)**

TIMKENSTEEL CORPORATION'S MOTION TO EXTEND PROTECTIVE ORDER

Pursuant to Rule 4901-1-24(D)&(F) of the Ohio Administrative Code ("O.A.C."), TimkenSteel Corporation ("TimkenSteel") moves to extend the December 16, 2015 protective order entered in this case ("Protective Order") to keep under seal the confidential, proprietary and trade secret information in TimkenSteel's Application for a Unique Arrangement (the "Application") and in the confidential versions of Direct Testimony of TimkenSteel Witnesses Peggy Claytor, Christopher Holding, Susan Misconish, Thomas Moline, Shawn Seanor and Dr. Paul Coomes (including (i) as filed under seal on November 25, 2015 and (ii) as admitted at the December 3, 2015 hearing in confidential Company Exhibit Nos. 2, 4, 6, 8, 10, 12 & 14) (the "Direct Testimony"). The reasons underlying this motion are detailed in the attached Memorandum in Support.

WHEREFORE, TimkenSteel respectfully requests that this motion be granted and that the unredacted versions of TimkenSteel's Application and Direct Testimony remain under seal.

Respectfully submitted,

By: s/ William A. Sieck
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**MEMORANDUM IN SUPPORT OF
TIMKENSTEEL CORPORATION'S MOTION TO EXTEND PROTECTIVE ORDER**

On November 2, 2015, TimkenSteel commenced this case by filing an Application for a Unique Arrangement ("Application"), which contains operational and financial data, actual and anticipated investment levels, market share, growth strategies and employment figures that are confidential, sensitive, and proprietary.¹ The same type of confidential, sensitive and proprietary information was included in the Direct Testimony of TimkenSteel witnesses Peggy Claytor, Christopher Holding, Susan Misconish, Thomas Moline, Shawn Seanor and Dr. Paul Coomes as filed under seal on November 25, 2015² and admitted at the December 3, 2015 evidentiary hearing as confidential Company Exhibit Nos. 2, 4, 6, 8, 10, 12 & 14³ (together, the "Direct Testimony").

TimkenSteel moved the Commission to enter a protective order keeping under seal the confidential information in the Application⁴ and in the Direct Testimony.⁵ Neither motion was opposed by any party. On December 16, 2015, the Commission granted TimkenSteel's motions for protective order in its December 16, 2015 Opinion & Order ("Protective Order").⁶ The Commission specified that the Protective Order would expire after 24-months – after December 16, 2017 – "unless otherwise ordered by the Commission or a subsequent motion for protective order is filed at least 45 days in advance of the expiration date of the existing order."⁷

¹ *In re Application of TimkenSteel Corporation for Approval of a Unique Arrangement for the TimkenSteel Corporation's Stark County Facilities*, Case No. 15-1857-EL-AEC, Application (filed Nov. 2, 2015) (confidential information was redacted from the public version and highlighted in yellow in the confidential version filed under seal).

² *Id.*, Direct Testimony of Peggy Claytor, Christopher Holding, Susan Misconish, Thomas Moline, Shawn Seanor and Dr. Paul Coomes (filed Nov. 25, 2015) (confidential information was redacted from the public version and highlighted in yellow in the confidential version filed under seal).

³ *Id.*, Hr'g Tr. 9-11 & 20 (filed Dec. 4, 2015)

⁴ *Id.*, Motion for Protective Order (filed Nov. 2, 2015)

⁵ *Id.*, Motion for Protective Order (filed Nov. 25, 2015).

⁶ *Id.*, Opinion & Order at 6-7 & 9 (filed Dec. 16, 2015).

⁷ *Id.* at 6-7.

By this motion, TimkenSteel timely requests that the December 16, 2015 Protective Order be extended for an additional 24-month period.

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 the Application and in the Direct Testimony, if released to the public, would harm TimkenSteel by providing its domestic and international competitors with proprietary information concerning its recent past, proposed and/or planned operations, investment projects, market share, growth strategies and its employment figures at the Stark County Facilities.

The need to protect the designated information from public disclosure is clear, and there is compelling legal authority supporting the 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). 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 reflects the state policy favoring the protection of trade secrets, such as the sensitive information in the Application and Direct Testimony.

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 the Application and Direct Testimony reflects TimkenSteel's recent past, proposed and/or planned operational and financial data, actual and anticipated investment levels, market share, growth strategies and employment figures. Such sensitive information is generally not disclosed and TimkenSteel takes steps to prevent the disclosure of this information. Its disclosure could give competitors an advantage that would hinder TimkenSteel's ability to compete worldwide.

As well, no party will be prejudiced if the Protective Order is extended. Rule 4901-1-24(D), Ohio Administrative Code 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 confidential

information in TimkenSteel's Application and Direct Testimony will not impair the purposes of Title 49. The Commission already decided the Application and determined "that TimkenSteel properly filed the documents with only such information redacted as is essential to prevent disclosure, consistent with Ohio Admin. Code 4901-1-24(D)."⁸ The Commission and its Staff also retain access to the confidential information in order to fulfill any statutory obligations. As well, no party challenged the Protective Order nor does any party have a right to public access to TimkenSteel's confidential, proprietary and trade secret information.

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 (1982). Indeed, for the Commission to do otherwise would be to negate the protections the Ohio General Assembly has granted to all businesses, and which this Commission previously granted to TimkenSteel in Case No. 10-3066-EL-AEC.

WHEREFORE, for the above reasons, TimkenSteel respectfully requests that the Protective Order be extended and that the confidential information in TimkenSteel's Application and Direct Testimony remain under seal for an additional 24-month period.

Respectfully submitted,

By: s/ William A. Sieck

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⁸ *Id.*, Opinion & Order at 7.

CERTIFICATE OF SERVICE

The Public Utilities Commission of Ohio e-filing system will electronically serve notice of the filing of this document on the parties referenced in the service list of the docket card who have electronically subscribed to this case. In addition, the undersigned certifies that a courtesy copy of *TimkenSteel Corporation's Motion to Extend Protective Order* is also being served upon the following persons below via electronic mail this 30th day of October, 2017:

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