

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio)	
Power Company to Adjust The Economic)	Case No. 19-232-EL-RDR
Development Cost Recovery Rider Rate.)	

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

Pursuant to Rule 4901-1-24(D), Ohio Administrative Code ("O.A.C."), Globe Metallurgical Inc. ("Globe") respectfully moves the Public Utilities Commission of Ohio ("Commission") to issue a Protective Order to protect the confidentiality and prohibit the disclosure of the confidential information contained in the schedules to the January 29, 2019 Application of Ohio Power Company ("AEP Ohio") to adjust its Economic Development Cost Recovery rider ("EDR") rate. 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,

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**MEMORANDUM IN SUPPORT
OF THE MOTION FOR PROTECTIVE ORDER**

I. INTRODUCTION AND BACKGROUND

Globe is a mercantile customer that is and has been taking service from AEP Ohio pursuant to Commission-approved unique arrangements.¹ On January 29, 2019, AEP Ohio filed an Application to adjust its EDR rate, which included Globe's confidential, customer-specific information filed under seal.²

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 that ESP proceeding, the Commission also set the initial level of the rider at zero, to be updated quarterly.³ In AEP Ohio's second and third ESP proceedings, the EDR was reauthorized and is filed semi-annually.⁴ In AEP

¹ *In re Application of Globe Metallurgical, Inc. for Approval of a Unique Arrangement Between Ohio Power Company and Globe Metallurgical, Inc.*, Case No. 16-737-EL-AEC, Opinion and Order at ¶ 12, 21 (Oct. 26, 2016) (approving unique arrangement effective Oct. 1, 2016 – Dec. 31, 2018). *See also In re Application of Globe Metallurgical, Inc. for Approval of a Unique Arrangement Between Ohio Power Company and Globe Metallurgical, Inc.*, Case No. 15-327-EL-AEC, Opinion and Order at 6 (May 13, 2015) (amending and extending unique arrangement through May 31, 2016) and Finding and Order at ¶ 7, 9 (May 25, 2016) (extension through June 30, 2016) and Finding and Order at ¶ 9, 11 (Jun. 29, 2016) (extension through September 30, 2016).

² *See In re Application of Ohio Power Company to Adjust The Economic Development Cost Recovery Rider Rate*, Case No. 19-232-EL-RDR, Application at Schedules 2 (reflecting actual and estimated monthly delta revenue amounts) and 4 (reflecting actual monthly electric usage and bill information, discounts, and delta revenues) (Jan. 29, 2019).

³ *In re 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 re 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 re Application of 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).

Ohio's ESP III extension proceeding, the rider was again continued, with certain costs transferred to the EDR.⁵ The rider is calculated as a percentage of a customer's distribution charges.

AEP Ohio's January 29, 2019 Application contains Globe's customer-specific information that was clearly marked as confidential and was submitted under seal, separate from the redacted public version of the Globe-specific schedule. The confidential information as it pertains to Globe is contained in Schedule Nos. 2 and 4 submitted under seal on January 29, 2019.⁶ AEP Ohio has moved for a protective order for Globe's customer-specific information.⁷

For the reasons stated below, Globe respectfully requests that the Commission grant this motion and grant AEP Ohio's motion for protective treatment of Globe's customer-specific information filed under seal in Schedule Nos. 2 and 4 in support of AEP-Ohio's application to adjust the EDR rate.

II. ARGUMENT

The billing information of the Globe reasonable arrangement filed in Schedule Nos. 2 and 4 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

⁵ *In re Application of 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. 16-1852-EL-SSO, *et al.*, Opinion and Order at 42, 126 (Apr. 25, 2018).

⁶ *In re Application of Ohio Power Company to Adjust The Economic Development Cost Recovery Rider Rate*, Case No. 19-232-EL-RDR, Application at Schedule Nos. 2 (reflecting actual monthly delta revenue amounts) and 4 (reflecting actual monthly electric usage and bill information, discounts, and delta revenues) (Jan. 29, 2019).

⁷ *Id.*, Motion for Protective Order (Jan. 29, 2019).

disclosure.⁸ Pursuant to this statutory grant of authority, the Commission promulgated O.A.C Rule 4901-1-24. Rule 4901-1-24(D) provides for the issuance of an order necessary to protect confidential information contained in documents filed at the Commission to the extent that state and federal law prohibit the release of such information when non-disclosure of the information is not inconsistent with the purposes of R.C. Title 49.

Trade secrets protected by state law are not public records and are exempt from public disclosure.⁹ A trade secret is defined by R.C. 1333.61(D), 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.

R.C. 1333.61(D) (emphasis added).

The Globe-related information contained within Schedule No. 2 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 Globe’s delta revenue and billings paid for electricity based upon its actual usage. Public disclosure of the pricing information would jeopardize Globe’s business position and its

⁸ See R.C. 4901.12 and 4905.07.

⁹ R.C. 149.43(A)(1)(v); *State ex rel. The Plain Dealer v. Ohio Dept. of Ins.*, 80 Ohio St. 3d 513, 530 (1997).

¹⁰ R.C. 1333.61(D).

ability to compete. The delta revenue and the actual 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. Finally, actual customer usage, billing information and pricing terms are protected from disclosure by AEP-Ohio¹¹ and routinely afforded protected status by the Commission. Globe's own information has repeatedly been afforded such treatment in many of AEP Ohio's previous EDR update proceedings.¹²

The non-disclosure of the actual usage and pricing information will not impair the purposes of R.C. Title 49, as the Commission and its Staff will still have full access to the

¹¹ See, e.g., Rule 4901:1-37-04(D)(1), O.A.C. (prohibiting disclosure of "proprietary customer information (e.g., individual customer load profiles or billing histories)").

¹² See, e.g., *In re Application of Ohio Power Company to Adjust The Economic Development Cost Recovery Rider Rate*, Case No. 18-1256-EL-RDR, Finding and Order at ¶13 (Sep. 19, 2018); *In re Application of Ohio Power Company to Adjust The Economic Development Cost Recovery Rider Rate*, Case No. 18-0191-EL-RDR, Finding and Order at ¶14 (Mar. 28, 2018); *In re Application of Ohio Power Company to Adjust its Economic Development Cost Recovery Rider Rate*, Case No. 17-1714-EL-RDR, Finding and Order at 4 (Sep. 23, 2017); *In re Application of Ohio Power Company to Adjust its Economic Development Cost Recovery Rider Rate*, Case No. 17-0295-EL-RDR, Finding and Order at 4 (Mar. 29, 2017); *In re 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 (Sep. 22, 2016); *In re 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 re 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 re 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 re Application of Ohio Power Company to Adjust Its Economic Development Rider Rate*, Case No. 14-1329-EL-RDR, Finding and Order at 4 (Sep. 17, 2014); *In re 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) and Entry at ¶ 5 (Dec. 08, 2014); *In re 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 re 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 (Sep. 26, 2012); *In re 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 re 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).

confidential information in order to complete its review process. Because Globe's information constitutes a trade secret, it should be accorded protected status.

III. CONCLUSION

Globe respectfully requests that this Motion for Protective Order and AEP Ohio's January 29, 2019 motion be granted 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 Public Utilities Commission of Ohio's e-filing system will electronically serve notice of the filing of this document on the parties referenced on the service list of the docket card who have electronically subscribed to the case. In addition, the undersigned certifies that a courtesy copy of the foregoing document is also being served (via electronic mail) on the 19th day of February 2019 upon all persons/entities listed below:

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Summary: Motion for Protective Order electronically filed by Mr. Michael J. Settineri on behalf of Globe Metallurgical, Inc.