

In the Matter of the Application of Ohio Power Company to Adjust The Economic Development Cost Recovery Rider Rate.

Pursuant to Rule 4901-1-24(D), Ohio Administrative Code, TimkenSteel Corporation (“TimkenSteel”) moves for a protective order to keep confidential certain information contained in Schedule No. 2 and Schedule No. 5 attached to the January 29, 2019 application of Ohio Power Company (“Ohio Power”) to update its Economic Development Cost Recovery rider (“EDR”) rate. For the reasons detailed in the attached Memorandum in Support, TimkenSteel seeks to protect certain information contained in Schedule Nos. 2 and 5 attached to the application.

WHEREFORE, TimkenSteel respectfully requests that this motion for a protective order be granted and that the unredacted versions of Schedule Nos. 2 and 5 remain under seal.

Respectfully submitted,

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

On December 16, 2015, TimkenSteel received approval from the Public Utilities Commission of Ohio (“Commission”) of a unique arrangement for TimkenSteel’s Stark County Facilities.¹ The Commission also granted TimkenSteel’s motion for protective order seeking to protect certain proprietary and confidential information related to the unique arrangement application.²

On January 29, 2019, Ohio Power applied to update its EDR rate commencing with the first billing cycle of April 2019.³ As part of the application, Ohio Power submitted under seal various schedules. Two of those schedules contain highly proprietary and confidential information as it relates to TimkenSteel:

- Schedule No. 2 contains the actual and estimated delta revenue amounts (by month) for TimkenSteel and monthly carrying charges; and,
- Schedule No. 5 contains the actual and estimated monthly electric bill information, monthly discounts and monthly delta revenues of TimkenSteel.⁴

Ohio Power moved for a protective order for TimkenSteel's customer-specific information.⁵ TimkenSteel’s customer specific information in Schedule Nos. 2 and 5 is confidential, sensitive, and proprietary. It is trade secret information for which TimkenSteel seeks a protective order.

¹ *In the Matter of the Application of TimkenSteel Corporation for Approval of a Unique Arrangement for the TimkenSteel Corporation’s Stark County Facilities*, Case No. 15-1857-EL-AEC, Opinion and Order (Dec. 16, 2015).

² *Id.*, Opinion and Order at 6.

³ *See In re Application of Ohio Power Company to Adjust The Economic Development Cost Recovery Rider Rate*, Case No. 19-232-EL-RDR, Application (Jan. 29, 2019).

⁴ *Id.*

⁵ *Id.*, Motion for Protective Order (Jan. 29, 2019).

At its Stark County Facilities, TimkenSteel manufactures specialty steel products that are, and will continue to be, sold in an international market that is very competitive. The confidential, customer-specific information contained in Schedule Nos. 2 and 5, if released to the public, would harm TimkenSteel by providing domestic and international competitors with proprietary information concerning the cost, physical limits, and nature of the manufacturing processes at the Stark County Facilities.

Rule 4901-1-24(D), Ohio Administrative Code (“O.A.C.”), provides that the Commission or certain designated employees may issue an order to protect the confidentiality of 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. State law recognizes the need to protect the types of information that are the subject of this motion. The non-disclosure of the information will not impair the purposes of Title 49. The Commission and its Staff have full access to the information in order to fulfill their statutory obligations. No purpose of Title 49 would be served by the public disclosure of the information.

The need to protect the designated information from public disclosure is clear, and there is compelling legal authority supporting the requested protective order. 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.

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 which is the subject of this motion.

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 a protective order should be granted. The information redacted from Schedule No. 5 contains information regarding the TimkenSteel actual and estimated monthly electric bill,

monthly discounts, and monthly delta revenues. Schedule No. 2 contains estimated and 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.

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, including public utilities. Ohio Power is prohibited from disclosing actual customer usage, billing information and pricing terms.⁶ Notably, on numerous occasions, this Commission has granted protective treatment of the same type of information provided in the schedules of other Ohio Power applications, including a decision issued most recently in September 2018.⁷ Also, the Commission has

⁶ 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)”).

⁷ 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. 13, 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 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 ¶13 (Sep. 22, 2016); *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 ¶12 (Mar. 31, 2016); *In the Matter of the Application of Ohio Power Company to Adjust Its Economic Development Rider*, Case No. 15-279-EL-RDR, Finding and Order at ¶10 (Mar. 18, 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 ¶10 (Sep. 17, 2014); *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. 13-325-EL-RDR, Finding and Order at ¶9 (Mar. 27, 2013); *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 ¶13 (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).

previously granted protective treatment for certain confidential information related to TimkenSteel's Stark County Facilities, including the cost of electricity.⁸

WHEREFORE, for the above reasons, TimkenSteel Corporation requests that the Commission grant its motion for protective order and the motion for protective order by Ohio Power (filed January 29, 2019 in this proceeding). The Commission should maintain under seal the confidential information contained in Schedule Nos. 2 and 5 of Ohio Power's application.

Respectfully submitted,

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⁸ See, e.g., *In the Matter of the Application of TimkenSteel Corporation for Approval of a Unique Arrangement for the TimkenSteel Corporation's Stark County Facilities*, Case No. 15-1857-EL-AEC, Opinion and Order at 6 (Dec. 16, 2015); *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, Entry at ¶7 (February 11, 2011).

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 February 19, 2019 upon all persons/entities listed below:

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