

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

As allowed under Ohio Administrative Code (“O.A.C.”) 4901-1-24(F), Globe Metallurgical Inc. (“Globe”) respectfully moves the Public Utilities Commission of Ohio (“Commission”) to extend the protective order previously granted in this docket for Globe’s confidential customer-specific information that has been held under seal. Globe requests that confidential treatment continue going forward for at least a two-year period. Globe’s confidential information is in the application materials filed under seal in this docket by Ohio Power Company (“AEP-Ohio”) when it applied to adjust its Economic Development Cost Recovery rider (“EDR”) rate. Globe’s confidential information is competitively sensitive and highly proprietary business information that the Commission previously found to be a trade secret. The information has remained a competitively sensitive and highly proprietary trade secret, and will continue to be a trade secret going forward. Protected status should be extended.

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

Respectfully submitted,

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MEMORANDUM IN SUPPORT

I. Introduction

In 2016, the Commission approved a unique arrangement between AEP-Ohio and Globe.¹ In January 2019 in this docket, AEP-Ohio requested that the Commission adjust AEP-Ohio's Economic Development Cost Recovery rider ("EDR") rate, based in part upon delta revenues generated from the unique service arrangement. AEP-Ohio included Globe's customer-specific information in the application materials filed in the Commission proceeding.

AEP-Ohio and Globe filed in the docket separate motions for protective orders related to Globe's customer-specific information and the Commission granted a protective order concluding that the Globe information was a trade secret that should be afforded confidential treatment.²

Through this motion, Globe requests that the Commission extend the prior protective order to the Globe information currently under seal. Globe requests that the Commission extend the protective order for a two-year period, as contemplated by O.A.C. 4901-1-24(F). As explained below, Globe's confidential customer-specific information has been and will continue to be trade secret information that warrants protective status.

¹ *In re Globe Metallurgical Inc.*, Case No. 16-0737-EL-AEC, Opinion and Order (October 26, 2016). The agreement followed an earlier unique arrangement that was amended and later extended. *In re Globe Metallurgical Inc.*, Case No. 08-884-EL-AEC, Finding and Order (July 31, 2008); *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); *In re Globe Metallurgical Inc.*, Case No. 15-327-EL-AEC, Finding and Order at 2 ¶¶ 5 & 7 (May 25, 2016) and Finding & Order at 2-3 ¶¶ 5-9 (June 29, 2016).

² Finding and Order at ¶ 13 (March 20, 2019).

II. Globe's information is a trade secret and its request to extend the protective order is reasonable without prejudicing any party.

The billing information of the Globe unique arrangement filed by AEP-Ohio contains and continues to consist of competitively sensitive and highly proprietary business information that constitutes a trade secret under Ohio law and the Commission's rules. State law recognizes the need to protect information that is confidential in nature. Trade secrets protected by state law are not considered public records and are therefore exempt from public disclosure.³ A trade secret is defined by Ohio Revised Code Section ("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 Commission has the statutory authority to exempt certain documents from disclosure. See R.C. 4901.12 and 4905.07. O.A.C. 4901-1-24(D) provides for a Commission 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

³ Section 149.43(A)(1)(v), Revised Code; and *State ex rel. The Plain Dealer v. Ohio Dept. of Insurance*, 80 Ohio St. 3d 513, 530 (1997).

information and where non-disclosure of the information is not inconsistent with the purposes of Title 49 of the Revised Code.

The Globe-related information contained in the application materials is competitively sensitive and highly proprietary business and financial information falling within the above-quoted statutory definition of a trade secret. It includes billings paid for Globe's electricity based upon its actual and estimated usage. Public disclosure of usage and pricing information would jeopardize Globe's business position and its ability to compete. This billing information derives independent economic value from not being generally known and not being readily ascertainable by proper means by Globe's competitors. Disclosure would allow Globe's competitors throughout the world the opportunity to glean competitively sensitive information regarding its prior and current business operations, including the facilities and its financial status. Globe's efforts to protect the confidential pricing information are reasonable under the circumstances. Additionally, actual customer usage, billing information and pricing terms are protected from disclosure by AEP-Ohio.⁴ As the Commission is aware, this information is routinely afforded protected status by the Commission, not just for Globe but other customers too. Finally, the Commission has already found Globe's customer-specific information filed under seal in the confidential versions of AEP-Ohio's filings was a trade secret and it should be afforded continued protected status.

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 applications and they retain full access to the confidential information. No party

⁴ See, e.g., O.A.C. 4901:1-37-04(D)(1), which prohibits disclosure of "proprietary customer information (e.g., individual customer load profiles or billing histories)."

will be prejudiced by continuing the protective treatment of the Globe information supporting the application.

Accordingly, because Globe's information in the application materials (in Schedules 2 & 4) constitutes a trade secret, it should continue to be afforded protected status.

III. Conclusion

Globe respectfully requests that the Commission grant this Motion. For the reasons set forth herein, the Commission should rule that a protective order be granted to Globe's customer-specific information that has been held under seal in this proceeding and that protective treatment be extended for at least a period of 24 months.

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 parties of record. In addition, I hereby certify that a copy of the foregoing document is being sent to the following counsel for parties of record on January 21, 2021, via electronic transmission.

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Summary: Motion Motion to Extend Protective Order and Memorandum in Support electronically filed by Mr. Michael J. Settineri on behalf of Globe Metallurgical, Inc.