**Before**

**The Public Utilities Commission of Ohio**

|  |  |  |
| --- | --- | --- |
| In the Matter of the Application of Ohio Power Company to Adjust Its Economic Development Cost Recovery Rider Rates Pursuant to Rule 4901:1-38-08(A)(5) of the Ohio Administrative Code | ))))) | Case No. 12-688-EL-RDR |

# SECOND MOTION OF GLOBE METALLURGICAL, INC. FOR PROTECTIVE ORDER AND MEMORANDUM IN SUPPORT

 Samuel C. Randazzo

Frank P. Darr (Counsel of Record)

Matthew R. Pritchard

McNees Wallace & Nurick LLC

21 East State Street, 17th Floor

Columbus, OH 43215-4228

Telephone: (614) 469-8000

Telecopier: (614) 469-4653

sam@mwncmh.com

fdarr@mwncmh.com

mpritchard@mwncmh.com

March 20, 2012 Attorneys for Globe Metallurgical, Inc.

Before

**The Public Utilities Commission of Ohio**

|  |  |  |
| --- | --- | --- |
| In the Matter of the Application of Ohio Power Company to Adjust Its Economic Development Cost Recovery Rider Rates Pursuant to Rule 4901:1-38-08(A)(5) of the Ohio Administrative Code | ))))) | Case No. 12-688-EL-RDR |

# SECOND MOTION OF GLOBE METALLURGICAL, INC.

# FOR PROTECTIVE ORDER

 Pursuant to Rule 4901-1-24, 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 revised update to Ohio Power Company’s (“OP”) Economic Development Cost Recovery Rider (“EDR”) filed by OP under seal on March 20, 2012. 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,

/s/ Matthew R. Pritchard

Samuel C. Randazzo

Frank P. Darr (Counsel of Record)

Matthew R. Pritchard

McNees Wallace & Nurick LLC

21 East State Street, 17th Floor

Columbus, OH 43215-4228

sam@mwncmh.com

fdarr@mwncmh.com

mpritchard@mwncmh.com

**Before**

**The Public Utilities Commission of Ohio**

|  |  |  |
| --- | --- | --- |
| In the Matter of the Application of Ohio Power Company to Adjust Its Economic Development Cost Recovery Rider Rates Pursuant to Rule 4901:1-38-08(A)(5) of the Ohio Administrative Code | ))))) | Case No. 12-688-EL-RDR |

# MEMORANDUM IN SUPPORT

1. **Introduction and background**

On July 16, 2008, OP filed an application for approval of a special arrangement with Globe.[[1]](#footnote-1) On November 12, 2010, the parties filed a stipulation for the Commission’s approval, which was supplemented and modified on March 21, 2011. On April 5, 2011, the Commission approved the November 2010 stipulation as modified by the March 2011 filing.

In OP’s initial electric security plan (“ESP”) proceeding (Case Nos. 08-917-EL-SSO, *et al.*), the Commission authorized OP’s EDR, to recover economic development amounts authorized by the Commission in reasonable arrangement cases. In that proceeding, the Commission also set the initial level of the rider at zero, to be updated quarterly.[[2]](#footnote-2) The rider is calculated as a percentage of a customer’s distribution charges. On February 22, 2012, OP initiated this quarterly update case requesting that the Commission adjust OP’s EDR. Globe intervened and filed a Motion for a Protective Order on February 24, 2012. On March 20, 2012, OP filed revisions to the February 22, 2012 application. OP’s March 20, 2012 revisions contain Globe’s customer-specific information that was clearly marked as confidential and was filed under seal, separate from the redacted, public version of the Globe-specific schedule.

For the reasons stated below, Globe respectfully requests that the Commission grant protective treatment of Globe’s customer-specific information included to support OP’s revised EDR adjustment filed under seal.

1. **ARGUMENT**

The billing information of the Globe reasonable arrangement schedule filed by OP 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.[[3]](#footnote-3) Pursuant to this statutory grant of authority, the Commission promulgated Rule 4901-1-24, O.A.C. Rule 4901-1-24(D), O.A.C., 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.[[4]](#footnote-4) 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 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 the Globe schedule is competitively sensitive and highly proprietary business and financial information falling within the statutory characterization of a trade secret.[[5]](#footnote-5) 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 pricing information would jeopardize Globe’s business position and its ability to compete. The actual and projected 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 and pricing terms are routinely accorded protected status by the Commission and the Commission accorded such treatment to Globe’s information in OP’s previous EDR update proceedings.[[6]](#footnote-6)

The non-disclosure of the actual usage and pricing information will not impair the purposes of Title 49 as the Commission and its Staff will have full access to the confidential information in order to complete its review process. Because Globe’s information constitutes a trade secret, it should be accorded protected status.

1. **CONCLUSION**

Globe respectfully requests that this Motion for Protective Order be granted for the reasons set forth herein.

Respectfully Submitted,

/s/ Matthew R. Pritchard

Samuel C. Randazzo

Frank P. Darr (Counsel of Record)

Matthew R. Pritchard

McNees Wallace & Nurick LLC

21 East State Street, 17th Floor

Columbus, OH 43215-4228

Telephone: (614) 469-8000

 Telecopier: (614) 469-4653

sam@mwncmh.com

fdarr@mwncmh.com

mpritchard@mwncmh.com

**Attorneys for Globe Metallurgical, Inc.**

**Certificate Of Service**

I hereby certify that a copy of the foregoing *Second Motion of Globe Metallurgical, Inc. for Protective Order and Memorandum in Support* was served upon the following parties of record this 20th day of March 2012, via electronic transmission or first class mail, postage prepaid.

/s/ Matthew R. Pritchard

Matthew R. Pritchard

Steven T. Nourse

Yazen Alami

American Electric Power Service Corporation

1 Riverside Plaza, 29th Floor

Columbus, Ohio 43215

stnourse@aep.com

yalami@aep.com

**On Behalf of Ohio Power Company**

M. Howard Petricoff

Michael J. Settineri

Vorys Sater Seymour & Pease

52 East Gay Street

PO Box 1008

Columbus, OH 43215-1008

mhpetricoff@vorys.com

mjsettineri@vorys.com

**On Behalf of The Timken Company**

Bruce J. Weston

Interim Consumers’ Counsel

Maureen R. Grady

Assistant Consumers’ Counsel

Office of the Ohio Consumers’ Counsel

10 West Broad Street, Suite 1800

Columbus, OH 43215-3485

grady@occ.state.oh.us

**On Behalf of Office of the Ohio Consumers’ Counsel**

1. *In the Matter of the Application for Approval of a Contract for Electric Service Between Ohio Power Company and Globe Metallurgical, Inc.*, Case No. 08-884-EL-AEC, Application (July 16, 2008). [↑](#footnote-ref-1)
2. *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 (March 18, 2009). [↑](#footnote-ref-2)
3. *See* Sections 4901.12 and 4905.07, Revised Code. [↑](#footnote-ref-3)
4. 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). [↑](#footnote-ref-4)
5. Section 1333.61(D), Revised Code. [↑](#footnote-ref-5)
6. *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 (October 12, 2011). [↑](#footnote-ref-6)