

FILE

7

RECEIVED-DOCKETING DIV
2009 AUG 24 PM 4:56

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

PUCO

In the Matter of the Application for
Establishment of a Reasonable
Arrangement between Eramet
Marietta, Inc. and Columbus Southern
Power Company.

)
)
) Case No. 09-516-EL-AEC
)
)

**MOTION FOR PROTECTIVE ORDER AND MEMORANDUM IN SUPPORT
OF ERAMET MARIETTA, INC.**

Lisa G. McAlister (Trial Attorney)
Thomas L. Froehle
McNEES WALLACE & NURICK LLC
21 East State Street, 17TH Floor
Columbus, OH 43215
Telephone: (614) 469-8000
Telecopier: (614) 469-4653
lmcAlister@mwncmh.com
tfroehle@mwncmh.com

August 24, 2009

Attorneys for Eramet Marietta, Inc.

This is to certify that the images appearing are an
accurate and complete reproduction of a case file
document delivered in the regular course of business
Technician TM Date Processed 8/24/2009

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application for)	
Establishment of a Reasonable)	
Arrangement between Eramet)	Case No. 09-516-EL-AEC
Marietta, Inc. and Columbus Southern)	
Power Company.)	

MOTION FOR PROTECTIVE ORDER

Pursuant to the provisions of Rule 4901-1-24, Ohio Administrative Code ("O.A.C."), Eramet Marietta, Inc. ("Eramet") respectfully moves the Public Utilities Commission of Ohio ("Commission") to issue a protective order to protect the confidentiality of and prohibit the disclosure of the Post Hearing Brief filed simultaneously with this motion in the above-captioned docket. The Post Hearing Brief at issue contains sensitive and highly proprietary information comprising of trade secrets. The grounds for the instant Motion are detailed in the attached Memorandum in Support.

Respectfully submitted,



Lisa G. McAlister (Trial Attorney)
Thomas L. Froehle
MCNEES WALLACE & NURICK LLC
21 East State Street, 17TH Floor
Columbus, OH 43215
Telephone: (614) 469-8000
Telecopier: (614) 469-4653
lmcaster@mwncmh.com
tfroehle@mwncmh.com

August 24, 2009

Attorneys for Eramet Marietta, Inc.

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application for)	
Establishment of a Reasonable)	
Arrangement between Eramet)	Case No. 09-516-EL-AEC
Marietta, Inc. and Columbus Southern)	
Power Company.)	

MEMORANDUM IN SUPPORT OF PROTECTIVE ORDER

On June 19, 2009, Eramet filed its Application for approval of a reasonable arrangement. The testimony supporting Eramet's Application contained business sensitive and proprietary information, which required confidential treatment. Eramet's request for such protection was granted by the Attorney Examiners on August 4, 2009, the first day of the hearing. Tr. Vol. I at 7. Additionally, by agreement of the parties and with the permission of the Attorney Examiners, portions of the transcript of the hearing regarding business sensitive and proprietary information were separately identified and treated as confidential. It was necessary for Eramet to include references to and discussions of the same confidential material in the Post Hearing Brief filed simultaneously with this motion. Consequently, Eramet requests that the Commission maintain the confidential nature of the information contained therein, and protect the document from public disclosure.

Eramet has taken care to protect the limited amount of information that falls under this category by filing a public, redacted version of the Post Hearing Brief and a confidential, unredacted version of the same. Eramet's request for protective treatment

is limited to those portions of the Post Hearing Brief that have been redacted. Specifically, only a limited portion of one sentence on page 4 and a portion of two sentences on page 15 have been redacted.

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. State law recognizes the need to protect information that is confidential in nature, as is the information contained in the supplemental documents that are the subject of this motion. Additionally, non-disclosure of the information will not impair the purposes of Title 49.

The Post Hearing Brief includes highly sensitive business information falling within the statutory characterization of a trade secret as defined by Section 1333.61(D) of the Revised Code. The definition of a "trade secret" contained in Section 1333.1(D) is 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 information is not generally known by the public and is held in confidence in the normal course of business. Therefore, Eramet reasonably requests that the information filed under seal be deemed to contain trade secrets, and thus, be treated as confidential by this Commission and its Staff.

Additionally, Eramet hereby requests a waiver from Rule 4901-1-24(F), O.A.C., which causes any order prohibiting public disclosure of certain documents to automatically expire eighteen (18) months after the date the order was issued. Given the extremely sensitive nature of the information and given the fact that such information addresses issues pertaining to the ten year period requested for the term of the reasonable arrangement, Eramet believes that a waiver of this rule is necessary. The information is proprietary now and will be in eighteen (18) months; the sensitive nature of this information will remain and the need to keep the information from public disclosure will not diminish. Thus, it is imperative to maintain the information as confidential and for the Commission to continue its protection from public disclosure. As such, Eramet respectfully requests that the Commission grant a waiver from Rule 4901-1-24(F), O.A.C., to prevent the information that has been filed under seal from being removed from protective status and placed into the public record of the proceeding.

WHEREFORE, given the highly confidential and proprietary nature of the contents of the information filed under seal in the redacted portion of the Post Hearing Brief, Eramet urges the Commission to grant this Motion and issue an appropriate Order to ensure the continued non-disclosure of these proprietary materials.

Respectfully submitted,



Lisa G. McAlister (Trial Attorney)

Thomas L. Froehle

MCNEES WALLACE & NURICK LLC

21 East State Street, 17TH Floor

Columbus, OH 43215

Telephone: (614) 469-8000

Telecopier: (614) 469-4653

lmcaster@mwncmh.com

tfroehle@mwncmh.com

Attorneys for Eramet Marietta, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Motion for Protective Agreement and Memorandum in Support of Eramet Marietta, Inc.* was provided to the following persons this 24th day of August 2009, via first class mail, postage prepaid, or electronically via e-mail attachment.



LISA G. MCALISTER

Marvin I. Resnik, Counsel of Record
Steven T. Nourse
American Electric Power Service
Corporation
1 Riverside Plaza, 29th Floor
Columbus, OH 43215

ON BEHALF OF AMERICAN ELECTRIC POWER

Janine Migden-Ostrander
Consumers' Counsel
Gregory J. Poulos
Maureen Grady
Office of the Ohio Consumers' Counsel
10 West Broad Street, 18th Floor
Columbus, OH 43215

**ON BEHALF OF THE OFFICE OF THE OHIO
CONSUMERS' COUNSEL**

David F. Boehm
Michael L. Kurtz
Boehm, Kurtz & Lowry
36 East Seventh Street, Suite 1510
Cincinnati, OH 45202

ON BEHALF OF THE OHIO ENERGY GROUP

Robert Fortney
Utilities Department
Public Utilities Commission of Ohio
180 East Broad Street, 3rd Floor
Columbus, OH 43215

Duane Luckey
Thomas McNamee
Werner Margard
Chief, Attorney General's Section
Public Utilities Commission of Ohio
180 East Broad Street, 9th Floor
Columbus, OH 43215

**ON BEHALF OF THE STAFF OF THE PUBLIC
UTILITIES COMMISSION OF OHIO**

Greg Price
Rebecca Hussey
Attorney Examiners
Public Utilities Commission of Ohio
180 East Broad Street
Columbus, OH 43215

ATTORNEY EXAMINERS