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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Joint Application of)
The Timken Company and the Ohio Power) Case No. 10-3066-EL-AEC
For Approval of a Unique Arrangement for)
The Timken Company's Canton, Ohio)
Facilities)

MOTION FOR PROTECTIVE ORDER

Pursuant to Rule 4901-1-24(D) of the Ohio Administrative Code ("O.A.C."), The Timken Company ("Timken") moves for a protective order to keep certain confidential information contained within the Joint Application and Appendix A confidential and not part of the public record. The reasons underlying this motion are detailed in the attached Memorandum in Support. Consistent with the requirements of the above cited Rule, three (3) un-redacted copies of the exhibits are submitted under seal.

Respectfully submitted,



M. Howard Petricoff
Michael J. Settineri
Vorys, Sater, Seymour and Pease LLP
52 East Gay Street
P.O. Box 1008
Columbus, Ohio 43216-1008
(614) 464-5468
mhpetricoff@vorys.com
mjsettineri@vorys.com

Attorneys for The Timken Company

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

The Timken Company ("Timken") and the Ohio Power Company ("Ohio Power") have filed a joint application ("Application") seeking approval of a unique arrangement for Timken's Canton, Ohio facilities. Certain information related to Timken which is proprietary and confidential has been redacted from the Application and from Appendix A of the Application. Specifically, the following items have been redacted: 1) Timken's interruptible capacity or capacity that is able to be curtailed on a short notice; 2) the threshold in energy usage over which the proposed economic discount would not apply; 3) the threshold in capacity usage over which the proposed economic discount would not apply; 4) the amount of incremental demand required by Timken's potential expansion comprised of an interruptible component and a firm capacity component; the incremental capacity required by Timken's Canton facility that would not qualify for discounts under the proposed rates; 5) Timken's planned dollar investment in conservation projects during the term of the proposed unique arrangement; 6) the annual payroll of Timken in Stark County; 7) the hourly pay range for Timken's hourly workers in Stark County; 8) the hourly total benefits per average hourly worker for Timken; the average annual salary of salaried employees before benefits of Timken; 9) the amount of the ceiling or cap on the amount to be collected through the Economic Development rider; 10) the current amount of capacity provided by Ohio Power to the Timken Canton facility including the amount for the Timken technology center and the amount of interruptible power; 11) the number of fulltime employees at Timken's Canton facility; 12) Timken's planned investment in the Canton facility during the next ten year period including the amount to be invested in the next five years; and 13) Timken's established goal of fulltime employees at the Canton facility.

Timken manufactures specialty steel and roller bearings at its Canton, Ohio facility. The specialty steel and roller bearing are sold in an international market that is very competitive. The above 13 items of information, if released to the public, would harm Timken by providing its domestic and international competitors with proprietary information concerning the cost, physical limits and nature of the manufacturing process at the Canton facility. Rule 4901-1-24(D) of the Ohio Administrative Code provides that the Commission or certain designated employees may issue an order which is necessary 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 certain types of information which 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 its 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. While the Commission has often expressed its preference for open proceedings, the Commission also long ago 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 has facilitated the protection of trade secrets in its rules (O.A.C. §

4901-1-24(A)(7)).

The definition of a "trade secret" is set forth in the Uniform Trade Secrets Act:

"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). This definition clearly reflects the state policy favoring the protection of trade secrets such as the financial information which is the subject of this motion.

In State ex rel The Plain Dealer the Ohio Dept. of Ins. (1997), 80 Ohio St. 3d 513, 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.

Id. at 524-525 (quoting Pyromatics, Inc. v. Petruziello, 7 Ohio App. 3d 131, 134-135 (Cuyahoga County 1983)).

Applying these factors to the confidential information Timken seeks to protect, it is clear that a protective order should be granted.

The information redacted from the Application and Appendix A contains a wide variety of information regarding energy usage, capacity, investment plans, conservation projects, and payroll information related to Timken. Such sensitive information is generally not disclosed. Its disclosure could give competitors an advantage that would hinder Timken's ability to compete.

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, and now the new entrants who will be providing power through the Uniform Trade Secrets Act. This Commission has previously carried out its obligations in this regard in numerous proceedings. See, e.g., Elyria Tel. Co., Case No. 89-965-TP-AEC (Finding and Order, September 21, 1989); Ohio Bell Tel. Co., Case No. 89-718-TP-ATA (Finding and Order, May 31, 1989); Columbia Gas of Ohio, Inc., Case No. 90-17-GA-GCR (Entry, August 17, 1990).

WHEREFORE, for the above reasons Timken requests the Commission grant its motion for a protective order and to maintain the confidential information contained in the

application and that is a part of Appendix A under seal.

Respectfully submitted,



M. Howard Petricoff
Michael J. Settineri
Vorys, Sater, Seymour and Pease LLP
52 East Gay Street
P.O. Box 1008
Columbus, Ohio 43216-1008
(614) 464-5468
mhpetricoff@vorys.com
mjsettineri@vorys.com

Attorneys for The Timken Company

LIST OF INFORMATION
FOR WHICH PROTECTION IS SOUGHT

INFORMATION

Energy, capacity, conservation, energy efficiency projects, investment, wage, salary and employee information related to Timken

REASONS JUSTIFYING PROTECTION

This information is extremely confidential. Its disclosure would give an undue advantage to competitors and would hinder Timken's ability to compete.