

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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

ENTRY

The attorney examiner finds:

- (1) On December 20, 2010, the Timken Company (Timken) and the Ohio Power Company (Ohio Power) filed a joint application (application) seeking approval of a unique arrangement for Timken's Canton, Ohio facilities. The application included several appendices, including Appendix A.
- (2) On December 20, 2010, Timken also filed a motion for protective order, requesting that Appendix A and certain redacted portions of the application be kept under seal. Appendix A and the redacted portions of the application contain information regarding Timken's energy usage, capacity, investment plans, conservation projects, and payroll information. No memorandum contra was filed regarding the motion for protective order.
- (3) In support of its motion for protective order, Timken avers that Appendix A and the redacted portions of the application contain competitively sensitive and proprietary business and financial information and that public disclosure of this information would give its competitors an unfair advantage and would hinder its ability to compete. Consequently, Timken requests that Appendix A and the redacted portions of the application be treated as confidential.
- (4) Section 4905.07, Revised Code, provides that all facts and information in the possession of the Commission shall be public, except as provided in Section 149.43, Revised Code, and as consistent with the purposes of Title 49 of the Revised Code. Section 149.43, Revised Code, specifies that the term "public records" excludes information which, under state or federal law, may not be released. The Ohio Supreme Court has further

clarified that the "state or federal law" exemption is intended to cover trade secrets. *State ex rel. Besser v. Ohio State* (2000), 89 Ohio St.3d 396, 399.

- (5) Similarly, Rule 4901-1-24, Ohio Administrative Code (O.A.C.), allows an attorney examiner to issue an order to protect the confidentiality of information contained in a filed document, "to the extent that state or federal law prohibits release of the information, including where the information is deemed . . . to constitute a trade secret under Ohio law, and where non-disclosure of the information is not inconsistent with the purposes of Title 49 of the Revised Code."
- (6) In considering Timken's motion for protective order, the attorney examiner notes that it is necessary to review the materials in question; to assess whether the information constitutes a trade secret under Ohio law; to decide whether nondisclosure of the materials will be consistent with the purposes of Title 49, Revised Code; and to evaluate whether the confidential material can reasonably be redacted.
- (7) After applying the requirements that the information have independent economic value and be the subject of reasonable efforts to maintain its secrecy pursuant to Section 1333.61(D), Revised Code, as well as the six-factor test set forth by the Ohio Supreme Court,¹ the attorney examiner finds that pages 1-3 and 6-48² of Appendix A and the redacted portions of the application contain trade secret information. The release of these specific documents is, therefore, prohibited under state law. The attorney examiner further finds that nondisclosure of this information is not inconsistent with the purposes of Title 49 of the Revised Code. Finally, the attorney examiner concludes that pages 1-3 and 6-48 of Appendix A could not be reasonably redacted to remove the confidential information contained therein. Consequently, the attorney examiner finds that Timken's motion for protective order is reasonable with regard to pages 1-3 and 6-48 of Appendix A and the redacted portions of the application and should be granted.

¹ See *State ex rel. The Plain Dealer v. Ohio Dept. of Ins.* (1997), 80 Ohio St.3d 513, 524-525.

² The attorney examiner notes that the pagination used in the table of contents of Appendix A and on the actual documents contained in Appendix A is not the same. For purpose of identifying the documents, the attorney examiner elects to use the pagination as set forth in the table of contents.

- (8) The attorney examiner notes that page 4 of Appendix A consists of an aerial photograph of Timken's Canton facility. Timken has provided no specific explanation as to why this aerial photograph contains sensitive information, and none is apparent. Consequently, the attorney examiner finds that this photograph does not contain information with an independent economic value. Additionally, the attorney examiner notes that page 5 of Appendix A, consisting of a "Steel Business Process Overview" flowchart, can be found on Timken's public website. Therefore, the attorney examiner finds that this information is not the subject of reasonable efforts to maintain its secrecy pursuant to Section 1333.61(D), Revised Code, as well as the six-factor test set forth by the Ohio Supreme Court. In conclusion, pages 4 and 5 of Appendix A do not contain information that can be considered trade secrets and the attorney examiner finds that Timken's motion for protective order with respect to pages 4 and 5 of Appendix A should be denied.

It is, therefore,

ORDERED, That the motion for protective order filed by Timken be granted in part and denied in part in accordance with findings (7) and (8). It is, further,


ORDERED, That the Commission's docketing division maintain, under seal, the unredacted portions of the application and pages 1-3 and 6-48 of Appendix A, which were filed under seal in this docket on December 20, 2010. It is, further,

ORDERED, That pages 4 and 5 of Appendix A shall be released to the public record ten days from the date of this entry. It is, further,

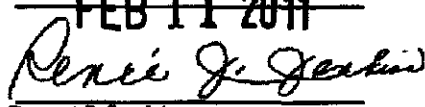
ORDERED, That a copy of this entry be served upon each party of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

By: 
Mandy L. Willey
Attorney Examiner

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Entered in the Journal


FEB 11 2011
Renee J. Jenkins
Secretary