

FILE

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of)
Columbus Southern Power Company)
and Ohio Power Company to Adjust)
Their Economic Development Cost)
Recovery Rider Rates.)

Case No. 11-705-EL-RDR

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

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February 11, 2011

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(C33263:)

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Pursuant to 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 and prohibit the disclosure of the confidential information contained in the update to Columbus Southern Power Company's ("CSP") Economic Development Rider ("EDR") filed by CSP under seal, which are not subject to disclosure and include competitively sensitive and highly proprietary business information comprising of trade secrets. 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 AND BACKGROUND

On June 15, 2009, Eramet filed an Application before the Commission for a reasonable arrangement with CSP to permit Eramet to upgrade its manufacturing facility in Ohio. On August 5, 2009, Eramet and Staff of the Commission filed a Joint Stipulation and Recommendation resolving the issues in the case ("Stipulation").¹ On October 15, 2009, the Commission issued an Opinion and Order approving the Stipulation with modifications. On March 24, 2010, the Commission issued an Entry on Rehearing denying Applications for Rehearing and upholding its Order approving the Stipulation. On April 26, 2010, CSP filed a Notice of Appeal at the Ohio Supreme Court.

In CSP's Electric Security Plan ("ESP") proceeding (Case No. 08-917-EL-SSO) the Commission authorized CSP's Economic Development Cost Recovery Rider ("EDR"), as a percentage, initially set at 0%, multiplied by the customers' distribution

¹ *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, Stipulation and Recommendation (August 5, 2009).

charges, to recover economic development amounts authorized by the Commission in reasonable arrangement cases.

On November 13, 2009, CSP sought to increase the EDR based, in part, upon Eramet's estimated usage.² The Commission authorized CSP to adjust its EDR to 10.52701% on January 7, 2010.³ The Company subsequently filed for authorization of its EDR on February 8, 2010 in Case No. 10-1072-EL-RDR.⁴ By Finding and Order dated September 22, 2010, the Commission approved new riders of 10.74420% for CSP.⁵

On February 10, 2011, CSP filed this case requesting that the Commission adjust CSP's EDR. Eramet's customer-specific information has been clearly marked as confidential and was filed under seal, separate from the redacted, public version of the Eramet-specific schedule.

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

II. ARGUMENT

The actual customer usage and actual pricing terms of the Eramet reasonable arrangement schedule filed concurrently with this Motion contain competitively sensitive

² *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company to Adjust Their Economic Development Cost Recovery Rider Rates*, Case No. 09-1095-EL-RDR, Application (November 13, 2009).

³ *Id.*, Finding and Order (January 7, 2010).

⁴ *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 4901:1-38-08 (A)(5), Ohio Administrative Code*, Case No. 10-154-EL-RDR, Application (February 8, 2010).

⁵ *Id.*, Finding and Order (Sept. 22, 2010).

and highly proprietary business information that constitutes trade secrets under Ohio law and the Commission's rules.

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 actual usage and pricing information contained in the Eramet schedule. The Commission has statutory authority to protect trade secrets.⁶ Additionally, 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.

The information for which protective treatment is sought includes Eramet's actual and projected kilowatt hour ("kWh") usage and the actual prices paid for electricity based upon the actual usage. The actual and projected usage and pricing terms contained within the Eramet schedule are competitively sensitive and highly proprietary business financial information falling within the statutory characterization of a trade secret, as defined by Section 1333.61(D), Revised Code. The definition of trade secret contained in Section 1333.61(D), Revised Code, 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:

⁶ See Sections 4901.12 and 4905.07, Revised Code.

(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).

Clearly, Eramet's usage and price information contained within the Eramet schedule is proprietary data and is confidential. Public disclosure of the pricing information would jeopardize Eramet's business position and its ability to compete. Actual customer usage and pricing terms are routinely accorded protected status by the Commission.⁷ The actual and projected usage and price information Eramet seeks to protect derives independent economic value from not being generally known and not being readily ascertainable by proper means by Eramet's competitors. Further, the efforts to protect the confidential pricing information are reasonable under the circumstances.

Additionally, Rule 4901:1-38-05(D), O.A.C., requires utilities to treat customer information to obtain a unique arrangement as confidential by requesting confidential treatment of customer-specific information that is filed with the Commission, with the exception of customer names and addresses. It follows that Eramet's customer-specific

⁷ In fact, the Commission has already recognized the confidentiality of the information inasmuch as the Commission granted protective treatment of Eramet's prefiled testimony discussing the same information. Eramet filed a Motion for protective treatment of confidential portions of its testimony on July 29, 2009 and filed the testimony under seal. There were no objections to Eramet's Motion and the Attorney Examiner granted the Motion on August 4, 2009. *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, Tr. Vol. I at 7 (August 4, 2009). Similarly, all oral testimony regarding the same information given during the course of the hearing was done so confidentially and two versions of the transcript were provided, the confidential redacted version and the public version. No parties objected to the protective treatment of the information.

information regarding its unique arrangement should be treated as confidential.

III. CONCLUSION

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

Respectfully Submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Motion of Eramet Marietta, Inc. for Protective Order and Memorandum in Support* was served upon the following parties of record this 11th day of February 2011, via electronic transmission or first class mail, postage prepaid.



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**ON BEHALF OF AMERICAN ELECTRIC
POWER**