

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

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

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**February 24, 2012**

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**MOTION OF ERAMET MARIETTA, INC. FOR PROTECTIVE ORDER**

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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 Ohio Power Company's ("OP") Economic Development Cost Recovery Rider ("EDR") filed by OP under seal. 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

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**MEMORANDUM IN SUPPORT**

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**I. INTRODUCTION AND BACKGROUND**

On June 19, 2009, Eramet filed an application before the Commission for a reasonable arrangement with OP to permit Eramet to upgrade its manufacturing facility in Ohio.<sup>1</sup> On August 5, 2009, Eramet and Commission Staff filed a Joint Stipulation and Recommendation resolving the issues in the case ("Stipulation").<sup>2</sup> 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.

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

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<sup>1</sup> The application, as filed and approved, was between Eramet and Columbus Southern Power Company ("CSP"). However, CSP has since merged with OP and therefore all references in this motion and to OP.

<sup>2</sup> *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).

updated quarterly.<sup>3</sup> The rider is calculated as a percentage of a customer's distribution charges. On February 22, 2012, OP filed this quarterly update case requesting that the Commission adjust OP's EDR. As part of OP's EDR application, Eramet's customer-specific information was attached in the schedule, was 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 OP's EDR adjustment filed under seal.

## **II. ARGUMENT**

The billing information of the Eramet 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.<sup>4</sup> 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.

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<sup>3</sup> *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).

<sup>4</sup> See Sections 4901.12 and 4905.07, Revised Code.

Trade secrets protected by state law are not considered public records and are therefore exempt from public disclosure.<sup>5</sup> 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 Eramet-related information contained within the Eramet schedule is competitively sensitive and highly proprietary business and financial information falling within the statutory characterization of a trade secret.<sup>6</sup> The information for which protective treatment is sought includes Eramet's billings paid for electricity based upon its actual and estimated usage. Public disclosure of the pricing information would jeopardize Eramet's business position and its ability to compete. The actual and projected billing 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. Finally, actual customer usage

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<sup>5</sup> 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).

<sup>6</sup> Section 1333.61(D), Revised Code.

and pricing terms are routinely accorded protected status by the Commission and the Commission accorded such treatment to Eramet's information in OP's previous EDR update proceedings.<sup>7</sup>

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 Eramet's information constitutes a trade secret it should be accorded protected status.

### **III. CONCLUSION**

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

Respectfully Submitted,

/s/ Matthew R. Pritchard

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<sup>7</sup> *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).*

## **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 24<sup>th</sup> day of February 2012, via electronic transmission or first class mail, postage prepaid.

/s/ Matthew R. Pritchard

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**ON BEHALF OF OHIO POWER COMPANY**

**This foregoing document was electronically filed with the Public Utilities**

**Commission of Ohio Docketing Information System on**

**2/24/2012 3:53:15 PM**

**in**

**Case No(s). 12-0688-EL-RDR**

Summary: Motion for Protective Order electronically filed by Mr. Matthew R. Pritchard on behalf of Eramet Marietta, Inc.