

**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)	

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

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March 20, 2012

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MOTION OF ERAMET MARIETTA, INC. FOR PROTECTIVE ORDER

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 revised update to Ohio Power Company's ("OP") Economic Development Cost Recovery Rider ("EDR") filed by OP under seal on March 20, 2012. 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

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.¹ On August 5, 2009, Eramet and Commission Staff filed a Joint Stipulation and Recommendation resolving the issues in the case ("Stipulation").² 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

¹ 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 are to OP.

² *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.³ The rider is calculated as a percentage of a customer's distribution charges. On February 22, 2012, OP initiated this quarterly update case requesting that the Commission adjust OP's EDR. Eramet intervened and filed a Motion for a Protective Order on February 24, 2012. On March 20, 2012, OP filed revisions to the February 22, 2012 application. OP's March 20, 2012 revisions contain Eramet's customer-specific information that 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.⁴ 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

³ *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).

⁴ See Sections 4901.12 and 4905.07, Revised Code.

not inconsistent with the purposes of Title 49 of the Revised Code.

Trade secrets protected by state law are not considered public records and are therefore exempt from public disclosure.⁵ 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.⁶ 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

⁵ 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).

⁶ Section 1333.61(D), Revised Code.

information are reasonable under the circumstances. Finally, actual customer usage 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.⁷

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,

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⁷ *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 *Second Motion of Eramet Marietta, Inc. for Protective Order and Memorandum in Support* was served upon the following parties of record this 20th day of March 2012, via electronic transmission or first class mail, postage prepaid.

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