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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Commission Review of)
The Capacity Charges of Ohio Power) Case No. 10-2929-EL-UNC
Company and Columbus Southern Power)
Company.)

**THE OHIO MANUFACTURERS' ASSOCIATION'S MOTION FOR PROTECTIVE
ORDER**

The Ohio Manufacturers' Association ("OMA"), pursuant to Rule 4901-1-24(D) of the Ohio Administrative Code ("OAC"), respectfully requests that the Public Utilities Commission of Ohio ("Commission") issue a protective order keeping confidential certain portions of the Testimonies of Belden Brick, OSCO Industries, Inc., AMG Vanadium, Ind., Lima Refining Company, and Whirlpool Corporation all filed on April 4, 2012. The confidential, unredacted version of the testimony and exhibit will be served upon parties that have executed confidentiality or protective agreements. The reasons supporting this motion are provided in the attached memorandum in support.

Respectfully submitted on behalf of
THE OHIO MANUFACTURERS' ASSOCIATION



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**MEMORANDUM IN SUPPORT OF THE OHIO MANUFACTURERS' ASSOCIATION'S
MOTION FOR PROTECTIVE ORDER**

OAC Rule 4901-1-24(D) provides that the Commission or certain designated Commission employees may issue an order "which is necessary to protect the confidentiality of information contained in the 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 nondisclosure of the information is not inconsistent with the purposes of Title 49 of the Revised Code." Moreover, Ohio Revised Code Section ("R.C.") 4928.06(F) specifically permits the Commission to grant confidentiality to competitive information.

R.C. 4901.12 and 4905.07 were amended in 1996 to facilitate the protection of trade secrets in Commission proceedings. By referencing R.C. 149.43 (Ohio's Public Records Law), the Commission-specific statutes incorporate the definition of "public records," as well as an exception to that definition that includes "[r]ecords the release of which is prohibited by state or federal law." R.C. 149.43(A)(1). In turn, state law prohibits the release of information meeting the definition of a trade secret. See R.C.

1333.61(D) and 1333.62. For this reason, records containing trade secrets are prohibited from public disclosure.

The definition of “trade secret” is set forth in R.C. 1333.61(D)

“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.

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. As the Ohio Supreme Court recently explained:

by adopting the Uniform Trade Secrets Act, with the express purpose to make uniform the law with respect to their subject among states, the General Assembly has determined that public policy in Ohio, as in the majority of other jurisdictions, favors the protection of trade secrets, whether memorized or reduced to some tangible form.

Al Minor & Associates, Inc. v. Martin, (2008) 117 Ohio St.3d 58.

Courts of other jurisdictions not only have held that a state public utilities commission has the authority to protect trade secrets, but that trade secret statutes create a duty to protect them. See *New York Tel. Co. v. Pub. Serv. Comm. N.Y.*, 56 N.Y. 2d 213 (1982).

Furthermore, this Commission itself has recognized the need to protect trade secrets from public disclosure as consistent with its other statutory obligations:

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). The Commission previously has carried out its obligation to protect the trade secret status of information from utilities and other regulated entities in numerous proceedings. See, e.g., *Cleveland Electric Illuminating Co.*, Case No. 07-171-EL-BTX (Entry dated August 14, 2008); *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).

Expounding upon the “trade secret” definition above, the Ohio Supreme Court has delineated factors to be considered in analyzing a trade secret claim:

(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.

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

The Commission applies these factors in the context of competitive retail natural gas broker/aggregator applications to conclude that certain financial exhibits constitute trade secrets. Applying these factors to the information contained in the relevant portions of the testimony demonstrates that protection from disclosure is appropriate.

Here, the Ohio Manufacturers' Association ("OMA"), pursuant to Rule 4901-1-24(D) of the Ohio Administrative Code ("OAC"), respectfully requests that the Public Utilities Commission of Ohio ("Commission") issue protective orders keeping confidential certain portions of the Testimony of Belden Brick, OSCO Industries, Inc., AMG Vanadium, Ind., Lima Refining Company, and Whirlpool Corporation (collectively, "Companies"). The information for which protection is sought includes competitively sensitive business information relating to the financial information of the Companies, including but not limited to payroll amounts, salaries of employees, and other confidential financial information.

The information identified above has been kept confidential, is entirely private and does not in the public record and, as a result, retains substantial economic value to the Companies by being kept confidential. Allowing unfettered public access to the information would give competitors and other third parties inappropriate access to proprietary and competitively sensitive business information about the Companies, respectively. It would be costly and time-consuming for third parties to replicate the information on their own. Accordingly, release of the information to the public would significantly reduce, if not eliminate, the value that the information has by being kept confidential and, thus, would cause harm to the Companies.

For the reasons stated above, the information in certain portions of the Testimony of the Companies falls directly within the definition of a "trade secret," and should be protected from public disclosure.

WHEREFORE, the OMA respectfully requests that this motion for protective order be granted.

Respectfully submitted on behalf of
THE OHIO MANUFACTURERS' ASSOCIATION

A handwritten signature in black ink, appearing to read 'Lisa McAlister', written over a horizontal line.

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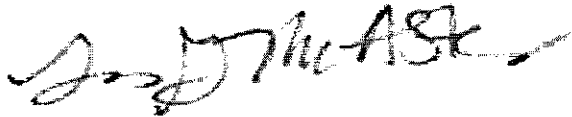
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served by mailing a true and correct copy via electronic mail, and by first-class postage prepaid mail, to all parties on this 5th day of April, 2012.



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