

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

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**MOTION OF GLOBE METALLURGICAL, INC. FOR AN  
EXTENSION OF THE PROTECTIVE ORDER AND  
MEMORANDUM IN SUPPORT**

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**August 6, 2013**

**Attorneys for Globe Metallurgical, Inc.**

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Pursuant to Rule 4901-1-24, Ohio Administrative Code ("O.A.C."), and the Public Utilities Commission of Ohio's ("Commission") March 28, 2012 Finding and Order in this proceeding, Globe Metallurgical, Inc. ("Globe") respectfully moves the Commission to extend, for an additional 18 months, the Protective Order issued by the Commission on March 28, 2012, to protect the confidentiality and prohibit the disclosure of the confidential information filed by Ohio Power Company ("AEP-Ohio") under seal on February 22, 2012, and March 20, 2012 as part of its application to update its Economic Development Cost Recovery Rider ("EDR"). As the Commission previously found, 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 July 16, 2008, AEP-Ohio filed an application for approval of a special arrangement with Globe.<sup>1</sup> On November 12, 2010, the parties filed a stipulation for the Commission's approval, which was supplemented and modified on March 21, 2011. On April 5, 2011, the Commission approved the November 2010 stipulation as modified by the March 2011 filing.

In AEP-Ohio's initial electric security plan ("ESP") proceeding (Case Nos. 08-917-EL-SSO, *et al.*), the Commission authorized AEP-Ohio'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 updated quarterly.<sup>2</sup> The rider is calculated as a percentage of a customer's distribution charges. On February 22, 2012, AEP-Ohio initiated this quarterly update case requesting that the Commission adjust AEP-Ohio's EDR. Globe

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<sup>1</sup> *In the Matter of the Application for Approval of a Contract for Electric Service Between Ohio Power Company and Globe Metallurgical, Inc.*, Case No. 08-884-EL-AEC, Application (July 16, 2008).

<sup>2</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 (Mar. 18, 2009).

intervened and filed a Motion for a Protective Order on February 24, 2012. On March 20, 2012, AEP-Ohio filed revisions to the February 22, 2012 application. Globe filed a Second Motion for a Protective Order on March 20, 2012.

The Commission approved Globe's motions and issued a protective order on March 28, 2012.<sup>3</sup> The Commission held the protective orders would expire after 18 months unless an appropriate motion to extend the Commission's protective order was filed at least 45 days prior to the expiration of the protective order. Accordingly, Globe files this timely motion to extend the Commission's March 28, 2012 protective order for an additional 18 months.

## **II. ARGUMENT**

The billing information of the Globe reasonable arrangement schedule filed by AEP-Ohio 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> Finding and Order at 4-5 (Mar. 28, 2012).

<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 Globe-related information contained within the Globe schedule remains 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 the extended protective treatment is sought includes Globe's electric bills based upon its actual and estimated usage. Public disclosure of the pricing information would jeopardize Globe's business position and its ability to compete. The actual and projected billing information Globe seeks to remain protected derives independent economic value from not being generally known and not being readily ascertainable by proper means by Globe's competitors. Further, the efforts to retain the protective treatment of the confidential pricing information are reasonable under the

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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.

circumstances. Finally, actual customer usage and pricing terms are routinely accorded protected status, which is often subsequently extended, by the Commission.<sup>7</sup>

The non-disclosure of the actual usage and pricing information will not impair the purposes of Title 49. Because Globe's information remains a trade secret, it should retain its protected status.

### III. CONCLUSION

Globe respectfully requests that this Motion for an Extension of the Protective Order be granted for the reasons set forth herein.

Respectfully Submitted,

/s/ Matthew R. Pritchard

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<sup>7</sup> See, e.g., *In the Matter of the Application for Establishment of a Reasonable Arrangement between Marathon Petroleum Company LP and Ohio Power Company*, Case No. 10-2777-EL-AEC, Entry at 2-3 (Jan. 25, 2013).

## **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing *Motion of Globe Metallurgical, Inc. for an Extension of the Protective Order and Memorandum in Support* was served upon the following parties of record this 6<sup>th</sup> day of August 2013, via electronic transmission or first class mail, postage prepaid.

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Summary: Motion of Globe Metallurgical, Inc. for an Extension of the Protective Order and Memorandum in Support electronically filed by Mr. Matthew R. Pritchard on behalf of Globe Metallurgical, Inc.