

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of)
Ohio Power Company to Adjust)
The Economic Development Cost) **Case No. 14-193-EL-RDR**
Recovery Rider Rates)

MOTION FOR PROTECTIVE ORDER

Pursuant to Rule 4901-1-24(D) of the Ohio Administrative Code (“O.A.C.”), The Timken Company (“Timken”) moves for a protective order to keep certain confidential information contained on Schedule No. 2, Schedule No. 2.1, Schedule No. 2.1A, Schedule No. 6 and Schedule No. 6.1 attached to the application of Ohio Power Company (“Ohio Power”) submitted in this case as confidential and not part of the public record.

On February 3, 2014, Ohio Power filed an application in this case to adjust its Economic Development Cost Recovery Rider Rates (EDR). Ohio Power also filed a motion for protective order seeking to protect certain information claimed by Eramet Marietta, Inc.; Globe Metallurgical, Inc.; and Timken to be confidential and proprietary. This information was contained in the confidential/unredacted versions of Schedule Nos. 2, 2.1, 2.1A, 4, 4.1 5, 5.1, 6 and 6.1 supporting the application. Ohio Power submitted three copies of each of these schedules under seal in compliance with Rule 4901-1-24(D) of the Ohio Administrative Code.

The Timken Company has moved for limited intervention in this case for the sole purpose of moving for a protective order to protect certain information contained on Schedule No. 2, Schedule No. 2.1, Schedule No. 2.1A, Schedule No. 6 and Schedule No. 6.1 attached to the application in this case.

The reasons underlying this motion are detailed in the attached Memorandum in Support. Consistent with the requirements of the above cited Rule, three (3) unredacted copies of Schedule No. 2, Schedule No. 2.1, Schedule No. 2.1A, Schedule No. 6 and Schedule No. 6.1 have been submitted under seal by Ohio Power.

WHEREFORE, Timken respectfully requests that its motion for a protective order be granted and that the unredacted versions of Schedule No. 2, Schedule No. 2.1, Schedule No. 2.1A, Schedule No. 6 and Schedule No. 6.1 remain under seal.

Respectfully submitted,

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**MEMORANDUM IN SUPPORT OF
MOTION FOR PROTECTIVE ORDER**

On April 27, 2011 in Case No. 10-3066-EL-AEC, The Timken Company (“Timken”) and Ohio Power Company (“Ohio Power”) received approval from the Public Utilities Commission of Ohio (“the Commission”) of a unique arrangement for Timken’s Canton, Ohio facilities. Certain information related to Timken which was proprietary and confidential had been redacted from Timken’s application. The redacted information related to operational data, employment figures, and electric usage and was found to be worthy of a protective order. In the Matter of the Joint Application of The Timken Company and the Ohio Power Company for Approval of a Unique Arrangement for The Timken Company’s Canton, Ohio Facilities, Case No. 10-3066-EL-AEC, Entry dated February 11, 2011 at ¶7.

On February 4, 2014, Ohio Power filed an application seeking to adjust its Economic Development Cost Recovery Rider Rates (EDR). As part of the application, Ohio Power submitted under seal copies of various schedules offered in support of its application. Three of those schedules were Schedule No. 2 entitled “Ohio Power Company February 2014 Economic Development Cost Recovery Rider True-Up Calculation of Cumulative Carrying Costs”, Schedule No. 2.1 titled “Ohio Power Company February 2014 Economic Development Cost Recovery Rider True-Up Calculation of Cumulative Carrying Costs” and Schedule No. 2.1A titled “Ohio Power Company February 2014 Economic Development Cost Recovery Rider True Up Calculation of Cumulative Carrying Costs”. Also included were Schedule No. 6 entitled “Timken Summary of Delta Revenue 2013” and Schedule No. 6.1 titled “Ohio Power Company Estimated Timken Economic Development Revenue for 2014”. Schedule No. 6 and Schedule No. 6.1, submitted under seal by Ohio Power, contain figures relating to the Timken

Manufacturing Complex monthly electric bill, the Timken Technology Center monthly electric bill, the Timken Manufacturing Complex discount authorized in the April 27, 2011 Opinion and Order in Case No. 10-3066, the Timken Technology Center discount as per the April 27, 2011 Opinion and Order in Case No. 10-3066, and the monthly Delta Revenue for the Manufacturing Complex and the Technology Center of Timken. Schedule No. 2, Schedule No. 2.1 and Schedule No. 2.1A redacted and submitted under seal by Ohio Power contain Timken's estimated and actual delta revenue for 2013. All of the Timken specific and redacted information on Schedule No. 2, Schedule No. 2.1, Schedule No. 2.1A, Schedule No. 6 and Schedule No. 6.1 is confidential, sensitive, and proprietary and constitutes trade secret information for which Timken is seeking a motion for a protective order.

Timken manufactures specialty steel and roller bearings at its Canton, Ohio facility. The specialty steel and roller bearing are sold in an international market that is very competitive. The confidential information contained on Schedule No. 2, Schedule No. 2.1, Schedule No. 2.1A, Schedule No. 6 and Schedule No. 6.1, if released to the public, would harm Timken by providing its domestic and international competitors with proprietary information concerning the cost, physical limits and nature of the manufacturing process at the Canton facility. Rule 4901-1-24(D) of the Ohio Administrative Code provides that the Commission or certain designated employees may issue an order which is necessary to protect the confidentiality of information contained in documents filed with the Commission's Docketing Division to the extent that state or federal law prohibits the release of the 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 certain types of information which are the subject of this motion. The non-disclosure of the information will not impair the purposes of Title 49. The Commission

and its Staff have full access to the information in order to fulfill its statutory obligations. No purpose of Title 49 would be served by the public disclosure of the information.

The need to protect the designated information from public disclosure is clear, and there is compelling legal authority supporting the requested protective order. While the Commission has often expressed its preference for open proceedings, the Commission also long ago recognized its statutory obligations with regard to trade secrets:

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.) Likewise, the Commission has facilitated the protection of trade secrets in its rules (O.A.C. 4901-1-24(A)(7)).

The definition of a “trade secret” is set forth in the Uniform Trade Secrets Act:

“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.

R.C. § 1333.61(D). This definition clearly reflects the state policy favoring the protection of trade secrets such as the sensitive information which is the subject of this motion.

In State ex rel The Plain Dealer the Ohio Dept. of Ins. (1997), 80 Ohio St. 3d 513, the Ohio Supreme Court adopted a six factor test to analyze whether information is a trade secret under the statute:

- (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.

Id. at 524-525 (quoting Pyromatics, Inc. v. Petruziello, 7 Ohio App. 3d 131, 134-135 (Cuyahoga County 1983)).

Applying these factors to the confidential information Timken seeks to protect, it is clear that a protective order should be granted. The information redacted from Schedule No. 6 and Schedule No. 6.1 attached to the application of Ohio Power contains information regarding the Timken Manufacturing Complex monthly electric bill, the Timken Technology Center monthly electric bill, the Timken Manufacturing Complex discount monthly bill, the Timken Technology Center discount monthly bill, and the monthly Delta Revenues for the Timken Manufacturing Complex and the Timken Technology Center. Schedule No. 2, Schedule No. 2.1 and Schedule No. 2.1A contain estimated and actual delta revenue data that reflects usage at Timken's facilities. Such sensitive information is generally not disclosed. Its disclosure could give competitors an advantage that would hinder Timken's ability to compete.

Courts of other jurisdictions have held that not only does a public utilities commission have the authority to protect the trade secrets of the companies subject to its jurisdiction, the trade secrets statute creates a duty to protect them. New York Tel. Co. v. Pub. Serv. Comm.

N.Y., 56 N.Y. 2d 213 (1982). Indeed, for the Commission to do otherwise would be to negate the protections the Ohio General Assembly has granted to all businesses, including public utilities. Notably, this Commission previously granted protective treatment of the same type of information provided in the schedules that are in Ohio Power's application.¹ The Commission also granted a motion by Timken seeking protective treatment of certain confidential information related to its Canton Facility, including Timken's cost of electricity, in Case No. 10-3066-EL-AEC. In the Matter of the Joint Application of The Timken Company and the Ohio Power Company for Approval of a Unique Arrangement for The Timken Company's Canton, Ohio Facilities, Case No. 10-3066-EL-AEC, Entry dated February 11, 2011 at ¶7.

WHEREFORE, for the above reasons Timken requests that the Commission grant the motions for protective orders by Ohio Power and Timken, and to maintain the confidential information contained in Schedule No. 2, Schedule No. 2.1, Schedule No. 2.1A, Schedule No. 6 and Schedule No. 6.1 of Ohio Power's application under seal.

Respectfully submitted,

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¹ In re 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; In re Application of Ohio Power Company to Adjust its Economic Development Cost Recovery Rider Pursuant to Rule 4901:1-38-08(A)(5), Ohio Administrative Code, Case No. 12-688-EL-RDR, Finding and Order, March 28, 2012; and In re Application of Ohio Power Company to Adjust its Economic Development Cost Recovery Rider Pursuant to Rule 4901:1-38-08(A)(5), Ohio Administrative Code, Case No. 13-325-EL-RDR, Finding and Order, March 27, 2013.

LIST OF INFORMATION
FOR WHICH PROTECTION IS SOUGHT

INFORMATION

The information contained under Schedule No. 2, Schedule No. 2.1, Schedule No. 2.1A, Schedule 6 and Schedule 6.1 which includes the Timken Manufacturing Complex monthly electric bill, the Timken Technology Center monthly electric bill, the Timken Manufacturing Complex discount as per the April 27, 2011 Opinion and Order in Case No. 10-3066, the Timken Technology Center discount as per the April 27, 2011 Opinion and Order in Case No. 10-3066, and the monthly Delta Revenues for the Timken Manufacturing Complex and the Timken Technology Center.

REASONS JUSTIFYING PROTECTION

This information is extremely confidential. Its disclosure would give an undue advantage to competitors and would hinder Timken's ability to compete.

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing document was served upon the following persons by

U.S. Mail and electronic mail this 5th day of February, 2014:

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This foregoing document was electronically filed with the Public Utilities

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2/5/2014 2:39:13 PM

in

Case No(s). 14-0193-EL-RDR

Summary: Motion for Protective Order electronically filed by M HOWARD PETRICOFF on behalf of The Timken Company