

FILE

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of)
Ohio Power Company to Adjust)
The Economic Development)
Cost Recovery Rider Rates)

Case No. 12-2210-EL-RDR

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**MOTION OF GLOBE METALLURGICAL, INC. TO
EXTEND PROTECTIVE ORDER AND MEMORANDUM IN SUPPORT**

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MOTION OF GLOBE METALLURGICAL, INC. TO EXTEND PROTECTIVE ORDER

Pursuant to Rule 4901-1-24, Ohio Administrative Code ("O.A.C."), Globe Metallurgical, Inc. ("Globe") respectfully moves the Public Utilities Commission of Ohio ("Commission") to extend the Protective Order the Commission previously granted on September 26, 2012. Extension of the Protective Order is necessary to protect the confidentiality and prohibit the disclosure of the confidential information contained in the Application of Ohio Power Company ("OP" or "AEP-Ohio") to Adjust its Economic Development Cost Recovery Rider ("EDR") Rates filed under seal on August 1, 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,



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MEMORANDUM IN SUPPORT

I. INTRODUCTION AND BACKGROUND

On July 16, 2008, OP filed an application for approval of a special arrangement with Globe.¹ 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 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 the ESP proceeding, the Commission also set the initial level of the rider at zero, to be updated quarterly.² The EDR was reauthorized in AEP-Ohio's second ESP proceeding.³ The rider is calculated as a percentage of a customer's distribution charges and is updated

¹ *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).

² *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).

³ *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan*, Case Nos. 11-346-EL-SSO, *et al.*, Opinion and Order at 66-67 (August 8, 2012).

semiannually. On August 1, 2012, OP initiated this update case by filing an Application requesting that the Commission adjust OP's EDR. OP's August 1, 2012 Application contains Globe's customer-specific information that was clearly marked as confidential and was filed under seal, separate from the redacted public version of the Globe-specific schedule.

On August 3, 2012, Globe filed a Motion to Intervene as well as a Motion for Protective Order in this proceeding. On September 26, 2012, the Commission granted both motions. Regarding Globe's Motion for Protective Order, the Commission stated:

The Commission hereby grants the request for protective treatment of the customer-specific information submitted and notes that the Commission has previously granted protective treatment to the same customer usage and pricing information that is the subject of the pending motions for protective treatment. See, the March 2012 EDR Order; *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company to Adjust Their Economic Development Cost Recovery Rider Rates*, Case No. 11-4570-EL-RDR (October 12, 2011); and *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, Tr. I at 7 (August 4, 2009).⁴

The Commission granted protective treatment for an eighteen month period, but held that Globe could extend the protective order if an "appropriate motion is filed at least 45 days in advance of the expiration date seeking to continue protective treatment."⁵

For the reasons stated below, Globe respectfully requests that the Commission grant Globe's timely Motion and extend protective treatment of Globe's customer-specific information included to support OP's EDR adjustment filed under seal.

⁴ Finding and Order at 5 (September 26, 2012).

⁵ *Id.*

II. ARGUMENT

The billing information of the Globe 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.⁶ 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.

Trade secrets protected by state law are not considered public records and are therefore exempt from public disclosure.⁷ 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.

⁶ See Sections 4901.12 and 4905.07, Revised Code.

⁷ 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).

(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.⁸ The information for which protective treatment is sought includes Globe's billings paid for electricity 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 protect 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 protect the confidential pricing 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 Globe's information in OP's previous EDR updated proceedings.⁹

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

⁸ Section 1333.61(D), Revised Code.

⁹ *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); *In the Matter of the 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 at 4-5 (March 28, 2012).

III. CONCLUSION

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

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Motion of Globe Metallurgical, Inc. to Extend Protective Order and Memorandum in Support* was served upon the following parties of record this 6th day of February 2014, via electronic transmission or first class mail, postage prepaid.



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