

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application for)
Establishment of a Reasonable)
Arrangement Between ASHTA)
Chemicals Inc. and The Cleveland)
Electric Illuminating Company.)

Case No. 12-1494-EL-AEC

**ASHTA CHEMICALS INC.'S MOTION TO EXTEND ITS PROTECTIVE
ORDER AND MEMORANDUM IN SUPPORT**

Samuel C. Randazzo, Trial Attorney
Scott E. Elisar
Frank P. Darr
MCNEES WALLACE & NURICK LLC
21 East State Street, 17th Floor
Columbus, OH 43215-4228
Telephone: (614) 469-8000
Telecopier: (614) 469-4653
sam@mwncmh.com
selisar@mwncmh.com
fdarr@mwncmh.com

March 20, 2014

Attorneys for ASHTA Chemicals Inc.

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ASHTA CHEMICALS INC.'S MOTION TO EXTEND ITS PROTECTIVE ORDER

Pursuant to Rule 4901-1-24(F), Ohio Administrative Code (“O.A.C”), and the Public Utilities Commission of Ohio’s (“Commission”) November 5, 2012 Entry in the above-captioned matter, ASHTA Chemicals Inc. (“ASHTA”) hereby requests that the Commission extend the protective order issued by the Commission in its November 5, 2012 Entry in this proceeding. This protective order protected the disclosure of the confidential information contained in the direct testimony of Richard L. Jackson and Kevin M. Murray that ASHTA filed under seal on August 20, 2012. The November 5, 2012 Entry indicated that the protective order would expire on May 5, 2014, unless ASHTA moved for an extension of the protective order at least 45 days before the expiration of the order. ASHTA notes that a portion of this protected information was subsequently voluntarily disclosed by ASHTA in the December 10, 2013 Amended Public Version of Joint Stipulation and Recommendation, and therefore only seeks to extend the protective order regarding the confidential information that remains under seal.¹ ASHTA would also note that on September 13, 2013, it filed a motion for

¹ The information that was publicly disclosed related to the amount ASHTA intended to invest and the number of employees that ASHTA would retain. Amended Public Version of Joint Stipulation and Recommendation at 5-6 (Dec. 10, 2013).

protective order regarding the confidential information contained in the Joint Stipulation and Recommendation, which remains pending.

As demonstrated in the attached memorandum in support, the confidential information contained in the direct testimony of Richard L. Jackson and Kevin M. Murray filed with the Commission August 20, 2012 remains a trade secret, which should remain protected. Accordingly, ASHTA requests that the Commission grant this motion.

Respectfully submitted,

/s/ Scott E. Elisar
Samuel C. Randazzo (Counsel of Record)
Scott E. Elisar
Frank P. Darr
MCNEES WALLACE & NURICK LLC
21 East State Street, 17th Floor
Columbus, OH 43215-4228
Telephone: (614) 469-8000
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sam@mwncmh.com
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MEMORANDUM IN SUPPORT

By this motion, ASHTA requests that the Commission extend the protective order regarding the confidential information contained in the direct testimony of Richard L. Jackson and Kevin M. Murray, which ASHTA filed under seal with the Commission on August 20, 2012 and which was not voluntarily publicly disclosed on December 10, 2013 in the Amended Public Version of Joint Stipulation and Recommendation.²

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.³ 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.

² The information that was publicly disclosed related to the amount ASHTA intended to invest and the number of employees that ASHTA would retain. Amended Public Version of Joint Stipulation and Recommendation at 5-6 (Dec. 10, 2013).

³ 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.⁴ 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).

In its November 5, 2012 Entry in this matter, the Commission found that the confidential information contained within the direct testimony of Richard L. Jackson and Kevin M. Murray that was filed under seal in this matter on August 20, 2012 constituted a trade secret and therefore the release of this information was prohibited as a matter of law.⁵ This information remains competitively sensitive and highly proprietary business and financial information that continues to fall within the definition of a trade secret. Public disclosure of the information would jeopardize ASHTA's business position and its ability to compete. Non-disclosure of the information will not impair the purposes of Title 49 of the Revised Code as the Commission and its Staff will continue to have full access to the confidential information. Because ASHTA's information continues to constitute a trade secret, it should retain its protected status.

⁴ 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).

⁵ Entry at 3 (Nov. 5, 2012); Section 1333.61(D), Revised Code.

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

Respectfully submitted,

/s/ Scott E. Elisar
Samuel C. Randazzo (Counsel of Record)
Scott E. Elisar
Frank P. Darr
MCNEES WALLACE & NURICK LLC
21 East State Street, 17th Floor
Columbus, OH 43215-4228
Telephone: (614) 469-8000
Telecopier: (614) 469-4653
sam@mwncmh.com
selisar@mwncmh.com
fdarr@mwncmh.com

Attorneys for ASHTA Chemicals Inc.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *ASHTA Chemicals Inc.'s Motion to Extend Protective Order and Memorandum in Support* was served upon the following parties of record this 20th day of March, 2014, *via* electronic transmission, hand-delivery, or ordinary U.S. mail, postage prepaid.

/s/ Scott E. Elisar

Scott E. Elisar

James Burk
FirstEnergy Service Company
76 S. Main Street
Akron, OH 44308
burkj@firstenergycorp.com

**ON BEHALF OF THE CLEVELAND ELECTRIC
ILLUMINATING COMPANY**

William Wright, Section Chief
Thomas W. McNamee
Assistant Attorneys General
Public Utilities Commission of Ohio
180 East Broad Street, 6th Floor
Columbus, OH 43215
thomas.mcnamee@puc.state.oh.us
william.wright@puc.state.oh.us

**ON BEHALF OF THE STAFF OF THE PUBLIC
UTILITIES COMMISSION OF OHIO**

David F. Boehm
Michael L. Kurtz
Jody Kyler Cohn
Boehm, Kurtz & Lowry
36 East Seventh Street, Suite 1510
Cincinnati, OH 45202
dboehm@BKLawfirm.com
mkurtz@BKLawfirm.com
jkylercohn@BKLawfirm.com

COUNSEL FOR OHIO ENERGY GROUP

Mandy Chiles
Greg Price
Public Utilities Commission of Ohio
180 East Broad Street, 12th Floor
Columbus, OH 43215
mandy.chiles@puc.state.oh.us
greg.price@puc.state.oh.us

ATTORNEY EXAMINERS

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Summary: Motion ASHTA Chemicals Inc.'s Motion to Extend Protective Order and Memorandum in Support electronically filed by Ms. Vicki L. Leach-Payne on behalf of Elisar, Scott E. Mr.