

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of)
Ohio Power Company to Adjust The) Case No. 14-1329-EL-RDR
Economic Development Cost Recovery)
Rider Rate)

**MOTION OF ERAMET MARIETTA, INC. FOR
PROTECTIVE ORDER AND MEMORANDUM IN SUPPORT**

Samuel C. Randazzo (Reg. No. 0016386)
Frank P. Darr (Reg. No. 0025469)
(Counsel of Record)
Matthew R. Pritchard (Reg. No. 0088070)
MCNEES WALLACE & NURICK LLC
21 East State Street, 17TH Floor
Columbus, OH 43215
Telephone: (614) 469-8000
Telecopier: (614) 469-4653
sam@mwncmh.com
fdarr@mwncmh.com
(willing to accept service by e-mail)
mpritchard@mwncmh.com
(willing to accept service by e-mail)

August 12, 2014

Attorneys for Eramet Marietta, Inc.

zero, to be updated quarterly.³ The EDR was reauthorized in AEP-Ohio's second ESP proceeding and is filed semi-annually.⁴ The rider is calculated as a percentage of a customer's distribution charges. On August 1, 2014, AEP-Ohio initiated this semi-annual update case by filing an Application requesting that the Commission adjust AEP-Ohio's EDR. AEP-Ohio's August 1, 2014 Application contains Eramet's customer-specific information that was clearly marked as confidential and was filed under seal, separate from the redacted public version of the Eramet-specific schedule. Prior to filing this Motion, on August 12, 2014, Eramet filed a Motion to Intervene in this proceeding.

For the reasons stated below, Eramet respectfully requests that the Commission grant protective treatment of Eramet's customer-specific information included to support AEP-Ohio's EDR adjustment filed under seal.

II. ARGUMENT

The billing information of the Eramet 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

³ *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).

⁴ *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).

documents from disclosure.⁵ 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.⁶ 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 Eramet-related information contained within the Eramet schedule is competitively sensitive and highly proprietary business and financial information falling within the statutory characterization of a trade secret.⁷ The information for which

⁵ See Sections 4901.12 and 4905.07, Revised Code.

⁶ 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).

⁷ Section 1333.61(D), Revised Code.

protective treatment is sought includes Eramet's billings paid for electricity based upon its actual and estimated usage. Public disclosure of the pricing information would jeopardize Eramet's business position and its ability to compete. The actual and projected billing information Eramet seeks to protect derives independent economic value from not being generally known and not being readily ascertainable by proper means by Eramet'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 Eramet's information in AEP-Ohio's previous EDR update proceedings.⁸

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

⁸ *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); 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. 12-2210-EL-RDR, Finding and Order at 4-5 (September 26, 2012).*

III. CONCLUSION

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

Respectfully submitted,

/s/ Matthew R. Pritchard

Samuel C. Randazzo
Frank P. Darr (Counsel of Record)
Matthew R. Pritchard
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
fdarr@mwncmh.com
mpritchard@mwncmh.com

Attorneys for Eramet Marietta, Inc.

CERTIFICATE OF SERVICE

In accordance with Rule 4901-1-05, Ohio Administrative Code, the PUCO's e-filing system will electronically serve notice of the filing of this document upon the following parties. In addition, I hereby certify that a service copy of the foregoing *Motion of Eramet Marietta, Inc. for Protective Order and Memorandum in Support* was sent by, or on behalf of, the undersigned counsel for Eramet Marietta, Inc. to the following parties of record this 12th day of August 2014, via electronic transmission.

/s/ Matthew R. Pritchard

MATTHEW R. PRITCHARD

Steven T. Nourse
Matthew J. Satterwhite
American Electric Power Service
Corporation
1 Riverside Plaza, 29th Floor
Columbus, OH 43215
stnourse@aep.com
mjsatterwhite@aep.com

ON BEHALF OF OHIO POWER COMPANY

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

8/12/2014 10:40:13 AM

in

Case No(s). 14-1329-EL-RDR

Summary: Motion of Eramet Marietta, Inc. for Protective Order and Memorandum in Support electronically filed by Mr. Frank P Darr on behalf of Eramet Marietta, Inc.