

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 ) Case No. 12-2210-EL-RDR  
Pursuant to Rule 4901:1-38-08(A)(5), )  
Ohio Administrative Code. )

ENTRY

The attorney examiner finds:

- (1) By Finding and Order issued on September 26, 2012, the Commission approved an application filed by Ohio Power Company d/b/a AEP Ohio (AEP Ohio) to adjust its economic development rider (EDR) rate. The Commission also granted motions for protective order filed by AEP Ohio, Globe Metallurgical, Inc. (Globe), Eramet Marietta, Inc. (Eramet), and The Timken Company with respect to certain customer usage and pricing information contained in the EDR application filed on August 1, 2012.
- (2) On February 7, 2014, Globe and Eramet filed motions to extend the protective order granted by the Commission on September 26, 2012. In their motions, Globe and Eramet state that AEP Ohio's EDR application includes certain customer-specific information related to electric usage and pricing that is confidential, sensitive, and proprietary trade secret information, as defined in R.C. 1333.61(D), and as recognized by Ohio Adm.Code 4901-1-24. According to Globe and Eramet, if the customer-specific information is released to the public, it would compromise their business position and ability to compete. Globe and Eramet assert that nondisclosure of the customer-specific information will not impair the purposes of R.C. Title 49. No memoranda contra the motions to extend the protective order were filed.
- (3) R.C. 4905.07 provides that all facts and information in the possession of the Commission shall be public, except as provided in R.C. 149.43, and as consistent with the purposes of Title 49 of the Revised Code. R.C. 149.43 specifies that the term "public records" excludes information that, under state

or federal law, may not be released. The Ohio Supreme Court has clarified that the “state or federal law” exemption is intended to cover trade secrets. *State ex rel. Besser v. Ohio State*, 89 Ohio St.3d 396, 399, 732 N.E.2d 373 (2000).

- (4) Similarly, Ohio Adm.Code 4901-1-24 allows an attorney examiner to issue an order to protect the confidentiality of information contained in a filed document, “to the extent that state or federal law prohibits release of the information, including where the information is deemed \* \* \* to constitute a trade secret under Ohio law, and where nondisclosure of the information is not inconsistent with the purposes of Title 49 of the Revised Code.”
- (5) Ohio law defines a trade secret as “information \* \* \* 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).
- (6) The Commission has previously reviewed the confidential information that is the subject of Globe’s and Eramet’s motions and determined that the information complies with the requirements for a protective order. Applying the requirements that the information have independent economic value and be the subject of reasonable efforts to maintain its secrecy pursuant to R.C. 1333.61(D), as well as the six-factor test set forth by the Ohio Supreme Court,<sup>1</sup> the attorney examiner finds that the customer usage and pricing data continues to constitute trade secret information. Its release is, therefore, prohibited under state law. The attorney examiner also finds that nondisclosure of this information is not inconsistent with the purposes of Title 49 of the Revised Code. Therefore, the attorney examiner finds that Globe’s and Eramet’s motions for an extension of the protective order are reasonable and should be granted.

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<sup>1</sup> See *State ex rel. the Plain Dealer v. Ohio Dept. of Ins.*, 80 Ohio St.3d 513, 524-525, 687 N.E.2d 661 (1997).

- (7) Ohio Adm.Code 4901-1-24(F) provides that, unless otherwise ordered, protective orders issued pursuant to Ohio Adm.Code 4901-1-24(D) automatically expire after 24 months. Therefore, confidential treatment shall be extended for an additional 24 months, or until December 8, 2016. Until that date, the Commission's docketing division should maintain, under seal, the confidential information contained in AEP Ohio's EDR application filed on August 1, 2012.
- (8) Ohio Adm.Code 4901-1-24(F) requires a party wishing to extend a protective order to file an appropriate motion at least 45 days in advance of the expiration date. If Globe and Eramet wish to extend this confidential treatment, they should file an appropriate motion at least 45 days in advance of the expiration date. If no such motion to extend confidential treatment is filed, the Commission may release this information without prior notice to Globe and Eramet.

It is, therefore,

ORDERED, That Globe's and Eramet's motions for extension of the protective order be granted. It is, further,

ORDERED, That the Commission's docketing division maintain, under seal, the confidential information filed by AEP Ohio on August 1, 2012, for a period of 24 months, ending on December 8, 2016. It is, further,

ORDERED, That a copy of this Entry be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

s/Sarah Parrot

By: Sarah J. Parrot  
Attorney Examiner

GAP/sc

**This foregoing document was electronically filed with the Public Utilities**

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**in**

**Case No(s). 12-2210-EL-RDR**

Summary: Attorney Examiner Entry grants Globe's and Eramet's motions for extension of the protective order. electronically filed by Sandra Coffey on behalf of Sarah Parrot, Attorney Examiner, Public Utilities Commission of Ohio