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BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of TimkenSteel)
Corporation for Approval of a Unique)
Arrangement for the TimkenSteel) Case No. 15-1857-EL-AEC
Corporation's Stark County Facilities)
)

MOTION FOR PROTECTIVE ORDER

Pursuant to Rule 4901-1-24(D) of the Ohio Administrative Code ("O.A.C."), TimkenSteel Corporation ("TimkenSteel") moves for a protective order to keep the confidential information contained in the Application for a Unique Arrangement (filed today in the instant proceeding by TimkenSteel) confidential and not part of the public record. 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 the Application for a Unique Arrangement have been submitted under seal stamped "Confidential, Proprietary and Trade Secret" by TimkenSteel.

Therefore, TimkenSteel respectfully requests that this motion be granted and that the unredacted versions of the Application for a Unique Arrangement remain under seal.

Respectfully submitted,

By: Michael J. Settineri
Michael J. Settineri, Trial Attorney (0073369)
William A. Sieck (0071813)
VORYS, SATER, SEYMOUR AND PEASE LLP
52 East Gay Street
P.O. Box 1008
Columbus, Ohio 43216-1008
Telephone: (614) 464-5462
Fax: (614) 791-5146
Email: mjsettineri@vorys.com
wasiack@vorys.com
Counsel for TimkenSteel Corporation

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

The Public Utilities Commission of Ohio (“Commission”) should provide the same protection to TimkenSteel’s confidential information in this case as it previously provided to the confidential information of TimkenSteel and its predecessor, The Timken Company (“Timken”).

I. Confidential Information was protected in Case No. 10-3066-EL-AEC.

In Case No. 10-3066-EL-AEC, Timken and the Ohio Power Company (“Ohio Power”) applied for and received approval from the Commission for a unique arrangement for what are now TimkenSteel’s facilities in Stark County, Ohio (the “Stark County Facilities”). *In the Matter of the Joint Application of The Timken Company and the Ohio Power Company for Approval of a Unique Arrangement for The TimkenSteel Company’s Canton, Ohio Facilities*, Case No. 10-3066-EL-AEC.

Throughout the prior proceedings, Timken and TimkenSteel sought protection for certain proprietary and confidential information that was included in but redacted from their filings. *See* Case No. 10-3066-EL-AEC, Motion filed Dec. 20, 2010, Motion filed Mar. 21, 2011, Motion filed Feb. 21, 2014, Motion filed Oct. 21, 2014. The redacted information related to operational data, employment figures, and electric usage, and was found to be worthy of a protective order. *Id.*, Entry at ¶ 7 (Feb. 11, 2011), Tr. of Hr’g held Mar. 29, 2011 at 6:1-13 (filed Apr. 12, 2011), Entry at ¶ 7 (Mar. 12, 2014), and Finding & Order at ¶ 4 (Oct. 29, 2014).

II. Confidential Information should be protected in this case.

On November 3, 2015, TimkenSteel commenced this case by filing an Application for a Unique Arrangement (“Application”), which contains operational and financial data, actual and anticipated investment levels, market share, growth strategies and employment figures that are

confidential, sensitive, and proprietary. This information constitutes trade secret information for which TimkenSteel is seeking a protective order.¹

TimkenSteel manufactures specialty steel at its Stark County Facilities. The specialty steel is sold in an international market that is extremely competitive. The confidential information contained in the Application, if released to the public, would harm TimkenSteel by providing its domestic and international competitors with proprietary information concerning its operations, investment projects, market share, growth strategies and its employment figures at the Stark County Facilities.

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 the types of information that are the subject of this motion. The non-disclosure of the information will not impair the purposes of Title 49 because 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

¹ Information for which confidential treatment is sought is redacted in the public version of the application and highlighted in yellow in the confidential version submitted under seal.

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). And, as already explained, the Commission has facilitated the protection of trade secrets in its rules (Rule 4901-1-24(A)(7), O.A.C.) and has afforded that protection to TimkenSteel in prior proceedings.

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.

Section 1333.61(D), Revised Code. 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.*, 80 Ohio St. 3d 513 (1997), 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 TimkenSteel seeks to protect, it is clear that a protective order should be granted. The information redacted from the Application contains information regarding TimkenSteel's operational and financial data, actual and anticipated investment levels, market share, growth strategies and employment figures. Such sensitive information is generally not disclosed and TimkenSteel takes steps to prevent the disclosure of this information. Its disclosure could give competitors an advantage that would hinder TimkenSteel's ability to compete worldwide.

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, and which this Commission previously granted to TimkenSteel in Case No. 10-3066-EL-AEC.

WHEREFORE, for the above reasons, TimkenSteel requests that the Commission grant

this motion for protective order, and to maintain the limited confidential information contained in the Application (including information redacted in the Appendices) under seal.

Respectfully submitted,

By:  _____

Michael J. Settineri, Trial Attorney (0073369)

William A. Sieck (0071813)

VORYS, SATER, SEYMOUR AND PEASE LLP

52 East Gay Street

P.O. Box 1008

Columbus, Ohio 43216-1008

Telephone: (614) 464-5462

Fax: (614) 791-5146

Email: mjsettineri@vorys.com

wasiack@vorys.com

Counsel for TimkenSteel Corporation

LIST OF INFORMATION
FOR WHICH PROTECTION IS SOUGHT

INFORMATION

The information is contained in the Application and Appendices filed this same day by TimkenSteel, which includes TimkenSteel's operational and financial data, actual and anticipated investment levels, market share, growth strategies and and employment figures.

REASONS JUSTIFYING PROTECTION

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

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Summary: Motion electronically filed by Ms. Donielle M Hunter on behalf of PUCO Staff