

**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

**MOTION OF GLOBE METALLURGICAL INC.
TO EXTEND THE PROTECTIVE ORDER**

Under Rule 4901-1-24(F), Ohio Administrative Code (“O.A.C.”), Globe Metallurgical Inc. (“Globe”) respectfully moves the Public Utilities Commission of Ohio (“Commission”) to extend the Protective Order issued December 8, 2014 to protect the confidentiality and prohibit the disclosure of the confidential information contained in the Application of Ohio Power Company (“AEP-Ohio”) to adjust its Economic Development Cost Recovery Rider (“EDR”) rates filed by AEP-Ohio 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.

Moreover, although this motion is filed fewer than 45 days before a December 8, 2016 deadline for expiration of protective treatment, that 45-day deadline should be waived or extended here because there is good cause to extend the protective order and no party will be prejudiced. No party has challenged the protective order nor does any party have a right to public access to Globe’s individual customer information. As well, the Commission and its Staff have already decided AEP-Ohio’s application and retain full access to the confidential information. The Commission has also previously

granted an extension of the protective order for Globe's confidential information on December 8, 2014.¹

The grounds for this Motion are set forth in the attached Memorandum in Support.

Respectfully submitted,

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¹ Finding and Order at 2 ¶ 6 (Dec. 8, 2014).

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MEMORANDUM IN SUPPORT

I. Introduction and Background

On July 16, 2008, AEP-Ohio filed an application for approval of a special arrangement with Globe.² 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. On July 31, 2013, the Commission approved an amendment of the special arrangement.³ On May 13, 2015, the Commission approved a second amendment to the special arrangement.⁴ The arrangement has ended.

In AEP-Ohio's initial electric security plan ("ESP") proceeding (Case Nos. 08-917-EL-SSO, *et al.*), the Commission authorized AEP-Ohio'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

² *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).

³ *In the Matter of the Application for Approval of an Amendment to a Contract for Electric Service Between Ohio Power Company and Globe Metallurgical, Inc.*, 13-1170-EL-AEC, Opinion and Order (July 31, 2013).

⁴ *In the Matter of the Application of Globe Metallurgical, Inc. for Approval of a Unique Arrangement Between Ohio Power Company and Globe Metallurgical, Inc.*, Case No. 15-327-EL-AEC, Opinion and Order at 6 (May 13, 2015). See also *id.*, Finding and Order at ¶ 7, 9 (May 25, 2016); *id.*, Finding and Order at ¶ 9, 11 (June 29, 2016).

the rider at zero, to be updated quarterly.⁵ The EDR was reauthorized in AEP-Ohio's second ESP proceeding.⁶ The rider is calculated as a percentage of a customer's distribution charges.

On August 1, 2012, AEP-Ohio initiated this update case and filed an Application requesting that the Commission adjust AEP-Ohio's EDR. AEP-Ohio's August 1, 2012 Application contains Globe's customer-specific information in Schedules 2 and 5 that was clearly marked as confidential and was filed under seal, separate from the redacted public version. The Commission granted Globe's Motions to Intervene and for a Protective Order, finding that Globe's customer-specific information constituted a trade secret in an Order dated September 26, 2012.⁷ The Commission then granted Globe's Motion to Extend the Protective Order in an Order dated December 8, 2014.⁸

In its order, the Commission specified that the Protective Order would extend for a period of 24-months and that should Globe wish to extend the Protective Order, it should file a motion requesting an extension at least 45 days before the expiration of the Protective Order.⁹ Although this motion is filed fewer than 45 days before a December 8, 2016 deadline for expiration of protective treatment, that 45-day deadline should be waived or extended here because there is good cause to extend the protective order and no party will be prejudiced. No party has challenged the

⁵ *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 (Mar. 18, 2009).

⁶ *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 66-7 (Aug. 8, 2012).

⁷ Finding and order at 4 ¶ 10 & 5 ¶ 13 (Sep. 26, 2012).

⁸ Finding and Order at 2 ¶ 6 (Dec. 8, 2014).

⁹ *Id.* at 3 ¶ 7-8.

protective order nor does any party have a right to public access to Globe's individual customer information. As well, the Commission and its Staff have already decided AEP-Ohio's application and retain full access to the confidential information.

For the reasons stated below, Globe respectfully requests that the Commission extend its Protective order a second time, for a period of 24 months to protect Globe's confidential customer-specific information included to support AEP-Ohio's revised EDR adjustment.

II. Globe's Request for an Extension of the Protective Order is Reasonable and will not Prejudice any Party

The billing information of the Globe 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 documents from disclosure.¹⁰ 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.

¹⁰ 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.¹¹ 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 Globe-related information contained within the Globe schedule is competitively sensitive and highly proprietary business and financial information falling within the statutory definition of a trade secret.¹² 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 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. Additionally, actual customer usage and pricing terms are routinely accorded protected

¹¹ 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).

¹² Section 1333.61(D), Revised Code.

status by the Commission and the Commission accorded such treatment to Globe's information in AEP-Ohio's previous EDR update proceedings.¹³ Finally, the Commission has already found in this proceeding that Globe's customer-specific information filed under seal in the confidential version of AEP-Ohio's application was a trade-secret and should be afforded protected status.¹⁴

The non-disclosure of the actual usage and pricing information will not impair the purposes of Title 49 of the Revised Code, as the Commission and its Staff have already decided AEP-Ohio's application and retain full access to the confidential information. With the application decided and no appeal pending from the Commission's decision to approve the application, no party will be prejudiced by a continuation of protective treatment of the schedules in the application.

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

¹³ *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 (Oct. 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 (Mar. 28, 2012); *In the Matter of the Application of Ohio Power Company to Adjust Its Economic Development Cost Recovery Rider Pursuant to Rule 4901:1-36-08(A)(5), Ohio Administrative Code*, Case No. 13-385-EL-ROR, Finding and Order at 4 (Mar. 27, 2013); *In the Matter of the Application of Ohio Power Company to Adjust Its Economic Development Rider Rate*, Case No. 14-1329-EL-RDR, Finding and Order at 4 (Sep. 17, 2014); *In the Matter of the Application of Ohio Power Company to Adjust Its Economic Development Rider Rate*, Case No. 15-279-EL-RDR, Finding and Order at 4 (Mar. 8, 2015); *In the Matter of the Application of Ohio Power Company to Adjust Its Economic Development Rider Rate*, Case No. 15-1400-EL-RDR, Finding and Order at 4 (Nov. 18, 2015); and *In the Matter of the Application of Ohio Power Company to Adjust the Economic Development Cost Recovery Rider Rate*, Case No. 16-260-EL-RDR, Finding and Order at 4 (Mar. 31, 2016).

¹⁴ Finding and Order at 4 ¶ 13 (Sep. 26, 2012); Finding and Order at 2 ¶ 6 (Dec. 8, 2014).

III. Conclusion

Globe respectfully requests that this Motion be granted and the Protective Order be extended for a period of 24 months for the reasons set forth herein.

Respectfully submitted,

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CERTIFICATE OF SERVICE

In accordance with Rule 4901-1-05, Ohio Administrative Code, the Commission'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 Globe Metallurgical Inc. to Extend the Protective Order and Memorandum in Support* is being served by or on behalf of the undersigned counsel for Globe Metallurgical Inc. to the following counsel for parties of record this 23rd day of November, 2016, via electronic transmission.

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Summary: Motion to Extend the Protective Order electronically filed by Mr. William A Sieck on behalf of Globe Metallurgical Inc.