

In the Matter of the Application of Ohio )  
Power Company to Adjust The Economic ) Case No. 18-191-EL-RDR  
Development Cost Recovery Rider Rate )

Pursuant to Rule 4901-1-24, Ohio Administrative Code (“O.A.C.”), Globe Metallurgical Inc. (“Globe”) respectfully moves the Public Utilities Commission of Ohio (“Commission”) to issue a Protective Order to protect the confidentiality and prohibit the disclosure of the confidential information contained in the schedules to the January 30, 2018 Application of Ohio Power Company (“AEP-Ohio”) to adjust its Economic Development Cost Recovery rider (“EDR”) rate. The confidential information is not subject to disclosure and includes competitively sensitive and highly proprietary business information comprising trade secrets.

Respectfully submitted,

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## I. INTRODUCTION AND BACKGROUND

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 the rider at zero, to be updated quarterly.<sup>3</sup> In AEP-

<sup>3</sup> *In re 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).

Ohio's second and third ESP proceedings, the EDR was reauthorized and is filed semi-annually.<sup>4</sup>

The rider is calculated as a percentage of a customer's distribution charges.

AEP-Ohio's January 30, 2018 Application contains Globe's customer-specific information that was clearly marked as confidential and was submitted under seal, separate from the redacted public version of the Globe-specific schedule. The confidential information as it pertains to Globe is contained in Schedule Nos. 2 and 4 submitted under seal on January 30, 2018.<sup>5</sup> AEP Ohio has moved for a protective order for Globe's customer-specific information.<sup>6</sup>

For the reasons stated below, Globe respectfully requests that the Commission grant this motion and AEP-Ohio's motion for protective treatment of Globe's customer-specific information filed under seal in Schedule Nos. 2 and 4 in support of AEP-Ohio's application to adjust the EDR rate.

## **II. ARGUMENT**

The billing information of the Globe reasonable arrangement filed in Schedule Nos. 2 and 4 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

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<sup>4</sup> *In re 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 (Aug. 8, 2012); *In re Application of Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to R.C. 4928.143, in the Form of an Electric Security Plan*, Case Nos. 13-2385-EL-SSO, et al., Opinion and Order at 69 (Feb. 25, 2015).

<sup>5</sup> *See In re Application of Ohio Power Company to Adjust The Economic Development Cost Recovery Rider Rate*, Case No. 18-0191-EL-RDR, Application at Schedule Nos. 2 (reflecting actual and estimated monthly delta revenue amounts) and 4 (reflecting estimated monthly electric usage and bill information, discounts, and delta revenues) (Jan. 30, 2018).

<sup>6</sup> *See id.*, Motion for Protective Order (Jan. 30, 2018).

disclosure.<sup>7</sup> Pursuant to this statutory grant of authority, the Commission promulgated O.A.C 4901-1-24. Rule 4901-1-24(D) provides for the issuance of an order necessary to protect confidential information contained in documents filed at the Commission to the extent that state and federal law prohibit the release of such information when non-disclosure of the information is not inconsistent with the purposes of R.C. Title 49.

Trade secrets protected by state law are not public records and are exempt from public disclosure.<sup>8</sup> A trade secret is defined by R.C. 1333.61 (D), 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.

R.C. 1333.61(D) (emphasis added).

The Globe-related information contained within Schedule No.2 is competitively sensitive and highly proprietary business and financial information falling within the statutory characterization of a trade secret.<sup>9</sup> The information for which protective treatment is sought includes Globe’s delta revenue and billings paid for electricity based upon its actual and estimated usage. Public disclosure of the pricing information would jeopardize Globe’s

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<sup>7</sup> See R.C. 4901.12 and 4905.07.

<sup>8</sup> R.C. 149.43(A)(1)(v); *State ex rel. The Plain Dealer v. Ohio Dept. of Ins.*, 80 Ohio St. 3d 513, 530 (1997).

<sup>9</sup> R.C. 1333.61(D).

business position and its ability to compete. The delta revenue and the actual and projected 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. Finally, actual customer usage, billing information and pricing terms are protected from disclosure by AEP-Ohio<sup>10</sup> and routinely accorded protected status by the Commission and Globe's information has been accorded such treatment in AEP-Ohio's previous EDR update proceedings.<sup>11</sup>

The non-disclosure of the actual usage and pricing information will not impair the purposes of R.C. Title 49, as the Commission and its Staff will have full access to the confidential information in order to complete its review process. Because Globe's information constitutes a trade secret, it should be accorded protected status.

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<sup>10</sup> See, e.g., Rule 4901:1-37-04(D)(1), O.A.C. (prohibiting disclosure of "proprietary customer information (e.g., individual customer load profiles or billing histories)").

<sup>11</sup> See, e.g., *In re Application of Ohio Power Company to Adjust its Economic Development Cost Recovery Rider Rate*, Case No. 17-1714-EL-RDR, Finding and Order at 4 (Sep. 23, 2017); *In re Application of Ohio Power Company to Adjust its Economic Development Cost Recovery Rider Rate*, Case No. 17-0295-EL-RDR, Finding and Order at 4 (Mar. 29, 2017); *In re Application of Ohio Power Company to Adjust the Economic Development Cost Recovery Rider Rate*, Case No. 16-1684-EL-RDR, Finding and Order at 4 (Sept. 22, 2016); *In re 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); *In re 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); *In re 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 re Application of Ohio Power Company to Adjust Its Economic Development Rider Rate*, Case No. 14-1329-EL-RDR, Finding and Order at 4 (Sept. 17, 2014); *In re Application of Ohio Power Company to Adjust the Economic Development Cost Recovery Rider Rate*, Case No. 13-1739-EL-RDR, Finding and Order at 4 (Sep. 18, 2013) & Entry at ¶ 5 (Dec. 08, 2014); *In re Application of Ohio Power Company to Adjust the Economic Development Cost Recovery Rider Rate*, Case No. 13-0325-EL-RDR, Finding and Order at 4 (Mar. 27, 2013); *In re 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. 12-2210-EL-ROR, Finding and Order at 4-5 (Sept. 26, 2012); *In re 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); and *In re 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).

### III. CONCLUSION

Globe respectfully requests that this Motion for Protective Order and AEP-Ohio's January 30, 2018 motion be granted 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 Public Utilities Commission of Ohio's e-filing system will electronically serve notice of the filing of this document on the parties referenced on the service list of the docket card who have electronically subscribed to the case. In addition, the undersigned certifies that a courtesy copy of the foregoing document is also being served (via electronic mail) on the 19th day of February 2018 upon all persons/entities listed below:

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Summary: Motion of Globe Metallurgical Inc. for Protective Order and Memorandum in Support electronically filed by Mr. William A Sieck on behalf of Globe Metallurgical Inc.