

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of	)	
Ohio Power Company to Adjust	)	Case No. 17-1714-EL-RDR
the Economic Development Cost	)	
Recovery Rider Rate	)	

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**MOTION OF ERAMET MARIETTA INC. TO EXTEND THE  
PROTECTIVE ORDER AND MEMORANDUM IN SUPPORT**

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**JULY 9, 2019**

**ATTORNEYS FOR ERAMET MARIETTA INC.**

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Pursuant to Rule 4901-1-24, Ohio Administrative Code (“O.A.C.”), and the Finding and Order of the Public Utilities Commission of Ohio (“Commission”) on September 13, 2017 in this matter, Eramet Marietta Inc. (“Eramet”) respectfully moves the Commission to issue an order extending the Protective Order. Extension of the Protective Order is necessary 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”) rate filed under seal on August 1, 2017. The confidential information is not subject to disclosure and includes competitively sensitive and highly proprietary business information comprising trade secrets. The grounds for this motion are set forth in the attached Memorandum in Support.

Respectfully submitted,

/s/ Matthew R. Pritchard

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**MEMORANDUM IN SUPPORT**

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**I. INTRODUCTION AND BACKGROUND**

On June 19, 2009, Eramet filed an application before the Commission for a reasonable arrangement with AEP-Ohio to permit Eramet to upgrade its manufacturing facility in Ohio.<sup>1</sup> On August 5, 2009, Eramet and Commission Staff filed a Joint Stipulation and Recommendation resolving the issues in the case (“Stipulation”).<sup>2</sup> On October 15, 2009, the Commission issued an Opinion and Order approving the Stipulation with modifications. On March 24, 2010, the Commission issued an Entry on Rehearing denying Applications for Rehearing and upholding its Opinion and Order approving the Stipulation. On January 22, 2015, Eramet filed an application to amend its reasonable arrangement. On October 14, 2015, the Commission approved a stipulation amending the reasonable arrangement.<sup>3</sup>

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

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<sup>1</sup> *In the Matter of the Application for Establishment of a Reasonable Arrangement between Eramet Marietta Inc. and Columbus Southern Power Company*, Case No. 09-516-EL-AEC, (June 19, 2009) (“*Eramet RA Case*”). The application, as filed and approved, was between Eramet and Columbus Southern Power Company (“CSP”). However, CSP has since merged with Ohio Power Company.

<sup>2</sup> *Eramet RA Case*, Stipulation (Aug. 5, 2009).

<sup>3</sup> *Eramet RA Case*, Opinion and Order (Oct. 14, 2015).

economic development amounts authorized by the Commission in reasonable arrangement cases. In the initial ESP proceeding, the Commission also set the initial level of the rider at zero, to be updated quarterly.<sup>4</sup> The EDR was reauthorized in AEP-Ohio's second, third, and fourth ESP proceedings and is filed semi-annually.<sup>5</sup> The rider is calculated as a percentage of a customer's distribution charges.

On August 1, 2017, AEP-Ohio initiated this semi-annual update case by filing an application requesting that the Commission adjust AEP-Ohio's EDR. AEP-Ohio's application contained 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. To protect its confidential information, Eramet sought to intervene in this proceeding and filed a Motion for Protective Order.

The Commission granted Eramet's Motion to Intervene and Motion for Protective Order, finding that the customer-specific information constituted a trade secret in a Finding and Order dated September 13, 2017.<sup>6</sup> In its Order, the Commission specified that its Protective Order would extend for a period of 24 months. It further specified that Eramet should file a motion requesting an extension of the Protective Order at least 45

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<sup>4</sup> *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).

<sup>5</sup> *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 (Aug. 8, 2012); *In the Matter of the 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); *In the Matter of the Application of Ohio Power Company to Establish a Standard Service Offer Pursuant to R.C. 4928.143, in the Form of an Electric Security Plan*, Case Nos. 16-1852-EL-SSO, *et al.*, Opinion and Order (Apr. 25, 2018).

<sup>6</sup> Finding and Order at 4 (Sept. 13, 2017).

days before the expiration of the Protective Order if Eramet sought to extend the Protective Order.<sup>7</sup>

For the reasons stated below, Eramet respectfully requests that the Commission extend the 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 documents from disclosure.<sup>8</sup> Pursuant to this statutory grant of authority, the Commission promulgated Rule 4901-1-24, O.A.C. The rule 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 or federal law prohibits 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.

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<sup>7</sup> *Id.*

<sup>8</sup> See R.C. 4901.12 and 4905.07.

Trade secrets protected by state law are not considered public records and are therefore exempt from public disclosure.<sup>9</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.

(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.<sup>10</sup> The information for which 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. Additionally, the efforts to protect the confidential pricing information are reasonable under the circumstances. Further, actual customer usage and

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<sup>9</sup> R.C. 149.43(A)(1)(v); *State ex rel. The Plain Dealer v. Ohio Dept. of Insurance*, 80 Ohio St.3d 513, 530 (1997).

<sup>10</sup> R.C. 1333.61(D).

pricing terms are routinely accorded protected status by the Commission, and the Commission has previously accorded such treatment to Eramet's information in other AEP-Ohio EDR cases.<sup>11</sup> Finally, the Commission has already found in this proceeding that Eramet'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.<sup>12</sup>

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

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<sup>11</sup> *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 4901:1-38-08(A)(5)*, Ohio Administrative Code, Case No. 12-2210-EL-RDR, Finding and Order at 4-5 (Sept. 26, 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. 13-325-EL-RDR, Finding and Order at 4 (Mar. 27, 2013); *In the Matter of the Application of Ohio Power Company to Adjust Its Economic Development Cost Recovery Rider Rate*, Case No. 13-1739-EL-RDR, Finding and Order at 4 (Sept. 18, 2013); *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. 13-325-EL-RDR, Finding and Order at 4 (Mar. 27, 2013); *In the Matter of the Application of Ohio Power Company to Adjust Its Economic Development Cost Recovery Rider Rate*, Case No. 13-1739-EL-RDR, Finding and Order at 4 (Sept. 18, 2013); *In the Matter of the Application of Ohio Power Company to Adjust Its Economic Development Rider Rate*, Case No. 14-193-EL-RDR, Finding and Order at 4-5 (Mar. 26, 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 3-4 (Mar. 18, 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 3-4 (Nov. 18, 2015); *In the Matter of the Application of Ohio Power Company to Adjust Its Economic Development Rider Rate*, Case No. 16-260-EL-RDR, Finding and Order at 3-4 (Mar. 31, 2016); *In the Matter of the Application of Ohio Power Company to Adjust Its Economic Development Rider Rate*, Case No. 16-1684-EL-RDR, Finding and Order at 4 (Sept. 22, 2016); *In the Matter of the Application of Ohio Power Company to Adjust Its Economic Development Rider Rate*, Case No. 17-295-EL-RDR, Finding and Order at 4 (Mar. 29, 2017); *In the Matter of the Application of Ohio Power Company to Adjust its Economic Development Rider Rate*, Case No. 17-1714-EL-RDR, Finding and Order (Sept. 13, 2017); *In the Matter of Ohio Power Company to Adjust Its Economic Development Rider Rate*, Case No. 18-191-EL-RDR, Finding and Order (Mar. 28, 2018); *In the Matter of the Application of Ohio Power Company to Adjust Its Economic Development Rider Rate*, Case No. 18-1256-EL-RDR, Finding and Order (Sept. 19, 2018); *In the Matter of the Application of Ohio Power Company to Adjust Its Economic Development Rider Rate*, Case No. 19-232-EL-RDR, Finding and Order (Mar. 20, 2019).

<sup>12</sup> Finding and Order at 4 (Sept. 13, 2017).



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

### III. CONCLUSION

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

Respectfully submitted,

/s/ Matthew R. Pritchard

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## **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. to Extend the 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 9<sup>th</sup> day of July 2019, via electronic transmission.

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Summary: Motion Motion of Eramet Marietta Inc. to Extend the Protective Order and Memorandum in Support electronically filed by Mr. Matthew R. Pritchard on behalf of Eramet Marietta, Inc.