

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of:

: Case No. 05-1057-EL-CSS

In the Matter of the
Complaint of Ormet Primary:

Aluminum Corporation and :

Ormet Aluminum Mill :

Products Corporation :

PROCEEDINGS

before Hearing Examiner Gregory Price, at the Public
Utilities Commission of Ohio, commencing at 10:00
a.m., on Thursday, October 26, 2006, in Hearing Room
11-E, 180 East Broad Street, Columbus, Ohio.

Present:

Commissioner Alan Schriber

ARMSTRONG & OKEY, INC.
185 South Fifth Street, Suite 101
Columbus, Ohio 43215-5201
(614) 224-9481/(800) 223-9481
Fax (614) 224-5724

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1 APPEARANCES:

2 Dinsmore & Shohl, LLP
3 By Mr. Edward Depp
4 1400 PNC Plaza
5 500 West Jefferson Street
6 Louisville, Kentucky 40202

7 On behalf of Ormet Primary Aluminum
8 Corporation and Ormet Aluminum Mill
9 Products Corporation.

10 Thompson Hine, LLP
11 By Mr. William R. Case
12 Ms. Carolyn S. Flahive
13 and Mr. Robert Mone
14 10 West Broad Street, Suite 700
15 Columbus, Ohio 43215-3435

16 On behalf of South Central Power Company.

17 American Electric Power
18 By Mr. Marvin I. Resnik
19 1 Riverside Plaza
20 Columbus, Ohio 43215

21 On behalf of Ohio Power Company.

22 McNees, Wallace & Nurick LLC
23 By Ms. Lisa McAlister
24 21 East State Street, 17th Floor
Columbus, Ohio 43215

On behalf of Industrial Energy
Users-Ohio.

Boehm, Kurtz & Lowry
By Mr. David Boehm
36 East Seventh Street
Suite 1510
Cincinnati, Ohio 45202-4454

On behalf of the Ohio Energy Group.

1 APPEARANCES:

2 Janine L. Migden-Ostrander
3 Ohio Consumers' Counsel
4 By Mr. Jeffrey L. Small
5 West Broad Street, Suite 1800
6 Columbus, Ohio 43215-3485

7 On behalf of the Residential
8 Consumers of the State of Ohio.

9 Jim Petro, Ohio Attorney General
10 Duane W. Luckey, Senior Deputy
11 Attorney General
12 Public Utilities Section
13 Mr. Thomas W. McNamee
14 Mr. William Wright
15 180 East Broad Street, 9th Floor
16 Columbus, Ohio 43215-3793

17 On behalf of the Staff of the Public
18 Utilities Commission.

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1 Thursday Morning Session,
2 October 26, 2006.

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4 THE HEARING EXAMINER: Good morning. The
5 Commission has set for this time and place in the
6 matter of the complaint of Ormet Primary Aluminum
7 Corporation and Aluminum Mill Products Corporation
8 versus South Central Power Company and the Ohio Power
9 Company.

10 My name is Gregory Price, the attorney
11 examiner assigned to preside over this matter. With
12 me today is Alan Schriber, chairman of the
13 Commission.

14 Let's take appearances beginning with
15 Ormet.

16 MR. DEPP: Good morning, Chairman,
17 Attorney Examiner Price. Edward Depp from the law
18 firm of Dinsmore & Shohl, 1400 PNC Plaza, 500 West
19 Jefferson Street, Louisville, Kentucky 40404.

20 MR. RESNIK: Please let the record show
21 the appearance on behalf of the Ohio Power Company,
22 Marvin I. Resnik, American Electric Power, One
23 Riverside Plaza, Columbus, Ohio 43215.

24 I would also like to enter an appearance

1 on behalf of Columbus Southern Power Company, the
2 stipulation entered into the record, a part of which
3 is the intervention and the agreement of those
4 parties signing the agreement to permit the
5 intervention on behalf of Columbus Southern Power.

6 THE HEARING EXAMINER: South Central
7 Power.

8 MR. CASE: Thank you. On behalf of South
9 Central, Bill Case from the law firm of Thompson
10 Hine, LLP, and also with me are Carolyn Flahive and
11 Robert Mone.

12 THE HEARING EXAMINER: IEU.

13 MS. McALISTER: Thank you. On behalf of
14 the Industrial Energy Users of Ohio, McNees, Wallace
15 & Nurick, Lisa McAlister, 21 East State Street,
16 Columbus, Ohio, 4321.

17 THE HEARING EXAMINER: Ohio Energy Group.

18 MR. BOEHM: Good morning. On behalf of
19 the Ohio Energy Group, David Boehm, from the law firm
20 of Boehm, Kurtz & Lowery, 36 East Seventh Street,
21 Cincinnati, Ohio, 45202.

22 THE HEARING EXAMINER: Steel workers
23 (No response.)

24 THE HEARING EXAMINER: Not in attendance

1 today.

2 Representative from staff.

3 MR. WRIGHT: Thank you, Your Honor. On
4 behalf of the staff, Ohio attorney General Jim Petro,
5 by Tom McNamee and Bill Wright, 180 East Broad
6 Street, Columbus, Ohio 43215.

7 THE HEARING EXAMINER: Mr. Small.

8 MR. SMALL: Your Honor, on behalf of the
9 Residential Customers of Columbus, Janine
10 Migden-Ostrander, Ohio Consumers' Counsel, Jeffrey
11 Small, consumers' counsel, Office of the Ohio
12 Consumers' Counsel, 10 West Broad Street, Suite 1800,
13 Columbus, Ohio, 43215.

14 Your Honor, the OCC filed with the
15 docketing a motion to intervene in the case in this
16 matter we would like to take up at the beginning of
17 this hearing. Thank you, Your Honor.

18 THE HEARING EXAMINER: Let's go ahead and
19 take that up now. We are going to defer ruling on
20 the motion to intervene. I would like the parties to
21 treat this as a request for expedited consideration
22 so I'd like the parties to file written responses
23 within seven days, and we will have no response to
24 the memorandum contra, if there are any.

1 Having said that, Mr. Small, I have a
2 couple questions, clarification regarding your
3 filing. In your filing you say the OCC does not seek
4 intervention to oppose the stipulation, but then you
5 indicate that intervention is important for the full
6 development and equitable resolution of the issues.
7 I'm not clear as to what OCC intends to do in its
8 participation.

9 MR. SMALL: Well, your Honor, as you
10 know, this case has taken its turns. It has been
11 active for approximately 18 months. The stipulation
12 is barely dry. It was filed on Friday, October 20,
13 and it has provisions and implications for rates. It
14 has implications for rates other than the parties
15 that are involved. It has implications for rates for
16 residential customers.

17 It's a little bit hard for me to tell
18 exactly where this case is going, and it is not
19 entirely clear, for instance, how the Commission will
20 deal with this stipulation. If it's simply a matter
21 of approving the stipulation, that's not entirely
22 clear at this point. For instance, in other cases
23 the parties have written stipulations, paragraph 11
24 comes to mind in particular, concerning the

1 Commission's review process. The Commission has, and
2 I use as an example the CG&E Rate Stabilization Plan
3 case, made alterations, I should say clarifications,
4 as far as the Commission's review process.

5 We just don't know exactly from reading
6 the stipulation that was filed just on Friday
7 entirely where this matter is going as far as the
8 review process and so forth.

9 It promises -- the stipulation promises a
10 filing prior to the start of 2007. That means there
11 would be almost an immediate filing since this is the
12 end of October, so the review process for that filing
13 will be important. The OCC would like to monitor
14 that situation and, perhaps, comment, depending upon
15 the outcome of the case here.

16 THE HEARING EXAMINER: Are you intending
17 to present a witness today?

18 MR. SMALL: No.

19 THE HEARING EXAMINER: Are you intending
20 to have cross-examination for any witnesses that
21 there may be.

22 MR. SMALL: I do have one question for
23 the AEP witness. It purely has to do with the review
24 process.

1 THE HEARING EXAMINER: If it is a
2 clarification question, maybe we can ask counsel now
3 and get that out of way.

4 MR. SMALL: The matter I would like to
5 ask about is what the timing is to have the filing
6 that was promised in paragraph 11 of the stipulation.

7 THE HEARING EXAMINER: Mr. Resnik, can
8 you answer that question?

9 MR. RESNIK: There is no precise date set
10 in here.

11 MR. SMALL: That's the purpose for the
12 question.

13 THE HEARING EXAMINER: Given we don't
14 know when the Commission will rule on this, I think
15 you are asking AEP a question they probably cannot
16 answer.

17 MR. SMALL: Hypothetically, if it was
18 approved today, when could they make the filing? It
19 does make a difference whether such a filing is made
20 on December 31 so that no one would have an
21 opportunity to even look at it. I mean, there's --
22 the time is very short before the end of the year.

23 THE HEARING EXAMINER: I understand that.
24 Does the answer to the question change your position

1 on the stipulation, or are you simply talking about
2 post stipulation implementation?

3 MR. SMALL: That's what I am talking
4 about, yes. And that's the primary focus of the
5 OCC's interest, yes.

6 MR. RESNIK: I would just point out that
7 in what I would think is the unlikely event, let's
8 say we did file on December 31, the Commission, in
9 its process in the market price filing resolved in
10 February, the charges to Ormet would remain the same.
11 We would certainly certainly have the ability, based on
12 what the Commission ultimately determined, to adjust
13 whatever differential we thought there was.

14 Since all we are doing initially is
15 amortizing regulatory liability, it is not going to
16 have an impact on customer billings. It just adjusts
17 the amortization if that differential turned out to
18 smaller or larger.

19 THE HEARING EXAMINER: Mr. Resnik, were
20 you intending to make this filing in a separate
21 proceeding or within this proceeding. Not something
22 you have thought about just yet?

23 MR. RESNIK: I really haven't. I really
24 haven't. Maybe the Commission will want to speak to

1 it in its order. I don't know. This has gone under
2 a fairly good pace over the last week or so, and that
3 is what I would call a detail. I'm not really sure
4 what the answer is.

5 THE HEARING EXAMINER: Thank you,
6 Mr. Small.

7 MR. SMALL: Thank you.

8 THE HEARING EXAMINER: Because there is a
9 public interest component to the statute under which
10 the stipulation is petitioning, today's hearing is
11 both a hearing for witnesses from the parties and any
12 public witnesses that may wish to testify.

13 If we do have any public witnesses, they
14 may give sworn or unsworn testimony. Sworn testimony
15 will be given greater weight by the Commission but
16 you will subject to cross-examination by the parties.

17 Unsworn testimony will still be given
18 weight by the Commission but you will not be subject
19 to cross-examination.

20 Mr. Resnik.

21 MR. RESNIK: Ohio Power Company and,
22 hopefully, Columbus Southern Power, would call Craig
23 Baker as its witness.

24 Please be seated and state your name and

1 business address for the record.

2 THE WITNESS: My name is John Craig Baker
3 I'm employed by AEP Service Corporation, and our
4 address is One Riverside Plaza, Columbus, Ohio,
5 43215.

6 THE HEARING EXAMINER: Thank you.

7 Please proceed, Mr. Resnik.

8 MR. RESNIK: Your Honor, I'd like to have
9 marked as Joint Exhibit 2, a 17-page document, which
10 is the Stipulation and Recommendation entered into by
11 Ohio Power, Columbus Southern Power Company, Ormet,
12 South Central Power Company, the Staff of the
13 Commission, Ohio Energy Group, and, for shorthand,
14 the Steel Workers Union.

15 THE HEARING EXAMINER: So marked.

16 (EXHIBIT MARKED FOR IDENTIFICATION.)

17 MR. RESNIK: I point to what is marked as
18 Joint Exhibit 2, because I'm not certain if there is
19 a Joint Exhibit 1, so it may be the same.

20 THE HEARING EXAMINER: So noted.

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1 JOHN CRAIG BAKER

2 being first duly sworn, as prescribed by law, was
3 examined and testified as follows:

4 DIRECT EXAMINATION

5 By Mr. Resnik:

6 Q. Do you have a copy before you of what has
7 been marked Joint Exhibit 2?

8 A. Yes, I do.

9 Q. Can you identify that for the record
10 please?

11 A. This is the Stipulation and
12 Recommendation that was entered into in the case
13 that's before the Commission in regards to service to
14 the Ormet Primary Aluminum Corporation.

15 Q. Have you previously filed testimony in
16 this proceeding?

17 A. Yes, I have.

18 Q. And could you tell us how long you have
19 been involved in utility rate regulation?

20 A. I probably prefer not to tell you how
21 long I've been, but I guess I have no choice. But to
22 answer the question, I first started in dealing at
23 all with Commissions actually with the PUCO back in
24 the late '70s, and I have been in charge of our

1 regulatory activities in the 11 states that we do
2 business in since 2000.

3 That has led me to be involved in many
4 different cases in many jurisdictions, and I have
5 testified in most of the state jurisdictions as well
6 as the FERC, so I have been at this quite awhile.

7 Q. And given that longevity, do you consider
8 yourself to be familiar with regulatory principles
9 and practices?

10 A. Yes, I am.

11 Q. Were you involved in the process that
12 resulted in Joint Exhibit 2 being filed in the docket
13 on Friday, October 20 of this year?

14 A. Yes, I was.

15 Q. And can you explain what your role in
16 that process was?

17 A. Certainly. First, as I identified
18 earlier, I had provided testimony in this case about
19 AEP Ohio's position in the case. Not long ago I was
20 contacted by a representative for Ormet, and we began
21 discussions in regards to was there any situation
22 that would be acceptable to the parties, being Ormet
23 and AEP Ohio, by which AEP Ohio would provide service
24 to Ormet on an ongoing basis.

1 That dialogue continued. We had a number
2 of discussions which led to some of the other parties
3 being included in that discussion, and the outcome of
4 that dialogue, which was very active and very short
5 considering what's going on here, we were able to
6 arrive at this Stipulation and Recommendation, and
7 the parties who were actively involved have either
8 signed on to the stipulation or, I believe, agreed
9 not to oppose the stipulation.

10 Q. And from that answer, is it proper to
11 assume you are familiar with the content of the
12 Stipulation and Recommendation?

13 A. Yes, I am.

14 Q. Could you, just briefly, describe how the
15 agreement is intended to work?

16 A. The agreement has a number of provisions
17 in it. First and foremost, I think you can describe
18 this as an agreement -- this agreement to be one
19 where previously it had been agreed upon that AEP
20 Ohio and its various companies, and the other
21 companies on the AEP system, would not be required to
22 serve Ormet on a going-forward basis, and they were
23 no longer in our certified service territory.

24 The basic provision as a starting point

1 is that we would petition the Commission to redefine
2 it and put Ormet back in the AEP Ohio service
3 territory, and we would, therefore, be taking on the
4 requirements to serve that under the contractual
5 provisions that are included in the agreement.

6 We recognize that there is a very large
7 load, in excess of 500 megawatts, and that we would
8 be serving it with an expected load factor of
9 99 percent. There are provisions under which Ormet
10 would agree to pay us \$43 a megawatt hour for the
11 generation commodity as they use it. It provides
12 that in the event that a market price, which would be
13 reviewed by the Commission, there was some discussion
14 about that earlier, exceeded the \$43 for the
15 generation, that we would then be entitled to reduce
16 a regulatory liability that we have on the books of
17 Ohio Power and the Columbus and Southern subsidiaries
18 to make up the differential, as I call it, between
19 the market price and the \$43.

20 In addition, there are charges here for
21 the transmission and distribution, and those
22 transmission and distribution charges are consistent
23 with the tariffs that we have filed for Ohio Power
24 and Columbus Southern Power and would be charged

1 directly to Ormet based on their usage.

2 There are also a number of other
3 provisions in here that deal with deposits and
4 prepayments. There are provisions that deal with
5 what happens in the event that this stipulation, if
6 it is, in effect, changed by the Commission or if it
7 is challenged the court, it deals with that. It also
8 has some provisions associated with what would happen
9 in the event of a bankruptcy.

10 And those are the basic provisions. If
11 there's any other specific you would like me to talk
12 to about, please ask.

13 Q. I will. And you may have said it and I
14 missed it, but I think there was also reference in
15 the settlement to what is referred to as the
16 additional four percent provision from both
17 companies' rate stabilization plan.

18 A. Yes. What is also provided here is in
19 the event over the two-year time frame that this
20 agreement would be in place we effectively were to
21 exceed the franchise tax regulatory liability, which
22 would be an issue in an upcoming case for
23 distribution, which would not happen before 2009, and
24 we basically zeroed that out, then we would have the

1 right to come in and get recovery for any additional
2 differential between the market price and the \$43
3 under the four percent provisions that are included
4 in the two companies' rate stabilization plans.

5 Q. Can you speak to the question of whether
6 the settlement is a product of serious bargaining
7 among capable and knowledgeable parties?

8 A. Yes, I think I can. I, along with my
9 regulatory experience, and I have a lot of experience
10 negotiating deals over the years, and I would say
11 that all of the parties were very well represented,
12 represented their sides very well and the interests
13 of their parties, and it was a serious negotiation
14 that would be what I would expect coming out of
15 something as serious in nature as this is.

16 Q. And do you believe the stipulation
17 benefits the ratepayers and the public interest?

18 A. I do.

19 Q. Can you explain why?

20 A. I'll take you back to my comment, I had
21 been approached by a representative from Ormet, and
22 when they approached us, they really talked about the
23 benefits that came to the locale where Ormet is
24 located. There have been a number of employees who

1 have been out of work for a long period of time. If
2 this is approved as described, the expectation that
3 Ormet has told me is that they would be bringing
4 these employees back going into full operation. I
5 think the amount of employees is in the range of
6 1,000 employees down there. The annual wages
7 probably are 30 to 40 million, although I am pulling
8 this out of Ormet's testimony. There's health care
9 benefits to come to those employees and the families
10 of those employees. There are taxes that are paid to
11 the counties down there in the school district, so as
12 Ormet being one of the largest employers, I think
13 this is in the public interest because many people
14 will be able to go back to work.

15 Q. And, finally, going back to earlier
16 descriptions, your familiarity with regulatory
17 principles and practices, is there anything in the
18 settlement agreement that, in your opinion, would
19 violate any of those regulatory principles or
20 practices with which you're familiar?

21 A. No. I absolutely believe there would be
22 nothing that would violate that.

23 MR. RESNIK: That's all I have for
24 Mr. Baker. Thank you, your Honor.

1 THE HEARING EXAMINER: Do we have any
2 questions from the other signatory parties?

3 (No response.)

4 THE HEARING EXAMINER: Thank you very
5 much, Mr. Baker.

6 MR. RESNIK: Your Honor, speaking for the
7 signatory parties to Joint Exhibit 2, I would move
8 for the admission of that exhibit.

9 THE HEARING EXAMINER: The exhibit will
10 be admitted.

11 (EXHIBIT MARKED FOR IDENTIFICATION.)

12 THE HEARING EXAMINER: Do we have any
13 other witnesses from the signatory parties?

14 (No response.)

15 THE HEARING EXAMINER: Do we have any
16 witnesses from the public?

17 (No response.)

18 THE HEARING EXAMINER: Thank you very
19 much. With that, we will consider this case to be
20 submitted on the record. Thank you.

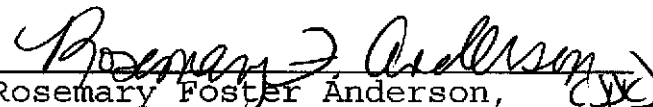
21 (Thereupon, the hearing concluded at
22 10:22 a.m.)

23 - - -

24

1 CERTIFICATE

2 I do hereby certify that the foregoing is a
3 true and correct transcript of the proceedings taken
4 by me in this matter on Thursday, October 26, 2006,
5 and carefully compared with my original stenographic
6 notes.

7
8 
9 Rosemary Foster Anderson, (X)
10 Professional Reporter and
Notary Public in and for
the State of Ohio.

11 My commission expires April 5, 2009.

12 (RFA-6923)

EXHIBIT

Case Number 05-1057-EL-CSS

The following exhibit(s) were prefiled and can be located with the pleadings:

Exhibits Date Filed
Stipulation and Recommendation 10-20-06