

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Ormet )  
Primary Aluminum Corporation for )  
Approval of a Unique Arrangement with ) Case No. 09-119-EL-AEC  
Ohio Power Company and Columbus )  
Southern Power Company. )

ENTRY

The attorney examiner finds:

- (1) By opinion and order issued on July 15, 2009, the Commission modified and approved the amended application of Ormet Primary Aluminum Corporation (Ormet) for a unique arrangement with Columbus Southern Power Company and Ohio Power Company (jointly, AEP Ohio) for electric service to Ormet's aluminum-producing facility located in Hannibal, Ohio.<sup>1</sup>
- (2) On October 12, 2012, Ormet filed a motion for expedited approval of payment deferral, pursuant to Section 4905.31, Revised Code, and Rules 4901-1-12(C) and 4901:1-38-05(B), Ohio Administrative Code (O.A.C). Specifically, Ormet sought approval of a modification to its unique arrangement with AEP Ohio, such that Ormet would be authorized to defer payment of its billed amounts for October and November 2012, which would otherwise be due in November and December 2012, respectively.
- (3) By entry issued on October 17, 2012, the Commission granted Ormet's request for a deferred payment arrangement to the extent set forth in the entry, although the Commission also noted its concern regarding the financial risk being incurred by AEP Ohio's ratepayers and directed that any further relief requested by Ormet should be accompanied by a detailed business plan confirming Ormet's long-term ability to exist without ratepayer support.

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<sup>1</sup> By entry issued on March 7, 2012, the Commission approved and confirmed the merger of Columbus Southern Power Company into Ohio Power Company, effective December 31, 2011. *In the Matter of the Application of Ohio Power Company and Columbus Southern Power Company for Authority to Merge and Related Approvals*, Case No. 10-2376-EL-UNC.

- (4) On June 14, 2013, Ormet filed a motion to amend its unique arrangement with AEP Ohio and a request for emergency relief, along with a memorandum in support, pursuant to Sections 4905.31 and 4909.16, Revised Code, and Rules 4901-1-12 and 4901:1-38-05, O.A.C. In the motion, Ormet explains its intention to file, within 30 days, a business plan demonstrating sustainable power pricing for the post-2015 period.
- (5) On July 15, 2013, Ormet filed a business plan and power plant report, along with a motion for protective order pursuant to Rule 4901-1-24(D), O.A.C. No memoranda contra Ormet's motion for protective order were filed.
- (6) In support of its motion for protective order, Ormet asserts that the business plan and power plant report contain information that is confidential and proprietary in nature and constitutes a trade secret. Specifically, Ormet states that the business plan contains information that demonstrates a sustainable energy price post-2015 from a future on-site power plant intended to support the ongoing operation of Ormet's facility. Ormet adds that the power plant report includes a description of the power plant, milestones to construction, and pricing information. Ormet notes that business plans are specifically mentioned as constituting a trade secret under Section 1333.61(D), Revised Code. According to Ormet, business plans are rarely released to the public and have never been publicly released by Ormet. Ormet argues that the information contained in its business plan, which Ormet claims has independent economic value, could give Ormet's competitors significant insight into Ormet's operations and a competitive advantage in the aluminum industry. Ormet maintains that its competitors do not have access to the business plan and that Ormet has made reasonable efforts to keep it confidential. Therefore, Ormet requests that the business plan and power plant report be treated as confidential.
- (7) Section 4905.07, Revised Code, provides that all facts and information in the possession of the Commission shall be public, except as provided in Section 149.43, Revised Code, and as consistent with the purposes of Title 49 of the Revised Code. Section 149.43, Revised Code, specifies that the term

“public records” excludes information that, under state or federal law, may not be released. The Ohio Supreme Court has clarified that the “state or federal law” exemption is intended to cover trade secrets. *State ex rel. Besser v. Ohio State*, 89 Ohio St. 3d 396, 399, 732 N.E.2d 373 (2000).

- (8) Similarly, Rule 4901-1-24, O.A.C., allows an attorney examiner to issue an order to protect the confidentiality of information contained in a filed document, “to the extent that state or federal law prohibits release of the information, including where the information is deemed . . . to constitute a trade secret under Ohio law, and where non-disclosure of the information is not inconsistent with the purposes of Title 49 of the Revised Code.”
- (9) Ohio law defines a trade secret as “information . . . 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.
- (10) Rule 4901-1-24(D)(1), O.A.C., provides that all documents submitted pursuant to Rule 4901-1-24(D), O.A.C., should be filed with only such information redacted as is essential to prevent disclosure of the allegedly confidential information.
- (11) The attorney examiner has reviewed Ormet’s business plan and power plant report and Ormet’s motion for protective order, as well as the assertions set forth in the memorandum in support. Applying the requirements that the information have independent economic value and be the subject of reasonable efforts to maintain its secrecy pursuant to Section 1333.61(D), Revised Code, as well as the six-factor test set forth by the Ohio Supreme Court,<sup>2</sup> the attorney examiner finds that only some of the information contained in Ormet’s business plan and power plant report constitutes trade secret information. Release of this information is, therefore, prohibited under state law. The attorney examiner also finds

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<sup>2</sup> See *State ex rel. the Plain Dealer v. Ohio Dept. of Ins.*, 80 Ohio St.3d 513, 524-525, 687 N.E.2d 661 (1997).

that nondisclosure of this information is not inconsistent with the purposes of Title 49 of the Revised Code.

- (12) However, the attorney examiner further finds that other information contained in Ormet's business plan and power plant report clearly does not constitute a trade secret and should not be protected. Additionally, the attorney examiner finds that Ormet's business plan and power plant report can be reasonably redacted to remove the confidential information, consistent with Rule 4901-1-24(D)(1), O.A.C., while the remainder of the business plan and power plant report should be released into the open record.
- (13) Accordingly, the attorney examiner finds that Ormet should file its business plan and power plant report as public documents, with only the trade secret information redacted, by August 9, 2013, for review by the Commission or attorney examiner. Ormet should strive to limit its redactions to trade secret information only, leaving as much of the information public as possible. Once the Commission is in possession of appropriately redacted versions of Ormet's business plan and power plant report, the Commission or attorney examiner will rule on the status of the documents.

It is, therefore,

ORDERED, That Ormet file redacted versions of its business plan and power plant report as public documents by August 9, 2013, for review by the Commission or attorney examiner. It is, further,

ORDERED, That a copy of this entry be served upon all parties of record in this case.

THE PUBLIC UTILITIES COMMISSION OF OHIO

s/Sarah Parrot

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By: Sarah J. Parrot  
Attorney Examiner

**This foregoing document was electronically filed with the Public Utilities**

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**Case No(s). 09-0119-EL-AEC**

Summary: Attorney Examiner Entry ordered Ormet to file redacted versions of its business plan and power plant report as public documents by 08/09/2013 for review by the Commission or attorney examiner. - electronically filed by Sandra Coffey on behalf of Sarah Parrot, Attorney Examiner, Public Utilities Commission of Ohio