

FILE

BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO

RECEIVED-DOCKETING DIV

2009 APR 24 PM 12:40

In the Matter of the Application of Ormet )  
Primary Aluminum Corporation for )  
Approval of a Unique Arrangement with )  
Ohio Power Company and Columbus )  
Southern Power Company. )

Case No. 09-119-EL-AEC

PUCO

---

**MOTION FOR EXTENSION OF TIME TO ESTABLISH A STAGGERED SCHEDULE  
FOR THE FILING OF DIRECT TESTIMONY**

**AND**

**REQUEST FOR AN EXPEDITED RULING**

**BY**

**THE OFFICE OF THE OHIO CONSUMERS' COUNSEL AND  
THE OHIO ENERGY GROUP**

---

The Office of the Ohio Consumers' Counsel ("OCC") and the Ohio Energy Group ("OEG") move the Public Utilities Commission of Ohio ("PUCO" or "Commission") for a five-day extension of the time, from April 23 to April 28, 2009, for intervenors to file written expert testimony in this proceeding. In this case, Ormet Primary Aluminum Corporation ("Ormet") is seeking Commission approval of electricity rates with huge discounts that would be paid by customers of Ohio Power Company ("OPC") and Columbus Southern Power ("CSP") (Collectively "AEP"), including residential customers.<sup>1</sup>

This extension may be granted for "good cause."<sup>2</sup> A five-day extension would give all intervenors the ability to file testimony that includes, but is not limited to, a response to Ormet's testimony -- Applicant and intervenor testimony was otherwise due yesterday. This staggered

---

<sup>1</sup> This motion is filed pursuant to Ohio Adm. Code 4901-1-12(C) and Ohio Adm. Code 4901-1-13(A).

<sup>2</sup> Ohio Adm. Code 4901-1-13(A).

This is to certify that the images appearing are an  
accurate and complete reproduction of a case file  
document delivered in the regular course of business.  
Technician T15 Date Processed 4/24/2009

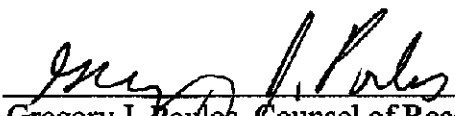
filing schedule is typical in PUCO proceedings where the party with the burden of proof<sup>3</sup> files testimony first, followed by other parties. This scheduling is fair considering that Ormet bears the burden of proof and the schedule will serve the efficiency of the proceedings including that it may diminish the need for intervenors to file rebuttal testimony, all of which constitute good cause. It is OCC and OEG's understanding that other parties, including the Kroger Company, support the opportunity to file written testimony on the schedule in this motion.

In addition, OCC and OEG request an expedited ruling pursuant to Ohio Adm. Code 4901-1-12(C). This Rule allows for "an immediate ruling," without the need to wait for other parties' memoranda, for extension requests that do not exceed five days.

The reasons why this Motion and Request should be granted are fully set forth in the following memorandum in support.

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER  
CONSUMERS' COUNSEL

  
\_\_\_\_\_  
Gregory J. Poulos, Counsel of Record  
Maureen Grady  
Assistant Consumers' Counsel

**Office of the Ohio Consumers' Counsel**  
10 West Broad Street, Suite 1800  
Columbus, Ohio 43215-3485  
Phone: 614-466-8574  
[poulos@occ.state.oh.us](mailto:poulos@occ.state.oh.us)  
[grady@occ.state.oh.us](mailto:grady@occ.state.oh.us)

---

<sup>3</sup> Under Ohio Adm. Code 4901:1-38-05(B)(1), Ormet has the burden of proof to establish that the proposed arrangement is reasonable.

Michael L. Kurtz / *per telephone*  
*Auth.*  
*S.P.*

David F. Boehm

Michael L. Kurtz

Boehm, Kurtz & Lowry

36 East Seventh Street, Suite 1510

Cincinnati, OH 45202

Phone: 513-421-2255

[dboehm@bkllawfirm.com](mailto:dboehm@bkllawfirm.com)

[mkurtz@bkllawfirm.com](mailto:mkurtz@bkllawfirm.com)

Attorneys for The Ohio Energy Group

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

---

**MEMORANDUM IN SUPPORT**

---

The PUCO's rules allow for granting extensions to file pleadings when "good cause" is shown.<sup>4</sup> There is good cause for granting OCC and OEG's motion, as explained below.

On April 10, 2009, Ormet filed an Amended Application for a Unique Arrangement ("Amended Application") that requested a reduced all-in power rate of \$34/MWh in the scenario that two potlines were shutoff and \$38/MWh in all other scenarios (as proposed in the Original Application). Ormet filed the Amended Application due to changes in the market conditions that it asserted had detrimental impacts.<sup>5</sup>

Ormet's testimony and application are conditioned on the PUCO approving AEP's request to recover 100% of the discounted (delta) revenues from AEP's customers. The delta revenues collected from customers could amount to approximately \$180 million in 2010 alone.<sup>6</sup> The delta revenues would be collected over the entire ten-year term of the contract. Thus, the magnitude of the increased costs to customers here is unprecedented, especially in light of the difficult economic times facing Ohio customers.

---

<sup>4</sup> See Ohio Adm. Code 4901-1-13(A).

<sup>5</sup> See Amended Application, (April 10, 2009) at cover letter.

<sup>6</sup> See Motion to Intervene of the Ohio Energy Group (March 3, 2009) at 5.

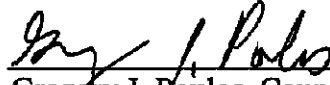
On April 17, 2009, the PUCO issued an Entry granting intervention to AEP, Ohio Energy Group, The Kroger Company, Industrial Energy Users-Ohio, and OCC. In addition, the PUCO advised interested parties that if they desired to intervene and file comments and objections, they must do so by April 28, 2009. Additionally the Commission ruled that a hearing will be held on the matter on April 30, 2009.

On April 23, 2009 Ormet filed testimony for four witnesses as part of its case-in-chief. In order to adequately protect consumers from Ormet's proposal to establish electricity rates with huge discounts that would be paid by AEP customers, OCC and OEG request a short extension for intervenors file direct testimony (that could include responses to Ormet's testimony) on a staggered basis after Ormet filed. Under Ohio Adm. Code 4901-1-27(B)(2) the hearing examiner may determine the order in which the parties present testimony – in this case Ormet has the burden of proof and should file its testimony first. Under Ohio Adm. Code 4901-1-29(A)(1), the wording with regard to testimony due dates is that the dates are set "Unless otherwise ordered by the commission, the legal director, the deputy legal director, or an attorney examiner." The attorney examiner, as allowed by the Rules, should grant the extension.

Therefore, OCC and OEG respectfully request a five-day extension for the filing of testimony. OCC and OEG have shown good cause for an extension of time, as required by Ohio Adm. Code 4901-13(A). Given the brief time available before the hearing in this case, the parties request an expedited ruling on this motion. Pursuant to Ohio Adm. Code 4901-12(C), "an immediate" ruling on Motions for five days or fewer can be issued without the filing of memoranda contra the motion.

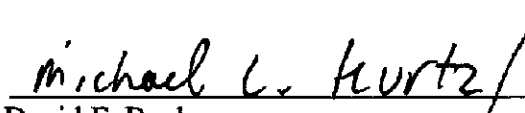
Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER  
CONSUMERS' COUNSEL



Gregory J. Poulos, Counsel of Record  
Maureen Grady  
Assistant Consumers' Counsel

**Office of the Ohio Consumers' Counsel**  
10 West Broad Street, Suite 1800  
Columbus, Ohio 43215-3485  
Phone: 614-466-8574  
[poulos@occ.state.oh.us](mailto:poulos@occ.state.oh.us)  
[grady@occ.state.oh.us](mailto:grady@occ.state.oh.us)



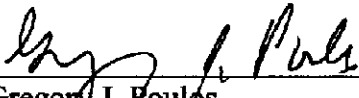
per telephone  
Auth.  
S.P.

David F. Boehm  
Michael L. Kurtz  
Boehm, Kurtz & Lowry  
36 East Seventh Street, Suite 1510  
Cincinnati, OH 45202  
Phone: 513-421-2255  
[dboehm@bkllawfirm.com](mailto:dboehm@bkllawfirm.com)  
[mkurtz@bkllawfirm.com](mailto:mkurtz@bkllawfirm.com)

Attorneys for The Ohio Energy Group

### **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Motion for Extension of Time by the Office of the Ohio Consumers' Counsel and the Ohio Energy Group was provided to the persons listed below via electronic transmission and regular U.S. Mail, postage prepaid, this 24th day of April 2009.

  
\_\_\_\_\_  
Gregory J. Poulos  
Assistant Consumers' Counsel

### **SERVICE LIST**

Marvin Resnik  
Steve Nourse  
AEP Service Corp.  
1 Riverside Plaza, 29<sup>th</sup> Floor  
Columbus, OH 43215

Duane Luckey  
Attorney General's Office  
Public Utilities Commission of Ohio  
180 E. Broad St., 9<sup>th</sup> Fl.  
Columbus, OH 43215

Clinton A. Vince  
William D. Booth  
Emma F. Hand  
Scott Richardson  
Douglas Bonner  
Sonnenschein Nath & Rosenthal LLP  
1301 K Street NW  
Suite 600, East Tower  
Washington, DC 20005

David F. Boehm  
Michael L. Kurtz  
Boehm, Kurtz & Lowry  
36 East Seventh Street, Suite 1510  
Cincinnati, OH 45202

John W. Bentine  
Mark S. Yurick  
Matthew S. White  
Chester, Willcox & Saxbe LLP  
65 East State St., Ste. 1000  
Columbus, OH 43215-4213

Duane.luckey@puc.state.oh.us  
miresnik@aep.com  
stnourse@aep.com  
myurick@cwslaw.com  
mwhite@cwslaw.com  
jbentine@cwslaw.com  
dboehm@bkllawfirm.com  
mkurtz@bkllawfirm.com  
cvince@sonnenschein.com  
ehand@sonnenschein.com  
wbooth@sonnenschein.com  
dbonner@sonnenschein.com