

FILE

Sonnenschein
SONNENSCHN NATH & ROSENTHAL LLP

RECEIVED-DOCKETING DIV

2009 MAY 14 AM 10:36

PUCO

1301 K Street, N.W.
Suite 600, East Tower
Washington, D.C. 20005-3364
202.408.6400
202.408.6399 fax
www.sonnenschein.com

Douglas G. Bonner
202.408.3957
dbonner@sonnenschein.com

May 13, 2009

VIA FACSIMILE & FEDERAL EXPRESS


Chief, Docketing Department
Public Utilities Commission of Ohio
180 East Broad Street
Columbus, OH 43215-3793

Re: PUCO Case Nos. 08-1338-EL-AAM & 08-1339-EL-UNC

Dear Sir or Madam:

Enclosed for filing in the above-referenced proceedings, please find an original and seven (7) copies of the Memorandum Contra of Ormet Primary Aluminum Corporation to the Motion To Enforce January 7, 2009 Order and to Cease Additional Deferrals and Request for Expedited Ruling By the Office of the Ohio Consumers' Counsel and the Ohio Energy Group. Finally, also enclosed please find 2 additional copies of this filing to be date-stamped and returned to me in the enclosed, self-addressed, postage-prepaid envelope.

Sincerely,


Douglas G. Bonner

Enclosures

Copy to: Service list (w/encl.)

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 SM Date Processed MAY 14 2009

Brussels Chicago Dallas Kansas City Los Angeles New York Phoenix St. Louis
San Francisco Short Hills, N.J. Silicon Valley Washington, D.C. West Palm Beach Zurich

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

RECEIVED-DOCKETING DIV

2009 MAY 14 AM 10:36

**In the Matter of the Joint Application of
Columbus Southern Power Company and
Ohio Power Company for Authority to
Modify their Accounting Procedure**

Case No. 08-1338-EL-AAM

**In the Matter of the Joint Application of
Columbus Southern Power Company and
Ohio Power Company and Ormet
Primary Aluminum Corporation for
Approval of Temporary Amendment to
Their Special Arrangement**

Case No. 08-1339-EL-UNC

PUCO

**ORMET PRIMARY ALUMINUM CORPORATION'S
MEMORANDUM CONTRA THE MOTION TO ENFORCE JANUARY 7, 2009 ORDER
AND TO CEASE ADDITIONAL DEFERRALS AND REQUEST FOR EXPEDITED
RULING BY THE OFFICE OF THE OHIO CONSUMERS' COUNSEL AND THE OHIO
ENERGY GROUP**

Ormet Primary Aluminum Corporation ("Ormet") respectfully submits this memorandum contra the Motion to Enforce January 7, 2009 Order and to Cease Additional Deferrals and Request for Expedited Ruling By the Office of the Ohio Consumers' Counsel and the Ohio Energy Group ("OCC" and "OEG", respectively) pursuant to Ohio Administrative Code Section 4901-1-12, to oppose the OCC's attempt to overturn a measure that is helping to preserve approximately 1,000 Ohio jobs.

The OCC and OEG's (collectively "Movants") motion is premised upon a fundamental misunderstanding of the Commission's order and the Interim Arrangement. The Movants argue incorrectly that the Commission's January 7, 2009 Finding and Order ("January 7 Order"), which they seek to enforce, "determined that Ormet should be charged the ESP rates when they

became effective.”¹ This premise is incorrect. The language in the January 7 Order that the OCC and OEG cite in support of their motion pertains to the treatment of deferrals, not to the rates that Ormet will pay under the Interim Arrangement. With regard to the expiration of the Interim Arrangement itself, the Commission’s January 7 Order states plainly that the Interim Arrangement as framed by the joint applicants was to remain effective until both new AEP ESP tariffs, and a new special arrangement are approved by the Commission and effective:

The joint applicants request that the temporary arrangement expire upon the effective date of the new AEP Ohio approved tariffs based on a Commission ruling on AEP Ohio’s ESP application and the effective date of a new special arrangement subsequently approved by the Commission.²

The Commission then held in its January 7 Order “[t]hat the temporary arrangement proposed in the joint application and AEP Ohio’s request for deferrals be approved.”³

The Commission approved the Interim Arrangement as filed, without modification. The Interim Arrangement, as stated in the Joint Application, specifically provides that:

The Joint Applicants agree that the temporary amendment will expire upon the effective date of new AEP Ohio approved tariffs based on a Commission ruling on the Companies’ ESP application (*i.e.*, if the Commission adopts the ESP as proposed or if the Companies accept any modifications made to the ESP by the Commission) and the effective date of a new special arrangement subsequently approved by the Commission.⁴

It bears repeating that the proposed Unique Arrangement filed in February, 2009, and as amended on April 10, 2009, is intended to provide Ormet with the affordable electricity it

¹ OCC and OEG Motion at 5.

² January 7, 2009 Order at 3, para. 6 (emphasis added).

³ *Id.* at 4.

⁴ Interim Arrangement, at 4-5, para. 8 (emphasis added).

needs to provide it with necessary cash flow to ensure its economic survival.⁵ An all-in rate in excess of \$38.00/MWh (on average for the full year of 2009), or as specifically urged by the Movants of an increase to \$44.24/MWh, would directly undermine the objectives of ensuring that Ormet has sufficient cash flow to maintain smelter operations and to survive.

Furthermore, if a basis for the Movants' Motion to Enforce is a misperception that "there is no incentive to 'seal the deal'" or there is no incentive for Ormet to "expeditiously pursue resolving its permanent application,"⁶ then the Movants misunderstand Ormet's priorities. It is a matter of record that Ormet has an enormous incentive to have a longterm Unique Arrangement approved by the Commission in the near future to eliminate uncertainty and to enable it secure the debt refinancing necessary to support its continued operations.⁷ Ormet's objective is for the Commission to approve the Unique Arrangement as soon as possible, and to resolve all of the issues raised by the Movants, realize the significant improvement in working capital resulting from the return of the deposit, and movement to standard tariff payment terms. Any modification to the Interim Agreement to increase electricity rates charged to Ormet above the rate approved by the Commission in its Order approving the Interim Agreement would be extremely counterproductive and ill-advised, would disrupt the pending application for a Unique Arrangement, and would jeopardize Ormet's very ability to continue smelter operations while it awaits Commission action on its pending application.

⁵ Amended Application, Case No. 09-119-EL-AEC at 5-8.

⁶ Memorandum in Support of Motion at 6.

⁷ Amended Application at 5-6, para. 9.

Therefore, under the January 7 Order, the Interim Arrangement remains in place pending Commission approval of the new special arrangement (currently before the Commission in Case No. 09-119-EL-AEC). The January 7 Order does not require that AEP Ohio begin charging Ormet the rates and charges approved in the AEP Electric Security Plan ("ESP"). The OCC and OEG's Motion should be denied, and the rates set forth under the Interim Arrangement should remain in place for Ormet, pending the effective date of any new rates approved by the Commission under a new Unique Arrangement.

Finally, Ormet objects to the Movants' seeking an expedited ruling on their motion.⁸ If the requested relief that the OCC and the OEG seek on an expedited basis were granted, it could result in the curtailment of Ormet's Hannibal Facilities, an outcome that clearly would not advance the interests of the Ohio economy nor of Ohio's consumers. A reversal of the Commission's prior order when it would have such a severe detrimental impact upon Ormet and its employees, and the Ohio economy in general, does not warrant expedited treatment and would threaten Ormet's economic survival.

WHEREFORE, Ormet respectfully requests that the Commission deny the Motion to Enforce January 7, 2009 Order and to Cease Additional Deferrals and Request for Expedited Ruling By the Office of the Ohio Consumers' Counsel and the Ohio Energy Group.

⁸ Movants acknowledge that they "cannot certify that no party objects" to the issuance of an expedited ruling. Motion at 2.

Respectfully submitted,

Emma F. Hand (for)

Clinton A. Vince, Counsel of Record

Emma F. Hand

Sonnenschein Nath and Rosenthal LLP

1301 K Street NW

Suite 600, East Tower

Washington, DC 20005

202-408-6400 (telephone)

202-408-6399 (facsimile)

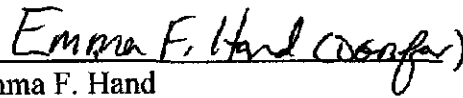
Attorneys for Ormet Primary Aluminum
Corporation

Dated: May 13, 2009

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Memorandum Contra was served by U.S.

Mail upon the parties of record identified below this 13 day of May, 2009.


Emma F. Hand

SERVICE LIST

Marvin Resnik
Steven T. Nourse
Matthew J. Satterwhite
American Electric Power Service Corp.
1 Riverside Plaza, 29th Floor
Columbus OH 43215

Selwyn J. R. Dias
Columbus Southern Power
Ohio Power Company
Suite 800 88 E. Broad St.
Columbus, OH 43215

Maureen Grady
Office Of Consumers' Counsel
10 W. Broad Street Suite 1800
Columbus, OH 43215-3485

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

Duane Luckey
Assistant Attorney General
Public Utilities Commission of Ohio
180 E. Broad St., 9th Fl.
Columbus, OH 43215

Facsimile Transmittal Sheet

DATE• May 13, 2009

PLEASE DELIVER THE FOLLOWING PAGES TO:

NAME• Docketing Division
FIRM• The Public Utilities Commission
PHONE• 1-614-466-4095
FAX• 1-614-466-0313
CLIENT / MATTER• 30000460-0004
FROM• Douglas G. Bonner

TOTAL NUMBER OF PAGES TRANSMITTED, INCLUDING THIS SHEET: 8

MESSAGE•

RE: ORMET PRIMARY ALUMINUM CORPORATION'S MEMORANDUM CONTRA THE MOTION TO ENFORCE JANUARY 7, 2009 ORDER AND TO CEASE ADDITIONAL DEFERRALS AND REQUEST FOR EXPEDITED RULING BY THE OFFICE OF THE OHIO CONSUMERS' COUNSEL AND THE OHIO ENERGY GROUP

Enclosed for electronic filing is the Memorandum Contra of Ormet Primary Aluminum.

Document Originator Douglas Bonner 202-408-3957.

Original will follow with FedEx.

Original will NOT be mailed

CONFIDENTIALITY NOTE

The documents accompanying this facsimile transmission and the Facsimile Transmission Sheet contain information from the law firm of Sonnenschein Nath & Rosenthal LLP which is confidential or privileged. The information is intended to be for the use of the individual or entity named on this transmission sheet. If you are not the intended recipient, be aware that any disclosure, copying, distribution or use of the contents of this facsimiled information is prohibited. If you have received this facsimile in error, please notify us by telephone immediately so that we can arrange for the retrieval of the original documents at no cost to you.

IF YOU DO NOT RECEIVE ALL OF THE PAGES ABOVE, PLEASE CALL 202.408.6400 AS SOON AS POSSIBLE.

SONNENSCHN FACSIMILE DEPARTMENT USE ONLY:

TRANSMISSION COMPLETED AT:

DOCUMENT TRANSMITTED BY: