

**FILE**

**BEFORE THE  
PUBLIC UTILITIES COMMISSION OF OHIO**

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In the Matter of the Joint Application of	)	
Columbus Southern Power Company and	)	
Ohio Power Company for Authority to	)	Case No. 08-1338-EL-AAM
Modify their Accounting Procedure	)	
	)	
	)	
In the Matter of the Joint Application of	)	
Columbus Southern Power Company and	)	
Ohio Power Company and Ormet	)	
Primary Aluminum Corporation for	)	Case No. 08-1339-EL-UNC
Approval of Temporary Amendment to	)	
Their Special Arrangement	)	

**COLUMBUS SOUTHERN POWER COMPANY'S  
AND OHIO POWER COMPANY'S  
MEMORANDUM CONTRA  
MOTION TO ENFORCE JANUARY 7, 2009 ORDER  
AND TO CEASE ADDITIONAL DEFERRALS**

On December 29, 2008, Columbus Southern Power Company and Ohio Power Company, collectively, the "Companies," together with Ormet Primary Aluminum Mill Products Corporation (Ormet) jointly filed an application for approval of a temporary amendment to their special arrangement that was set to expire on December 31, 2008. The temporary amendment, which the Commission approved by Finding and Order dated January 7, 2009,<sup>1</sup> priced Ormet's "generation service at current applicable tariff rates and riders while Ormet and the Companies continue to negotiate a longer-term arrangement

<sup>1</sup> By its Entry on Rehearing dated March 4, 2009, the Commission granted the rehearing application of the Ohio Consumers' Counsel (OCC) to provide time for further consideration of the matters specified in OCC's application for rehearing.

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*and pending the outcome of the Commission's ruling on the ESP application....*"<sup>2</sup>  
(Application, ¶8, p.4, emphasis added)

More specifically, the Companies and Ormet explicitly stated "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 the modifications made to the ESP by the Commission) *and* the effective date of a new special arrangement subsequently approved by the Commission." (*Id.* at 4, 5, emphasis added). Therefore, as discussed below, by the terms of the joint application which has been approved by the Commission, the temporary amendment is not superseded until both events occur.

On March 30, 2009 the Commission approved the Companies' tariffs that were based on the Commission's orders in the Companies' ESP proceeding and those tariffs became effective on that date.<sup>3</sup> On February 17, 2009, Ormet filed an application for approval of a unique arrangement with the Companies. The unique arrangement, if ultimately approved by the Commission would be the special arrangement contemplated in the temporary amendment filed in this proceeding. The unique arrangement, filed unilaterally by Ormet, is far from being approved by the Commission. Initial hearings on the unique arrangement concluded on May 1, 2009 and additional hearings will be held, but have yet to be scheduled. (Case No. 09-119-EL-AEC, Tr. Vol. II, pp. 379-383). In the mean time, a briefing schedule has not been established. In light of these events, it is clear that the temporary amendment has not been superseded.

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<sup>2</sup> Case Nos. 08-917-EL-SSO and 08-918-EL-SSO.

<sup>3</sup> The record in the ESP case reflects that the Commission did not adopt the ESP "as proposed." Further the Companies have sought rehearing of certain of the Commission's modifications to the proposed ESP.

Nonetheless, on May 11, 2009 OCC and the Ohio Energy Group (OEG) filed a motion, supposedly to enforce the Commission's January 7, 2009 Finding and Order and to cease additional deferrals which are being recorded by the Companies pursuant to the Commission-approved joint application.<sup>4</sup> The basis of the OCC/OEG motion is their belief that the temporary arrangement is superseded through a new special arrangement approved by the Commission *or* through the approval of final tariffs effectuating the ESP rulings." (emphasis in original, Motion, p. 5). OCC/OEG goes on to argue that "[f]inal ESP tariffs are now in place, subject to the standard rehearing process."<sup>5</sup> The pre-ESP rates[for generation being paid by Ormet under the temporary amendment] have been superseded." (*Id.*)

Despite the OCC/OEG motion being based on an event which occurred nearly a month and a half prior to the filing of their motion, OCC/OEG seek expedited ruling by the Commission pursuant to §4901-1-12 (C), Ohio Admin. Code. Having done so, the time for filing memoranda contra to a motion that apparently was a month and a half in the making is reduced from 15 days to 7 days.<sup>6</sup>

The OCC/OEG motion should be denied. It is abundantly clear that the temporary amendment has not been superseded. The language in Paragraph 8 of the Companies/Ormet joint application in this proceeding provides that two distinct events must both have occurred in order for the temporary amendment to be superseded. Moreover, this is how the Commission understood the joint application, as reflected in its

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<sup>4</sup> In footnote 14 of the OCC/OEG motion, OCC reserves the right "to take further action against the Commission to support its rehearing application in this proceeding." The Companies are not aware of what this may be referring to.

<sup>5</sup> OCC neglects to mention that the approved tariffs also are subject to the not-so-standard Complaint for Writ of Prohibition it filed against the Commission in Supreme Court of Ohio Case No. 09-710.

<sup>6</sup> OCC/OEG offer no explanation for their delay in filing this motion.

Finding and Order approving the temporary amendment, without modification. In Paragraph 6 of the Finding and Order the Commission stated:

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. (Emphasis added).

Similarly, the reliance that the OCC/OEG motion places on the language in Paragraph 9 of the joint application, and to which the Commission's Finding and Order refers in Paragraph 7, does not support either the notion of placing Ormet on the ESP GS-4 rate or the discontinuance of deferrals being booked. That language states:

The 2009 deferrals will continue to accrue *until the temporary amendment is superseded* through either a new special arrangement approved by the Commission or through the approval of final tariffs effectuating the Commission's ESP ruling. (Emphasis added).

As demonstrated above, the temporary amendment has not been superseded. This language simply reflects the likelihood that the two events needed for superseding the temporary amendment would not occur at the same time. Therefore, since one of the events was likely to precede the other, the event finally triggering the temporary amendment being superseded would be "*either* a new special arrangement approved by the Commission *or* through the approval of final tariffs effectuating the Commission's ESP rulings. (Emphasis added). The "either/or" structure simply reflects that one or the other event already would have occurred. In other words, under the terms of expiration set forth in Paragraph 8 of the joint application, it is the second of the two events that triggers the temporary amendment being superseded. The suggestion that either of these events occurring without the other having already occurred is sufficient to supersede the

joint application (the rate portion and the deferral portion) effectively deletes the phrase “until the temporary amendment is superseded” from Paragraph 9 of the joint application. Therefore, OCC’s and OEG’s argument in this regard should be rejected.

Besides the OCC/OEG motion’s misunderstanding of the provisions regarding the temporary amendment, the motion expresses other bases in support of the requested relief.<sup>7</sup> For instance, OCC and OEG argue that the temporary agreement should be tied to the new ESP rates. Of course, that is not what the Commission-approved temporary amendment provides and their argument to the contrary is essentially a very late-filed application for rehearing on that issue.

OCC and OEG also argue that the ESP rates must be charged to Ormet under §§4905.22, 4905.30 and 4905.32, Ohio Rev. Code. In making this argument, OCC and OEG fail to address the Commission’s authority under §4905.31, Ohio Rev. Code, to approve reasonable arrangements between a public utility and its customers. The temporary amendment is such an arrangement and OCC’s/OEG’s argument to the contrary should be rejected.

Finally, OCC and OEG speak of a “windfall” to the Companies and that the Companies have “figured out a way to get more” than authorized in the Commission’s ESP order. The current situation is not of the Companies making. It is well documented that the Companies continuously urged that its ESP proceeding be completed within the statutory time frame. That did not happen, at least in part because of OCC’s desire to extend the procedural schedule in the ESP proceeding. The record also is well documented that the Companies opposed Ormet’s return to receive service from them.

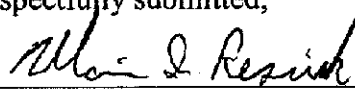
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<sup>7</sup> OCC and OEG contend that granting their motion will incentivize Ormet to expeditiously resolve the unique arrangement proceeding. Ormet has responded to that argument.

Nonetheless, Ormet now is a customer of the Companies. To suggest that the Companies somehow have "figured out" a way of getting more than the ESP order authorized is baseless.

The OCC/OEG motion should be denied. Even if it were to be granted, such a ruling should be applied only prospectively because up until the time of such a ruling the Companies are billing Ormet and making deferrals in conformance with the Commission's January 7, 2009 Finding and Order.

Respectfully submitted,



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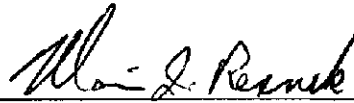
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## CERTIFICATE OF SERVICE

I hereby certify that a copy of Columbus Southern Power Company's and Ohio Power Company's Memorandum Contra Motion to Enforce January 7, 2009 Order and to Cease Additional Deferrals was served by U.S. Mail upon counsel identified below for all parties of record this 15<sup>th</sup> day of May, 2009.



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