

RECEIVED-DOCKETING DIV

2009 JUN -1 AM 9:33

PUCO

Emma F. Hand  
202.408.7094  
ehand@sonnenschein.com

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

May 29, 2009

VIA FEDERAL EXPRESS

Public Utilities Commission of Ohio  
Docketing Division  
180 East Broad Street  
Columbus, Ohio 43215-3793

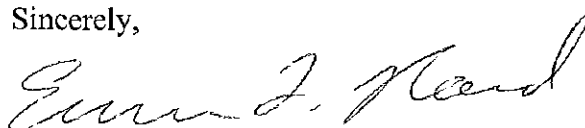
Re: Enclosed Document for Filing in Case No. 09-119-EL-AEC

Dear Sir or Madam:

Enclosed please find an original and seven (7) copies of the *Motion for Protective Order* of Ormet Primary Aluminum Corporation ("Ormet") in Case No. 09-119-EL-AEC. Also enclosed are eight copies of a redacted version of the *Supplemental Direct Testimony of James Burns Riley on Behalf of Ormet Primary Aluminum Corporation* that is the subject of the motion and three unredacted copies of the same to be filed under seal.

Also enclosed are two extra copies of each document to be date-stamped and returned to me in the enclosed, self-addressed Federal Express envelope. Thank you for your assistance in this matter, if you have any questions please contact me at the number above.

Sincerely,



Emma F. Hand

Enclosures

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 Am Date Processed 6/1/09

ORIGINAL

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  
Ohio Power Company and Columbus  
Southern Power Company

)  
)  
)  
)  
)  
)

Docket No. 09-119-EL-AEC

PUCO

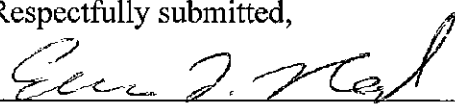
2009 JUN -1 AM 9:33

RECEIVED-DOCKETING DIV

MOTION FOR PROTECTIVE ORDER

Pursuant to Ohio Administrative Code Section 4901-1-24(D), Ormet Primary Aluminum Corporation moves for confidential treatment of certain information contained in the Supplemental Direct Testimony of James Burns Riley on Behalf of Ormet Primary Aluminum Corporation ("Supplemental Testimony") and associated Exhibits being filed simultaneously with this motion. The Supplemental Testimony contains information that is confidential and proprietary and that constitutes a trade secret, as is more fully described in the accompanying Memorandum in Support. As required under Section 4901-1-24, Ormet is filing the three unredacted copies of the Supplemental Testimony under seal, and required number of redacted copies for inclusion in the record.

Respectfully submitted,

  
Clinton A. Vince, Counsel of Record  
Douglas G. Bonner  
Daniel D. Barnowski  
Emma F. Hand  
Sonnenschein Nath & Rosenthal LLP  
1301 K Street NW  
Suite 600, East Tower  
Washington, DC 20005  
202.408.8004 Telephone  
202.408.6399 Facsimile

Dated: May 29, 2009

Attorneys for Ormet Primary Aluminum  
Corporation

**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  
Ohio Power Company and Columbus  
Southern Power Company**

)  
)  
)  
)  
)  
)

**Docket No. 09-119-EL-AEC**

**MEMORANDUM IN SUPPORT OF MOTION FOR PROTECTIVE ORDER**

The Supplemental Testimony of James Burns Riley on Behalf of Ormet Primary Aluminum Corporation (“Supplemental Testimony”) and associated Exhibits should be treated as confidential by the Public Utilities Commission of Ohio (“Commission”) pursuant to Ohio Administrative Code (“OAC”) Section 4901-1-24(D). The Supplemental Testimony contains competitively sensitive and highly proprietary business information that constitutes trade secrets under Ohio law and the Commission’s rules, and warrants confidential treatment by the Commission.

The Commission has statutory authority to protect trade secrets generally. *See* Sections 4901.12 and 4905-07, Ohio Revised Code. Section 4901-1-24(D) of the OAC gives the Commission and the attorney examiner the specific power to order confidential treatment of information contained in documents filed with the Commission’s Docketing Division if: (a) state or federal law prohibits the release of the information, and (b) non-disclosure of the information is consistent with the purposes of Title 49 of the Revised Code. Ohio law recognizes the need to protect trade secret information, like the information that is the subject of this motion.<sup>1</sup> Ohio Revised Code Section 1333.61(D) defines “trade secret” as follows:

---

<sup>1</sup> *See* Ohio Rev. Code Ann. §§ 4901.12, 4905.07.

(D) "Trade secret" means information, including the whole or any portion or phase of any scientific or technical information, design, process, procedure, formula, pattern, compilation, program, device, method, technique, or improvement, or any business information or plans, financial information, or listing of names, addresses, or telephone numbers, 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.

The factors considered under Ohio law in analyzing a trade secret claim are (1) the extent to which the information is known outside the business; (2) the extent to which it is known to those inside the business, *i.e.* by the employees; (3) the precautions taken by the holder of the trade secret to guard the secrecy of the information; (4) the savings effected and the value to the holder in having the information as against competitors; (5) the amount of effort and money expended in obtaining and developing the information; and (6) the amount of time and expense it would take for others to acquire and duplicate the information.<sup>2</sup>

Ormet's Supplemental Testimony contains detailed financial forecasts and data regarding Ormet that are trade secrets. Financial forecasts of this type are rarely released publicly by any business, and have never been publicly released by Ormet. The only persons with access to this information are Ormet's Board of Directors, its senior management team, and its auditors and lenders, with whom Ormet has entered into confidentiality agreements. The information contained in the Supplemental Testimony could give Ormet's competitors in the aluminum industry significant insights into Ormet's operations. This information has independent economic value that Ormet's competitors, who do not otherwise have access to this information,

---

<sup>2</sup> *State ex rel. The Plain Dealer v. Ohio Dep't. of Ins.*, 80 Ohio St. 3d 513, 524-525 (1997).

could use to give themselves a competitive advantage over Ormet. Absent access to Ormet's books and records, it would be nearly impossible for Ormet's competitors to acquire and duplicate the forecasted financial information.

In addition to these factors, Ormet must also abide by securities regulations which require that if the information got into the public domain, Ormet would have to provide it in a general release so as to not advantage one set of investors who had access to the confidential information as compared to all investors. If such financial forecasts found their way into the public domain Ormet's Board would have to either continually update those forecasts, or find a method to assure that investors would not rely on the published documents. Ormet could be subject to liability to investors who relied upon a forecast that was inaccurate when making their investment decisions. The factors affecting Ormet's financial forecasts change on a nearly day-by-day basis and so forecasts can become quickly outdated. Continually updating the forecasts would not only place an undue burden upon Ormet, but would also give Ormet's competitors continuous, nearly real-time information regarding Ormet's operations in great detail.

The non-disclosure of the information will not impair the purposes of Title 49. The Commission and its Staff have full access to the information in order to fulfill its statutory obligations. Furthermore, Ormet is willing to disclose the information to other parties in this proceeding who are willing to enter into a reasonable Protective Agreement with Ormet that provides Ormet with the assurance that the information will not find its way into the public domain.<sup>3</sup> No purpose of Title 49 would be served by the public disclosure of the information.

---

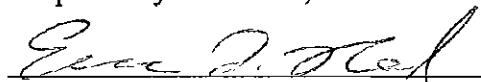
<sup>3</sup> To date, only one party to this proceeding, the Ohio Consumers Counsel ("OCC"), has sought to enter into a Protective Agreement with Ormet, and Ormet has been negotiating with the OCC. Ormet should note, however, that it does not consider provisions requiring Ormet to indemnify a party for the negligence, gross negligence or willful misconduct of that party to be appropriate for inclusion in a Protective Agreement. In addition, for parties to this proceeding that cannot

Ormet has filed a public version of the Supplemental Testimony from which the financial information has been redacted and has filed three unredacted copies of the Supplemental Testimony under seal.

The financial data contained in Ormet's Supplemental Testimony thus meets the requirements of confidential trade secret data because it would have independent economic value to Ormet's competitors who otherwise do not have access to it and Ormet has made reasonable efforts to keep it confidential. Further, public release of such data could subject Ormet to an undue burden under applicable securities regulations. Therefore, the Commission should grant Ormet's motion to treat the data as confidential trade secret data.

WHEREFORE, Ormet respectfully requests that a Protective Order be entered in order to maintain the confidentiality of Ormet's trade secret information and that the unredacted copies of its Supplemental Testimony be kept under seal.

Respectfully submitted,



Clinton A. Vince, Counsel of Record  
Douglas G. Bonner  
Daniel D. Barnowski  
Emma F. Hand  
Sonnenschein Nath & Rosenthal LLP  
1301 K Street NW  
Suite 600, East Tower  
Washington, DC 20005  
202.408.8004 Telephone  
202.408.6399 Facsimile

Dated: May 29, 2009

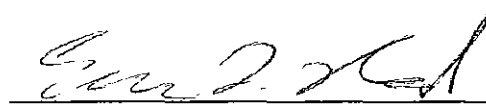
*Attorneys for Ormet Primary Aluminum  
Corporation*

---

offer assurance to Ormet that they will be able to keep Ormet's trade secret information confidential, Ormet is willing to discuss the possibility of allowing them to view the information without copying or taking possession of it.

### **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing Motion and Memorandum in Support has been served upon the below-named persons via regular U.S. Mail Service, postage prepaid, this 29th day of May, 2009.



Emma F. Hand

Attorney for Ormet Primary Aluminum Corporation

### **SERVICE LIST**

Marvin Resnik, Counsel of Record  
Steven T. Nourse  
American Electric Power Corporation  
1 Riverside Plaza  
Columbus, OH 43215

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

Samuel C. Randazzo, Counsel of Record  
Lisa McAlister  
Joseph M. Clark  
McNees Wallace & Nurick LLC  
21 East State Street, 17<sup>th</sup> Floor  
Columbus, OH 43215-4228

John W. Bentine  
Mark S. Yurick  
Matthew S. White  
Chester Wilcox & Saxbe LLP  
65 East State Street, Suite 1000  
Columbus, OH 43215

Maureen Grady  
Gregory Poulos  
Ohio Consumers' Counsel  
10 West Broad Street, Suite 1800  
Columbus, OH 43215

Jennifer Duffer,  
Armstrong & Okey, Inc.  
222 East Town Street 2nd Floor  
Columbus OH 43215

Duane Luckey  
Attorney General's Office  
180 E. Broad Street, 9<sup>th</sup> Floor  
Columbus, OH 43215