

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of the :  
Application for :  
Establishment of a :  
Reasonable Arrangement : Case No. 09-516-EL-AEC  
Between Eramet Marietta, :  
Inc. and Columbus :  
Southern Power Company. :

- - -

PROCEEDINGS

before Mr. Gregory A. Price and Ms. Rebecca Hussey,  
Hearing Examiners, at the Public Utilities Commission  
of Ohio, 180 East Broad Street, Room 11-F, Columbus,  
Ohio, called at 10:00 a.m. on Tuesday, August 4,  
2009.

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VOLUME I

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On behalf of the staff of the Public  
Utilities Commission of Ohio.

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1 Tuesday Morning Session,

2 August 4, 2009.

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4 EXAMINER HUSSEY: Let's go on the record,  
5 then. The Public Utilities Commission of Ohio has  
6 called for hearing at this time and place case number  
7 09-516-EL-AEC captioned In the Matter of the  
8 Application for Establishment of a Reasonable  
9 Arrangement Between Eramet Marietta, Incorporated and  
10 Columbus Southern Power Company.

11 My name is Rebecca Hussey, this is Greg  
12 Price, we are the attorney-examiners assigned to this  
13 case today.

14 We will begin by taking appearances  
15 beginning with the applicant.

16 MS. McALISTER: Thank you, your Honors.  
17 On behalf of Eramet Marietta, Incorporated, McNeese,  
18 Wallace & Nurick, by Lisa McAlister, Samuel C.  
19 Randazzo, Thomas L. Froehle, 21 East State Street,  
20 Columbus, Ohio 43215.

21 MR. BOEHM: On behalf of the Ohio Energy  
22 Group I'm David Boehm from the law firm of Boehm,  
23 Kurtz and Lowry, 36 East Seventh Street, Cincinnati,  
24 Ohio 45202.

25 MS. GRADY: Thank you, your Honor. On

1 behalf of the residential customers of CSP, the  
2 Office of the Consumers' Counsel, by Maureen R. Grady  
3 and Gregory Poulos.

4 MR. RESNIK: Your Honors, on behalf of  
5 Columbus Southern Power Company, I'm Marvin I. Resnik  
6 and with me is Steven T. Nourse. We're both with the  
7 American Electric Power Service Corporation, One  
8 Riverside Plaza, Columbus, Ohio 43215.

9 MR. McNAMEE: On behalf of the staff of  
10 the Public Utilities Commission of Ohio, Richard  
11 Cordray, Attorney General of the state of Ohio, Duane  
12 Luckey, Chief, Public Utilities Section, we are  
13 Werner Margard, and I am Thomas McNamee, Assistant  
14 Attorneys General. The address is 180 East Broad  
15 Street, Columbus, Ohio 43215.

16 EXAMINER HUSSEY: Thank you.

17 Do we have any preliminary matters or  
18 motions that need to be addressed before we take your  
19 first witness?

20 MS. McALISTER: Yes, your Honor. As I  
21 made a reference off the record, we believe that we  
22 are close to reaching a stipulation with at least  
23 staff, and we would propose that as we go forward  
24 with the hearing today, we put on Mr. Bjorklund, have  
25 his direct and cross-examination, and then move for a

1 recess so that we may distribute any settlement we  
2 are able to reach to the other parties and allow them  
3 time to determine whether they need to modify their  
4 cross-examination of our subsequent witnesses.

5 EXAMINER HUSSEY: Are there any  
6 objections to this practice?

7 MR. RESNIK: No.

8 EXAMINER HUSSEY: No? Okay. Seeing  
9 none, we'll go forward in that fashion.

10 Are there any other motions? I believe  
11 that there's a motion for protective order on  
12 Eramet's part.

13 MS. McALISTER: Yes, thank you, your  
14 Honor. When we filed the testimony of Mr. Bjorklund  
15 and also Mr. Flygar, there were confidential portions  
16 that we moved to have treated as confidential, and we  
17 submitted both redacted and unredacted versions and  
18 we would move that the Commission maintain the  
19 confidentiality of those portions of the testimony  
20 that we've redacted.

21 EXAMINER HUSSEY: Does any party oppose  
22 Eramet's motion at this point?

23 MR. RESNIK: No.

24 EXAMINER HUSSEY: Okay. The motion will  
25 be granted.

1           Let's go ahead and address the discovery  
2 matters that have been brought to our attention.

3           MS. GRADY: Thank you, your Honor. OCC  
4 at this time, your Honor, moves to compel responses  
5 from Eramet with relation to two discovery requests,  
6 the first being interrogatory No. 6 which asked to  
7 identify all internal communications, including, but  
8 not limited to, communications involving Eramet  
9 consultants concerning Eramet's application, as well  
10 as request for production No. 8 which merely is the  
11 document form of that request asking for copies of  
12 internal communications, including, but not limited  
13 to, communications involving Eramet's counsel  
14 concerning Eramet's application.

15           We, your Honor, have been working over  
16 the past, probably since when we received the  
17 discovery responses which were, I believe, July  
18 21st to address the concerns. There were concerns  
19 about it being overly broad, burdensome, so, your  
20 Honor, we modified our request -- and for the life of  
21 me I'm looking for that modification -- it was  
22 conveyed to Eramet's counsel, it limited the time, it  
23 limited the scope, and I just don't have it in front  
24 of me right now.

25           It was conveyed in an e-mail dated July



1 27th, 2009, and we believe that the limitations  
2 that we've posed -- I believe the limitations went to  
3 information specifically related to job retention or  
4 job sustainability, and also went to the capital  
5 expenditures and the ability to find alternate  
6 sources for capital funding. I can't recall the  
7 other area, your Honor, but we did limit it.

8 Eramet's response was essentially that,  
9 No, we're not going to respond, it would be still  
10 unduly burdensome, and so we reached an impasse. An  
11 impasse was reached, your Honor, yesterday evening.  
12 Again, we did engage in numerous efforts to try to  
13 resolve the issue, we did attempt to work it out, and  
14 I think we've come to the point where it can no  
15 longer be worked out.

16 So OCC would move to compel Eramet to  
17 respond to that interrogatory 6 and request for  
18 production No. 8.

19 EXAMINER PRICE: Just for clarification,  
20 were you asking for communications with their  
21 consultant or communications with their counsel?

22 MS. GRADY: We were not, your Honor, we  
23 are not asking for communications with counsel. That  
24 was one of the objections, that some of the  
25 information may be privileged. We're not seeking

1 privileged information. We believe, though, rather  
2 than just blanketly claiming privilege, that Eramet  
3 has a duty to support the privilege if privilege is  
4 involved, and we've not seen any support whatsoever  
5 for a claim of privilege.

6 Would your Honors like me to take a  
7 moment to find the clarification of that?

8 EXAMINER PRICE: You can do that while  
9 Ms. McAlister responds.

10 MS. McALISTER: Thank you, your Honor.  
11 We did object to this not simply on the basis of  
12 privilege, but that was certainly one of the bases  
13 for the objection. The other is that it was unduly  
14 burdensome. They requested all internal  
15 communications; there was no limitation on whether it  
16 was privileged or not.

17 The first attempt that we had to resolve  
18 counsel requested that we make a log of all of the  
19 communications and identify why we believe they were  
20 privileged versus not. We did not agree to do that.

21 And then the second clarification that  
22 she's referring to requested that we further identify  
23 the nature of the communications. Although she did  
24 limit the time frame to a period of about two years I  
25 believe, we thought that was still overly burdensome,

1 particularly given that we have been working on  
2 discovery issues for a number of weeks. They had  
3 extensive depositions of all of our witnesses,  
4 particularly one that went over five hours, so I  
5 think that they've had an opportunity to discover any  
6 information pertaining to communications without us  
7 having to sort through all of our e-mails for all of  
8 our company employees whether they be to counsel,  
9 other parties, consultants.

10           Additionally, we did provide  
11 communications between Eramet and other parties  
12 relative to the same request, so we continue to  
13 object to the overly burdensome nature and that many  
14 of the communications would be subject to  
15 confidentiality for trade secret, additionally, trial  
16 preparation and attorney-client privilege.

17           EXAMINER PRICE: Ms. Grady.

18           MS. GRADY: Yes, your Honor. I did find  
19 the e-mail dated 7/27/09; in that we limited the  
20 discovery request to a period -- this is  
21 interrogatory 6 -- to a period of time from  
22 approximately June 2008 through present and limiting  
23 the communication to the scope of capital  
24 expenditures and funding and funding sources for the  
25 capital expenditures associated with the application

1 and the \$150 million plan and job retention,  
2 displacement, and creation.

3 Request for production No. 8, we limited  
4 the discovery scope to the time period June 2008  
5 through present with the same topics, communications  
6 regarding funding and funding sources for cap  
7 expenditures associated with the projects proposed in  
8 the application and the \$150 million plan announced  
9 August 30th, including corporate communications,  
10 relating to initiatives to postpone or cancel capital  
11 expenditures and projects announced in fourth quarter  
12 of 2008 as it relates to the application.

13 EXAMINER PRICE: Do you want to respond  
14 to everything else Ms. McAlister said?

15 MS. GRADY: Yes, your Honor. I guess I  
16 would just briefly note that if, in fact, counsel is  
17 claiming privilege and the right to shield documents  
18 from discovery, they need to do more than just make a  
19 blanket statement. I don't believe that just a mere  
20 claim that it could be privileged, it could involve  
21 going through e-mails, is sufficient to sustain the  
22 burden of showing that a claim exists.

23 And I think privilege logs, your Honor,  
24 we've seen them used, it's a way to identify and to  
25 ensure that counsel's not hiding behind a privilege

1 to prevent disclosure of documents and information.

2 EXAMINER PRICE: Ms. McAlister.

3 MS. McALISTER: Your Honor, I think that  
4 we've provided sufficient information that otherwise  
5 responds to the discovery requests without sorting  
6 through all of the e-mails without any real  
7 limitation. We've provided --

8 EXAMINER PRICE: How many interrogatories  
9 did you respond to?

10 MS. McALISTER: Well, that's a good  
11 question. We responded to a total of 35, not  
12 counting subparts, interrogatories -- and this is in  
13 the initial version -- and 28 requests for production  
14 of documents. However, I would like to make clear  
15 that the questions over time have changed through an  
16 informal process, that we have supplemented the  
17 responses in addition to the initial responses, and  
18 in addition to the depositions which took place over  
19 two days.

20 EXAMINER PRICE: I'm going to take this  
21 matter under advisement and think it over. Sorry you  
22 won't have this for Mr. Bjorklund's  
23 cross-examination, but I'd like to think it over.

24 MS. GRADY: Thank you, your Honor. At  
25 this time is it your Honor's preference that we move

1 into evidence our documents that we discussed off the  
2 record?

3 EXAMINER HUSSEY: Yes.

4 MS. GRADY: Your Honor, at this time we  
5 would like marked for identification purposes the  
6 following exhibits, if I may approach.

7 EXAMINER HUSSEY: You may.

8 MS. GRADY: Your Honor, the total copy  
9 Exhibit 1 is a document entitled "Eramet 2008 Results  
10 February 19th, 2009," that is a 72-page document,  
11 it will be produced in its entirety and brought over  
12 this morning; I would like that marked as Exhibit 1.

13 EXAMINER HUSSEY: OCC Exhibit 1?

14 MS. GRADY: Yes.

15 EXAMINER HUSSEY: So marked.

16 (EXHIBIT MARKED FOR IDENTIFICATION.)

17 MS. GRADY: And then, your Honor, I have  
18 excerpts from OCC Exhibit 1 which I would like to  
19 singularly mark as the first being Exhibit 1A which  
20 is entitled "Manganese ROCE" -- R-O-C-E -- "Before  
21 Income Tax." And I'll go ahead and pass that  
22 document out to the parties.

23 EXAMINER HUSSEY: So marked.

24 (EXHIBIT MARKED FOR IDENTIFICATION.)

25 MS. GRADY: Thank you.

1           Your Honor, the next excerpt from OCC  
2 Exhibit 1 would be entitled "Return on Capital  
3 Employed," that will be Exhibit 1B with the title  
4 "ROCE Remained High in 2008."

5           EXAMINER HUSSEY: So marked.

6           (EXHIBIT MARKED FOR IDENTIFICATION.)

7           MS. GRADY: And, your Honor, the final  
8 excerpt from OCC Exhibit 1 will be OCC Exhibit 1C  
9 entitled "Key Figures 2008" with the caption  
10 "Excellent Results for Eramet Manganese."

11          EXAMINER HUSSEY: So marked.

12          (EXHIBIT MARKED FOR IDENTIFICATION.)

13          MS. GRADY: Next, your Honor, we move on  
14 to OCC Exhibit No. 2, it is a 297-page document  
15 entitled "Reference Document 2008." And from that  
16 OCC Exhibit No. 2 we will have Exhibit 2A, which is a  
17 single-page document, page 50 of the Exhibit 2 Eramet  
18 2008 Reference Document, entitled "Business Overview  
19 Manganese Division."

20          Your Honor, the next OCC Exhibit would be  
21 an excerpt from OCC Exhibit 2, I would like that  
22 marked as Exhibit 2B, it is page 16 from the Eramet  
23 2008 Reference Document. At the top of the page --  
24 it is a single page entitled "Risk Factors, section  
25 4.1, Liquidity, Market and Counterparty Risks."

1 MR. RESNIK: Excuse me. Can I interrupt  
2 for a moment. Now that we're starting to get some of  
3 these down here, and we get them about three exhibits  
4 after you've identified them, so can we go back to  
5 Exhibit 1 and tell me which of these is which  
6 exhibit.

7 MS. GRADY: Sure. I'd be happy to do  
8 that. Mr. Resnik, Exhibit 1A is the single sheet  
9 entitled "Manganese ROCE" -- or ROCE -- "Before  
10 Income Tax."

11 EXAMINER PRICE: Do you have copies for  
12 the Bench?

13 MS. GRADY: I'm sorry. Yes, your Honor.  
14 When they come around. I made ten copies; I'm hoping  
15 that will be sufficient.

16 Mr. Resnik, if you can just pile up the  
17 copies and I'll --

18 MR. RESNIK: They stopped here.

19 MS. GRADY: Oh, they did. Did we really  
20 run out at ten?

21 EXAMINER HUSSEY: The Bench is going to  
22 need a copy as well as the court reporter.

23 EXAMINER PRICE: Do you have one for the  
24 reporter?

25 MS. GRADY: Are we really out at ten?



1 MR. POULOS: I have one too, so you can  
2 take ours.

3 MS. GRADY: If you give me a moment after  
4 I'm all done marking, I'll get your stack, and I  
5 apologize.

6 EXAMINER PRICE: I'm concerned if you --

7 EXAMINER HUSSEY: Let's go off the record  
8 for just a second.

9 (Discussion off the record.)

10 EXAMINER HUSSEY: Let's go back on the  
11 record. I believe that we stopped by discussing 2B.  
12 Let's go from there.

13 MS. GRADY: Okay, your Honor. Just to  
14 move along, and again, I am grateful for the patience  
15 shown in marking these exhibits and getting them in,  
16 the next OCC Exhibit will be 2C, that exhibit being  
17 page 187 from OCC Exhibit 2 entitled "Financial  
18 information on the issuer's assets and liabilities,  
19 financial position and results," a single-page  
20 document.

21 EXAMINER HUSSEY: So marked.

22 (EXHIBITS MARKED FOR IDENTIFICATION.)

23 MS. GRADY: Your Honor, the final exhibit  
24 or subexhibit 2 is 2D, it is page 177 from OCC  
25 Exhibit 2 entitled "Financial information on issuer's

1 assets and liabilities, financial position and  
2 results," a single-page document.

3 EXAMINER HUSSEY: So marked.

4 (EXHIBIT MARKED FOR IDENTIFICATION.)

5 MS. GRADY: And finally, your Honor, I  
6 would like marked as OCC Exhibit No. 3 a document,  
7 multi-page document consisting of 11 pages, the cover  
8 sheet of the page indicates that it is a press  
9 release issued in Paris, February 19th, 2009,  
10 entitled "Excellent Results in 2008 despite  
11 Substantial Impact of Crisis in 4th Quarter."

12 EXAMINER HUSSEY: So marked.

13 (EXHIBITS MARKED FOR IDENTIFICATION.)

14 MS. GRADY: Your Honor, OCC in agreement  
15 with counsel has -- let me strike that.

16 Your Honor, counsel for Eramet has agreed  
17 to waive objections on authentication and  
18 identification with respect to these documents and  
19 preserve the right to argue about the relevancy of  
20 the documents. So OCC at this time would move to  
21 admit documents marked as OCC Exhibits 1 and the  
22 subparts, 2 and the subparts, and 3.

23 EXAMINER HUSSEY: Mr. Randazzo.

24 MR. RANDAZZO: Your Honor, we, as counsel  
25 for OCC indicated, we've agreed that these documents

1 are authentic and they are produced by the parent  
2 organization. I think the motion to admit the  
3 documents simply because they're authentic is  
4 improper.

5 I assume counsel for OCC intends to use  
6 excerpts from these documents during her  
7 cross-examination. We will see at that point what  
8 the intended use is and whether or not the use of the  
9 authentic documents is appropriate relative to this  
10 proceeding. All of the documents are historic. We  
11 are proposing a going-forward arrangement.

12 So we clearly need to have a better  
13 understanding of what the intentions are before we  
14 can determine whether or not we believe at least  
15 they're relevant, and we'd reserve our ability to do  
16 so.

17 EXAMINER HUSSEY: Your objections are  
18 noted.

19 MS. GRADY: Is it your intention, then,  
20 to hear arguments on relevance after Mr. Bjorklund  
21 has been on and off the stand?

22 EXAMINER HUSSEY: We'll go forward on a  
23 case-by-case basis as it may be -- or,  
24 exhibit-by-exhibit basis and we'll take arguments at  
25 that point.

1 MS. GRADY: Thank you, your Honor.

2 EXAMINER HUSSEY: You're welcome.

3 MR. RANDAZZO: Maybe I could suggest  
4 something that would shorten this up. We have no  
5 problem with the document coming into the record if  
6 it's simply a document that indicates what the parent  
7 organization said at one point in time. If there is  
8 further use of the document to be made, in other  
9 words, arguing about whether or not the special  
10 arrangement should be approved based upon something  
11 that's in the document, that's a different  
12 application and we need to see what the intention is  
13 there.

14 But if it would shorten it up, we don't  
15 have any problem with the documents coming into the  
16 record for the --

17 EXAMINER PRICE: I'm sure they intend to  
18 use them and prove to the Commission why they  
19 shouldn't approve the special arrangement.

20 MS. GRADY: Your Honor, yes, we intend to  
21 use them. Whether we cross Mr. Bjorklund on it may  
22 not -- because Mr. Bjorklund indicated in depositions  
23 that he was not necessarily familiar with those  
24 documents although he may be familiar with the  
25 information behind the documents.

1           So I would suggest that we take up the  
2 relevance issue following Mr. Bjorklund's  
3 cross-examination.

4           EXAMINER HUSSEY: We will go forward.  
5 We'll preserve the right to admit them at a later  
6 point, but we'll go forward and we'll address  
7 relevance of each of them at that point.

8           Anything further before we take the first  
9 witness? Okay. Eramet, if you would like to call  
10 your first witness.

11          MS. McALISTER: Thank you, your Honor.  
12 At this time we call Mr. Frank Bjorklund.

13          EXAMINER HUSSEY: Please raise your right  
14 hand.

15          (Witness sworn.)

16          EXAMINER HUSSEY: You may be seated.

17          THE WITNESS: Thank you.

18          EXAMINER HUSSEY: Please state your name  
19 and business address for the record.

20          THE WITNESS: My name is Frank Bjorklund,  
21 and my business address is Eramet Marietta,  
22 Incorporated Company, Box 299, 16705 State Route 7,  
23 Marietta, Ohio.

24          EXAMINER HUSSEY: Eramet may proceed.

25          MS. McALISTER: Thank you, your Honor.

1 FRANK BJORKLUND

2 being first duly sworn, as prescribed by law, was  
3 examined and testified as follows:

4 DIRECT EXAMINATION

5 By Ms. McAlister:

6 Q. Mr. Bjorklund, by whom are you employed?

7 A. I'm employed by Eramet Marietta.

8 Q. And did you prepare testimony that was  
9 filed on July 29th, 2009, in this proceeding?

10 A. Yes.

11 Q. Do you have that with you?

12 A. Yes.

13 MS. McALISTER: Your Honor, at this time  
14 I'd like to have marked for identification purposes  
15 as Eramet Exhibit 2 the confidential version of  
16 Mr. Bjorklund's testimony. At this time I'd also  
17 like to have marked for identification purposes as  
18 Eramet Exhibit 2A the public redacted version of  
19 Mr. Bjorklund's testimony.

20 EXAMINER HUSSEY: So marked.

21 (EXHIBITS MARKED FOR IDENTIFICATION.)

22 Q. Mr. Bjorklund, do you have both versions  
23 of the testimony in front of you there today?

24 A. Yes.

25 Q. Do you also have a copy of the

1 application that Eramet filed in this proceeding?

2 A. Yes, I do.

3 MS. McALISTER: Your Honor, at this time  
4 I'd like to have marked for identification purposes  
5 as Eramet Exhibit 1 the application that was filed on  
6 June 19th, 2009, in this proceeding.

7 EXAMINER HUSSEY: So marked.

8 (EXHIBIT MARKED FOR IDENTIFICATION.)

9 Q. Mr. Bjorklund, do you have any  
10 corrections or additions to make to what has been  
11 marked as Eramet Exhibit 2?

12 A. No, I don't.

13 Q. And if I were to ask you the same  
14 questions today as what's in Exhibit 2, would your  
15 answers today be the same?

16 A. Yes.

17 Q. And are they true and correct to the best  
18 of your knowledge and belief?

19 A. Yes, they are.

20 MS. McALISTER: Your Honor, at this time  
21 I'd move for the admission of Eramet Exhibits 2A and  
22 2 subject to cross-examination, and Mr. Bjorklund is  
23 available for cross-examination.

24 EXAMINER HUSSEY: Any objections at this  
25 point to the admission? Okay. We'll admit the

1 direct testimony -- Exhibit 1 and Exhibit 2 and 2A.

2 (EXHIBITS ADMITTED INTO EVIDENCE.)

3 EXAMINER HUSSEY: For cross-examination  
4 let's go with OCC.

5 MR. POULOS: Thank you, your Honor.

6 - - -

7 CROSS-EXAMINATION

8 By Mr. Poulos:

9 Q. Good morning, Mr. Bjorklund.

10 A. Good morning.

11 Q. Currently how many employees does Eramet  
12 Marietta have?

13 A. Around 230 employees.

14 Q. And at the end of 2008 is it true that  
15 Eramet Marietta had approximately 360 employees?

16 A. That's correct.

17 Q. Isn't it true that there was a layoff of  
18 approximately 130 employees at the start of 2009?

19 A. That's correct.

20 Q. And what was the reason for that layoff?

21 A. The reason for the layoff was the idling  
22 of what we call the north side of the plant, the  
23 Special Product division.

24 Q. What does the Special Products division  
25 do?



1 A. It produce different chromium products.

2 Q. And who decided to idle the north side of  
3 the plant?

4 A. I did.

5 Q. Was that your decision alone, or did the  
6 parent company, Eramet SA, have any say in that  
7 decision?

8 A. They have.

9 Q. What say did they have in that decision?

10 A. They have to approve it.

11 Q. Currently Eramet Marietta has 230  
12 employees, correct?

13 A. Approximate, yeah.

14 Q. And isn't it true as part of the  
15 application you are willing to commit or Eramet  
16 Marietta is willing to commit to maintaining the  
17 level of 200 employees for the life of the agreement?

18 A. That's correct.

19 Q. If Eramet drops below the 200 employee  
20 level, does Eramet agree that the discounted rate  
21 it's requesting in this application would end?

22 A. No.

23 Q. What would happen if Eramet dropped below  
24 the 200 employee level?

25 A. I think we have to look at the time range

1 and the reason for it.

2 Q. And what circumstances -- what  
3 circumstances would Eramet agree to drop the request  
4 for the application or -- excuse me. Strike that.

5 At what point would Eramet agree to drop  
6 the discounted rate if the employee level dropped  
7 below 200 for a certain time period?

8 A. This is something we have not discussed  
9 in the application.

10 Q. So at this point you would agree that  
11 there's 230 employees and Eramet is agreeing to  
12 maintain the status quo of approximately 200  
13 employees --

14 A. Yes.

15 Q. -- correct?

16 MR. POULOS: Your Honor, I'd like to go  
17 into some confidential information, I think most of  
18 my cross-examination questions will be of a  
19 confidential nature.

20 EXAMINER HUSSEY: Okay. Let's go off of  
21 the public transcript and move on to the confidential  
22 transcript for this portion.

23 Mr. Randazzo.

24 MR. RANDAZZO: Your Honor, if there are  
25 individuals in the hearing room that either have not

1 signed or are not subject to the confidentiality  
2 agreement, it probably would be appropriate to ask  
3 them to leave as well.

4 EXAMINER HUSSEY: Let's do that. If you  
5 have not signed or are not party to a confidentiality  
6 agreement at this point, if you'd -- feel free to  
7 leave the room. Thank you.

8 EXAMINER PRICE: Is that everybody?

9 MR. RANDAZZO: Off the record.

10 (Discussion off the record.)

11 EXAMINER HUSSEY: Let's now shift gears  
12 and go into the confidential transcript.

13 (CONFIDENTIAL PORTION EXCERPTED.)  
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(OPEN RECORD.)

1                   EXAMINER HUSSEY: We're going to take an  
2 hour recess for lunch, I believe. Will that allow  
3 sufficient time; 2 p.m.? Okay. Great. We'll  
4 reconvene at 2 p.m.

5                   (At 12:55 p.m. a lunch recess was taken  
6 until 2:00 p.m.)

7                                   - - -

1 Tuesday Afternoon Session,  
2 August 4, 2009.

3 - - -

4 EXAMINER HUSSEY: Let's go back on the  
5 record.

6 EXAMINER PRICE: Before we take our first  
7 witness, you can come on up, but before we take our  
8 first witness we owe OCC and Eramet a ruling on the  
9 discovery. If OCC's counsel can again read to me the  
10 amended discovery request.

11 MS. GRADY: Yes, your Honor.  
12 Specifically interrogatory 6, we are asking to limit  
13 the time period from approximately June 2008 through  
14 the present and to limit the topics to communications  
15 regarding the scope of capital expenditures and  
16 fundings for the capital expenditures associated with  
17 the projects in the application and the \$150 million  
18 plan announced August 30th, 2009, and jobs,  
19 including retention, displacement, and creation.

20 EXAMINER PRICE: The motion to compel as  
21 limited by counsel's last discussion will be granted.

22 MS. GRADY: Thank you, your Honor. And  
23 the other request was on request for production  
24 No. 8, similar situation where we had limited the  
25 discovery request for documents on that same area

1 from June 2008 through present limiting the  
2 communications to funding and funding sources, the  
3 \$150 million plan, and communications related to  
4 initiatives to postpone or cancel capital expenditure  
5 projects announced in fourth quarter 2008.

6 EXAMINER PRICE: That motion also as  
7 limited by counsel just now will be granted.

8 MS. GRADY: Thank you, your Honor.

9 Your Honor, might I ask for the documents  
10 to be produced before the end of the proceeding so I  
11 have the opportunity to review those and, if  
12 necessary, cross-examine on those documents.

13 EXAMINER PRICE: Ms. McAlister, what's a  
14 reasonable time you could have this? I understand a  
15 lot of things are going on in this case right now.

16 MS. McALISTER: Right. And in fact our  
17 witnesses who would need to review their e-mail  
18 correspondence are here in the hearing room, so I'm  
19 not sure whether we have the ability to accommodate  
20 their request before the end of the proceeding. A  
21 reasonable amount of time --

22 EXAMINER PRICE: Can you have this by the  
23 end of the day on Thursday?

24 MS. McALISTER: Assuming that we're  
25 finished with the hearing on the end of Wednesday?

1 EXAMINER PRICE: Let's make it end of the  
2 day on Thursday and if you need an extension because  
3 we are still in hearing on Thursday, we'll discuss  
4 that at that point.

5 MS. GRADY: And, your Honor, am I  
6 assuming, then, that I will have the opportunity to  
7 ask questions from a witness with respect to --

8 EXAMINER PRICE: If we need to re-call a  
9 witness at that point, that's what we'll have to do.

10 MS. GRADY: Thank you, your Honor.

11 EXAMINER HUSSEY: Mr. Resnik.

12 MR. RESNIK: Thank you, your Honor.

13 - - -

14 CROSS-EXAMINATION

15 By Mr. Resnik:

16 Q. Good afternoon, Mr. Bjorklund.

17 A. Good afternoon.

18 Q. I want to try and stay out of  
19 confidential portions of exhibits if I can.

20 MR. RENSİK: And maybe this is more a  
21 question for counsel, and I should have asked before  
22 we started out. I just wanted to make a reference to  
23 what's been marked as OCC Exhibit 4 and the dates  
24 that are on there. Could I ask about that? Does  
25 that need to be in the confidential portion?



1 MS. McALISTER: I'm not sure what dates  
2 you're referring to.

3 MR. RESNIK: Well, the --

4 EXAMINER PRICE: In the first column.

5 MR. RESNIK: Where it says "Year" and  
6 there's, you know, a span of three years and then  
7 another span of three years.

8 MS. McALISTER: I mean, the time frames  
9 for the projects were in the application. Not  
10 knowing what you're going to ask, it's difficult to  
11 respond whether it's confidential or not.

12 MR. RESNIK: Let me ask the question, if  
13 it needs to be confidential, then we can treat it  
14 that way.

15 Q. (By Mr. Resnik) I was looking at the date  
16 frame of 2013 through '15 and I thought I had heard  
17 in your testimony that those projects were in the  
18 time span of 2012 through '14. I was just trying to  
19 at least clarify the confusion that I have between  
20 those two different spans.

21 A. I just saw the same now. In the  
22 application what we have asked for is 2009, '10, and  
23 '11, and then we talk about '12, '13, '14, through  
24 '15, and it doesn't correspond with this document; I  
25 agree.

1           Q.    But the dates that are set out in the  
2 application are the dates that you feel are  
3 controlling, not the dates that are shown on this OCC  
4 Exhibit 4?

5           A.    That's correct.

6           Q.    Thank you.

7           MS. McALISTER: I don't believe you  
8 crossed into any confidential information there.

9           MR. RESNIK: Great.

10          Q.    Mr. Bjorklund, do you know if Eramet has  
11 provided any notice to Columbus Southern Power to  
12 discontinue the service it's taking under its GS-4  
13 tariff?

14          A.    No, I don't know if this has happened.

15          Q.    Okay. The application refers to a  
16 consumption level to which the discounted rate would  
17 apply at 42 million kWh per calendar month; is that  
18 right?

19          A.    That's right.

20          Q.    And I understand from the deposition that  
21 some of that consumption is attributable to another  
22 corporate entity not affiliated with Eramet, but that  
23 takes power through Eramet; is that right?

24          A.    That's correct.

25          Q.    And is it Eramet's proposal to provide

1 the discount in a fashion that it would also be  
2 applicable to the power taken by this other corporate  
3 entity?

4 A. No, we have no plans of doing that.

5 Q. You have no plans to do that.

6 A. No.

7 Q. And so how you would -- but the  
8 42 million kWh does include that other consumption.

9 A. That's correct.

10 Q. So this would be something, what you're  
11 suggesting is that the discount would apply to  
12 something less than 42 million kWh.

13 A. That's correct.

14 Q. Do you know what that number would be, in  
15 rough terms?

16 A. I think I have to refer to Mr. Bob Flygar  
17 on that.

18 Q. Okay. Looking at your testimony, and  
19 this is at page 2, line 12 of your prefiled  
20 testimony, you make reference to predicable electric  
21 prices at a reasonable level over a period of time.  
22 Do you see that reference?

23 A. Yes. Yes.

24 Q. When you are determining what is a  
25 reasonable level, is that based not only on what the

1 market prices are for electricity, but also what, in  
2 your view, Eramet needs by way of a price in order to  
3 proceed with the proposed improvements?

4 A. In a way it's both.

5 Q. And is it mostly one or the other? When  
6 you say it's both, how do you make that analysis?

7 A. I think to be able to compete within the  
8 Eramet group for capital money, we need to show a  
9 compatible power rate, so that has been the basis for  
10 our application.

11 Q. A compatible power rate. Is that what  
12 you said?

13 A. I think that's the right word.

14 Q. No, I wasn't questioning that, I just  
15 wasn't -- I guess I was emphasizing that for myself.

16 Okay. So what do you mean by a  
17 compatible power rate?

18 A. So we are not paying more than the  
19 plants -- the older plants in the system and due to  
20 this lose opportunities to get capital money.

21 Q. At page 7, line 11 of your testimony,  
22 when you're referring to Eramet not being able to  
23 make changes without outside assistance, are you  
24 referring to Eramet Marietta?

25 A. That's correct.

1           Q.    When it comes to the business decision of  
2 purchasing power, is it your view that you would  
3 prefer to have the flexibility to shop in the market  
4 so that if market prices were below the reasonable  
5 arrangement that you're asking the Commission to  
6 approve, that you would be able to take advantage of  
7 those lower market prices?

8           A.    This is also something I would refer to  
9 Mr. Bob Flygar.

10          Q.    You don't have a view on that?

11          A.    I have -- my personal view is that with a  
12 power contract as stipulated in the application, we  
13 don't need to shop.

14          Q.    So even if a -- well, you may not need  
15 to. But you're saying that if a lower market price  
16 were available during the term of the special  
17 arrangement, you would be content not to switch to  
18 that lower price.

19          A.    We will not be content to switch.

20          Q.    You will not be content to switch. You  
21 would be content not to switch?

22          A.    No. I see this as a commitment from both  
23 parties and the structure of the application is made  
24 in such a way that it shouldn't be necessary to talk  
25 about switching; that's the way I see it. But more

1 details maybe from Mr. Flygar.

2 Q. Okay.

3 MR. RESNIK: And again, let me try to ask  
4 some questions, and if I get into confidential  
5 waters, you'll let me know.

6 Q. As part of the application you propose --  
7 Eramet is proposing at least the potential of certain  
8 projects that would have energy efficiency benefits  
9 associated with them?

10 A. That's correct.

11 Q. And are these projects being -- the  
12 energy efficiency attributes of these projects being  
13 committed to Columbus Southern Power to meet its  
14 mandates for energy efficiency as required by Senate  
15 Bill 221?

16 A. I think I have to refer to Mr. Flygar on  
17 this.

18 Q. You're just not familiar with it?

19 A. I'm not familiar if the proposal we made  
20 is suitable for your purpose.

21 Q. Well, I'll take it up with Mr. Flygar  
22 then.

23 MR. RESNIK: Quicker than half an hour.  
24 That's all I've got.

25 EXAMINER HUSSEY: Thank you.

1 MR. RESNIK: Thank you.

2 EXAMINER HUSSEY: Staff? Mr. McNamee?

3 MR. McNAMEE: No questions.

4 EXAMINER HUSSEY: No questions. Okay.  
5 Redirect?

6 MS. McALISTER: No, your Honor.

7 EXAMINER HUSSEY: Thank you very much.  
8 You're excused.

9 THE WITNESS: Thank you, your Honor.  
10 (Witness excused.)

11 MR. POULOS: OCC would like to ask for  
12 admittance of our exhibits.

13 EXAMINER PRICE: Which ones are you  
14 moving at this time?

15 MR. POULOS: Exhibits 4 and 5. That  
16 would be -- the capital expenditure one was one page  
17 which was Exhibit 4, and Exhibit 5 was the summary of  
18 plant upgrades, the 17 pages.

19 MS. McALISTER: I guess, your Honor, I  
20 would not object so long as it's protected, as long  
21 as I can have a motion for protection of the  
22 documents.

23 EXAMINER HUSSEY: That motion will be  
24 granted in conjunction with the motion earlier.

25 Mr. Poulos, these are the only exhibits

1 you'd like to be admitted at this point in time?

2 MR. POULOS: At this time, your Honor,  
3 yes.

4 EXAMINER HUSSEY: Okay. They'll be  
5 admitted.

6 MR. POULOS: Thank you.

7 MR. RESNIK: And that was just 4 and 5,  
8 right?

9 EXAMINER HUSSEY: That's correct.

10 (EXHIBITS ADMITTED INTO EVIDENCE.)

11 EXAMINER HUSSEY: Let's go off the  
12 record.

13 (Discussion off the record.)

14 EXAMINER HUSSEY: We'll reconvene at  
15 9 o'clock tomorrow.

16 (The hearing adjourned at 3:35 p.m.)

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## 1 CERTIFICATE

2 I do hereby certify that the foregoing is a  
3 true and correct transcript of the proceedings taken  
4 by me in this matter on Tuesday, August 4, 2009, and  
5 carefully compared with my original stenographic  
6 notes.

7  
8 Maria DiPaolo Jones, Registered  
9 Diplomat Reporter and CRR and  
Notary Public in and for the  
State of Ohio.

10 My commission expires June 19, 2011.

11 (MDJ-3423)

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