

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of)	
Columbus Southern Power Company and)	
Ohio Power Company for Authority to)	Case No. 11-346-EL-SSO
Establish a Standard Service Offer)	Case No. 11-348-EL-SSO
Pursuant to § 4928.143, Ohio Rev. Code,)	
)	
In the Form of an Electric Security Plan)	
In the Matter of the Application of)	
Columbus Southern Power Company and)	Case No. 11-349-EL-AAM
Ohio Power Company for Approval of)	Case No. 11-350-EL-AAM
Certain Accounting Authority)	

**MOTION FOR PROTECTIVE ORDER OF CONFIDENTIAL VERSION OF
ORMET PRIMARY ALUMINUM CORPORATION'S
POST-HEARING BRIEF**

Ormet Primary Aluminum Corporation (“Ormet”), by its attorneys and pursuant to Section 4901-1-24(D) of the Public Utilities Commission of Ohio’s (“Commission”) rules (O.A.C. § 4901-1-24(D)), hereby moves the Commission to enter a protective order keeping confidential certain designated confidential and/or proprietary information contained on pages 1-3 and 13-14 of the unredacted version of Ormet’s Post-Hearing Brief. Consistent with the requirements of Section 4901-1-24(D) of the Commission's rules, an original and two unredacted copies containing the confidential information which is the subject of this motion have been hand-delivered to the Commission today for filing under seal. The relevant portions of the brief for which the protective order is sought and the reasons supporting this motion are detailed in the attached Memorandum in Support.

/s/ Thomas R. Millar

SNR DENTON US LLP

Emma F. Hand

Dan Barnowski

James Rubin

Thomas R. Millar

1301 K Street, NW

Suite 600, East Tower

Washington, DC 20005

emma.hand@snrdenton.com

202-408-6400 (phone)

202-408-6399 (fax)

Counsel for Ormet Primary Aluminum Corporation

Dated: June 29, 2012

**BEFORE
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**MEMORANDUM IN SUPPORT OF
MOTION FOR PROTECTIVE ORDER OF CONFIDENTIAL VERSION OF
ORMET PRIMARY ALUMINUM CORPORATION’S
POST-HEARING BRIEF**

Ormet respectfully requests that portions of its Post-Hearing Brief be designated as confidential and protected from public disclosure. The information for which protection is sought includes information that was introduced during the recently-concluded hearing in the above-captioned matter in closed, confidential session and that was produced to Ormet in discovery subject to a Confidentiality Agreement. Specifically, the brief discusses information that Ohio Power Company (now merged with Columbus Southern Power Company and referred to herein as “AEP Ohio”) produced in response to First Energy Solutions’ (“FES”) Interrogatory 5-05, which has been treated by the Commission as confidential. Ormet introduced this interrogatory response into evidence at the hearing subject to its confidential treatment as Ormet Exhibit 101. To introduce that document and question Mr. David M. Roush about it, Ormet also moved the hearing into confidential session. *See generally* Hr’g Tr., vol. IV, May 22, 2012 (Confidential). Additionally, Ormet again moved the Commission into confidential session when putting on its own witness Whitfield A. Russell, who offered testimony regarding information that drew upon the AEP Ohio’s response to FES-INT-5-05 and Hr’g Tr., vol. IV (Confidential). *See*

generally Hr'g Tr., vol. XIV, June 6, 2012 (Confidential).

The portions of Ormet's Post-Hearing Brief where confidential information is discussed are listed in the table below and identified in the brief with the designation [BEGIN

CONFIDENTIAL INFORMATION . . . END CONFIDENTIAL INFORMATION]:

Redacted Sentence		Page Number
In direct response to questioning by Commissioner Andre Porter himself, however, AEP Ohio's own witness acknowledged that the Company's own projections demonstrate that the current Electric Security Plan ("ESP II") application could increase Ormet's electricity rates by over [BEGIN CONFIDENTIAL INFORMATION ██████████ END CONFIDENTIAL INFORMATION] compared to its 2011 rates.		1
The real rate increase for Ormet, as was explained by the uncontroverted testimony of Ormet witness Whitfield A. Russell, will be [BEGIN CONFIDENTIAL INFORMATION \$ ██████████ END CONFIDENTIAL INFORMATION] if the fuel costs increases projected by AEP Ohio witness Oliver J. Sever prove accurate.		2
For example, according to the evidence presented in the case, it is clear that Ormet very well could experience a rate increase of as much as [BEGIN CONFIDENTIAL INFORMATION \$ ██████████ END CONFIDENTIAL INFORMATION] over its 2011 rates by 2013. <i>See</i> Hr'g Tr. vol. XIV, 3920:7-12, June 6, 2012. This would represent a [BEGIN CONFIDENTIAL INFORMATION ██████████ END CONFIDENTIAL INFORMATION] increase over the 2011 rates.		2-3
In a line of questioning in which Commissioner Porter probed AEP Ohio witness Roush's statements that Ormet's rates could increase by over [BEGIN CONFIDENTIAL INFORMATION ██████████ END CONFIDENTIAL INFORMATION] under the currently proposed ESP plan, Commissioner Porter concluded as follows: "[BEGIN CONFIDENTIAL INFORMATION ██████████ END CONFIDENTIAL INFORMATION]"		13
Take, for example, the impact that the FAC has on the GS-4 tariff rate. The FAC component of that rate has increased 60% since 2009 and 22% since 2011.		13-14
FAC Average Cost in 2009	\$22.09	
FAC Average Cost in 2010	\$25.80	
FAC Average Cost in 2011	\$28.94	
FAC for Q2 2012 is	\$35.42	
AEP Ohio's Estimated FAC for 2013	[BEGIN CONFIDENTIAL INFORMATION ██████████ END CONFIDENTIAL INFORMATION]	[BEGIN CONFIDENTIAL INFORMATION ██████████ END CONFIDENTIAL INFORMATION]

	INFORMATION	INFORMATION	13-14
Based on AEP Ohio's estimate, the actual impact on Ormet as a result of increased fuel costs will be [BEGIN CONFIDENTIAL INFORMATION ██████████ ██████████ END CONFIDENTIAL INFORMATION].			

AEP Ohio has asserted that the public release of the information designated as confidential in Ormet's brief would harm the Company. Other portions of Ormet's Post-Hearing Brief have been redacted because they reveal information obtained in portions of the hearing designated confidential and non-public. They were treated confidentially at hearing and are a part of this motion because they discuss the information contained in FES-5-05. For these reasons, as more specifically laid out below, the information redacted from the public version of Ormet's Post-Hearing Brief should be subject to a protective order by the Commission. Ormet therefore requests that the Commission enter such an order to ensure that this information remains confidential and protected and not subject to public disclosure.

Section 4901-1-24(D) of the Commission's rules provides that the Commission or certain designated employees may issue an order which is necessary to protect the confidentiality of information contained in documents filed with the Commission's Docketing Division to the extent that state or federal law prohibits the release of the information and where non-disclosure of the information is not inconsistent with the purposes of Title 49 of the Revised Code. Ohio Admin. Code § 4901-1-24(D) (2012). As set forth herein, the information described above has been represented as confidential and sensitive business information by AEP Ohio and has been provided to Ormet subject to a protective agreement. Therefore, Ormet requests that this information be protected from disclosure. The Commission regularly grants such protective orders. *See, e.g., Elyria Tel. Co.*, Case No. 89-965-TP-AEC (Finding and Order, Sept. 21, 1989); *Ohio Bell Tel. Co.*, Case No. 89-718-TP-ATA (Finding and Order, May 31, 1989); *Columbia Gas of Ohio, Inc.*, Case No. 90-17-GA-GCR (Entry, Aug. 17, 1990).

While the Commission has often expressed its preference for open proceedings, the

Commission also long ago recognized its statutory obligations with regard to trade secrets:

The Commission is of the opinion that the “public records” statute must also be read *in pari materia* with Section 1333.31, Revised Code (“trade secrets” statute). The latter statute must be interpreted as evincing the recognition, on the part of the General Assembly, of the value of trade secret information.

In re: General Telephone Co., Case No. 81-383-TP-AIR (Entry, Feb. 17, 1982). Section

1333.61(D) identifies the definition of a trade secret as set forth in the Uniform Trade Secrets Act:

“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.

Ohio Rev. Code Ann. § 1331.61(D) (West 2012). The Commission facilitates the protection of such trade secrets in its rules in the Administrative Code as well. *See* Ohio Admin. Code § 4901-124(A)(7) (2012). AEP Ohio, in providing the information for which Ormet is requesting a protective order, has asserted that their projections of fuel cost changes, and discussion of them, constitute trade secrets.

In State ex rel The Plain Dealer v. Ohio Dept. of Ins., the Ohio Supreme Court adopted a six factor test to analyze whether information is a trade secret under Revised Code section 1331:

(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 or 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.

State ex rel. The Plain Dealer v. Ohio Dept. of Ins., 80 Ohio St. 3d 513, 524-25 (1997).

Applying these factors to the portions of Ormet's Post-Hearing Brief for which Ormet seeks confidential treatment indicates that a protective order should be granted. The Fuel Adjustment Clause ("FAC") projections are not known outside the business; they are known inside AEP Ohio only to a limited extent; AEP Ohio has consistently sought its treatment as a trade secret; AEP Ohio's competitors could use that information to their competitive advantage; the information and forecasting and negotiation efforts that underlie were expensive for AEP Ohio to develop; and others would face comparable cost to develop it on their own, if that were even possible. *Id.* For these reasons, the *Plain Dealer* factors favor treating the confidential portions of Ormet's Post-Hearing Brief as Trade Secrets. *Id.* That is why the Hearing Examiners were justified in moving the hearing into closed session when these topics came up, and that is why Ormet has redacted the portions of its Post-Hearing Brief that draw on the confidential hearing transcripts discussing these issues.

Accordingly, by this motion and memorandum in support Ormet seeks to uphold its agreement with AEP Ohio and treat the information AEP Ohio has designated as confidential as such in the Post-Hearing Brief and ensure that it is filed under seal pursuant to a confidentiality order by the Commission.

Respectfully Submitted,

/s/ Thomas R. Millar

SNR DENTON US LLP

Emma F. Hand

Dan Barnowski

James Rubin

Thomas R. Millar

1301 K Street, NW

Suite 600, East Tower

Washington, DC 20005

emma.hand@snrdenton.com

202-408-6400 (phone)

202-408-6399 (fax)

Counsel for Ormet Primary Aluminum Corporation

Dated: June 29, 2012

Certificate of Service

I hereby certify that a copy of the foregoing Motion for Protective Order of Confidential Version of Ormet Primary Aluminum Corporation's Post-Hearing Brief was served this 29th day of June, 2012, via the PUCO electronic filing system and/or by U.S. mail, on the parties listed below.

_____/s/ Thomas R. Millar

SNR Denton US LLP
Thomas R. Millar
1301 K Street, NW
Suite 600, East Tower
Washington, DC 20005
emma.hand@snrdenton.com
202-408-6400 (phone)
202-408-6399 (fax)

Attorney for Ormet Primary Aluminum Corporation

Steven T. Nourse
Matthew J. Satterwhite
Yazen Alami
American Electric Power Corp.
1 Riverside Plaza, 29th Floor
Columbus, Ohio 43215

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

Vick Leach-Payne
Samuel C. Randazzo
Joseph E. Olikier
Frank P. Darr
Matthew R. Pritchard
McNees Wallace & Nurick LLC
21 East State Street, 17th Fl
Columbus, OH 43215
The Kroger Co.
Linda Viens
60 Worthington Mall
Worthington, OH 43085

Richard L. Sites
Ohio Hospital Association
155 East Broad Street, 15th Floor
Columbus, OH 43215

Paul F. Wight
John Estes, III
Skadden, Arps, Slate, Meagher & Flom LLP
1440 New York Avenue, NW
Washington, DC 20005

Maureen R. Grady
Office of the Ohio Consumers' Counsel
10 W Broad Street
Suite 1800
Columbus, OH 43215

Thomas J. O'Brien
Teresa Orahod
Ohio Hospital Association
Bricker & Eckler LLP
100 South Third Street
Columbus, OH 43215

The Kroger Co.
John W. Bentine
Mark Yurick
Zachary D. Kravitz
Chester Wilcox & Saxbe LLP
65 E State Street
Suite 1000
Columbus, OH 43215

Andrew Campbell
Melissa L. Thompson
Mark A. Whitt
Whitt Sturtevant LLP
PNC Plaza, Ste. 2020
155 East Broad Street
Columbus, OH 43215

Jesse A. Rodriguez
Exelon Generation Company, LLC
300 Exelon Way
Kennett Square, PA 19348

Dane Stinson
Bailey Cavalieri LLC
10 West Broad Street, Ste. 2100
Columbus, OH 43215

Lisa G. McAlister
Bricker & Eckler LLP
100 South Third Street
Columbus, OH 43215

Deb J. Bingham
Patti Mallarnee
Office of the Ohio Consumers' Counsel
10 W. Broad St., 18th Fl.
Columbus, OH 43215

Lija K. Kaieps-Clark
M. Howard Petricoff
Stephen Howard
Vorys, Sater, Seymour and Pease
52 E. Gay Street
P.O. Box 1008
Columbus, OH 43216-1008

Christopher L. Miller
Gregory H. Dunn
Asim Z. Haque
Stephen J. Smith
C. Todd Jones
Ice Miller LLP
250 West Street
Columbus, OH 43215

Sandy I-ru Grace
101 Constitution Avenue, NW
Suite 400 East
Washington, DC 20001

United Way of Jefferson County
501 Washington Street
P.O. Box 1463
Steubenville, OH 43952

Jeffrey Small
Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 180
Columbus, OH 43215

Vincent Parisi
Interstate Gas Supply
6100 Emerald Parkway
Dublin, OH 43016

Gary A. Jeffries
Dominion Resources Services, Inc.
501 Martindale Street
Suite 400
Pittsburgh, PA 15212-5817

Dianne Kuhnell
Matt Walz, Vice President
Duke Energy Business Services
139 East Fourth Street EA025
PO Box 960
Cincinnati, OH 45201

Ohio Construction Materials Coalition
Attn: Brian Barger
Brady, Coyle & Schmidt, Ltd.
4052 Holland-Sylvania Road
Toledo, OH 43623
David A. Kutik
Jones Day
901 Lakeside Avenue
Cleveland, OH 44114

Chad A. Endsley
Ohio Farm Bureau Federation
280 N. High Street
Columbus, OH 43218

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

Constellation NewEnergy Inc.
Cynthia Fonner Brady
David Fein
550 W Washington Street, Suite 300
Chicago, IL 60661

James F. Lang
Laura C. McBride
N. Trevor Alexander
Calfee, Halter & Griswold LLP
1400 KeyBank Center
800 Superior Avenue
Cleveland, OH 44114

Allison E. Haedt
Grant W. Weber
Jones Day
P.O. Box 165017
325 John H. McConnell Boulevard
Suite 600
Columbus, OH 43216

Ohio Partners for Affordable Energy
David C. Rinebolt
231 West Lima Street
Findlay, OH 45839

Steve Howard
52 East Gay Street
P.O. Box 1008
Columbus, OH 43215

Robert A. McMahon
Eberly McMahon LLC
2321 Kemper Lane, Suite 100
Cincinnati, OH 45206

Joseph M. Clark
Direct Energy Services, LLC
6641 North High Street, Ste. 200
Worthington, OH 43085

AEP Retail Energy Partners LLC
Anne M. Vogel
1 Riverside Plaza, 29th Floor
Columbus, OH 43215

Amy Spiller
Rocco D'Ascenzo
Elizabeth Watts
139 E. Fourth Street, 1303-Main
P.O. Box 961
Cincinnati, OH 45202

Roger P. Sugarman
Kegler, Brown, Hill & Ritter
1800 Capitol Square
65 East State Street
Columbus, OH 43215

Larry F. Eisenstate
Richard Lehfeldt
Bradley Hutter
Robert Kinder, Jr.
Dickstein Shapiro LLP
1825 Eye Street, NW
Washington, DC 20006

Carolyn S. Flahive
Philip B. Sineneng
Terrance Mebane
Stephanie Chmiel
Thompson Hine LLP
41 S. High Street, Ste. 1700
Columbus, OH 43215

Sue Salamido
Kristin Watson
Cloppert, Latanick, Sauter & Washburn
225 E. Broad St., 4th Floor
Columbus, OH 43215

Nolan Moster
Trent Dougherty
Tara Santarelli
The Ohio Environmental Council
1207 Grandview Avenue, Suite 201
Columbus, OH 43212

Andrea P. Govan
Bricker & Eckler LLP
100 South Third Street
Columbus, OH 43215

Sara Reich Bruce
Staff Counsel
Ohio Metro Automobile Dealers Association
655 Metro Place South, Ste. 270
Dublin, OH 43017

Christopher Allwein
Todd M. Williams
Williams Allwein & Moser, LLC
1373 Grandview Ave, Suite 212r
Columbus, OH 43212

Randy Hart
Rob Remington
David Michalski
Hahn Loeser & Parks LLP
200 Public Square, Ste. 2800
Cleveland, OH 44114

Robert Burke
Braith Kelly
Competitive Powers Ventures, Inc.
8403 Colesville, Road, Ste. 915
Silver Spring, MD 20910

Mary W. Christensen
Christensen Law Offices
8760 Orion Place, Ste. 300
Columbus, OH 43240-2109

Kenneth Kreider
Holly Rachel Smith
Keating Muething & Klekamp PPL
Hitt Business Center
3603 Rectortown Road
Marshall, VA 20115

First Energy Solutions Corp
Louis M. D'Alessandris
341 White Pond Drive
Akron, OH 44320

Judi L. Sobecki
Dayton Power and Light Company
1065 Woodman Drive
Dayton, OH 45432

Teresa Ringenbach, Manager
Direct Energy & Services LLC
Government & Regulatory Affairs
9605 El Camino Lane
Plain City, OH 43064

Matthew R. Cox
Matthew Cox Law, Ltd.
4145 St. Theresa Blvd.
Avon, OH 44011

Christen M. Moore
Porter Wright Morris & Arthur, LLP
41 South High Street, 30th Floor
Columbus, OH 43215

Jeanne W. Kingery
Duke Energy Ohio, Inc.
139 E. Fourth Street
Cincinnati, OH 45201-0960

Carys Cochern
Duke Energy
155 East Borad Street, 21st Floor
Columbus, OH 43215

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

6/29/2012 3:49:20 PM

in

Case No(s). 11-0346-EL-SSO, 11-0348-EL-SSO, 11-0349-EL-AAM, 11-0350-EL-AAM

Summary: Motion MOTION FOR PROTECTIVE ORDER OF CONFIDENTIAL VERSION OF ORMET PRIMARY ALUMINUM CORPORATION'S POST-HEARING BRIEF and MEMORANDUM IN SUPPORT THEREOF electronically filed by Ms. Emma F Hand on behalf of Ormet Primary Aluminum Corporation