

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) Case No. 09-119-EL-AEC
Ohio Power Company and Columbus)
Southern Power Company.)

ENTRY

The attorney examiner finds:

- (1) Pursuant to Section 4905.31, Revised Code, the Commission has the authority to approve schedules for electric service upon application of a public utility or to establish reasonable arrangements for electric service upon application of a public utility and/or mercantile customer.
- (2) By opinion and order issued on July 15, 2009, the Commission modified and approved the amended application of Ormet Primary Aluminum Corporation (Ormet) for a unique arrangement with Columbus Southern Power Company and Ohio Power Company (jointly, AEP Ohio) for electric service to Ormet's aluminum-producing facility located in Hannibal, Ohio.¹
- (3) On June 14, 2013, Ormet filed a motion to amend its unique arrangement with AEP Ohio and a request for emergency relief, along with a memorandum in support, pursuant to Sections 4905.31 and 4909.16, Revised Code, and Rules 4901-1-12 and 4901:1-38-05, Ohio Administrative Code (O.A.C.). Ormet seeks four amendments to the unique arrangement in the form of emergency relief, specifically requesting that (a) the duration of the unique arrangement be shortened by three years such that it would terminate at the end of December 2015; (b) payment of the remaining \$92.5 million in economic development discounts be advanced by three years such that

¹ By entry issued on March 7, 2012, the Commission approved and confirmed the merger of Columbus Southern Power Company into Ohio Power Company, effective December 31, 2011. *In the Matter of the Application of Ohio Power Company and Columbus Southern Power Company for Authority to Merge and Related Approvals*, Case No. 10-2376-EL-UNC.

the last monthly installments would be fully received by December 2014; (c) the prohibition on Ormet's purchase of power from a third-party supplier be eliminated as of the January 2014 billing cycle; and (d) the price for the generation component of the standard service offer electricity purchased by Ormet from AEP Ohio during 2013 be fixed at \$45.89 per megawatt hour, which was the amount billed to Ormet during the first quarter of 2013. Ormet also requests that the Commission affirm, in the emergency order, the assignment by Ormet of its interest in the amended unique arrangement to Smelter Acquisition LLC pursuant to Section 13.04 of the current unique arrangement. Finally, Ormet seeks approval of a number of other significant modifications to the unique arrangement, on a non-emergency basis, that Ormet believes will ensure sustainable, expanded long-term operations at its facility in Hannibal, Ohio. In its motion, Ormet emphasizes that the requested relief is necessary to enable Ormet to emerge from a recent bankruptcy sale as a going concern and to continue its operations in Ohio.

- (4) Rule 4901:1-38-05(B), O.A.C., provides that a mercantile customer of an electric utility may apply to the Commission for a unique arrangement with the electric utility. In accordance with Rule 4901:1-38-05(F), O.A.C., affected parties may file a motion to intervene, as well as comments and objections to any application filed under the rule, within 20 days of the date of the filing of the application. Additionally, Rule 4901:1-38-05(B)(3), O.A.C., provides that, upon the filing of an application for a unique arrangement, the Commission may fix a time and place for a hearing if the application appears to be unjust or unreasonable.
- (5) By entry issued on June 27, 2013, the attorney examiner found that, although Ormet's June 14, 2013, filing is posed to the Commission as a motion to amend Ormet's unique arrangement with AEP Ohio, Ormet's filing should be construed as an application for a unique arrangement under Rule 4901:1-38-05(B), O.A.C., given the nature and extent of the modifications requested by Ormet to the existing unique arrangement, and that the 20-day intervention and comment period specified in Rule 4901:1-38-05(F), O.A.C., should apply to affected parties. Accordingly, the attorney examiner

determined that motions to intervene, as well as comments and objections from affected parties, should be filed by July 5, 2013.

- (6) On July 3, 2013, comments were filed by United Steelworkers District 1. On July 5, 2013, the Ohio Hospital Association (OHA); AEP Retail Energy Partners LLC d/b/a AEP Energy and AEP Energy, Inc. (collectively, AEP Energy); Industrial Energy Users-Ohio; AEP Ohio; and the Ohio Consumers' Counsel filed comments and/or objections.
- (7) On July 5, 2013, motions to intervene in this proceeding were filed by OHA, OMA Energy Group, and AEP Energy.
- (8) On July 8, 2013, Ormet filed a motion requesting leave to file a consolidated reply to the July 5, 2013, pleadings by July 12, 2013. In support of its motion, Ormet states that neither Rule 4901:1-38-05, O.A.C., nor the entry of June 27, 2013, prohibits or even addresses the filing of reply comments. Ormet notes that it seeks to address issues raised in the parties' July 5, 2013, pleadings that reflect confusion with respect to Ormet's application for a unique arrangement. The attorney examiner finds that Ormet's motion is reasonable and should be granted.
- (9) Section 4909.16, Revised Code, provides that, when the Commission deems it necessary to prevent injury to the business or interests of the public or of any public utility of this state in case of any emergency to be judged by the Commission, it may temporarily alter, amend, or, with the consent of the public utility concerned, suspend any existing rates, schedules, or order relating to or affecting any public utility or part of any public utility in this state.
- (10) With respect to Ormet's request for emergency relief pursuant to Section 4909.16, Revised Code, the attorney examiner notes that the Supreme Court of Ohio has cautioned the Commission that its power to grant emergency relief is extraordinary in nature.² Additionally, the Commission has historically exercised its emergency powers under the statute only in situations in which the financial integrity of a public utility is such that its ongoing ability to provide service is threatened, or

² *Cincinnati v. Pub. Util. Comm.*, 149 Ohio St. 570, 80 N.E.2d 150 (1948).

where utility service is otherwise jeopardized.³ Indeed, in reviewing emergency rate applications pursuant to Section 4909.16, Revised Code, the Commission has often explained that the ultimate question for its consideration is whether, absent emergency relief, the public utility will be financially imperiled or its ability to render service will be impaired.⁴ Such circumstances are not present in this case. The attorney examiner finds, therefore, that Ormet's request for emergency relief pursuant to Section 4909.16, Revised Code, should be denied.

- (11) Further, upon review of Ormet's application for a unique arrangement, and in light of the comments and objections filed by the parties, the attorney examiner finds that serious questions exist as to whether Ormet's application is just and reasonable and, therefore, that a hearing on this matter should be held, consistent with Rule 4901:1-38-05(B)(3), O.A.C. Accordingly, the following procedural schedule should be established:
- (a) Ormet's consolidated reply to the July 5, 2013, pleadings should be filed by July 12, 2013.
 - (b) Testimony on behalf of Ormet shall be filed by August 6, 2013.
 - (c) Testimony on behalf of AEP Ohio and intervenors shall be filed by August 16, 2013.
 - (d) Discovery requests, except for notices of depositions, should be served by August 16, 2013.
 - (e) An evidentiary hearing shall commence on August 27, 2013, at 10:00 a.m., at the offices of the Commission, 180 East Broad Street, 11th Floor, Hearing Room 11-A, Columbus, Ohio 43215-3793.

³ *In the Matter of the Complaint of Green Cove Resort I Owners' Association v. Carroll Township Treatment Services, LLC*, Case No. 00-1595-ST-CRC, Entry, at 5 (January 3, 2001).

⁴ *See, e.g., In the Matter of the Application of Akron Thermal, Limited Partnership for an Emergency Increase in its Rates and Charges for Steam and Hot Water Service*, Case No. 09-453-HT-AEM, *et al.*, Opinion and Order, at 6 (September 2, 2009); *In the Matter of the Application of Akron Thermal, Limited Partnership for an Emergency Increase in its Steam and Hot Water Rates and Charges*, Case No. 00-2260-HT-AEM, Opinion and Order, at 3 (January 25, 2001).

- (12) In light of the timeframe established in this case, the attorney examiner finds that, in the event a motion is made in this proceeding, any memoranda contra shall be filed within five calendar days after the service of such motion. Any reply memoranda shall be filed within three calendar days after the service of a memorandum contra. Parties shall provide service of pleadings via hand delivery, facsimile, or electronic mail.
- (13) In addition, the attorney examiner finds that the response time for discovery shall continue to be shortened to seven calendar days, consistent with the timeframe established by entry in this proceeding on April 17, 2009. Unless otherwise agreed to by the parties, discovery requests and replies shall be served by hand delivery, facsimile, or electronic mail. An attorney serving a discovery request shall attempt to contact the attorney upon whom the discovery request will be served in advance to advise him/her that a request will be forthcoming.

It is, therefore,

ORDERED, That Ormet's motion for leave to file a consolidated reply be granted. It is, further,

ORDERED, That Ormet's request for emergency relief pursuant to Section 4909.16, Revised Code, be denied. It is, further,

ORDERED, That the procedural schedule set forth in finding (11) be adopted. It is, further,

ORDERED, That the parties comply with the directives set forth in findings (12) and (13). It is, further,

ORDERED, That a copy of this entry be served upon all parties of record in this case.

THE PUBLIC UTILITIES COMMISSION OF OHIO

s/Sarah Parrot

By: Sarah J. Parrot
Attorney Examiner

JRJ/sc

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

7/11/2013 4:35:22 PM

in

Case No(s). 09-0119-EL-AEC

Summary: Attorney Examiner Entry ordering that Ormet's motion for leave to file a consolidated reply be granted; Ormet's request for emergency relief pursuant to Section 4909.16, Revised Code, be denied; the procedural schedule set forth in finding (11) be adopted; and the parties comply with the directives set forth in findings (12) and (13). - electronically filed by Sandra Coffey on behalf of Sarah Parrot, Attorney Examiner, Public Utilities Commission of Ohio