

**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)	

Interlocutory Appeal And Request For Oral Argument Before The Commission

Pursuant to Rule 4901-1-15(B) of the Ohio Administrative Code, Ormet Primary Aluminum Corporation (“Ormet”) hereby submits this Interlocutory Appeal to the Public Utilities Commission of Ohio. Ormet seeks an interlocutory appeal of the Attorney Examiner’s July 11, 2013 Entry, which denied Ormet’s request for emergency relief under Section 4909.16, Revised Code, on the sole grounds that “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 where utility service is otherwise jeopardized.” (Entry at Paragraph 10) (emphasis added). This is a novel and new interpretation of the Commission’s emergency powers and departs from past precedent. By focusing solely on the Commission’s authority to protect utilities, the Entry completely reads out of Section 4909.16 the Commission’s unquestioned authority (and duty) to take emergency action “to prevent injury to the business or interests of the public.” (emphasis added).

In interpreting the same language of a predecessor statute, the Ohio Supreme Court made clear that the Commission’s duty extends to protecting the public:

the manifest purpose of the General Assembly [was] to empower the commission to take immediate action to protect the public or a utility as concerns rates for utility products or services when the exigencies of a situation demand it.

Cincinnati v. Pub. Util. Comm., 149 Ohio St 570, 575, 80 N.E.2d 150, 153 (1948) (emphasis added).

The July 11, 2013 Entry denied Ormet's request for emergency relief, and instead established a procedural schedule governing all of the requested modifications that culminates in an August 27, 2013 evidentiary hearing. The Entry thus forecloses any possibility of putting a solution into place until sometime in September -- well past the July 31 deadline for Ormet obtaining the cash infusions necessary to continue its operations. The Entry therefore has the very real effect of, at a minimum, significantly reducing Ormet's operations to two operating lines within the next 30 days, or potentially forcing a complete shutdown of Ormet's operations before the results of the hearing are final.

Ormet therefore requests the legal director, deputy legal director, attorney examiner, or presiding hearing officer to certify this appeal to the full Commission. Ormet also requests the Commission to set the an oral argument during the week of July 22, 2013 to allow the Commission to fully consider and resolve whether an emergency exists and whether Ormet's request for emergency relief should be granted.

To be certified, the appeal either must present a new or novel question of interpretation, law or policy, or must concern a ruling that represents a departure from past precedent. In addition, an immediate determination must be necessary to prevent the likelihood of undue prejudice or expense to one or more of the parties. Ormet satisfies these requirements and the appeal should be certified to the Commission.

The July 11, 2013 Entry by the Attorney Examiner goes beyond the authority of an attorney examiner to establish a record upon which the Commission can make a ruling. Paragraph 10 of the July 11, 2013 Entry is not a procedural determination, but rather a

substantive ruling. It denies a petition for Emergency Relief made under a statute which empowers the Commission, not the attorney examiner, to act. Additionally, for the reasons set forth above, Paragraph 10 of the July 11, 2013 Entry presents a novel interpretation of the Commission's emergency powers which contradicts the clear language of the statute and is at odds with past practice.

Finally, Ormet satisfies the last requirement of Rule 4901-1-15 (B) (an immediate determination is necessary to prevent undue prejudice or expense). As detailed in both Ormet's June 14, 2013 Motion for Amendment and its July 12, 2013 Reply, failure to grant the emergency relief will result in substantial harm to both Ormet and Ohioans in general -- in the form of several thousand lost Ohio jobs and hundreds of millions of dollars of lost wages, worker benefits, tax payments and contributions to AEP's rate base.

The bases for these arguments are more fully set forth in the following memorandum in support.

WHEREFORE, Ormet respectfully requests that: (a) its interlocutory appeal be certified to the Commission, (b) the Commission set a hearing on the appeal during the week of July 22, 2013, and (c) the Commission reverse the July 11, 2013 Entry denying emergency relief to Ormet.

Respectfully submitted,



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**Memorandum In Support Of Interlocutory Appeal
And Request For Certification**

I. Factual Background.

On July 15, 2009, the Commission approved in this docket a unique arrangement between Ormet and AEP Ohio. The arrangement provided Ormet a discount off the GS-4 rates for electricity purchases. However, from the time the discount was approved in 2009 until 2013, the price per MWh of GS-4 tariff power has increased by approximately 50%. These material electricity cost increases, coupled with historically low aluminum prices and high pension and VEBA Trust funding, combined to force Ormet to file for bankruptcy protection in February of this year.

The bankruptcy court recently approved the one and only offer to purchase Ormet's assets which would bring Ormet out of bankruptcy as a going concern and thereby preserve thousands of Ohio jobs, tax payments and contributions to AEP's rate base. The bankruptcy-approved offer between Ormet and Smelter Acquisition LLC (the "Purchaser"), an affiliate of Wayzata Investment Partners LLC (collectively referred as the "Wayzata Entities"), contains one remaining condition: entry of an emergency order approving certain amendments to the unique

arrangement that will result in a fair market electricity price for Ormet. Thus, Ormet moved this Commission on June 14, 2013 to approve certain modifications to its 2009 unique arrangement.

Ormet is facing an imminent liquidity crisis and will not be able to access additional capital to continue operations unless the emergency relief is granted before July 31, 2013. Ormet needs a cash infusion of more than \$1 million by the end of July in order to continue operations and an infusion of more than \$13 million by the end of August. The Wayzata Entities are prepared to provide additional capital to Ormet in connection with closing the sale between the Purchaser and Ormet only if the emergency relief is granted. Having provided \$30 million to Ormet since February of this year to fund operating losses and bankruptcy administrative expenses, the Wayzata Entities will not provide additional capital to Ormet without reasonable assurance that Ormet's energy costs will be rationalized. Thus, the proposed amendments to the unique arrangement were divided into two parts in order to ensure the most time-sensitive elements of the plan were approved before the critical July 31 deadline: a request for emergency relief to be addressed by July 31, 2013, and a request for non-emergency relief, which is equally important, but not as time sensitive.

The July 11, 2013 Entry ("Entry"), however, denied Ormet's request for emergency relief, and instead set a procedural schedule governing all of the requested modifications that culminates in an August 27, 2013 evidentiary hearing. The Entry forecloses any possibility of putting a solution into place until sometime in September -- well past the deadline for Ormet obtaining the cash infusions necessary to continue its operations. The Entry therefore has the very real effect of, at a minimum, significantly reducing Ormet's operations to two operating lines within the next 30 days, or potentially forcing a complete shutdown of Ormet's operations before the results of the hearing are final.

The extinction of Ormet would bring with it massive and very real damages to the citizens of Ohio and the Ohio economy, including:

1. The permanent loss of more than 800 direct jobs and an additional 2000 indirect jobs in an economically disadvantaged region of the State;
2. The permanent loss of more than \$81 million in annual wages and benefits provided to Ohioans;
3. The permanent loss of \$1.5 million in annual Ohio local and state tax contributions;
4. The permanent loss of more than \$230 million in annual contributions to the local Hannibal, Ohio economy¹; and
5. The permanent loss of more than \$100 million in Ormet-made contributions to AEP's rate base -- contributions that will have to be absorbed by AEP itself or made by other ratepayers.

These massive losses can be avoided by granting Ormet the emergency relief described in its June 14, 2013 Motion to Amend and for Emergency Relief. Ormet recognizes that its request for emergency relief would impose additional costs upon AEP's other ratepayers or upon AEP itself -- but those costs would be dwarfed by the losses that would flow from Ormet's extinction.

II. The Commission Has The Power To Provide Emergency Relief That Protects The Public.

The July 11, 2013 Entry denied Ormet's request for emergency relief on the grounds that "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 where utility service is otherwise jeopardized." (Entry at Paragraph 10) (emphasis added). This is a novel and new interpretation of the Commission's emergency powers and departs from past precedent. By focusing solely on the Commission's

¹ For support for these numbers, *see* Ormet's June 14, 2013 Motion to Amend and for Emergency Relief.

authority to protect utilities, the Entry completely reads out of Section 4909.16, Revised Code, the Commission's unquestioned authority (and duty) to take emergency action "to prevent injury to the business or interests of the public." (emphasis added).

The phrase "of the public or of any public utility" is key. Had the legislature intended to limit the Commission's emergency powers only to situations where a utility's business was in danger, it would not have included the phrase "of the public" in the statute. Or it would have written "of the public **AND** of any public utility."

In interpreting the exact same language of a predecessor statute, the Ohio Supreme Court made clear that the Commission's duty extends to protecting the public:

the manifest purpose of the General Assembly [was] to empower the commission to take immediate action to protect the public or a utility as concerns rates for utility products or services when the exigencies of a situation demand it.

Cincinnati v. Pub. Util. Comm., 149 Ohio St 570, 575, 80 N.E.2d 150, 153 (1948) (emphasis added).²

The July 11, 2013 Entry further asserts that the Commission has historically exercised its emergency powers only in situations where the financial integrity of a utility is threatened, or when utility service is otherwise jeopardized. (Entry at Paragraph 10.) That assertion is also incorrect. In 1983, in the proceeding that initiated the Percentage of Income Payment ("PIP") Plan, the Commission found that the disconnection of services for non-payment by those financially unable to pay constituted an emergency under R.C. 4909.16, and it created the PIP Plan pursuant to its emergency powers under R.C. 4909.16. *Montgomery County Board of Commissioners v. Pub. Util. Comm'n of Ohio*, 28 Ohio St. 3d 171, 174, 503 N.E.2d 167, 169

² The Commission has broad discretion to determine whether an emergency exists. The Ohio Supreme Court has held that ". . . under the statute, the determination of an emergency rests within the sound discretion of the commission. . . ." *City of Cambridge v. Pub. Util. Comm'n of Ohio*, 159 Ohio St. 88, 91, 111 N.E.2d 1, 3 (1953).

(1968). The Commission's exercise of its emergency authority was appealed to the Ohio Supreme Court in a number of cases and all such appeals were summarily dismissed upon motion of the Commission which asserted that the quasi-legislative nature of its decisions was not properly subject to judicial review. (*Id.*) The Ohio Supreme Court went on to write:

In addition, it is the opinion of this court that it is clearly within the PUCO's emergency powers under R.S. 4909.16 to fashion such relief as that provided by the PIP plan and we find the plan of the Commission to be manifestly fair and reasonable as a solution to the crisis. (*Id.*)

Moreover, in Duff v. Public Utilities Comm. (1978) 56 Ohio St. 2d 367; 384 N.E. 2d 264; 1978 Ohio LEXIS 704, the Ohio Supreme Court approved the Commission's exercise of emergency powers when it was discovered that a Staff Report had not been issued or sent to mayors in a rate increase case. The Court, after reciting Section 4909.16, Revised Code, stated: "considering the discretion given to the Commission to exercise its emergency powers when it 'deems necessary,' it is not improper for the Commission to consider emergency measures upon its own motion." 56 Ohio St. 2d at 377.

Thus, neither Commission precedent nor Ohio Supreme Court precedent requires the Commission to stay its hand in the absence of utility harm.³ When the public's interests are threatened, the Commission has used its emergency powers.

The public obviously has a very real stake in this matter as well. In addition to hundreds of millions of dollars that will be lost if Ormet goes out of business, the livelihood of thousands of Ohioans is literally at stake here. Ormet submits that this is exactly the type of situation in which the Commission should exercise its discretion to order emergency relief to protect the public's interest. If something is not done here, massive losses will be absorbed by all Ohioans.

³ See *Consumers' Counsel v. Public Utilities Comm.* (1978), 55 Ohio St. 2d 30; 377 N.E. 2d 796; 1978 Ohio LEXIS 610, where the Court, in dicta, suggested a set of circumstances where customers could justify emergency rate relief.

Moreover, Ormet has pursued significant alternative means to reduce its costs and to allow it to operate efficiently in the future. Other parties, including the United Steelworkers Union, have made meaningful concessions to allow Ormet to operate efficiently as well. Ormet has developed a plan to allow it to operate efficiently in the future. Finally, through the bankruptcy process, Ormet has located a buyer who is willing to infuse additional capital into the company, provided the emergency relief is approved.⁴ These are exactly the kinds of steps that the Commission has found necessary to support emergency relief in previous applications.⁵

III. An Attorney Examiner Lacks The Authority To Deny Ormet's Petition For Emergency Relief.

The General Assembly created the attorney examiner position to assist the Commission by conducting hearings and establishing a record upon which the Commission can make substantive decisions.⁶

The public utilities commission shall appoint one or more examiners for the purpose of making any investigation or holding any inquiry or hearing which the commission is required or permitted to make or hold.⁷

The General Assembly did not delegate any decision making authority to the attorney examiner. Thus, unlike administrative law judges at the Federal Energy Regulatory Commission, attorney examiners do not render decisions on their own; instead they investigate, conduct hearings and make recommendations to the Commission. Decisions must be made by the Commission.

The findings and recommendations of such examiner are advisory only and do not preclude the commission from taking further

⁴ For a description of the measures undertaken by Ormet and others to improve Ormet's operations, see Ormet's June 14, 2013 Motion to Amend and for Emergency Relief and supporting affidavit.

⁵ See *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, Opinion and Order, at 3-4 (September 2, 2009).

⁶ Section 4901.18, Revised Code

⁷ Id.

evidence. Any such findings made or order recommended by any such examiner, which are approved and confirmed, or modified, by the commission and filed in its office, are the findings and order of the commission.⁸

Paragraph 10 of the July 11, 2013 Entry is not advisory; it is a substantive decision as to legal and factual matters issued in the name of the attorney examiner.

The attorney examiner finds, therefore, that Ormet's request for emergency relief pursuant to Section 4909.16, Revised Code should be denied.⁹

Simply put, the July 11, 2013 Entry is *ultra vires*. Only the Commission can make such a substantive ruling. Nor is the above ruling just a case of an entry that is inartfully worded. The Entry clearly intends to rule on whether an emergency exists and whether the emergency relief should be granted. That can be seen by the fact that it sets the hearing to take place a month past the time of the emergency.

**IV. The Commission Must Decide Whether An Emergency Exists
And If The Requested Relief Should Be Granted.**

On June 14, 2013, Ormet filed a petition with the Commission explaining that, to prevent injury to the business or interest of the public, the terms and conditions of the Commission's 2009 Opinion and Order, which established the rates, terms and conditions under which Ormet purchases power, must be amended. Ormet sought emergency relief covering only four items. The remainder of Ormet's June 14, 2013 motion requested additional relief on a non-emergency basis. The authority for the Commission to grant emergency rate relief is found in Section 4909.16, Revised Code which states in part:

When the public utilities 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

⁸ Id.

⁹ July 11, 2013 Attorney Examiner Entry Case No. 09-119-EL-AEC

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. Rates so made by the commission shall apply to one or more of the public utilities in this state, or to any portion thereof, as is directed by the commission, and shall take effect at such time and remain in force for such length of time as the commission prescribes¹⁰. (emphasis added)

Senate Bill 221 amended the Special Contract authority of the Commission to allow it to be actively engaged in setting rates and providing discounts to attract and preserve economic development. Thus, the Commission not only has the authority to grant rates which retain jobs and promote commerce, it also has the responsibility to consider such requests and make such decisions wisely.

The ability of Ormet to emerge from bankruptcy is a matter that affects the livelihood of thousands of Ohioans, as well as the pensions of past workers and local tax collections. Thus, it is important that such a decision be fully considered. Failure to grant interlocutory relief and establish a process to make a timely decision, will result in the attorney examiner making a major decision (which affects thousands of people) based simply on when it schedules the hearing to take place.

As noted above, the fact that an attorney examiner has been appointed to hear a case or has made a recommendation does not preclude the Commission from holding additional fact finding. While Ormet believes that its requested emergency relief can and should be granted on the strength of the pleadings submitted thus far, given the comments in opposition that have been filed, Ormet suggests the Commission hold an oral argument during the week of July 22, 2013, so the Commission can weigh for itself after listening to all parties: 1) whether an emergency exists; 2) the extent of the Commission's authority to grant emergency relief for the public as

¹⁰ Section 4909.16, Revised Code

well as for utilities; and 3) whether the emergency merits granting the emergency relief requested by Ormet.

V. Conclusion.

In short, the crisis at issue here can be averted. Ormet recognizes that it is requesting serious relief from the Commission that requires thoughtful use of the Commission's authority. But the July 11, 2013 Entry forecloses any meaningful consideration of the relief requested because it forces the extinction of Ormet before any of the issues can be analyzed.

In order to avoid this result -- and the massive harms to all Ohioans that will be occasioned by it -- the Commission need only expedite its consideration of the issues raised by the motion for emergency relief by approximately a month (versus the schedule set by the July 11, 2013 Entry). That is an appropriate use of the Commission's broad discretion. Choosing to do otherwise represents a decision to allow Ohio's economy to be damaged and to allow thousands of Ohioans to lose their livelihoods without any meaningful consideration of the alternative options available to the parties.

Respectfully submitted,



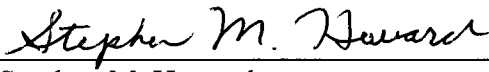
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CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing document has been served upon the persons below via electronic mail this 15th day of July, 2013.



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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 1 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

This foregoing document was electronically filed with the Public Utilities

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

Summary: Request Interlocutory Appeal and Request for Oral Argument before the Commission electronically filed by M HOWARD PETRICOFF on behalf of Ormet Primary Aluminum Corporation