

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) 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.<sup>1</sup>
- (2) On October 12, 2012, Ormet filed a motion for expedited approval of payment deferral, pursuant to Section 4905.31, Revised Code, and Rules 4901-1-12(C) and 4901:1-38-05(B), Ohio Administrative Code (O.A.C.). Specifically, Ormet sought approval of a modification to its unique arrangement with AEP Ohio, such that Ormet would be authorized to defer payment of its billed amounts for October and November 2012, which would otherwise be due in November and December 2012, respectively.
- (3) By entry issued on October 17, 2012, the Commission granted Ormet's request for a deferred payment arrangement to the extent set forth in the entry, although the Commission also noted its concern regarding the financial risk being incurred by AEP Ohio's ratepayers and directed that any further relief requested by Ormet should be accompanied by a detailed

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<sup>1</sup> 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.

business plan confirming Ormet's long-term ability to exist without ratepayer support.

- (4) 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, O.A.C. In the motion, Ormet noted its intention to file, within 30 days, a business plan demonstrating sustainable power pricing for the post-2015 period.
- (5) On July 15, 2013, Ormet filed a business plan and power plant report, along with a motion for protective order pursuant to Rule 4901-1-24(D), O.A.C.
- (6) By entry issued on August 6, 2013, the attorney examiner directed Ormet to file its business plan and power plant report as public documents, with only the trade secret information redacted, by August 9, 2013, for review by the Commission or attorney examiner.
- (7) On August 6, 2013, Ormet filed a motion for protective order with respect to an exhibit contained in the testimony of Mark D. Thompson, which was filed on that same date and later designated as Ormet Exhibit 3. In support of its motion, Ormet argues that Ormet Exhibit 3, Exhibit MDT-5 contains confidential trade secret information related to Ormet's business plan and power plant report. No memoranda contra were filed.
- (8) On August 9, 2013, Ormet filed a public version of its business plan and power plant report.
- (9) On August 27, 2013, an evidentiary hearing commenced on Ormet's motion to amend its unique arrangement with AEP Ohio. During the hearing, the attorney examiner directed Ormet to make further redactions to its business plan and power plant report and to file the revised document by August 30, 2013, along with a redacted version of Ormet Exhibit 3, Exhibit MDT-5 (Tr. I at 10-12).

- (10) On August 30, 2013, Ormet filed a newly redacted version of its business plan and power plant report, which released considerable information into the public record, while maintaining the confidential status of certain figures contained within several financial forecasts, as well as the detailed information explaining Ormet's strategy regarding the proposed power plant. Ormet, however, did not file a redacted version of Ormet Exhibit 3, Exhibit MDT-5.
- (11) By entry issued on September 25, 2013, the attorney examiner directed Ormet to file a redacted version of Ormet Exhibit 3, Exhibit MDT-5, by September 30, 2013. Noting that Ormet Exhibit 3, Exhibit MDT-5 consists of excerpts of Ormet's business plan and power plant report, the attorney examiner specified that Ormet Exhibit 3, Exhibit MDT-5 should be redacted consistent with the redacted version of Ormet's business plan and power plant report filed by Ormet on August 30, 2013.
- (12) On September 30, 2013, Ormet filed a redacted version of Ormet Exhibit 3, Exhibit MDT-5, consistent with the redacted version of Ormet's business plan and power plant report filed by Ormet on August 30, 2013.
- (13) Section 4905.07, Revised Code, provides that all facts and information in the possession of the Commission shall be public, except as provided in Section 149.43, Revised Code, and as consistent with the purposes of Title 49 of the Revised Code. Section 149.43, Revised Code, specifies that the term "public records" excludes information that, under state or federal law, may not be released. The Ohio Supreme Court has clarified that the "state or federal law" exemption is intended to cover trade secrets. *State ex rel. Besser v. Ohio State*, 89 Ohio St. 3d 396, 399, 732 N.E.2d 373 (2000).
- (14) Similarly, Rule 4901-1-24, O.A.C., allows an attorney examiner to issue an order to protect the confidentiality of information contained in a filed document, "to the extent that state or federal law prohibits release of the information, including where the information is deemed . . . to constitute a trade secret under Ohio law, and where non-disclosure of the information is not inconsistent with the purposes of Title 49 of the Revised Code."

- (15) Ohio law defines a trade secret as “information . . . 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.” Section 1333.61(D), Revised Code.
- (16) Rule 4901-1-24(D)(1), O.A.C., provides that all documents submitted pursuant to Rule 4901-1-24(D), O.A.C., should be filed with only such information redacted as is essential to prevent disclosure of the allegedly confidential information.
- (17) The attorney examiner has reviewed the confidential portion of Ormet Exhibit 3, Exhibit MDT-5, as filed on August 6, 2013, and redacted on September 30, 2013. Applying the requirements that the information have independent economic value and be the subject of reasonable efforts to maintain its secrecy pursuant to Section 1333.61(D), Revised Code, as well as the six-factor test set forth by the Ohio Supreme Court,<sup>2</sup> the attorney examiner finds that the information constitutes trade secret information. Release of this information is, therefore, prohibited under state law. The attorney examiner also finds that nondisclosure of this information is not inconsistent with the purposes of Title 49 of the Revised Code. Therefore, the attorney examiner finds that Ormet’s motion for protective order seeking to protect the confidential portion of Ormet Exhibit 3, Exhibit MDT-5 is reasonable and should be granted.
- (18) Rule 4901-1-24(F), O.A.C., provides that, unless otherwise ordered, protective orders issued pursuant to Rule 4901-1-24(D), O.A.C., automatically expire after 18 months. Therefore, confidential treatment shall be afforded for a period ending 18 months from the date of this entry or until April 3, 2015. Until that date, the docketing division should maintain, under seal, the information filed confidentially.

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<sup>2</sup> See *State ex rel. the Plain Dealer v. Ohio Dept. of Ins.*, 80 Ohio St.3d 513, 524-525, 687 N.E.2d 661 (1997).

- (19) Rule 4901-1-24(F), O.A.C., requires a party wishing to extend a protective order to file an appropriate motion at least 45 days in advance of the expiration date. If Ormet wishes to extend this confidential treatment, it should file an appropriate motion at least 45 days in advance of the expiration date. If no such motion to extend confidential treatment is filed, the Commission may release this information without prior notice to Ormet.

It is, therefore,

ORDERED, That the motion for protective order filed by Ormet on August 6, 2013, be granted, as set forth above. It is, further,

ORDERED, That the Commission's docketing division maintain, under seal, the confidential portion of Ormet Exhibit 3, Exhibit MDT-5, filed on August 6, 2013, and redacted on September 30, 2013, for a period of 18 months, ending on April 3, 2015. 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

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By: Sarah J. Parrot  
Attorney Examiner

JRJ/sc

**This foregoing document was electronically filed with the Public Utilities**

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

Summary: Attorney Examiner Entry grants Ormet's motion for protective order and orders the Commission's docketing division to maintain, under seal, the confidential portion of Ormet Exhibit 3, Exhibit MDT-5 for a period of 18 months. - electronically filed by Sandra Coffey on behalf of Sarah Parrot, Attorney Examiner, Public Utilities Commission of Ohio