

**FILE**

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**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of )  
Columbus Southern Power Company and ) Case No. 09-1095-EL-UNC  
Ohio Power Company to Adjust Their )  
Economic Development Cost Recovery )  
Rider Rates. )

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**COMMENTS  
BY  
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL  
AND THE OHIO ENERGY GROUP**

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The Office of the Ohio Consumers' Counsel ("OCC"), on behalf of the 1.2 million residential utility consumers of Ohio Power Company ("OPC") and Columbus Southern Power ("CSP") (Collectively "AEP" or "Companies"), and the Ohio Energy Group ("OEG"), on behalf of the AK Steel Corporation, Aleris International, Inc., ArcelorMittal, BP-Husky Refining, LLC, Brush Wellman, E.I. dupont de Nemours & Company, Ford Motor Company, GE Aviation, Griffin Wheel, Linde, Inc., Proctor & Gamble Distribution Company, PPG Industries, Inc., Republic Engineered Products, Inc. Severstal Wheeling and Worthington Industries, file comments in the above-captioned case where AEP is seeking approval to collect delta revenues from customers through its Economic Development Riders ("EDRs"), effective with the first billing cycle of January 2010.<sup>1</sup> The EDR Application identifies the collection from customers of "Ormet-Related

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<sup>1</sup> See AEP's Economic Development Cost Recovery Rider Application at 8. ("EDR Application")

Cost Under-Recoveries”<sup>2</sup> and “Eramet-Related Cost Under-Recoveries”<sup>3</sup> as the basis for the adjustment.

OCC and OEG request the Commission find that the AEP EDR Application as filed may be unjust and unreasonable because:

1. AEP failed to file the projected impact of the proposed rider on all customers by customer class, as required by Ohio Adm. Code 4901:1-38-08(A)(4);
2. The Commission has determined that AEP is the exclusive provider of electricity to Ormet and Eramet and therefore any POLR charges paid to AEP should be credited to the economic development rider.
3. In paragraph 13 of the EDR Application AEP unreasonably requested to accrue carrying costs on any under-recovery of delta revenues caused by levelized rates, but failed to request a symmetrical mechanism for protecting customers with an accrual of carrying costs on any similar over-recovery.

## **I. BACKGROUND**

### **A. The Ormet Reasonable Arrangement**

The “Ormet-Related Cost Under-Recoveries” pertain to the February 17, 2009, Ormet Primary Aluminum Corporation (“Ormet”) application filed by Ormet as a “Unique Arrangement” pursuant to R.C. 4905.31 and Ohio Adm. Code 4901:1-38-05.<sup>4</sup> In its application Ormet requested approval of an all-in \$38/MWh rate for power for all

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<sup>2</sup> EDR Application at 2-3.

<sup>3</sup> EDR Application at 4.

<sup>4</sup> EDR Application at 1-4. See also *In the Matter of the Application of Ormet Primary Aluminum Corporation for Approval of a Unique Arrangement with Ohio Power Company and Columbus Southern Power Company*, Case No. 09-119-EL-AEC, Application at 1 (February 17, 2009). (“Ormet”)

of 2009 – including a request to make the rates retroactive back to January 1, 2009.<sup>5</sup>

After 2009, Ormet requested that the Commission approve a rate that indexed the electricity price that Ormet would pay to the price of aluminum, as reported on the London Metal Exchange. As part of the proposal for 2010 and beyond, Ormet requested a “target price” that would be developed by it “at which Ormet could afford to pay the AEP Ohio Tariff Rate and still maintain sufficient cash flow to sustain its operations at the [Ohio] Facilities and pay its required legacy pension costs.”<sup>6</sup>

On July 15, 2009, the Commission issued an Opinion and Order approving a ten-year Unique Arrangement for Ormet, that would be funded in part by all other customers, but modified certain provisions. For 2009, contingent upon Ormet employing 900 people, the Commission approved the discounted rates proposed by Ormet --\$38 per MWh at full production, \$35 per MWh at 4.6 potlines and \$34 per MWh at 4 potlines.<sup>7</sup> With respect to the delta revenues<sup>8</sup>, the Commission authorized AEP to defer the delta revenues created by this unique arrangement and file “to recover the appropriate amounts of the deferrals authorized by the Commission in Case No. 08-1338-EL-AAM [the temporary Ormet arrangement case] and the delta revenues for calendar year 2009.”<sup>9</sup> AEP has filed two applications in response to the Commission directive—one application

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<sup>5</sup> See Ormet Application at 5. (On April 10, 2009, Ormet amended its Application and requested an even lower power rate of \$34/MWh for any period in 2009 where the Company was forced to shut down two potlines. Amended Application at cover letter (April 10, 2009)).

<sup>6</sup> *Ormet*, Direct Testimony of Ormet witness Henry W. Fayne at 3 (April 23, 2009).

<sup>7</sup> See *Ormet* Entry on Rehearing at 5 (September 15, 2009).

<sup>8</sup> Delta revenues are defined as “the deviation resulting from the difference in rate levels between the otherwise applicable rate schedule and the result of any reasonable arrangement approved by the Commission” Ohio Adm. Code 4901:1-38-01(C).

<sup>9</sup> See *Ormet* Opinion and Order at 4-5 (July 15, 2009).

focusing on the delta revenues created from January 1, 2009 through September 18, 2009, and another application seeking delta revenues through the end of 2009, and 2010, for the purpose of collecting from all other customers the discount that AEP is giving to Ormet.<sup>10</sup>

For 2010 (through 2018), the Commission adopted the indexed structure proposed by Ormet, tying the price of electricity to the price of aluminum on the London Metal Exchange ("LME"), but made a number of modifications to the proposal.<sup>11</sup> The Commission modified Ormet's proposal by ordering a true-up of projected LME prices each year with actual LME prices.<sup>12</sup> In addition, the Commission ruled that Ormet will receive no more than a \$60 million subsidy per year for 2010 and 2011 that will be funded by other customers.<sup>13</sup> The Commission also determined that, starting in 2010, customers will not pay more in delta revenue for Ormet's discount than an annual "ceiling" of \$54 million.<sup>14</sup> The potential differential created between the \$54 million ceiling customers could pay and the \$60 million maximum discount Ormet could receive in a year (\$6 million per year) is to be deferred by AEP with carrying costs at the long

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<sup>10</sup> OCC and OEG continue to oppose the collection of 100% of the delta revenues created by reasonable arrangement from customers. Utilities, such as AEP, should not assume an entitlement to such collections from customers, as the Commission has through its recent past decisions made clear that each reasonable arrangement must be decided upon on its own merits and delta revenue collections from customers will be set depending on the benefits, among other things, received by the parties to the arrangement, the customers, and the state of Ohio. Additionally, the PUCO has noted that "we do not believe that 100% recovery of delta revenues will always be appropriate." *In the Matter of the Application of The Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code in the Form of an Electric Security Plan*, Case No. 08-935-EL-SSO, Opinion and Order at 55 (Dec. 19, 2009) Rather the Commission has endorsed a case by case determination.

<sup>11</sup> See *Id.* at 6.

<sup>12</sup> See *Id.*

<sup>13</sup> See *Id.* at 9.

<sup>14</sup> See *Id.* at 10.

term cost of debt for the term of the arrangement.<sup>15</sup> Further, the Commission held that if deferrals are necessary, at the end of the unique arrangement, AEP will be permitted to recover any remaining deferrals, including carrying charges, through its economic development rider. What this means is that the \$54 million cap in customer funding for 2010 and 2011 really could be a \$60 million plus cap. The \$60 million rate discount floor will be in effect for 2010 and 2011, the relevant time period for AEP's EDR Application in this case.<sup>16</sup>

The Commission also determined in its July 15 Opinion and Order and reaffirmed in the September 15 Entry on Rehearing that since AEP would be the exclusive supplier to Ormet there would be no risk to AEP that Ormet will shop and then return to AEP's provider of last resort ("POLR") service.<sup>17</sup> Accordingly, the Commission determined that customers should not compensate AEP for a service it would not be providing to Ormet. Thus, the Commission found that any POLR charges paid by Ormet should be credited to the economic development rider that AEP is seeking to adjust in this case.<sup>18</sup>

Relying upon the Commission's Order (and the entry on rehearing) in the Ormet case, AEP asserts in the EDR Application that it has the right to collect from customers the delta revenues – or the difference between the reasonable arrangement rate paid by Ormet and rate Ormet would otherwise pay under AEP's ESP tariffs – that were “created

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<sup>15</sup> See *Id.* at 10.

<sup>16</sup> See *Id.* at 9.

<sup>17</sup> See *Ormet* Opinion and Order at 13-14 (July 15, 2009); See *Ormet* Entry on Rehearing at 9 (September 15, 2009).

<sup>18</sup> See *Ormet* Opinion and Order at 14 (July 15, 2009). See *Ormet* Entry on Rehearing at 9 (September 15, 2009).

by the [Ormet] unique arrangement for the remainder of calendar year 2009.”<sup>19</sup> AEP presents two schedules in its application. One based on an EDR with no POLR offset (Schedule 1), and one based on an EDR with a POLR offset (Schedule 2). AEP supports adoption of Schedule 1 with no POLR offset. In this application AEP is seeking collection from customers of the estimated delta revenues (and carrying costs) for the period of September 18, 2009 through December 31, 2009.<sup>20</sup> In addition, AEP is seeking the estimated maximum amount of delta revenue that could be collected as a result of the Ormet reasonable arrangement for 2010 (plus carrying costs).<sup>21</sup>

#### **B. The Eramet Reasonable Arrangement**

The “Eramet-Related Cost Under-Recoveries” pertain to the June 19, 2009, application for a “Reasonable Arrangement” with CSP filed by Eramet Marietta, Inc. (“Eramet”) pursuant to R.C. 4905.31.<sup>22</sup> In its application Eramet requested a three-phase, ten-year arrangement. Under Phase One, the only part of the application that is applicable to AEP’s EDR Application, is from 2009 through 2011 and requested an “all-in” rate of \$.04224 per KWh for power (exclusive of a self-assessed KWh tax).<sup>23</sup> In return, Eramet committed to investing \$20 million into its current Ohio manufacturing

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<sup>19</sup> EDR Application at 2.

<sup>20</sup> See EDR Application at 5 (The estimated delta revenues were calculated based on Ormet’s estimated level of production and associated consumption for 2009)

<sup>21</sup> See EDR Application at 5-6 and Schedule 3.

<sup>22</sup> *In the Matter of the Application for Establishment of a Reasonable Arrangement Between Eramet Marietta Inc. and Columbus Southern Power Company*, Case No. 09-516-EL-AEC, Application at 1 (June 19, 2009). (“Eramet”)

<sup>23</sup> See Eramet Application at 3 (June 19, 2009)



operations during this three-year timeframe.<sup>24</sup> Phase two and three of Eramet's proposal were three and four years in length, respectively, and also included "all-in" rates with a 3.5% increase each year.<sup>25</sup> Phases two and three of Eramet's proposal are not relevant to the matters before the Commission in this EDP Application.

An evidentiary hearing to address Eramet's application commenced on August 4, 2009, and on the following day Eramet filed a Joint Stipulation and Recommendation ("Stipulation") that solely addressed the concerns of Eramet and the Staff of the PUCO. Because a number of the parties were not a part of the two-party settlement, the hearing continued intermittently over a two-week period. All of the parties then filed post-hearing briefs. Finally, on October 15, the Commission issued an Opinion and Order approving the Stipulation between Eramet and the PUCO Staff that included a ten-year "reasonable arrangement" for Eramet.<sup>26</sup> Under the terms of the PUCO-approved Two-Party Agreement, and as originally requested, Eramet received an "all-in" rate of \$.04224 per KWh (exclusive of a self-assessed KWh tax) for power through December 31, 2011, described as phase one.<sup>27</sup> In return, Eramet must maintain at least 200 employees and invest \$20 million in capital investments into its current Ohio manufacturing operations during this three-year timeframe.<sup>28</sup>

Finally, the Commission relied upon the precedent decided in the *Ormet* case and found that since CSP would be the exclusive supplier to Eramet, there would be no risk to

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<sup>24</sup> See *Id.*

<sup>25</sup> See *Id.*

<sup>26</sup> See *Eramet* Opinion and Order (October 15, 2009).

<sup>27</sup> See *Id.* at 4.

<sup>28</sup> See *id.*

CSP that Eramet will shop and then return to CSP's POLR service.<sup>29</sup> Accordingly, the Commission determined that CSP should not be compensated by customers for a service it would not be providing. Thus, the Commission found that any POLR charges paid by Eramet should be credited to the economic development rider that is before the Commission in this case.<sup>30</sup> The Eramet Order is not final at this point, as there are pending applications for rehearing filed by several parties.

Relying upon the Commission's Order in the AEP Electric Security Plan proceeding, the Companies assert that the Commission authorized the Companies' EDR.<sup>31</sup> In this application AEP is seeking to collect from all of its other customers the actual and estimated delta revenues (and carrying costs) created by the Eramet unique arrangement for the period October 18, 2009 through December 31, 2010.<sup>32</sup>

Finally, AEP requests implementation of the EDR to begin collections from customers in the first billing cycle of January 2010.<sup>33</sup> In case the Commission cannot rule on the EDR Application in time to make the rates effective for the first billing cycle of January 2010, the Companies ask that the Commission approve it anyway and have it "trued-up" at a later date.<sup>34</sup>

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<sup>29</sup> See *id.* at 7-9.

<sup>30</sup> See *id.* at 9.

<sup>31</sup> See EDR Application at 1.

<sup>32</sup> See EDR Application at 6-7 (The estimated delta revenues were calculated based on Eramet's estimated consumption for 2009)

<sup>33</sup> See EDR Application at 8.

<sup>34</sup> EDR Application at 8-9.

## II. ARGUMENT

### **A. AEP Failed to Support Its Applications with the Appropriate Information, Including Documentation Required by Ohio Adm. Code 4901:1-38-08, and Therefore the Commission Should Deny AEP's EDR Application as Unreasonable.**

#### **1. AEP failed to file the projected impact of the proposed rider on all customers by customer class, as required by Ohio Adm. Code 4901:1-38-08(A)(4).**

Ohio Adm. Code 4901:1-38-08(A)(4) requires that the electric utility spread the amount of revenue recovery (meaning what customers will pay to the utility) proportionately to all customers on the same basis that is used under the current revenue distribution between and among classes. To provide adequate transparency and notice to customers regarding these additional charges the Commission mandated that the projected cost impact be included in the EDR Application. It was not. AEP should be ordered to file the information and allow the parties an opportunity to review the information before the Commission rules on the Application or the EDR Application should be denied.

#### **2. The Proposed Amount of Delta Revenues Projected for 2010 by AEP makes unsupported "maximum" assumptions regarding 2010 delta revenue collection and the assumptions should be verified.**

In accordance with Ohio law "[e]very such schedule or reasonable arrangement shall be under the supervision and regulation of the commission and is subject to change, alteration, or modification but the commission."<sup>35</sup> AEP, in its EDR Application, should not be permitted to presume that Ormet will receive the maximum discount permitted in 2010 without establishing in the record the reasons for that position. The impact of this

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<sup>35</sup> R.C. 4905.31

presumption is to accelerate the recovery of delta revenues from customers, by basing the EDR rate on projections of delta revenue. Before this is allowed to happen, AEP needs to place on the record the basis for the assumption so that others may judge its appropriateness.

Ohio Adm. Code 4901:1-38-08 (B)(1) states that AEP has the burden of proof to show that the revenue recovery rider proposal in the application is just and reasonable. Under the rules, if it appears to the Commission that the application may be unjust or unreasonable, the Commission may order a hearing.<sup>36</sup> In this case, a hearing is necessary because AEP failed in the record to support its assumptions for the 2010 delta revenue assumptions for Ormet.

**B. The Commission has determined that AEP is the exclusive provider of electricity to Ormet and Eramet and therefore any POLR charges paid to AEP should be credited to the economic development rider.**

As part of the EDR Application, AEP prepared and filed two schedules to establish the amount of collection from customers it was requesting. Both schedules show the estimated cost under-recoveries the Companies projected for 2010, as well as on the actual and projected delta revenues associated with the 2009 portions of the Ormet and Eramet Unique Arrangements. The difference between the two schedules is that schedule 1 does not reflect a POLR Credit whereas Schedule 2 does.

Based on the Commission's ruling regarding both the Ormet and Eramet Reasonable Arrangements POLR charges must be credited to the EDR and therefore Schedule 2 is the appropriate schedule for the Commission to approve. In both the

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<sup>36</sup> See Ohio Adm. Code 4901:1-38-05(B)(3).

Eramet and the Ormet decisions the Commission found that the Companies would be the exclusive suppliers to Ormet and Eramet for the duration of the AEP ESP and thus, there would be no risk that Eramet will shop and then return to the provider of last resort ("POLR") service. Accordingly, the Commission determined that the Companies should not be compensated for a service it would not be providing. Thus, the Commission found that any POLR charges paid by Ormet and Eramet to AEP should be credited to the economic development rider.<sup>37</sup>

**C. AEP unreasonably requests to accrue carrying costs on any under-recovery of delta revenues caused by levelized rates, but failed to request a symmetrical mechanism for protecting customers with an accrual of carrying costs on any similar over-recovery.**

As part of the EDR Application, AEP seeks accrual of the carrying cost at its respective weighted average cost of long-term debt on the under-recovery caused by the levelized EDR rates.<sup>38</sup> AEP's asserts that under-recovery is a concern mainly because of "the structure of the Ormet contract, which loads Ormet's price discount over the first eight months of each year."<sup>39</sup> OCC and OEG request that Commission adopt a similar mechanism for crediting the EDR in the event there is an over-recovery of carrying costs.

OCC and OEG also are concerned about the volatility inherent in the structure of the discounted rate for Ormet and the possibility that there will be substantial over-recovery of carrying costs at some points. For 2010 through 2018 the Ormet discounted

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<sup>37</sup> See Ormet Order at 13-14 (July 15, 2009); See also Eramet at 7-8 (October 15, 2009).

<sup>38</sup> See EDR Application at 7-8.

<sup>39</sup> Id. at 7.

rate is directly linked the price of electricity to the price of aluminum.<sup>40</sup> The Commission has acknowledged that the aluminum market “is subject to a great deal of volatility.”<sup>41</sup> In light of AEP’s request for accrual of carrying costs on any under-recovery of delta revenues a similar mechanism that would protect customers with an accrual of carrying costs on any similar over-recovery is reasonable.

**III. AEP’S EDR SHOULD BE AUDITED EVERY SIX MONTHS TO VERIFY THAT AEP, ORMET AND ERAMET HAVE MET – AND MAINTAINED COMPLIANCE WITH – THE COMMISSION-ORDERED CONDITIONS.**

In the *Ormet* case the Commission recognized that the ability of ratepayers to fund the recovery of delta revenues is not unlimited.<sup>42</sup> AEP’s EDR application is the first opportunity for the Commission to review the revenue recovery mechanism established for reasonable arrangements requested under the Commission’s reasonable arrangement rule, Ohio Adm. Code 4901:1-38-08. AEP’s Application also gives the Commission its first opportunity to review and audit the “unique” circumstances surrounding both the *Ormet* arrangement and the *Eramet* arrangement.

The Commission should perform an audit of the information provided by AEP and the reasonable-arrangement customers every six months in accordance with Ohio Adm. Code 4901:1-38-08(A)(5) to ensure that the Commission-ordered conditions that were placed on reasonable arrangements were met. At a minimum, to protect all other customers who are paying AEP for the rate discounts to Ormet and Eramet, the

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<sup>40</sup> See *Ormet* Order at 2 (July 15, 2009).

<sup>41</sup> *Id.* at 10.

<sup>42</sup> See *Ormet* Opinion and Order at 10 (July 15, 2009).

Commission should evaluate the following aspects of the *Ormet* reasonable arrangement on a semi-annual basis:<sup>43</sup>

1. The Commission should confirm that Ormet has met its commitment of maintaining the proposed employment levels at all times—the condition upon which the unique 2009 arrangement rate is contingent;<sup>44</sup>
2. The Commission should determine the number of potlines actually operated by Ormet and the time period those potlines were in use to determine the appropriate discounted rate to be applied to Ormet;<sup>45</sup>
3. The Commission should ensure that Ormet is really at break even cash flow level. That is, it made no profit with the discounted rate;
4. The Commission should determine the actual Ormet monthly power usage and demand billed by AEP;
5. The Commission should confirm the actual monthly amount of POLR charges billed to Ormet by AEP;
6. The Commission should determine if any approved carrying costs on under and over collections of delta revenue have been properly applied and
7. The Commission should evaluate any additional costs that AEP is claiming are related to the unique arrangement for which collection from customers is sought.<sup>46</sup>

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<sup>43</sup> Ohio Adm. Code 4901:1-38-08(A)(5) states: “The rider shall be updated and reconciled, by application to the commission, semiannually. All data submitted in support of the rider update is subject to commission review and audit.”

<sup>44</sup> *Ormet* Opinion & Order at 5 (July 15, 2009).

<sup>45</sup> *Ormet* Opinion & Order at 5 (July 15, 2009). “With respect to price, the Commission orders AEP Ohio to bill Ormet, for the balance of 2009, at a rate which, for all of calendar year 2009 averages \$38.00 per MWh for the periods when Ormet was in full operation (i.e. six potlines), \$35.00 per MWh for the periods when Ormet curtailed production to 4.6 potlines, and \$34.00 per MWh for the periods when Ormet curtailed production to 4 potlines.”

<sup>46</sup> Ohio Adm. Code 4901:1-38-08(A)(2) states: “The electric utility may request recovery of direct incremental administrative costs related to the program as part of the rider. Such cost recovery shall be subject to audit, review and approval by the commission.”

The Commission should order Ormet to cooperate with AEP to meet the specific reporting requirements of 4901:1-38-06, as the burden of proof to demonstrate ongoing compliance with the reasonable arrangement lies with Ormet. In that regard, Ormet should be required to file and serve the parties and the Commission with the specific information every six months that confirms and verifies that it has complied with the PUCO's Order approving its arrangement, including the above-stated requirements for the applicable period. Notably, Ormet must be required to provide information verifying that it has met its commitment of maintaining 650 full-time employees.<sup>47</sup>

The Commission should also implement its authority under Ohio Adm. Code 4901:1-38-08(A)(5) and audit the *Eramet* reasonable arrangement every six months to ensure that the Company has maintained compliance with all the Commission-ordered conditions, including:<sup>48</sup>

1. The Commission should confirm whether Eramet has met its employee commitments and the efforts to obtain approval and initiate capital improvements at the facility;
2. The Commission should confirm the actual Eramet monthly power usage billed by AEP;
3. The Commission should confirm the actual monthly amount of power usage that AEP billed to Eramet;
4. The Commission should confirm the actual monthly amount of POLR charges paid by Eramet to AEP;
5. The Commission should determine if any approved carrying costs on under and over collections of delta revenue have been properly applied and

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<sup>47</sup> *Ormet* Opinion & Order at 11 (July 15, 2009).

<sup>48</sup> Ohio Adm. Code 4901:1-38-08(A)(5) states: "The rider shall be updated and reconciled, by application to the commission, semiannually. All data submitted in support of the rider update is subject to commission review and audit."



6. The Commission should evaluate any additional AEP costs that AEP is claiming are related to the Eramet unique arrangement for which collection from customers is sought<sup>49</sup>


A Commission administered audit would assure that commitments have been made and the claimed costs related to delta revenues are reasonable.

#### IV. CONCLUSION

AEP's EDR Application does not include data regarding the projected impact of the proposed rider on all customers, contrary to what is required by the Commission's rules, and unreasonably provides an asymmetry of carrying charges for the Companies but not its customers. Taking all of these factors into consideration, the Commission should outright reject the Applications as filed. Alternatively, the Commission should determine that, based on the inadequacies of the record, the proposal may be unjust and unreasonable and set the matter for hearing.

Respectfully submitted,

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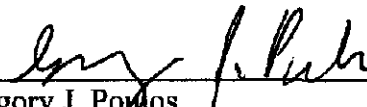
<sup>49</sup> Ohio Adm. Code 4901:1-38-08(A)(2) states: "The electric utility may request recovery of direct incremental administrative costs related to the program as part of the rider. Such cost recovery shall be subject to audit, review and approval by the commission."

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## **CERTIFICATE OF SERVICE**

I hereby certify that a copy of these Comments was served on the persons stated below via first class U.S. Mail, postage prepaid, this 3rd day of December, 2009.

  
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