

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 Commission 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 Under this unique arrangement, the Commission approved rate subsidies for Ormet of up to \$308 million through December 31, 2018, including \$232 million through 2013.
- (3) 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

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.

November and December 2012, respectively. Ormet proposed to pay the deferred amounts over the 12 months of 2014 and the first five months of 2015 in equal monthly installment payments that are equal to 1/17, or 5.88235 percent, of the cumulative amount of the two bills.

- (4) 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. In the entry, the Commission authorized AEP Ohio to recover an additional \$20 million from ratepayers in the event Ormet failed to repay the deferred payments. 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 business plan confirming Ormet's long-term ability to exist without ratepayer support.
- (5) 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. 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 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 (Smelter) 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.

- (6) 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.
- (7) 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.
- (8) On July 3, 2013, comments were filed by United Steelworkers District 1. On July 5, 2013, the Ohio Hospital Association; AEP Retail Energy Partners LLC d/b/a AEP Energy and AEP Energy, Inc.; Industrial Energy Users-Ohio; AEP Ohio; and the Ohio Consumers' Counsel filed comments and/or objections.
- (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) By entry dated July 11, 2013, the attorney examiner found that Ormet's request for emergency relief pursuant to Section 4909.16, Revised Code, should be denied and that a hearing on this matter should be held, consistent with Rule 4901:1-38-05(B)(3), O.A.C. The entry established a procedural schedule including an evidentiary hearing to commence on August 27, 2013.
- (11) On July 15, 2013, Ormet filed an interlocutory appeal of the attorney examiner's July 11, 2013, entry, pursuant to Rule 4901-1-15(B), O.A.C., requesting that the interlocutory appeal be certified to the Commission for consideration.
- (12) By entry issued on July 25, 2013, the attorney examiner certified Ormet's interlocutory appeal to the Commission pursuant to Rule 4901-1-15(B), O.A.C.
- (13) On July 31, 2013, the Commission issued an entry finding that the attorney examiner's July 11, 2013, entry should be affirmed and that a hearing on this matter should be held in accordance with the procedural schedule established by the attorney examiner.
- (14) On July 31, 2013, Ormet filed a motion for expedited approval of payment deferral, pursuant to Section 4905.31, Revised Code, and Rule 4901:1-38-05(B), O.A.C. Specifically, Ormet seeks 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 August and September 2013, as well as any other billed amounts due before the Commission issues a decision on Ormet's June 14, 2013, application. Ormet proposes to pay the deferred amounts within five business days of the closing of the sale to Smelter. Ormet notes that its recommended deferred payment arrangement is short in duration, does not substantively change the terms of the

unique arrangement with AEP Ohio, and does not impose additional costs on ratepayers. Ormet further notes that the requested payment deferral would enable Ormet to continue limited operations, while also providing the time necessary for the Commission to fully consider Ormet's June 14, 2013, application.

- (15) In support of its motion, Ormet states that, in light of the Commission's July 31, 2013, entry denying Ormet's interlocutory appeal, Ormet must immediately begin to shut down half of its existing operations at its facility in Hannibal, Ohio. Further, Ormet asserts that the requested payment deferral is necessary to avoid termination of all remaining operations by early September. Ormet contends that, if the Commission authorizes the payment deferral and issues a decision on the June 14, 2013, application by September 30, 2013, Ormet would be able to continue its operations and avoid the significant economic harm that would otherwise result. Ormet adds that it is located in an economically depressed region of the state and that its contribution as an employer, taxpayer, and purchaser of goods and services is critical to the area's economy. Ormet believes that the deferred payment arrangement is vital to protect thousands of Ohio jobs.
- (16) Additionally, Ormet requests an expedited ruling on its motion pursuant to Rule 4901-1-12(C), O.A.C. To facilitate an expedited ruling, Ormet also requests waivers of Rules 4901:1-38-05(B)(2) and (F), O.A.C. Ormet explains that Rule 4901:1-38-05(B)(2), O.A.C., requires the filing of an affidavit from a company official as to the veracity of the information provided in an application for a unique arrangement. Ormet states that it will file the required affidavit as a late-filed exhibit within seven days of the filing of its motion. With respect to Rule 4901:1-38-05(F), O.A.C., which provides for a 20-day comment period following the filing of an application for a unique arrangement, Ormet explains that the nature of the relief requested and the need for an expedited ruling have prompted Ormet to request a waiver of the rules.
- (17) On August 6, 2013, AEP Ohio filed a memorandum contra Ormet's motion for expedited approval of payment deferral.

AEP Ohio urges the Commission to deny Ormet's request, which AEP Ohio believes is an improper attempt to modify a final bankruptcy court order. AEP Ohio argues that Ormet agreed to pay its post-petition electric bills as they come due, which constitutes the "adequate assurance of payment" required under Section 366 of the Bankruptcy Code, and is evidenced by a final order of the bankruptcy court. According to AEP Ohio, as long as Ormet remains in bankruptcy, the bankruptcy court has exclusive jurisdiction over the payment agreement and the Commission cannot, therefore, alter Ormet's commitment to pay its post-petition utility charges on or before the applicable due date. AEP Ohio asserts that, if Ormet seeks to amend the adequate assurance of payment agreement with AEP Ohio, Ormet must file a motion with the bankruptcy court and not the Commission. AEP Ohio adds that Ormet's attempt to circumvent the procedural schedule established in the attorney examiner's July 11, 2013, entry, as well as Ormet's unwarranted waiver requests, should be rejected as procedurally deficient. Finally, AEP Ohio asserts that there is no justification for the considerable increased financial risk that the payment deferral would impose on AEP Ohio and its customers. AEP Ohio also maintains that, if Ormet's request is granted, the Commission should provide for a carrying charge to recover AEP Ohio's weighted average cost of capital.

- (18) On August 7, 2013, Ormet filed the affidavit required by Rule 4901:1-38-05(B)(2), O.A.C., as a late-filed exhibit to Ormet's motion for expedited approval of payment deferral.
- (19) Upon review of Ormet's motion and AEP Ohio's memorandum contra, the Commission finds that Ormet's request for a deferred payment arrangement should be granted to the extent set forth in this entry. Specifically, the Commission grants Ormet's request to modify the terms of its unique arrangement with AEP Ohio, such that Ormet may defer payment of \$5 million for its bill due in August 2013 and, if its annual rate subsidies have been used, up to \$5.5 million for its bill for September 2013, which is consistent with the monthly discount requested in Ormet's June 14, 2013, application as emergency relief to support

Ormet's current operations. Payment of the deferred amounts should occur within five business days of the closing of the sale to Smelter, as proposed by Ormet.

- (20) The Commission also finds that AEP Ohio should be authorized to modify its accounting procedures, pursuant to Section 4905.13, Revised Code, to defer incurred costs not recovered from Ormet's billings due in August and September 2013, not to exceed \$5 million for August 2013 and \$5.5 million for September 2013. Any amounts that are not timely paid by Ormet under the deferred payment arrangement approved today shall be considered as foregone revenue under Section 4905.31, Revised Code, and shall be recovered by AEP Ohio through its Economic Development Rider. Finally, pursuant to Rule 4901:1-38-02(B), O.A.C., the Commission grants Ormet's request for waivers of Rules 4901:1-38-05(B)(2) and (F), O.A.C.
- (21) As a final matter, the Commission notes that the relief granted today is intended to mitigate Ormet's immediate cash flow problem and enable Ormet to continue its current operations until the Commission's review of Ormet's June 14, 2013, application is complete, following the evidentiary hearing process established in the attorney examiner's July 11, 2013, entry. In granting only the relief necessary to permit Ormet to maintain its current operations, the Commission's decision also recognizes the potential financial risk being incurred by AEP Ohio and its other ratepayers. Further, although the Commission authorizes Ormet to defer a limited portion of its bills for August and September 2013, nothing in this entry relieves Ormet of any obligation to pay the non-deferred portion of its electric bills by the applicable due date. The Commission recognizes that there is an existing payment agreement between Ormet and AEP Ohio that is subject to the jurisdiction of the bankruptcy court. Accordingly, the relief granted to Ormet by the Commission today is likewise subject to modification or revocation by order of the bankruptcy court.

It is, therefore,

ORDERED, That Ormet's motion for expedited approval of payment deferral and request for waivers be granted to the extent set forth herein. It is, further,


ORDERED, That AEP Ohio be authorized to defer incurred costs not recovered from Ormet's billings for August and September 2013, as set forth above. It is, further,

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

THE PUBLIC UTILITIES COMMISSION OF OHIO



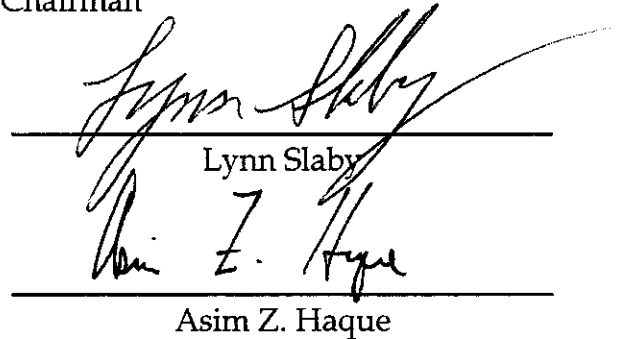
Todd A. Snitchler, Chairman



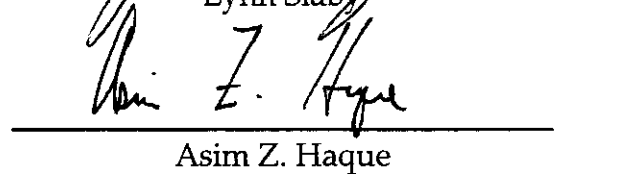
Steven D. Lesser



M. Beth Trombold



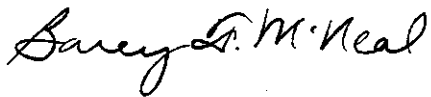
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