BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Ormet	)	
Primary Aluminum Corporation for	)	Case No. 09-119-EL-AEC
Approval of a Unique Arrangement with	)	
Ohio Power Company and Columbus	)	
Southern Power Company.	)	

POST-HEARING BRIEF BY THE OFFICE OF THE OHIO CONSUMERS' COUNSEL

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I. EXECUTIVE SUMMARY

The Public Utilities Commission of Ohio ("PUCO" or "Commission") has again been presented by Ormet Primary Aluminum Corporation ("Ormet") with a decision to make. The PUCO will have to weigh whether to grant or deny another Ormet request for economic development funds in the form of discounted electric service paid for by customers. Ormet's request comes with the history of the "unprecedented subsidies"[1] that just last year the PUCO said Ohioans are paying to Ormet. The customers of Ohio Power Company have paid 100% of the electricity discount for Ormet. Customer payments to Ohio Power to fund the discount total $220 million since 2010.[2] The current subsidy that the PUCO has authorized Ohio Power to collect is expected to exceed $300

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[1] See *In the Matter of the Application of Ormet Primary Aluminum Corporation for Approval of a Unique Arrangement with Ohio Power Company*, Case No. 09-119-EL-AEC, Entry at ¶5 (Oct. 17, 2012).

[2] The delta revenues collected are $60 million in 2010, $60 million in 2011, $54 million in 2012, and $44 million in 2013. See Ormet Motion to Amend at 6 -7 (June 14, 2013). According to AEP Ohio, the $44 million discount is expected to be used at the end of August 2013. See Application, Schedule No. 3.1 in Case No. 13-325-EL-RDR (February 1, 2012). The 2009 delta revenue associated with the Ormet discount was collected separately from the existing Economic Development Cost Recovery Rider. There are also associated carrying charges for any under-recovery.

million through 2018.[3] Ormet's new request will add to what other customers will pay to Ohio Power for the subsidy.

Jobs and economic development are a key to Ohio. At the same time, the PUCO has been increasingly concerned with the magnitude of the costs borne by other customers for this particular unique arrangement.[4] A typical residential consumer in the Ohio Power rate zone currently pays $3.41 per month on his or her electric bill to subsidize the electricity discount arrangements. Almost 68% of these discounts subsidize Ormet.[5] A typical residential customer in the Columbus Southern Power rate zone pays approximately $2.89 per month to fund the electricity discount arrangements.[6] Again, almost 68% of these charges, which flow through Ohio Power's economic development riders ("EDR"), subsidize Ormet.

If Ormet's proposal to amend its existing reasonable arrangement is adopted, and customers bear the entire cost of the discount, the monthly bill for a typical residential customer will increase by another $1.60 per month in 2013, another $3.04 per month in 2014, and another $1.71 per month in 2015.[7]

The Office of the Ohio Consumers' Counsel ("OCC") represents Ohio Power's 1.1 million residential customers, who, along with other customers of Ohio Power, are paying Ohio Power for 100% of the subsidy to Ormet. Residential customers pay the

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[3] *In the Matter of the Application of Ormet Primary Aluminum Corporation for Approval of a Unique Arrangement with Ohio Power Company*, Case No. 09-119-EL-AEC, Opinion and Order at 10 (July 15, 2009).

[4] *In the Matter of the Application of Ormet Primary Aluminum Corporation for Approval of a Unique Arrangement with Ohio Power Company*, Case No. 09-119-EL-AEC, Entry at ¶5 (Oct. 17, 2012).

[5] Based on 1,000 KWh usage, OCC Ex. 7.

[6] Based on 1,000 KWh usage. OCC Ex.7.

[7] See Direct Testimony of David M. Roush at DMR-3.

lion's share of the subsidy under the rates designed by Ohio Power, as the EDR rates are allocated consistent with base distribution rates.[8]

OCC welcomes the opportunity to explore balanced solutions to Ormet's request for a new reasonable arrangement. To find that balance, there must be a limit to the subsidies that other customers are paying. And Ohio Power itself should be paying (without reimbursement from customers) some of the subsidy that is authorized for the benefit of its customer, Ormet.

The PUCO's determination of the "reasonableness" of Ormet's request should be considered in totality with all other subsidies paid by electricity customers for economic development. Unique arrangements must be reasonable not only for the entity receiving the subsidy from other customers but also for those other customers who bear the payment of the subsidies.

II. FACTS

Ormet is a major producer (smelter) of aluminum in the United States.[9] Ormet's smelter is located in Hannibal, Ohio.[10] When the smelter is fully operating (six potlines),[11] Ormet employs approximately one thousand employees who reside in three

[8] The EDR is allocated on the basis of distribution rates. In the CSP rate zone 41.4% of the delta revenues are the responsibility of the residential customer class. In the OP rate zone 35.2% of the delta revenues are the responsibility of the residential customer class. See Direct Testimony of Amr Ibrahim, at 17, footnote 32. Thus, residential ratepayers as a class are the class of customers most affected by increases to the EDR.

[9] Ormet also owns an alumina refinery in Burnside, Louisiana which was restarted on November 1, 2011. Ormet Corporation Rule 15c2-11 at 1, Information and Disclosure Statement for the Six Months Ended June 30, 2012.

[10] See Id.

[11] Ormet reduced production at the Hannibal smelter to four potlines at the end of August 2012. As of October 1, 2012, Ormet has reduced its Hannibal smelter workforce by approximately 90 employees. Id.

states.[12] Currently, Ormet is in bankruptcy and seeks to emerge from bankruptcy as a going concern.[13]

Since August of 2012, Ormet has operated four potlines.[14] While operating four potlines, Ormet employs approximately 850 people.[15] It recently scaled down production from four potlines to two potlines following the PUCO's rejection of Ormet's request for emergency relief.[16] When scaling down its operations, Ormet laid off 203 employees. (Tr. II at 347). Ormet projects a total of 250 employee layoffs under a two potline operation. (Tr. II at 347-348). Roughly sixty percent (60%) of Ormet's smelter employees are Ohio residents and forty percent (40%) are residents of West Virginia or Pennsylvania.[17] With Ohio jobs at issue, this Commission faces a difficult decision. It is a decision that will likely impose significant costs on all parties other than Ormet—customers and the Utility, no matter what the outcome.

According to Ormet, the PUCO only has two options—either approve the amendments to the unique arrangement sought by Ormet or allow Ormet to be liquidated.[18] While Ormet has chosen to offer only two alternatives to the PUCO, the PUCO should recognize that, under R.C. 4905.31(E), it may change, alter, or modify the proposal by Ormet and the terms of an existing arrangement that is under its supervision and regulation. However, it should be noted that any decision on the continuing

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[12] See Affidavit of James Burns Riley (Oct. 19, 2012).

[13] See Ormet Motion to Amend at 1 (June 14, 2013).

[14] Id. at Ex B, ¶4.

[15] See Testimony of Dr. Coomes at 4.

[16] Tr. II at 347-348.

[17] See Ormet Ex. A at 5 (Coomes).

[18] Ormet Reply to the July 5, 2013 Motions, Comments, Objections and Memorandum in Opposition (July 12, 2013).

operation of the Ormet facility is ultimately the responsibility of Ormet. Although the PUCO's decision on the electric discounts is important to the future of Ormet, Ormet is also highly dependent on the market price of aluminum and the state of the economy in Ohio.

A. The Existing Ormet Unique Arrangement.

In evaluating whether the Commission should adopt, modify, or reject Ormet's proposed amendments, the Commission should consider the existing Ormet subsidy and recall the consumer protections built into that subsidy. As the PUCO specifically ruled, all terms of the existing arrangement remain in effect today, unless modified by Order of the PUCO.[19]

The existing Ormet arrangement was approved by the PUCO four years ago. On July 14, 2009, the Commission issued an Order approving a ten-year unique arrangement for Ormet.[20] The PUCO set 2009 rates for Ormet based on different levels of production. 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 Metals Exchange ("LME").

The PUCO, however, modified Ormet's proposal, recognizing that the ability of electric customers to fund economic development is not unlimited.[21] The PUCO established both a ceiling and a floor to the Ormet proposal, finding that generally,

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[19] See Entry on Rehearing at ¶11 (Dec. 12, 2012).

[20] *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, Opinion and Order (July 14, 2009).

[21] Opinion and Order at 10.

unique arrangements must contain both provisions.[22] The PUCO set a floor -- a minimum amount that the party seeking the unique arrangement should be required to pay -- based on the variable costs of production of electricity consumed by Ormet at full capacity.[23] The ceiling—the maximum amount of delta revenue which customers should be expected to pay—was also determined.

The PUCO ordered, inter alia, that Ormet was to receive no more than a $60 million subsidy for 2010 and 2011 and that starting in 2011 customers would not pay more discounts than the annual ceiling of $54 million.[24] Beginning in 2012, the discount was to be reduced to $54 million. And in the calendar years 2013 through 2018, the discount would be reduced each year by $10 million until phasing out completely in 2018.[25] The phasing out of the Ormet discount was intended to reduce and eliminate Ormet's reliance on customer funding over time.[26] The PUCO subsequently referred to this customer funding as providing for "unprecedented subsidies" to Ormet.[27]

There were also other consumer protections that the PUCO approved. The PUCO noted that the primary purpose of the unique arrangement was to retain jobs rather than boost worldwide aluminum production or to enrich Ormet's investors.[28] Accordingly, the PUCO ruled that rate discounts provided to Ormet must be directly related to Ormet maintaining certain levels of employment.[29] The PUCO ordered that the discounts to

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[22] Id. at 9.

[23] Id.

[24] Opinion and Order at 10.

[25] Id.

[26] Entry at ¶5 (Oct.17, 2012).

[27] Id.

[28] Id. at 11.

[29] Id. at 11.

Ormet would be required to maintain an employment level of 650 full time employees. Further it determined that the discount will be reduced each month for every 50 employees below 650.[30] The Commission also implemented as a safeguard an additional, independent termination provision in the event that long-term LME prices did not recover as predicted by Ormet. That provision allows the PUCO to terminate the unique arrangement if Ormet did not begin, by April 1, 2012, to reduce Ohio Power's accumulated deferrals and carrying charges.[31]

In October, 2012, the PUCO acted upon a motion by Ormet to make other modifications to Ormet's unique arrangement. It permitted Ormet to defer payment (with no carrying charges to Ohio Power) of its October and November 2012 bills until 2014, with the payment of the bills to extend seventeen months.[32] It also ruled that any amounts, up to $20 million, that are not timely paid by Ormet would be treated as delta revenues recoverable from other customers. The PUCO noted that the relief granted to Ormet was limited to approval of the deferral of no more than the two payments specified, and should not be extended to other payments.[33] Nonetheless, in granting the relief, the PUCO noted that it is "concerned by the financial risk being incurred by AEP-Ohio ratepayers."[34] The Commission advised Ormet that "any further relief

[30] Id. at 11.

[31] Id. at 15. Notwithstanding the fact that Ormet has not paid above tariff rates to date, the PUCO has not exercised the termination provision.

[32] Entry at ¶5 (October 17, 2012).

[33] Id.

[34] Id.

requested***will be accompanied by a detailed business plan confirming its long-term ability to exist without ratepayer support."[35]

But further modifications to the Ormet arrangement were proposed and permitted. As recently as August 21, 2013, the PUCO again responded to Ormet's request for relief. Ormet again sought to defer payment of its electric bills that were due in August and September of 2013.[36] Ormet requested to defer payment of these bills until five days after the closing of the sale to Smelter. The PUCO granted Ormet's request for payment but limited the deferrals to $5 million for the August 2013 bill and $5.5 million for Ormet's September 2013 bill.[37] In doing so, the Commission recognized the "potential financial risk being incurred by AEP Ohio and its other ratepayers."[38]

B. Accelerating The Timing Of The Discount For Ormet Will Impact Customers' Bills.

The PUCO has characterized the current Ormet subsidies as "unprecedented."[39] The evidence shows that a Columbus Southern rate zone residential customer, averaging 1,000 kWh per month, is paying $2.50 per month in the summer, and $2.15 per month in the winter, to subsidize service to Ormet.[40] An Ohio Power residential customer, utilizing 1,000 kWh per month is paying $1.90 per month year-round, to subsidize service to Ormet.[41]

[35] Id.

[36] Entry at ¶14 (August 21, 2013).

[37] Id. at ¶19.

[38] Entry at ¶21.

[39] Entry at ¶5 (Oct.17, 2012).

[40] OCC Ex. 7.

[41] OCC Ex. 7.

The existing unique arrangement subsidies were designed to decrease from $44 million to $34 million in 2014,[42] thus lowering customers' payments for Ormet by approximately 23%. But Ormet's proposal would instead increase these subsidies and customers' payments. Under Ormet's proposal, the total subsidy in 2013 would be $72 million, or nearly a 66% increase over the subsidy currently included in rates.[43] In 2014, rather than the current level of subsidy decreasing by 23% to $34 million, Ormet proposes an increase in the subsidy to $54 million, a 23% increase.

While Ormet witness Henry Fayne argues that this just represents an advancement of the subsidy,[44] the declining schedule of subsidies through 2018 included in the current unique arrangement was intended to decrease Ormet's dependence on delta revenues.[45] With Ormet shopping, the substantial subsidies will continue until Ormet is no longer served by Ohio Power. For the first 5 months of 2015, under Ormet's proposal, customers would continue to pay a subsidy equivalent to the 2014 subsidy.[46] And while customers would not see an increase in the EDR rate, customers would not benefit from the reduction to the EDR rider that would otherwise have occurred.

[42] Direct Testimony of Henry W. Fayne (Ormet Ex. 7) at 5; OCC Exh. 5.

[43] OCC Ex. 5 (with revision from Direct Testimony of Henry W. Fayne (Ormet Ex. 7) at 4; Tr. II at 246.

[44] Direct Testimony of Henry Fayne at 6 (Ormet Ex. 7).

[45] Entry of October 17, 2012 at ¶5.

[46] OCC Ex. 5; Direct Testimony of Henry W. Fayne at 6 (Ormet Ex. 7).

C. The Incremental Costs[47] To Customers Of The Ormet Proposed Modifications Is Between $56.1 Million And $119 Million.

Ormet seeks a number of modifications to its unique arrangement which will allow it to receive larger discounts on its electricity bills. Ormet has quantified the cost of the additional discounts to be $56.1 million.[48] In addition to advancing the currently approved subsidies,[49] the elements of Ormet's cost calculation are: discounted generation rate for 2013 ($6.0 Million); a $4.5 million monthly discount for potlines 1-4 from January through May 2015; a $12.4 million shopping credit for lines 5-6 through May 31, 2015; and a $15.2 million shopping credit during June 2015 through December 2015 on total usage (all 6 potlines).[50] While there is no dispute that the proposed modifications will impose at least $56 million in incremental costs (on top of the $76 million of PUCO authorized discount for customers to pay under the current arrangement), the PUCO should consider other costs as well.

First, the Commission should be aware that Ohio Power is asserting that the Ormet modifications will cause it to lose revenues that it otherwise would be receiving from Ormet. This claim pertains to the amendments that Ormet seeks to permit it to shop. Currently, Ohio Power is the exclusive provider of Ormet's electricity. Permitting Ormet to shop will cause Ohio Power to lose revenues.

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[47] The total cost to Ormet's customers for the next two years is actually $132 million which includes the incremental discount of $56 million and the $76 million discount not yet paid under the existing unique arrangement.

[48] Direct Testimony of Henry W. Fayne at 8.

[49] Ormet proposes to receive the remaining $76 million in discounts over the next two years, instead of receiving the discount over the next five years.

[50] Id., see also Ex DMR-1.

Ohio Power characterizes these lost revenues as equivalent to a "termination fee" which consists of an $18 million capacity component, an $18 million capacity deferral component, and a fixed fuel adjustment clause ("FAC") component of $27 million.[51] Ohio Power proposes to collect the termination fee from Ormet, and considers this $63 million calculation to be a cost of Ormet's modifications, which, when added to the $56 million, amounts to a total of $119 million.

The $18 million capacity component consists of the difference between the tariff capacity rate (based on Ohio Power's embedded cost estimate) and the firm resource requirement ("FRR") capacity revenues Ohio Power would receive (at $188.88/MW-day) from a competitive retail electric service ("CRES") provider if Ormet shops.[52] This $18 million figure is based on a six potline operation. This cost calculation appears to be overstated considering Ormet is operating only two potlines and is not expected to operate six potlines until July 1, 2014 at the earliest.[53]

Essentially then this "cost" of the Ormet proposal as argued by Ohio Power is nothing more than an (unlawful) Ohio Power claim for lost base generation revenues caused by customer shopping.[54] The $18 million calculation is premised upon base generation rates which include capacity priced above the PUCO determined $188.88

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[51] See Ex. DMR-1.

[52] Id.

[53] See Tr. II at 409.

[54] As argued by OCC in the Ohio Power ESP proceeding, under the law there is no provision in an ESP that permits lost revenues to be collected. Lost revenues from customers' shopping are a business risk faced by all retail suppliers as a result of competition. *In the Matter of the Application of Columbus Southern Power Company for approval of an Electric Security Plan*, Case No. 08-917-EL-SSO, Order on Remand at 31-32 ((Oct. 3, 2011). Likewise, lost revenues should not be collected under an economic development arrangement. They do not amount to "costs incurred in conjunction with economic development" under R.C. 4905.31. Nor should they be equated to "foregone revenue" because to do so would be anti-competitive. See e.g. *In the Matter of the Dayton Power and Light Company for Approval of its Electric Security Plan,* Case No. 12-426-EL-SSO, Opinion and Order at 30 (Sept. 4, 2013).

MW/day.[55] Ohio Power further proposes that lost base generation revenues, collected through the termination fees, will be kept by Ohio Power and not used to offset delta revenues.[56]

The $18 million of revenues characterized as a "capacity deferral component" considers that Ormet, if permitted to shop, will be served by a CRES provider. Thus, Ormet, through the CRES providers, will be paying a market based auction clearing price ("RPM" or reliability pricing model) for capacity instead of the $188.88/MW-day PUCO determined Ohio Power price for capacity..[57] Under the current Ohio Power electric security plan ("ESP"), this additional Ormet shopping would contribute to capacity deferrals, thus potentially increasing the capacity deferral charges borne by all customers of Ohio Power. Because part of the capacity deferrals are a component of the retail stability rider, Mr. Roush testified the retail stability rider deferrals paid for by all customers would increase.[58] However, the total deferral balance created under the existing ESP has not yet been determined. It will be determined at the end of the ESP term, and rates will be set to collect the appropriate balance.[59]

The Fixed FAC component of $27 million accounts for the fact that Ormet will no longer be paying the fuel adjustment clause because it will cease being a standard service offer customer. Ohio Power segregates the fixed cost component of the FAC and concludes that Ormet rather than other Ohio Power standard service offer customers

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[55] Tr. II at 414.

[56] Testimony of David M. Roush at 8.

[57] See Tr. II at 411.

[58] Testimony of David M. Roush at 9.

[59] Tr. II at 453-454; see *In the Matter of the Application of Columbus Southern Power Company and Ohio Power 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. 11-346-EL-SSO, Opinion and Order at 36 (Aug. 8, 2012).

should continue to pay the fixed cost from January 1, 2014 through May 31, 2015. [60] Under Ohio Power's ESP, the FAC rate paid by SSO customers would otherwise increase without Ormet's contribution to fixed cost. This is because the fixed costs would be spread over the remaining customer base under the PUCO-approved FAC.

Thus, while Ormet contends that the incremental cost of its proposed amendments is $56 million,[61] Ohio Power calculates that the cost is $119 million. The difference is whether or not one considers the loss of revenue contribution from Ormet associated with its ability to shop.

Ormet has not shopped under its arrangement. If Ormet is permitted to shop, there will be a loss of revenue. The question becomes is this loss of revenue recognizable as a legitimate cost of the Ormet amendments? And as discussed in later portions of this brief, who should pay for these costs?

In considering the $18 million lost generation revenues associated with base capacity revenue, the PUCO should be aware that S.B. 221 does not guarantee that electric distribution utilities such as Ohio Power will be made whole for sales of generation lost to CRES providers. There is no such provision in Chapter 4928 for Ohio Power's theory.

As to whether the $18 million of capacity deferral revenues should be considered a cost of Ormet's modifications, the Commission should recognize that OCC (and others) contend that the capacity deferrals and the retail stability rider are unlawful charges that

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[60] Testimony of David M. Roush at 9.

[61] The total cost to Ormet's customers for the next two years is actually $132 million which includes the incremental discount of $56 million and the $76 million discount not yet paid under the existing Unique Arrangement.

customers of Ohio Power should not be paying.[62] OCC and others have appealed these issues to the Ohio Supreme Court and those appeals are in the briefing stages.

Second, one must consider as a cost of Ormet's modifications the time value of money to customers. Ormet has asked that the term of its arrangement be shortened by three years, allowing it to receive the remaining $76 million in discounts over a shorter period of time. Under Ormet's proposal, customers will pay $76 million over the next three years (2013-2015), instead of $76 million over five years. If customers pay more now, instead of later, as Ormet proposes, customers will lose some of the time value of their money—a cost that neither Ormet nor Ohio Power considered.[63]

D. Ormet's Proposed Additional "Discounts," Coupled With Its Shopping, Results In Customers Paying Ormet To Continue Operating. As Ohio Power's Witness Roush Testified, Ormet's Credits Will Be Greater Than Ormet's Regulated Electric Service Charges.

In its Motion to Amend, Ormet has proposed a number of additional discounts for the period commencing upon approval through 2015.[64] These include accelerating the remaining discounts such that Ormet receives $22 million additional in 2013 (in addition to the $44 million discounts currently authorized),[65] $54 million in 2014 (rather than the $34 million currently authorized),[66] and a proposed discount of $22.5 million for the first 5 months of 2015.[67] In addition, for 2013, Ormet proposes a fixed generation rate of $45.89 per MWh ($0.04589 per kWh), which it is estimated would reduce Ormet's

[62] See *The Kroger Co. v. The Public Utilities Commission of Ohio*, Case No. 2013-0521.

[63] Tr. II at 322-323.

[64] Direct Testimony of Henry W. Fayne at 5-6. (Ormet Exh. 7).

[65] Id.

[66] Id.

[67] Id. at 6-7, 8.

charges by an additional $6 million for 2013 as compared to the overall generation charges estimated for 2013.[68] Combined with the additional $22 million requested for 2013, this would result in a total discount to Ormet for 2013 of $72 million ($44 million + $22 million + $6 million) that other electric customers would apparently be asked to pay.

Ormet proposes to shop for its own generation service beginning on January 1, 2014. Ormet's proposal to shop will result in Ormet no longer paying generation charges to Ohio Power. Generation charges are currently a substantial component of Ormet's bills.[69] The generation charges Ormet will avoid by shopping include the demand charges, FAC charges, and Alternative Energy Rider ("AER") charges it is currently billed. For 2013, Ohio Power's actual and estimated generation charges to Ormet are approximately $108,509,250.[70] Although these charges would no longer be incurred by Ormet from Ohio Power, Ormet would purchase generation in the market from a CRES provider, presumably for a lesser amount.

Ormet has nonetheless proposed additional rate discounts for 2014 and 2015. This includes an additional $22 million in 2014 and $22.5 million for the first 5 months of 2015.[71] In addition, there are additional shopping credits of $12.4 million for the first 5 months of 2015, and an estimated shopping credit of $15.2 million if Ormet's construction of its self-supply is delayed beyond June 1, 2015 until the end of the year.

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[68] Id. at 4-5, 8.

[69] Id. at 4-5.

[70] Direct Testimony of David M. Roush (OPC Ex. 2), Ex. DMR-1 (Estimated 2013 Usage 2,235 GWh * Estimated Generation Price Before Discount $0.04855/kWh * 1,000,000 = $108,509,250).

[71] Direct Testimony of Henry Fayne (Ormet Ex. 7) at 5-6. Ormet proposes a discount of $4.5 million per month for 2014, or a total of $54 million, which is $20 million more than its current authorized discount for 2014. Together with the additional $22 million proposed for 2013, this would exhaust the discounts approved by the PUCO under the current unique arrangement for the years 2014 through 2018. Id.

Combining the effect of eliminating the generation charge with the additional discounts to Ormet for 2014 and 2015 would mean that customers would be paying Ormet more than its Ohio Power regulated electric bill. In fact customers would actually be paying Ormet's bill to CRES providers in 2014 and 2015.[72] Ohio Power witness David Roush testified to this fact:

> Ormet's entire bill for distribution service including non-bypassable charges such as the PIRR and RSR is less than \$6/MWh. Ormet's proposed shopping credits in 2014 and 2015 of \$9/MWh and \$6/MWh ***would result in Ormet being paid by OPC's other customers an amount greater than Ormet's regulated electric service charges***.[73]

In other words, not only would customers be subsidizing the rates Ormet pays to Ohio Power but, in addition, customers would be paying Ormet cash so that it could purchase electricity from a CRES supplier. The notion that customers would pay Ormet for more than its regulated electric bill is contrary to the concept of a floor set at variable cost of production of electricity.[74] And as recognized by the PUCO Staff in the first phase of this proceeding, a floor is important because it maintains the unique arrangement customers' incentive to operate efficiently and effectively.[75] Moreover, all customers paying CRES providers' bills for another customer may run afoul of the law that prohibits subsidies between and among regulated and unregulated services.

Based on the information in the record, Table 1 below shows that, for 2013, Ormet's payments, net of Ormet's current and proposed \$72 million in subsidies, fall

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[72] Direct Testimony of Henry W. Fayne at 10. (OPC Ex. 2).

[73] Direct Testimony of David M. Roush at 10. (OPC Ex. 2). (Emphasis added).

[74] Opinion and Order of July 15, 2009 at 9 (PUCO determined that there should be a floor to the Ormet contract which is the variable cost of production of electricity, rejecting the provisions in the contract which would have resulted in Ormet paying zero dollars for electricity or customers paying Ormet to use electricity).

[75] Id. at 8.

significantly short (by $34 million) of even the estimated fuel costs that Ohio Power incurs to serve Ormet:

Table 1: Ormet Payments, Existing Discounts and Additional Discounts For 2013			
		2013 Charges	
		(Est and Actual)	
1	Annual Usage (MWh)	2,235,000	1
2	Estimated Generation Price Before Discount ($/MWh)	48.55	1
3	Estimated Generation Revenues Before Discounts	$108,509,250	2
4	Gross Price for Distribution Charges and Non-Bypassable Riders ($/MWh)	$6.00	3
5	Estimated Revenues from Ormet Distribution Charges and Non-Bypassable Riders	$13,410,000	4
6	Estimated Generation, Distribution, and Non-Bypassable Charges to Ormet	121,919,250	5
7	Current Discounts Authorized	44,000,000	
8	Ormet Current Annual Payments Toward Generation, Distribution, Non-Bypassable	77,919,250	6
9	Proposed Additional Discounts	22,000,000	
10	Fix Generation Rate for 2013	6,000,000	7
11	Total Discounts (Current and Proposed) off of Charges to Ormet	72,000,000	8
12	Net Revenues from Ormet	49,919,250	9
13	AEP Forecasted Fuel Cost - Average Rate for 6 Months 1/1/2013 to 6/30/2013 ($/MWh)	$37.56	10
14	AEP Fuel Costs for Ormet Sales Based on Forecasted Fuel Costs for 1/1/13 to 6/30/13	83,955,540.0	11
15	Ormet Payments Above/Below AEP Fuel Costs for Ormet	-34,036,290.0	12
	[1]Exh. DMR-1 (No. 2.)		
	[2](Line 1)*(Line2)		
	[3]Roush Testimony, AEP Ex 2 at 10		
	[4](Line 1*Line 4)		
	[5](Line 3+Line 5)		
	[6](Line 13-Line14)		
	[7]Fayne Testimony, Ormet Exh. 7 at 4.		
	[8](Line 7 + Line 9 + Line 10)		
	[9](Line 6 - Line 11)		
	[10]Transcript Vol. II -- pp. 384 - 386 (Testimony of Henry Fayne); Average 1st & 2nd Q CSP and OP rates		
	=Average(4.0023+3.38963+4.1333+3.50241)*1,000		
	[11](Line 1 * Line 13)		
	[12](Line 11 - Line 14)		

For 2014, with Ormet shopping but still paying distribution and non-bypassable charges (totaling $16.99 million), after subsidies to Ormet of $54 million, customers would be out-of-pocket $37 million to keep Ormet in business as shown on Table 2:

Table 2: Ormet Payments, Existing Discounts and Additional Discounts Proposed for 2014			
		4-potlines	
		2014	
		(Estimated)	
		(Assumes Shopping;	
		Therefore No Generation)	
1	Annual Usage (MWh)	2,832,000	1
2	Estimated Generation Price Before Discount ($/MWh)	0	
3	Estimated Generation Revenues Before Discounts	0	
4	Gross Price for Distribution Charges and Non-Bypassable Riders ($/MWh)	$6.00	2
5	Estimated Revenues from Ormet Distribution Charges and Non-Bypassable Riders	$16,992,000	3
6	Estimated Generation, Distribution, and Non-Bypassable Charges to Ormet	16,992,000	4
7	Current Discounts Authorized	34,000,000	
8	Ormet Current Annual Payments Toward Generation, Distribution, Non-Bypassable	-17,008,000	5
9	Proposed Additional Discounts	20,000,000	
10	Total Current and Proposed Discounts for 2014	54,000,000	6
11	Net Revenues from Ormet	-37,008,000	7
12	Increased Capacity Deferrals to Other Customers Due to Ormet Shopping	14,000,000	8
13	Net Gain/Loss from Ormet's Proposals 2014	-51,008,000	9
	[1]Exh. DMR-1 (No. 10.) ((361 GWh) - No. 7 (125 GWh))*12*1000		
	[2]Roush Testimony, AEP Ex 2 at 10		
	[3](Line 1*Line 4)		
	[4](Line 3 + Line 5)		
	[5](Line 6 -Line 7)		
	[6](Line 7 + Line 9)		
	[7](Line 6 - Line 10)		
	[8]Exh. DMR-4		
	[9](Line 11 - Line 12)		

In addition, with Ormet shopping and its CRES supplier only paying RPM rather than capacity costs included in generation rates, capacity cost deferrals would increase by

$14 million.[76] The total cost to customers of Ormet's proposal would, therefore, be $54 million in discounts and $14 million in capacity cost deferrals. Even if one were to assume that all of Ormet's payments toward distribution and non-bypassable charges would reduce customer liability for these other costs, other electric customers (including residential customers) would be out approximately $51 million.

Similarly, in 2015, customers would pay, with four potlines operating, approximately $22.5 million for Ormet for 5 months of operation, and another $15.2 million for Ormet if Ormet's self-supply facility is delayed and Ormet is unable to rely on its own generation. In addition, with Ormet shopping, additional capacity cost deferrals would be shifted to other customers - $2 million for the first 5 months of 2015 and $2.8 million if construction delays keep Ormet from relying on its own generation. These economic facts would continue to cause other customers' payments to Ormet to be greater than its contribution to distribution and non-bypassable riders.

And Ormet's suggestion that if it returns to 6 potlines, this will be very advantageous to customers[77] is doubtful. While this would increase Ohio Power's collection of distribution and non-bypassable charges, this increase would be more than offset by the additional shopping credit Ormet requests -- $12.4 million -- for returning potlines 5 and 6 to service.

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76 Ex. DMR-4.

77 Transcript Vol. I at 3 (Ormet witness Tanchuk).

E. The Economic Impact Study Is A Factor To Consider But Likely Overstates The Positive Effects Of Ormet's Continued Operation.

As part of its application in this case, Ormet reintroduces its economic analysis that was originally presented by Dr. Coomes in 2011. Dr. Coomes testified that the analysis had not been updated or revised.[78]

Dr. Coomes' study analyzed the economic and fiscal impacts in the tri-state region (Pennsylvania, West Virginia, and Ohio) if Ormet were to shut down its smelter.[79] Dr. Coomes' study was based on the assumption that Ormet was employing 1,030 employees and that six potlines were being operated.[80] Under the tri-state analysis, and assuming 1,030 employees, Dr. Coomes estimated that the total net impact on the region of Ormet shutting down would be a job loss of 3,117 (direct and indirect) and $238 million in employee compensation.[81] Ormet Witness Fayne uses this annual employee compensation figure (multiplied by two) to show that denying Ormet's motion will have a $629.8 million total impact.

But the economic analysis must be framed in the proper perspective. While Dr. Coomes' calculation may be a gross indicator of what will happen to the tri-state region if Ormet closes its doors, one must question whether the calculation is valid for purposes of setting the appropriate electric subsidy to be funded entirely by Ohio customers. At the time of the study, 58% of the 1,030 plant employees resided in Ohio.[82] Dr. Coomes testified that if one wanted to identify the Ohio-only portion of the losses to jobs and

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[78] Tr. I at 58.

[79] Id.

[80] Tr. I at 59.

[81] Tr. I at 61.

[82] Id.

employee compensation if Ormet shuts down, it would be appropriate to start by discounting these numbers presented in his economic impact study by 40%.[83]

And the validity of the economic impact analysis may be called into question for other reasons as well. First, the economic analysis is based on jobs for 1,030 employees instead of the level of employees currently employed by Ormet. Current employee levels at Ormet are down from prior levels. Following the PUCO's rejection of Ormet's request for emergency relief, Ormet laid off 203 employees. (Tr. II at 347-348). Second, Dr. Coomes fails to factor into his analysis the negative economic impact on the rest of Ohio—including Ohio Power's other customers—from raising electric rates to fund the subsidy for Ormet.[84]

In fact, under Dr. Coomes study, the economic impact of Ormet on the region would be the same whether the electric subsidy paid by other Ohio Power customers to Ormet is $2, $200 million, or $2.0 billion. This is certainly a questionable conclusion. Just like there are positive impacts on household spending associated with job retention, there are negative impacts on household spending if other customers have to pay extra costs annually to keep Ormet operating. Yet Dr. Coomes' economic impact analysis fails to recognize this phenomenon.

The PUCO may also want to consider the impact that increased electric bills have on the rate of customer disconnections. The PUCO has routinely expressed concern for Ohioans who have their electricity (or gas) disconnected because of limited financial resources:

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[83] Tr. I at 67.

[84] Id.

> As in past years, the Commission is concerned about those who, because of limited financial resources, have had their gas and/or electric utility service disconnected because they are unable to pay their bills and who, because of arrearages, have been unable to have these services restored.[85]

It already could be expected that Ohio Power's disconnection rates will increase as a result of its recent ESP rate increases.[86]

F. Setting Aside The Economic Development Impacts, The Cost To Customers Of Ceasing Ormet's Operation Is Less Than The Cost Of Ormet's Proposed Amendments.

In his direct testimony, Ohio Power witness David Roush testified that if Ormet were to close, customers would incur certain costs due to the lack of Ormet contribution to Ohio Power rates. Mr. Roush identified the lost contribution costs as: (1) loss of Ormet payments of deferrals under the Phase-In Recovery Rider (estimated at $0.5 million per month); (2) loss of Ormet's contribution to the fixed cost portion of the FAC (estimated at $1.0 million per month); (3) loss of Ormet's contribution to the Energy Efficiency and Peak Demand Reduction Rider (estimated to be $0.14 million per month), and (4) loss of Ormet's contribution to the Retail Stability Rider (estimated to be $0.7 million per month).[87] The total of these lost contributions is $2.34 million per month. On cross-examination by Ormet counsel, Mr. Roush acknowledged that the lost contribution would be greater (by 50%) if 6 potlines were in operation.[88] He also

[85] *In the Matter of the Investigation into Long-Term Solutions Concerning Disconnection of Gas and Electric Service in Winter Emergencies*, Case No. 08-951-GE-UNC at 1 (Sept. 10, 2008).

[86] See IEU Ohio Ex 8, 9, and 10.

[87] Direct Testimony of David M. Roush at 6. (OPC Ex. 2).

[88] Tr. II at 397-401(Roush).

acknowledged that the $37 million (of which $30 million is customers' responsibility) in deferred payments that the PUCO has approved for Ormet would be lost.[89]

The loss of contribution to Ohio Power's fixed costs, however, should be viewed in comparison to Ormet's proposal in the Motion to Amend. Under the Motion to Amend, Ormet would not be paying any part of the FAC beginning on January 1, 2014 when it proposes to shop.[90] Consequently, keeping Ormet in business through the Motion to Amend would not save this $12 million in fixed cost contribution. Looking at the tables above, Ormet's contributions to fixed costs under its Motion to Amend are exceeded by the discounts and capacity cost deferrals that customers are being asked to pay under Ormet's proposal. Customers would not have to pay for these discounts and capacity cost deferrals if Ormet went out of business.

Ormet Witness Fayne's testimony also bears this out. When Mr. Fayne compares the cost of approving the motion to amend to the denial of the motion, he concludes that denying the motion to amend will cost $629.8 million.[91] But $575 million of the value is attributed to economic development loss. That leaves only a $54 million revenue contribution which compares to the $132.1 million cost to customers under approving the motion to amend. Thus, by Ormet's own conclusions, but for the value of the economic impact, the costs to customers exceed the costs paid.

While the economic impact analysis may weigh in favor of approving Ormet's proposal, Ormet has not demonstrated a net benefit to other customers in approving the Motion to Amend. Moreover, Ormet's suggestion that its 6 potline scenario would

[89] Tr. II at 401(Roush).

[90] Direct Testimony of Henry W. Fayne at 4. (Ormet Exh. 7).

[91] Direct Testimony of Henry W. Fayne at 10.

increase the benefits must be considered in context. That is, if six potlines are operating, Ormet will be receiving additional discounts, which exceed the added benefits of bringing 6 potlines into operation. Additionally, the 6 potline scenario is an uncertain outcome, depending upon "economic viability," as Ormet's CEO admitted.[92] In turn, the measurement of economic viability is dependent on a number of factors, including energy prices and aluminum prices.[93] Ormet is, for good reason, careful about its projections of future economic viability in light of its previous forecasts that did not come to fruition.

G. Ormet's Aluminum Price Projections Are A Critical, And Uncertain, Assumption Associated With Its Business Plan.

As Ormet has acknowledged, its bankruptcy restructuring business plan is substantially dependent on the price of aluminum as determined at the London Metals Exchange as adjusted for locational differentials. Ormet witness Tanchuk and Riley testified that increasing production above the current 2 potlines will require sustained aluminum prices on the London Metals Exchange of $2,000 - $2,200 per metric ton, in addition to relief in the current proceedings.[94] Even then, Ormet's CEO could not be certain of whether sustained prices in this range would return Ormet to profitability or allow it to restart potlines 5 & 6.[95] He stated that the decision to return the potlines 5 & 6 to service will be based upon economic viability, but he did not have a particular definition of viability. He stated in this respect:

> A. I think economic viability would be mainly around two things. One would be the result of these hearings and the power price that's applicable and the London Metal Exchange pricing at the time.

[92] Tr. I at 31-32. (Michael Tanchuk)

[93] Id.

[94] Tr. I at 31-32.

[95] Id. at 31.

Q. Mr. Tanchuk, is the price of somewhere between 20 -- 2,000 and 2,200 necessary to achieve economic viability?

A. In the short-term I -- I -- I can't say that it would be. Remember where I alluded to that was the long-term after you are operating six potlines so incrementally I can tell you the intent of Ormet is to restart the whole plant and restart these two potlines because the plant itself doesn't maintain profitability at low operating levels so you need unit production to -- to return to profitability so the intent is to do that as quickly as possible. I can't give you today a specific number because we are waiting to see what happens with these hearings, and we will make a determination at the time. But we are spending the money and the time to prepare the lines for restart.[96]

Ormet's long-term survival depends upon aluminum prices and Ormet's business plan incorporates prices forecast by Harbor Aluminum's Intelligence Unit. Ormet witness Jorge Vazquez is the founder and managing directing of Harbor Aluminum Intelligence and prepared the aluminum forecasts on which Ormet's business plan is based. As part of the support for Ormet's business plan, Ormet submitted Mr. Vazquez's forecasted average prices of $2,294 per mton in 2014 and $2,400 per mton in 2015.[97] However, Harbor's forecasts have been consistently overstated over the last several years, as admitted by Mr. Vazquez and shown on OCC Exhibits 2, 3 and 4. OCC Exhibits 3 and 4, in particular, show the percentage error between Mr. Vazquez's monthly (OCC Exh. 3) and annual forecasts (OCC Exh. 4).

Indeed, Mr. Vazquez's forecasts have been dramatically wrong on numerous occasions. For example, in September 2009, Mr. Vazquez forecast prices in July of 2010 of $2,985 but prices turned out to be $1,988 per mton, resulting in a forecast that

[96] Id. at 31-32.

[97] Direct Testimony of Jorge Vazquez at 5. (Ormet Ex. 6).

was 50% too high.[98] And beginning in August 2010, Mr. Vazquez's projections of prices for October 2011 through December 2012 were consistently overstated by double digit percentages of error.[99] For example, in July 2011, Mr. Vazquez projected prices for August 2012 of $3,134 and the price turned out to be $1,838. His projection was 70.5% overstated.[100]

Mr. Vazquez's forecasts for 2013 aluminum prices have also been significantly overstated. Starting in July 2012, his forecasts were as much as 38% overstated for July 2013.[101] The margin of error for 2013 prices was generally in double-digit margins.

Mr. Vazquez's annual average price forecasts have also been overstated during the last several years. This is demonstrated on OCC Exh. 4. For example, in April 2011 and July 2011, Harbor Intelligence forecasted a price for Year 2012 of $3,100 but the actual price turned out to be $2,020, the forecasted price being 53.47% too high.[102] Although current average prices for 2013 are $1,919 per mton through June, 2013, and Mr. Vazquez is projecting a price of $2,294 per mton for 2014, the record shows earlier projections that differed dramatically from the current average price projections for these periods.[103]

While OCC above points to a number of instances where Mr. Vazquez's forecasts have shown a significant margin of error, not all of his forecasts have been so

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[98] OCC Ex. 3, p. 1; Tr. II at 197.

[99] OCC Ex. 3, pp. 2-4; Tr. II at 198.

[100] OCC Ex. 3, p. 3; Tr. II at 198.

[101] OCC Ex. 3, pp. 4-5; Tr. II at 198; see also OCC Exh. 2 (12th page) (Confidential)

[102] Direct Testimony of Jorge Vazquez at 4-5; OCC Ex. 4(Confidential).

[103] Id.

far off the money. Some of his forecasts have been very close and, obviously, the forecasts have a smaller margin of error as the period being forecasted gets closer.

But the point that needs to be emphasized is that forecasts of market prices for any commodity are subject to significant error. While Mr. Vazquez would like to think that the methodology his company utilizes to perform forecasts gives them greater accuracy, the simple fact that he only assigns a 50% odds to his "realistic," or "base case," scenario would indicate that the likelihood of projecting prices, especially prices further into the future, is little better than a flip of the coin.[104] Mr. Vazquez's biased view that his projections are better than a flip of a coin is reflected in his inability to accept what 50% odds means, as indicated in the following discussion:

> Q. Would you agree with me that if you're putting 50 percent odds on something, that that's equal to the flip of a coin?
>
> A. No, I wouldn't agree with that because when you flip a coin, there's no analysis behind it. There's no real pondering of possibilities. I wouldn't represent what we do, nor the odds of what we express in that particular case of our different three scenarios, I wouldn't relate that to flipping a coin.
>
> Q. But you would agree with me that the mathematical likelihood that when a coin is flipped, that it will be 50 percent heads and 50 percent tails.
>
> A. Yes, when you flip a coin, statistically half of the time we should expect heads and half of the time we should expect tails.
>
> Q. Would you agree with me that even if you do a lot of work to determine that there's a 50 percent chance of being close to a particular projection, that doesn't make the mathematical certainty of that projection any greater than 50 percent? Is that correct?

[104] Tr. II at 183.

> A. Well, it's difficult to answer that question in those terms because, again, in our view that's not what's behind the intention of the developments of those numbers.[105]

The PUCO should be well aware that Ormet's business plan is heavily dependent on aluminum price forecasts and that Ormet's survival and the benefits of the discounts will only come to fruition if prices actually turn out to be as high as, or higher than, Mr. Vazquez's forecasts. There is a significant amount of uncertainty with aluminum prices that the PUCO needs to take into consideration in determining whether Ormet's business plan is a viable one.

III. OCC RECOMMENDATIONS

A. The PUCO Should Consider A 50/50 Split Between Customers And AEP Ohio For Paying Incremental Costs (Including Delta Revenues) Created By Ormet's Proposed Amendments.

Under the Ormet proposed amendments, at a minimum, an additional $56.1 million in incremental discounts will be created. On top of the direct costs of Ormet's proposals are the $61 million of indirect costs which have been identified by Ohio Power through its proposed termination fee.

Ormet does not address who should pay the costs of Ormet's proposal. But Ohio Power does. Ohio Power believes that any additional delta revenues created by additional discounts to Ormet should be borne by other electric customers.[106]

[105] Tr. II at 183-184.

[106] Testimony of Dave M. Roush at 10 (testifying that "if the Commission deems a modification to Ormet's contract is warranted, any such modification should provide for full delta revenue recovery).

Additionally, in its discussion of the indirect costs of the Ormet proposal, Ohio Power attributes $43 million of the $61 million of indirect costs to its customers.[107]

But Ohio Power's approach fails to recognize (1) that it is not entitled to full recovery of all delta revenue resulting from a unique arrangement and (2) the inequity that exists whereby both Ohio Power and its customers benefit from the economic development, but only customers pay for the discount that supports the economic development.

As the PUCO has recognized, the plain language of R.C. 4905.31 does not require the Commission to approve the full recovery of all delta revenue (revenues the utility no longer collects) resulting from a unique arrangement.[108] The PUCO concluded that the statutory use of the term "may" authorizes, but does not require the PUCO to approve the utility's recovery of delta revenues. The PUCO reasoned that "[i]f the General Assembly had intended to require the recovery of delta revenues, the General Assembly would have used 'shall' or 'must' rather than 'may.'"[109] Instead, the PUCO concluded that according to the plain language of the statute, it is for the PUCO's discretion to determine if the utility will be allowed the recovery of delta revenues. The Ohio Supreme Court, in the appeal of the PUCO's decision, affirmed the PUCO.[110] The Court found that R.C.

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[107] Ohio Power witness Roush testified that Ormet's shopping proposal will cause increased deferrals under the RSR, which all customers are obligated to pay. Roush testimony at 9. Mr. Roush also testified that SSO customers will lose $27 million of FAC revenues from Ormet during the 17 month period of the arrangement as well. Id. The increased FAC fixed costs would also then be costs SSO customers would be obligated to pay.

[108] *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, Entry on Rehearing at ¶12 (ruling that the POLR charge paid for by Ormet could be credited to the economic development rider); Affirmed by the Ohio Supreme Court in *In re: Ormet Primary Aluminum Corp.,* 129 Ohio St.3d 9, 2011 Ohio 2477, 949 N.E.2d 991.

[109] Id.

[110] *In re: Ormet Primary Aluminum Corp.,* 129 Ohio St.3d at 129.

4905.31 does not require full recovery of delta revenues but is "permissive."[111] It concluded that because the statute used permissive language in describing whether foregone revenue may be recovered, it is a matter for the PUCO's discretion.

Moreover, saddling customers with 100% of the cost of the modifications, including the delta revenues, is inconsistent with certain PUCO precedent.[112] In particular the PUCO has held in the past that "a 50/50 split properly recognizes that both the company and its customers benefit from the company's policy of providing economic incentive rates to retain customers to attract new business in the utility's service territory."[113]

While the Commission has noted the existence of this 50/50 policy as recently as 2009,[114] it did not apply the policy to the initial Ormet arrangement approved back in 2009. Thus, to date, Ohio Power customers have borne 100% of the significant discount to Ormet. In terms of dollars, Ohio Power customers have contributed $220 million to fund the electricity discounts for Ormet. <u>Ohio Power has contributed nothing toward the electricity discounts to help Ormet and its employees</u>.

Notably, when customers were held liable to pay for 100% of the delta revenues, they were receiving a benefit from Ormet's contributions to fixed fuel costs. This benefit was stable and reliable. It existed because Ohio Power was the exclusive provider of

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[111] Id. at 12.

[112] See, e.g., *Ohio Edison Company*, Case No. 89-1001-EL-AIR, Opinion and Order at 41 (Aug. 16, 1990); *Cleveland Electric Illuminating Co.,* Case No. 88-170-EL-AIR, Opinion and Order at 18-19 (Jan. 31, 1989).

[113] *In the Matter of the Application of Columbus Southern Power Company for Authority to Amend its Filed Tariffs to increase the Rates and Charges for Electric Service*, Case No. 91-418-EL-AIR, Opinion and Order at 110 (May 12, 1992).

[114] See *In the Matter of the Application of Columbus Southern Power company for Approval of an Electric Security plan; an Amendment to its Corporate Separation Plan; and the Sale or Transfer of Certain Generating Assets*, Case No. 08-917-EL-SSO, Opinion and Order at 48 (Mar. 18, 2009).

service to Ormet and Ormet could not shop. Thus, Ormet's contribution to fixed fuel costs was never in jeopardy.

But in the modifications now proposed by Ormet, Ormet will be shopping. Thus, Ormet's contribution to fixed fuel costs will be gone once shopping begins. Ohio Power estimates this lost contribution to be $27 million over the seventeen month period of the Ormet proposal.[115] Additionally, under Ohio Power's ESP, Ormet's shopping will create capacity deferrals which would not be created if Ohio Power remained as Ormet's exclusive supplier. According to Ohio Power, the capacity deferrals created by Ormet shopping add $18 million to the capacity deferral pot. That capacity deferral pot, created under Ohio Power's ESP,[116] stands to be collected from all customers at the end of the Ohio Power's ESP term (unless the Ohio Supreme Court overturns the PUCO).[117]

Thus, customer benefits of the Ormet unique arrangement would dwindle under Ormet's proposal. Indeed customers will be paying $18 million more in capacity deferrals, while at the same time losing $27 million of fixed fuel cost contribution, and paying $56 million more in direct discounts. Added to this is the fact that customers also bear a $30 million risk if Ormet defaults on its unpaid bills.

Ohio Power on the other hand will still derive benefits from the modified contract, with minimal risks. It will continue to collect capacity costs from Ormet. And it will collect numerous non-bypassable riders through the term of the modified contract. It will also be able to sell into the market the incremental energy and capacity freed up

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[115] See DMR-3.

[116] *In the Matter of the Application of the Columbus Southern Power Company and Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to Sec. 4928.143, Ohio Rev. Code, in the Form of an Electric Security Plan*, Case No. 11-346-EL:-SSO, Opinion and Order at 37-38 (Aug. 8. 2012).

[117] Numerous parties, including OCC, have appealed the Ohio Power ESP Order. Issues under appeal include the capacity deferral plan and the retail stability rider.

when Ormet shops.[118] And if Ormet defaults, Ohio Power will stand to lose a mere $7 million—a paltry sum in comparison to the $30 million customers will pay if Ormet defaults.

Given the modifications Ormet is seeking, it is incumbent upon the PUCO to take a fresh look at the delta revenue recovery issue. In doing so the PUCO should consider the diminished benefits to customers, along with the markedly increased costs to customers. In reconsidering the equities of the delta sharing, the PUCO should conclude that a 50/50 split for the delta revenue associated with this new round of assistance to Ormet is equitable for both customers and the utility. The 50/50 split means that customers would pay half and Ohio Power would pay half of an electricity discount to help Ormet.

Both direct and indirect costs should be considered "delta revenue" and be subject to a 50/50 sharing. The direct costs are those identified by Ormet as $56 million over the seventeen month period. The indirect costs are the two components identified by Ohio Power in its proposed termination fee: the capacity deferral component of $18 million and the fixed FAC component of $27 million. The remaining component of the indirect costs, characterized by Ohio Power as an $18 million capacity component, has no legal basis and thus should not be part of the total delta revenue sharing.[119] In other words, the total incremental cost of Ormet's modifications in terms of delta revenues should be: $56 million plus $18 million plus $27 million. This adds to a total of $101 million. This is the delta revenue that should be shared 50/50: under the Ormet proposal, Ohio Power would pay $50.5 million and its customers would pay $50.5 million.

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[118] Tr. II at 427.

[119] See footnote 53.

B. If and When Ormet Is Permitted To Shop or to Generate its Own Power ("Self-Supply), AEP Ohio Should Credit to Customers Revenues from Market Sales Made With Capacity Previously Used to Serve Ormet.

If Ormet is permitted to shop and when it begins to generate its own power, AEP Ohio will have 540 MW of capacity and the associated energy available for sale into the wholesale market that was previously being used to serve Ormet's load. The capacity utilized to serve Ormet's load has been paid for by other customers over many years. Consequently, the PUCO should recognize customer's contribution to this capacity by reimbursing customers with a portion of the wholesale sales associated with the capacity previously used to serve Ormet. This reimbursement would be limited to the amounts contributed by customers since approval of Ormet's unique arrangements, plus carrying costs.

C. The PUCO Should Protect Customers By Requiring Ormet To Fulfill Certain Commitments.

If Ormet's Motion to Amend is approved, it is essential that the PUCO carefully guard the interests of customers by adhering to current job commitments and insuring that the terms of the unique arrangement are followed. Those job commitments are reflected in prior PUCO rulings. Additionally, the PUCO should institute a provision that would reimburse customers for the incremental discounts provided if Ormet becomes profitable. Finally, to prevent customers from bearing any further economic burdens, the PUCO should provide for Ormet to have to succeed with its own resources in the future, as appears to be Ormet's proposal.

1. Continuous employment of 650 employees is and should continue to be a condition of Ormet receiving the discount requested.

Under the existing Ormet agreement, Ormet must maintain an employment level of 650 full time employees in order to receive its full discount. This provision is currently in place. It should remain in place.

As the PUCO noted, the primary purpose of the unique arrangement is to retain jobs rather than boost worldwide aluminum production or to enrich Ormet's investors.[120] And with increasing costs under the Ormet agreement, and the absence of Ormet's contribution to fixed costs (due to shopping), the economic benefit related to jobs in Ohio is important to justify customers continuing to subsidize Ormet. Accordingly, it is fitting to insist that any rate discounts provided to Ormet must be directly related to Ormet maintaining 650 full time employees.[121]

2. The PUCO should impose reporting requirements on Ormet, requiring it to publicly file reports on its employee levels and progress toward self-supply.

Because the value to customers from Ormet's unique arrangement is largely in the economic development benefits it provides to the community in and about Hannibal, Ohio, the PUCO should ensure that the unique arrangement is carefully monitored by imposing reporting requirements on Ormet. In particular, the unique arrangement requires continuous employment of 650 employees. As discussed above, this is an existing provision of the unique arrangement that is in effect and should continue. Ormet should be required to report its employee numbers (including numbers that reflect Ohioans employed) to the PUCO on a monthly basis through a public filing in this

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[120] Id. at 11.

[121] Id.

docket. Additionally, because the economics of the current unique arrangement are designed to facilitate Ormet's transition to self-supply, Ormet should be required to report on a monthly basis on the status of construction and operation of its self-supply facility, and upon any delays in construction that may impact on the unique arrangement.

3. Customers should be reimbursed for the incremental discounts they have paid should Ormet become profitable.

Historically, Ormet has sought regulatory protection in the form of reduced electric rates, in order to deal with the economic and competitive hardships of aluminum production in today's world. And the massive subsidies the PUCO has granted in the past have had few strings attached. But with Ormet's new round of requested discounts in its Motion to Amend, it is time that the PUCO begin looking at these "discounts" in a new light. The discounts to unique arrangement customers are subsidies from other customers. The dollars come from other customers' pockets and are paid to Ohio Power in lieu of the unique arrangement customers' payments.

But as the PUCO has recognized, customers should not be asked to pay economic development costs without limits.[122] Ohio Power customers in particular have had to subsidize Ormet through discounted electric rates so that Ormet could weather the swings in the LME market. In recognition of these market risks Ohio Power customers are being asked to pay in these next round of discounts, it is only fair and equitable to reimburse customers for these risks if Ormet becomes a profitable venture. This is especially the case for customers, like Ormet, whose contributions to electric fixed costs are exceeded by the subsidy paid by customers. For customers like Ormet who are not even paying the

[122] See, e.g., Opinion and Order at 9, holding that as a general matter, unique arrangements should contain a ceiling and a floor.

marginal cost of serving them,[123] and thus provide no real contribution to system fixed costs, the discounts given to them should be subject to reimbursement should the entity become profitable. The PUCO should require that any of the incremental discounts approved for Ormet in this proceeding become a conditional account receivable that should be repaid when Ormet becomes profitable – even if Ormet is self-supplying at the time it becomes profitable. The PUCO should condition any incremental discounts on such provision. Additionally, any subsequent collection by AEP Ohio of such incremental discounts should be reimbursed to customers.

4. If the PUCO grants the additional support that Ormet is seeking, then in the future Ormet should rely on its own resources and not again be granted funding from electric customers.

Since before 2009, Ormet has received subsidies in the form of discounted electric rates, with the subsidies being paid by other customers. In Case No. 05-1057-EL-CSS, the PUCO approved a stipulation that set a generation rate for Ormet below the market and tariff rate for like customers at that time.[124] In that case, the PUCO also provided a means for Ohio Power to collect the agreed to difference, or delta, that was anticipated to be at least $56 million over two years.[125] On July 15, 2009, in the present case, the PUCO approved a ten year unique arrangement which it described as providing

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[123] Tables 1 and 2 appear to show this. Notably, Ormet witness Fayne testified that while the discounts would exceed non-bypassable riders, he testified that it they would not exceed the payback of deferred billing amounts and transmission rates. Transcript – Vol. II at 291 (Fayne Testimony).

[124] See, e.g., Entry at ¶5 (Oct. 17, 2012).

[125] Ohio Power was permitted to amortize its Ohio Franchise Tax phase-out regulatory liability. In the vent that it was not fully compensated by that method, Ohio Power was authorized to recover the differential under its rate stabilization plan in Case No. 04-169-EL-UNC. *In the Matter of the Complaint of Ormet Primary Aluminum Corporation and Ormet Aluminum Mill Products Corporation v. Southern Central Power Company and Ohio Power Company*, Case No. 05-1057-EL-CSS, Supplemental Opinion and Order (Nov. 8, 2006).

for “unprecedented subsidies” [126] by other ratepayers. Since 2010, utility customers have paid 100% of the Ormet discount which totals approximately $220 million.[127] Twice in the past year, Ormet has sought further assistance from customers—in the form of delaying its payment of its electric bills. The Commission approved both of those requests permitting Ormet to defer payments for four total months of unpaid bills. The bulk of these unpaid bills ($30 million of $37 million) will become a liability to customers if Ormet liquidates. In short, when Ormet has needed assistance, the PUCO (and other customers) have answered its calls. And in the end it is the customers of Ohio Power who have helped Ormet.

There is benefit that Ormet brings to its surrounding area and that is to be appreciated. There also is the economic burden imposed on Ohio Power’s other customers for funding more than $200 million (expected soon to be over $300 million) in subsidies for Ormet,. The customers’ burden of paying these subsidies to make AEP Ohio whole comes at a time when customers are seeing increasing Ohio Power bills and are struggling to pay their own bills. The PUCO should provide for Ormet to have to succeed with its own resources (and not electric customers’ resources) in the future, as appears to be Ormet’s proposal.

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[126] See *In the Matter of the Application of Ormet Primary Aluminum Corporation for Approval of a Unique Arrangement with Ohio Power Company*, Case No. 09-119-EL-AEC, Entry at ¶5 (Oct. 17, 2012).

[127] The delta revenues collected are $60 million in 2010, $60 million in 2011, $54 million in 2012, and $44 million in 2013. See Motion to Amend at 6 -7. According to AEP Ohio, the $44 million discount is expected to be used at the end of August 2013. See Application, Schedule No. 3.1 in Case No. 13-325-EL-RDR (February 1, 2012). The 2009 delta revenue associated with the Ormet discount was collected separately from the existing Economic Development Cost Recovery Rider. There are also associated carrying charges for any under-recovery.

D. The PUCO Should Impose Conditions to Protect Consumers In The Event Ormet Ceases Operations.

1. The PUCO should not allow adjustments to AEP Ohio's retail stability rider that would negatively affect customers, if Ormet ceases operations.

If Ormet liquidates, the PUCO may see an application from Ohio Power seeking to adjust its retail stability rider to account for its reduction in non-shopping load. Such an application would be expected as a consequence of the PUCO's ruling in Ohio Power's ESP proceeding.[128] There the PUCO ruled that if during the term of the ESP there is a "significant"[129] reduction in non-shopping load "for reasons beyond the control of the Company other than for shopping," Ohio Power is authorized to file an application to adjust the RSR to account for such changes.[130]

But the Commission should deny any such adjustments proposed in a future Ohio Power application because otherwise more costs will be borne by customers of Ohio Power. And, as discussed previously, it is the customers of Ohio Power who already stand to bear the bulk of the Ormet liquidation costs in the form of unpaid deferred electric bills.

The split on liquidation costs associated with unpaid electric bills as it stands today is inequitable, as between Ohio Power and its customers. While both customers and the utility benefit from economic development arrangements, the PUCO has

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[128] OCC applied for rehearing with respect to this finding. The rehearing request was denied. *In the Matter of the Application of the Columbus Southern Power Company and Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to Sec. 4928.143, Ohio Rev. Code, in the Form of an Electric Security Plan*, Case No. 11-346-EL-SSO, Entry on Rehearing at ¶26 (Jan. 30, 2013) (the PUCO noted that parties may be able to appropriately advocate for or against any adjustments).

[129] The PUCO did not define "significant reduction" but given the considerable non-shopping load lost if Ormet liquidates, it is assumed the loss would qualify as a significant reduction in non-shopping load.

[130] *In the Matter of the Application of the Columbus Southern Power Company and Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to Sec. 4928.143, Ohio Rev. Code, in the Form of an Electric Security Plan*, Case No. 11-346-EL:-SSO, Opinion and Order at 37-38 (Aug. 8. 2012).

permitted AEP to receive the benefits (in terms of base generation revenues) and yet bear very little of the risks and costs of Ormet's default. Given the current rulings which are in place, the PUCO should avoid imposing any further costs—such as those cloaked in the form of an increased retail stability rider on customers.

2. The PUCO should place a cap on customers' liability for any Ormet unpaid bills, limited to the current $30 million approved by the PUCO for customer payment.

In the event Ormet is unable to pay its bills or shuts down before its deferred payments are fully paid back to Ohio Power, the liability of customers for Ormet's bills should not be increased beyond the $30 million already approved by the PUCO.[131] Customers should not be exposed to further liability in light of the significant discounts and deferrals already placed on their shoulders. Moreover, unpaid bills are a normal risk of Ohio Power's business. While Ormet's bills are large ones, other customers should not be considered guarantors of payment of Ormet's bills and should not now be found liable for any unpaid bills from Ormet, beyond the $30 million of deferred billings that the PUCO has approved to date. Moreover, given the substantial discounts given to Ormet to date as well as the allowance of $37 million in deferred billings, OPC should be wary of extending any more customer credit to Ormet. By limiting customer liability, the PUCO will ensure that Ohio Power, because it is at risk for further unpaid bills, acts promptly to address any additional unpaid amounts presented by Ormet.

IV. CONCLUSION

This case has been heard with a backdrop that includes Ohio electric customers having to date paid AEP Ohio more than $220 million to subsidize the electricity

[131] Entry of October 17, 2012 at 3 (¶5); Entry of August 21, 2013 at 7 (¶20).

discount that Ohio Power provides to Ormet. Ohio Power itself has not paid any of the discount to help Ormet. If the PUCO determines that Ormet's Motion should be granted, then the PUCO should also order certain enhanced protections for customers.

The PUCO should carefully evaluate Ormet's proposals, the costs to customers, and the benefits to Ohio of Ormet's continued operations. The PUCO should be known that Ohio Power's own witness has said that "due to the low LME prices Ormet has needed free electricity since March 2013 to sustain its operations and pay its required legacy costs."[132] The PUCO should ensure that any continuing discounts it approves are provided with PUCO oversight of Ormet's fulfillment of employment levels (to ensure the minimum employment levels are maintained for Ohioans) and reporting requirements. The benefits for Ohioans that Ormet emphasizes result from its continued operations should be assured if the PUCO decides to grant Ormet's Motion.

Importantly, the PUCO should begin to require Ohio Power to share equally with customers in the burden of funding the incremental electricity discounts for Ormet. Furthermore, Ohio Power should not be permitted to charge customers, as if customers are its guarantors, to make Ohio Power whole for any lost revenues from Ormet as a result of Ormet's shopping, its determination to self-supply, or its possible business closure. Ohio Power should not be allowed to mix the role of its customers with what is rightly the role of its investors. Finally, customer responsibility for any unpaid bills from Ormet should be limited to the $30 million already approved by the PUCO. Any additional amounts that cannot be collected from Ormet should be borne by Ohio Power, not its customers.

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[132] Direct Testimony of David Roush (AEP Exh. 2) at 4.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the Post-Hearing Brief by the Office of the Ohio Consumers' Counsel has been served via electronic transmission upon the following parties of record this 9th day of September, 2013.

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