

BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Complaint of	)	
Ormet Primary Aluminum Corporation	)	
	)	
Complainant	)	Case No. 13-2206-EL-CSS
	)	
v.	)	
	)	
Ohio Power Company d/b/a AEP Ohio	)	

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**DIRECT TESTIMONY OF  
WILLIAM A. ALLEN  
IN SUPPORT OF THE FEBRUARY 3, 2014  
STIPULATION AND RECOMMENDATION  
ON BEHALF OF  
OHIO POWER COMPANY**

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Filed: April 8, 2014

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THE PUBLIC UTILITIES COMMISSION OF OHIO  
DIRECT TESTIMONY OF  
WILLIAM A. ALLEN  
ON BEHALF OF  
OHIO POWER COMPANY

1    **PERSONAL DATA**

2    **Q.    PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

3    A.    My name is William A. Allen, and my business address is 1 Riverside Plaza, Columbus,  
4           Ohio 43215.

5    **Q.    BY WHOM ARE YOU EMPLOYED AND WHAT IS YOUR POSITION?**

6    A.    I am employed by the American Electric Power Service Corporation (AEPSC) as  
7           Managing Director of Regulatory Case Management. AEPSC supplies engineering,  
8           financing, accounting, and planning and advisory services to the electric operating  
9           companies of the American Electric Power System, one of which is Ohio Power  
10          Company (“OPCo” or “AEP Ohio”).

11   **Q.    WOULD YOU PLEASE DESCRIBE YOUR EDUCATIONAL AND**  
12       **PROFESSIONAL BACKGROUND?**

13   A.    Yes. I received a Bachelor of Science in Nuclear Engineering from the University of  
14          Cincinnati in 1996 and a Master of Business Administration from the Ohio State  
15          University in 2004.

16               I was employed by AEPSC beginning in 1992 as a Coop Engineer in the Nuclear  
17          Fuels, Safety and Analysis department and upon completing my degree in 1996 was hired  
18          on a permanent basis in the Nuclear Fuel section of the same department. In January  
19          1997, the Nuclear Fuel section became a part of Indiana Michigan Power Company

1 (I&M) due to a corporate restructuring. In 1999, I transferred to the Business Planning  
2 section of the Nuclear Generation Group as a Financial Analyst. In 2000, I transferred  
3 back to AEPSC into the Regulatory Pricing and Analysis section as a Regulatory  
4 Consultant. In 2003, I transferred into the Corporate Financial Forecasting department as  
5 a Senior Financial Analyst. In 2007, I was promoted to the position of Director of  
6 Operating Company Forecasts. In that role, I was primarily responsible for the  
7 supervision of the financial forecasting and analysis of the AEP System's operating  
8 companies, including AEP Ohio. In 2010, I transferred to the Regulatory Services  
9 Department as Director of Regulatory Case Management. I was named to my current  
10 position in January 2013.

11 **Q. WHAT ARE YOUR RESPONSIBILITIES AS MANAGING DIRECTOR OF**  
12 **REGULATORY CASE MANAGEMENT?**

13 A. I am primarily responsible for the supervision, oversight and preparation of major filings  
14 with state utility commissions and the Federal Energy Regulatory Commission (FERC).

15 **Q. HAVE YOU PREVIOUSLY SUBMITTED TESTIMONY IN ANY REGULATORY**  
16 **PROCEEDINGS?**

17 A. Yes. I have previously testified before the Public Utilities Commission of Ohio  
18 (Commission) on behalf of AEP Ohio. I have also submitted testimony or testified  
19 before the Michigan Public Service Commission, the Indiana Utility Regulatory  
20 Commission, the West Virginia Public Service Commission and the Virginia State  
21 Corporation Commission on behalf of various other electric operating companies of the  
22 American Electric Power system.  
23

1 **PURPOSE OF TESTIMONY**

2 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

3 A. The purpose of my testimony is to summarize the provisions of the Stipulation and  
4 Recommendation (Stipulation) submitted on February 3, 2014 for the Commission's  
5 consideration. The Stipulation provides the basis for resolving the complaint Ormet  
6 Primary Aluminum Corp. ("Ormet") filed in this proceeding on November 13, 2013  
7 alleging that Ohio Power Company ("AEP Ohio" or the "Company") had misinterpreted  
8 the parties 2009 unique arrangement and made billing errors under the unique  
9 arrangement and the August 21, 2013 Entry in Case No. 09-119-EL-AEC.

10 My testimony provides an overview of the relevant background regarding the  
11 2009 unique arrangement, a summary of the Stipulation, discusses the criteria that the  
12 Commission uses when considering settlement agreements and explains how the  
13 Stipulation in this proceeding meets those criteria. Specifically, my testimony supports  
14 the conclusion that the Stipulation satisfies the three-part test because it: (1) is the product  
15 of serious bargaining among capable, knowledgeable parties; (2) does not violate any  
16 important regulatory principle or practice; and (3) as a package, benefits ratepayers and is  
17 in the public interest.

18  
19 **SIGNATORY PARTIES**

20 **Q. WHO ARE THE SIGNATORY PARTIES TO THE STIPULATION?**

21 A. The Signatory Parties are Ormet Primary Aluminum Corp. ("Ormet"), the complainant,  
22 and AEP Ohio, the respondent.

1    **2009 UNIQUE ARRANGEMENT**

2    **Q.     PLEASE PROVIDE AN OVERVIEW OF THE RELEVANT BACKGROUND**  
3           **CONCERNING THE 2009 UNIQUE ARRANGEMENT AND RELATED**  
4           **PROCEEDINGS.**

5    A.     On February 17, 2009, Ormet requested approval by the Commission of a Unique  
6           Arrangement under which AEP Ohio would provide electric service to Ormet. AEP  
7           Ohio's motion to intervene in the matter was granted by the Attorney Examiner on April  
8           17, 2009.

9           Through a July 15, 2009, Opinion and Order, the Commission adopted a unique  
10          arrangement in 2009 between AEP Ohio and Ormet which was reflected in the Power  
11          Agreement dated September 16, 2009, and docketed in Case No. 09-119-EL-AEC  
12          ("unique arrangement").

13          Among other provisions, the unique arrangement, as required by the July 15, 2009  
14          Opinion and Order, waived deposit and advance payment requirements but provided that  
15          AEP Ohio is permitted to treat any defaulted amounts due and unpaid as delta revenue to  
16          be recovered from all customers. The unique arrangement as adopted by the  
17          Commission also provided for an annual delta revenue cap of \$54 million and provided  
18          that discounts above that amount would be deferred and AEP Ohio would be permitted to  
19          recover any deferred amounts, including carrying charges, through the (Economic  
20          Development Rider (EDR) at the end of the unique arrangement term.

21          On October 17, 2012 in Case No. 09-119-EL-AEC (09-119 case), the  
22          Commission granted Ormet's request for payment deferral under the unique arrangement  
23          for October and November 2012 billings (\$27,239,473) in order to resolve an immediate

1 cash flow problem experienced by Ormet and provided that up to \$20 million of the  
2 payment deferral could be recovered from ratepayers if Ormet failed to timely pay any  
3 amounts under the deferred payment schedule. The Commission placed the risk of  
4 recovery of the remaining \$7,239,473 on AEP Ohio. Ormet filed Chapter 11 bankruptcy  
5 proceedings on February 25, 2013 before the United States Bankruptcy Court for the  
6 District of Delaware in Case No. 13-10334 (“bankruptcy proceeding”).

7 While AEP Ohio has a right to recover all of the delta revenue being requested,  
8 the Company has attempted to recover the funds from Ormet through the bankruptcy  
9 process. In that regard, during the pendency of Ormet’s bankruptcy proceeding, AEP  
10 Ohio pursued recovery of past due post-petition charges due and owing to AEP Ohio  
11 through the filing of several pleadings in the bankruptcy case but was denied by the  
12 Bankruptcy Court to date. I have attached as Exhibit WAA-1 a summary of the activities  
13 undertaken by AEP Ohio before the Bankruptcy Court and the Commission to pursue  
14 recovery of the amounts owed by Ormet under the unique arrangement.

15 In the 09-119 case, Ormet filed a June 14, 2013 motion to amend the unique  
16 arrangement to amend the discount structure and provide other relief. While the motion  
17 to amend the unique arrangement was pending, Ormet sought interim relief in the form of  
18 additional payment deferrals, which the Commission granted through an August 21, 2013  
19 Entry in the 09-119 case. The Commission ultimately granted the motion to amend in  
20 part and denied it in part through its October 2, 2013 Opinion and Order in the 09-119  
21 case (upheld in its November 13, 2013 Entry on Rehearing in that case).

22 On October 4, 2013, Ormet announced that it did not intend to pursue the  
23 amended unique arrangement and curtailed all remaining operations at its smelter facility

1 in Hannibal, Ohio. Ormet filed a request on October 22, 2013 in 09-119 case to receive  
2 “mothball” service going forward at tariff rates and on a weekly pre-pay basis while the  
3 bankruptcy case remains pending, which was granted by the Commission through an  
4 October 30, 2013 Entry in the 09-119 case.

5 Ormet filed the complaint initiating this proceeding on November 13, 2013  
6 alleging that AEP Ohio had misinterpreted the unique arrangement and made billing  
7 errors under the unique arrangement and the August 21, 2013 Entry in the 09-119 case.

## 8 **OVERVIEW OF THE STIPULATION**

### 9 **Q. PLEASE PROVIDE AN OVERVIEW OF THE STIPULATION.**

10 A. The Stipulation resolves the billing dispute and clarifies delta revenue recovery in light of  
11 the completion of service under the unique arrangement.

#### 12 **Resolution of billing disputes**

13 Under the Stipulation AEP Ohio agrees to reduce Ormet’s bill for September 2013 usage  
14 (due in October 2013) to reflect an additional \$5.5 million deferral, within 10 days of an  
15 order adopting the Stipulation. With respect to the additional billing deferrals referenced  
16 in the August 21, 2013 Entry, the Company has already reflected the \$5 million deferral  
17 as part of the July usage bill (due in August) but has not reflected the additional \$5.5  
18 million deferral to date. Ormet agrees to withdraw its claim regarding minimum demand  
19 charges and agrees not to contest AEP Ohio’s position that Section 5.08 of the unique  
20 arrangement incorporates minimum demand charges under the Company’s tariff.

#### 21 **Delta Revenue Recovery**

22 In light of the completion of service under the unique arrangement and the  
23 commencement of service under the new “mothball” arrangement, and given the fully  
24 curtailed status of the Hannibal Facilities, it is appropriate for AEP Ohio to finalize

1 collection of delta revenue in connection with the unique arrangement. The Commission  
2 approved AEP Ohio EDR update on March 26, 2014, which reflects all of the unique  
3 arrangement delta revenue accumulated prior to adoption of the Stipulation except for  
4 approximately \$10.5 million.<sup>1</sup> As pertinent to the \$10.5 million, the Stipulation confirms  
5 AEP Ohio's right to fully recover through the EDR as foregone revenue the bill deferral  
6 for September 2013 usage of \$5,500,000 and the remaining billed and unpaid amounts  
7 from 2013 under the unique arrangement totaling \$4,983,157.

8 Because gaining approval to presently recover all of the delta revenue associated  
9 with winding down the unique arrangement is a condition precedent to AEP Ohio's  
10 agreement, the Company will make an EDR update filing consistent with the Stipulation  
11 after the Commission adopts the Stipulation. As demonstrated in the EDR update filing  
12 (Case No. 14-193-EL-RDR), recovery during 2014-2015 of all of these outstanding delta  
13 revenue amounts under the unique arrangement will not cause the EDR rate to  
14 significantly increase.

15 As part of the Stipulation, Ormet agreed to pay AEP Ohio \$147,375 in connection  
16 with the parallel bankruptcy process. That payment along with Ormet's  
17 acknowledgement of the pre-petition deferral repayment obligation of \$27,239,473 (2012  
18 billing deferrals referenced above) as a general unsecured claim were subject to approval  
19 by the Bankruptcy Court. The payment of \$147,375 has already been made by Ormet  
20 (after being approved by the Bankruptcy Court) and has been deducted from the billed  
21 unpaid amounts for 2013 being proposed for recovery under the Stipulation. Any

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<sup>1</sup> AEP Ohio notes, however, that even with adoption of the Stipulation here and resolution of the unique arrangement delta revenue, there remains unrecovered delta revenue associated with prior reasonable arrangements between Ormet and AEP Ohio. Those separate issues are pending before the Commission in connection with Case Nos. 08-1338-EL-AAM and 08-1339-EL-UNC.



1 additional amount above \$7,239,473 (the amount of the 2012 deferrals that would  
2 otherwise be borne by AEP Ohio if not ultimately paid by Ormet) that is collected from  
3 Ormet through the bankruptcy process will be credited to ratepayers through the EDR.  
4 Of course, the Company also notes that approval of the Stipulation by the Commission is  
5 also a condition for the Stipulation to become fully binding.  
6

7 **CRITERIA FOR CONSIDERING APPROVAL OF A STIPULATION**

8 **Q. WHAT IS THE STANDARD THAT THE COMMISSION HAS USED WHEN**  
9 **CONSIDERING APPROVAL OF A STIPULATION AMONG PARTIES TO**  
10 **PROCEEDINGS?**

11 A. Based on advice of counsel, my understanding is that a contested stipulation must satisfy  
12 the three-part test. The components of the test, as I understand them, are: (1) is the  
13 stipulation the product of serious bargaining among capable, knowledgeable parties? (2)  
14 does the stipulation violate any important regulatory principle or practice? and (3) as a  
15 package, does the stipulation benefit ratepayers and the public interest?

16 **Q. WHY IS IT NECESSARY TO ADDRESS THE THREE-PART STIPULATION**  
17 **TEST IN THIS CASE?**

18 A. Based on its objections filed on March 10, 2014, the Office of the Ohio Consumers'  
19 Counsel (OCC) appears to contest AEP Ohio's recovery of \$4.983 million as billed  
20 unpaid amounts under the unique arrangement. In the context of challenging this single  
21 aspect of the Stipulation providing for AEP Ohio's recovery of the billed unpaid amount  
22 of \$4.983 million, the OCC claims without basis that the Stipulation fails the three-part  
23 test. As set forth below and while reserving any additional arguments the OCC may

1 attempt to raise in its testimony, if any, AEP Ohio maintains that the Stipulation fully  
2 satisfies the three-part test. The Commission's Finding and Order in the EDR update  
3 case (in Paragraph 23) held that AEP Ohio could file an application to increase the EDR  
4 rate for the remainder of the rate period, if the Commission adopts the Stipulation in this  
5 case. Thus, if the Stipulation is adopted, AEP Ohio would credit Ormet with the  
6 additional \$5.5 million billing deferral and pursue recovery of both the \$5.5 million  
7 billing deferral and the additional \$4.983 million billed unpaid amounts in the EDR  
8 update docket.

9  
10 *The Stipulation Is The Result Of Serious Bargaining Among Capable, Knowledgeable Parties*

11 **Q. IS THE STIPULATION SUBMITTED IN THIS CASE THE PRODUCT OF**  
12 **SERIOUS BARGAINING AMONG CAPABLE AND KNOWLEDGEABLE**  
13 **PARTIES?**

14 A. Yes. The Stipulation that has been proposed in this case is the result of a lengthy process  
15 of negotiation involving experienced counsel. While I am advised by counsel that the  
16 content and substance of settlement discussions is confidential and should not be  
17 revealed, I can tell you that Ormet and the Company had a series of meetings to discuss  
18 and negotiate the Stipulation. The settlement reflects compromise by both parties and  
19 neither party was able to get the other party to fully accept their respective litigation  
20 positions. Obviously, both Ormet and AEP Ohio are capable and knowledgeable parties  
21 that practice extensively before the Commission.

1   **Q.    IS THERE ANY MERIT TO OCC’S OBJECTION IN THIS REGARD THAT THE**  
2       **CUSTOMER CLASS WAS IMPROPERLY EXCLUDED FROM THE**  
3       **SETTLEMENT?**

4    A.   No. At the time of the settlement discussions and the filing of the Stipulation, Ormet and  
5       AEP Ohio were the only parties to the case. In this regard, I am advised by counsel that  
6       the *Time Warner* case relied upon by OCC was non-binding language that was not part of  
7       the decision in that case and does not serve as precedent. In any event, the point made in  
8       that part of the Court’s opinion is inapplicable here because OCC was not a party at the  
9       time of the negotiations in this case. Further, the Signatory Parties were careful to avoid  
10      short-circuiting consideration of the rate issues that could affect other customers as part  
11      of the Stipulation. In this regard, while the Stipulation recommended that the EDR  
12      include all of the remaining delta revenue in order to finalize matters relating to the  
13      unique arrangement, it also recognized that the rate issues could be addressed, in part, in  
14      the EDR case by explicitly acknowledging that the Commission may wish to either  
15      decide the two proceedings in parallel. Subsequently, the Commission’s Finding and  
16      Order in the EDR update proceeding decided (in Paragraph 23) that it would address the  
17      delta revenue issues in this complaint proceeding and then the Company can re-apply to  
18      increase the EDR accordingly. So it is now appropriate to address adoption of the  
19      Stipulation with OCC’s participation. In this regard, AEP Ohio notes that it has not  
20      opposed OCC’s intervention in this case or made any attempt to limit OCC’s  
21      participation. In any case, AEP Ohio and Ormet had no duty to reach out to OCC and  
22      include them in negotiations when OCC had not sought to participate in this case at the  
23      time settlement discussions occurred. The fact that OCC subsequently sought

1 intervention should not change the obvious conclusion that the first prong of the three-  
2 part test is fulfilled.

3  
4 ***The Stipulation Does Not Violate Any Important Regulatory Principle Or Practice***

5 **Q. DOES THE STIPULATION VIOLATE ANY IMPORTANT REGULATORY**  
6 **PRINCIPLE OR PRACTICE?**

7 A. I am not aware of any important regulatory principle or practice with which the  
8 Stipulation conflicts. As I explained above, the Stipulation resolves the billing dispute at  
9 issue in a manner that, in my opinion, is reasonable. In addition, none of the individual  
10 provisions of the Stipulation are inconsistent with or violates any important regulatory  
11 principle or practice. On the contrary, the Stipulation is consistent with the  
12 Commission's July 15, 2009 Opinion and Order in the 09-119 case approving the Ormet  
13 unique arrangement and the terms of the unique arrangement. Moreover, by addressing  
14 billed and unpaid amounts owed by Ormet to AEP Ohio, the Stipulation is in line with  
15 the Commission's policy determination to waive Ormet's deposit obligation at the outset.

16 It is my understanding of the 09-119 Opinion and Order that all delta revenue is  
17 recoverable through AEP Ohio's EDR. After agreeing with Staff's recommendation that  
18 ratepayers should expect to pay no more than \$54 million each year in delta revenues, the  
19 Commission stated, "At the end of the term of the unique arrangement, AEP-Ohio will be  
20 permitted to recover any remaining deferred amounts, including carrying charges,  
21 through its economic development rider." (Order at p. 10). The Stipulation is consistent  
22 with the Commission's prior determination that AEP Ohio is authorized to recover delta  
23 revenues during the duration of the unique arrangement through its EDR.

1           It is my understanding that the contract the Commission approved in the 09-119  
2 case defines delta revenue so as to include billed unpaid amounts. Section 1.07 of the  
3 contract states, "Delta Revenue means all revenue which would be recoverable from  
4 Ormet under the AEP Ohio Tariff Rate, but for this Power Agreement, forgone by AEP  
5 Ohio as a result of the provisions of the Power Agreement, including as a result of an  
6 Event of Default by Ormet of this Power Agreement." Section 8.01(a) specifies that an  
7 "Event of Default" includes "[f]ailure to make a payment within two (2) Business Days of  
8 when it is due for reasons other than the occurrence of a force majeure event that  
9 precludes Ormet's ability to process its payment." Thus, both the Opinion and Order and  
10 the approved compliance contract are clear that all billed unpaid amounts are delta  
11 revenue. The Stipulation is consistent with the Commission's Order and the contractual  
12 language.

13           It is also my understanding that the Commission's up front policy decision in 09-  
14 119 to relieve Ormet of the obligation to provide a deposit – knowing that it would  
15 increase the ratepayers' risk of having to cover the delta revenues should Ormet default –  
16 is particularly applicable and controlling here. (Order at p. 14). In fact, the deposit then  
17 held by the Company was required to be returned to Ormet. Had the Commission not  
18 made that policy decision to waive Ormet's obligation to provide a deposit to AEP Ohio,  
19 the Company would use the deposit to pay the billed unpaid amounts. Instead, the  
20 Commission understood the risk that waiving the deposit increased exposure to delta  
21 revenue, and it is clear from the Order and the contract language that billed and unpaid  
22 amounts are delta revenue to be collected through the EDR, as the Stipulation sets forth.

1 Any amounts that are not timely paid – whether under a Commission-approved  
2 deferred payment arrangement or unpaid bills under the contract – are delta revenues. I  
3 have been advised by counsel that these are foregone revenue under Section 4905.31,  
4 Revised Code, and shall be recovered by AEP Ohio through its EDR. Thus, in addition  
5 to being consistent with the Opinion and Order approving the contract and paragraph 20  
6 of the August 21, 2013 Entry in that case, by permitting AEP Ohio to recover foregone  
7 revenue through its EDR, the Stipulation is consistent with state law.

8 **Q. SO IT IS SAFE TO SAY THAT YOU DISAGREE WITH OCC’S CONTENTION**  
9 **IN THIS REGARD THAT THE STIPULATION VIOLATES THE**  
10 **COMMISSION’S POLICY REGARDING RECOVERY OF BAD DEBT?**

11 A. Yes. While OCC’s objections make reference to a regulatory policy that makes the  
12 utility responsible for managing uncollectible amounts without special treatment through  
13 a rider mechanism, OCC’s statement of the policy is both inapplicable and inaccurate.  
14 OCC’s claim in this regard primarily relies upon a 1984 base rate case involving the gas  
15 industry. Aside from being marginally relevant, at best, AEP Ohio submits that whatever  
16 general bad debt policy that exists is simply not applicable here. While AEP Ohio does  
17 not have a bad debt rider, each of the other electric utilities does have a bad debt rider –  
18 so today’s bad debt policy does not reflect OCC’s misguided view that a bad debt rider  
19 constitutes special ratemaking treatment that is unjustified. More importantly, as  
20 discussed above, the Commission’s decision in the 09-119 case to waive the deposit  
21 requirement and permit recovery of billed unpaid amounts under the unique arrangement  
22 is controlling here and any general policy to the contrary is not applicable. In sum, the  
23 Stipulation does not violate any important regulatory policy.

1  
2 *As A Package, The Stipulation Benefits Ratepayers And The Public Interest*

3 **Q. DOES THE STIPULATION AS A PACKAGE BENEFIT CUSTOMERS AND THE**  
4 **PUBLIC INTEREST?**

5 A. Yes. The Company has demonstrated that it has done everything reasonably possible in  
6 the bankruptcy proceeding to get full recovery directly from Ormet. AEP Ohio, through  
7 the filing of several pleadings in the bankruptcy case, tried to get Ormet to pay past due  
8 post-petition charges due and owing to AEP Ohio, but was denied by the Bankruptcy  
9 Judge. At this time, Ormet is unable to pay its administrative claims in the bankruptcy.  
10 Moreover, as reflected in Ormet's January 2014 Operating Report (the latest available  
11 report available from the Bankruptcy Court's docket), it continues to appear likely that  
12 administrative claims in the bankruptcy will not be paid in full, if at all. Finally, in the  
13 unlikely event that AEP Ohio does recover some amounts on its allowed administrative  
14 expense claim in the Bankruptcy Court, it has already committed to refund any such  
15 recovery to the ratepayers, which provides an obvious benefit for customers and the  
16 public interest. AEP Ohio is entitled to recovery under the Commission's prior Ormet  
17 orders, the terms of the unique arrangement, and state law, and it is in the public interest  
18 to approve the Stipulation which furthers this result.

19 **Q. DOES THE STIPULATION IN THIS PROCEEDING SATISFY EACH ASPECT**  
20 **OF THE THREE-PART TEST?**

21 A. For all of the reasons provided above, the Stipulation satisfies each aspect of that test and  
22 should be accepted by the Commission.  
23

1    **CONCLUSION**

2    **Q.     DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?**

3    **A.     Yes, it does.**



## Exhibit WAA-1

### **Summary of Ormet Bankruptcy Proceeding as it relates to AEP Ohio**

1. On February 25, 2013 (the “Petition Date”), the Debtors filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code.
2. On February 26, 2013, the Debtors filed *Debtors’ Motion For Authority Pursuant To Sections 363, 366 And 105(a) Of The Bankruptcy Code For An Interim And Final Order (I) Prohibiting Utility Services Providers From Altering, Refusing, Or Discontinuing Service; (II) Authorizing Payment Of Certain Pre-Petition Claims Of Certain Utility Providers As Part Of Adequate Assurance Payments; (III) Deeming Utilities Adequately Assured Of Payment; And (IV) Establishing Procedures For Determining Adequate Assurance Of Payment* (the “Utility Motion”)[Docket No. 11].
3. In the Utility Motion, the Debtors offered AEP the following as adequate assurance of payment under Section 366:
  - A. Payment of AEP’s February 2013 prepetition charges in the amount of \$6,403,598.69; and
  - B. Timely payment of AEP’s post-petition invoices.
4. AEP accepted the Debtors’ offer of adequate assurance with the following additional provision that was evidenced and approved by the Bankruptcy Court in the *Final Order For Authority Pursuant To Sections 363, 366 And 105(a) Of The Bankruptcy Code (I) Prohibiting Utility Services Providers From Altering, Refusing, Or Discontinuing Service; (II) Authorizing Payment Of Certain Pre-Petition Claims Of Certain Utility Providers As Part Of Adequate Assurance Payments; (III) Deeming Utilities Adequately Assured Of Payment; And (IV) Establishing Procedures For Determining Adequate Assurance Of Payment* (the “Utility Order”) [Docket No. 135]:

A. The Debtors agreed to waive any and all claims against AEP under Sections 547, 548 and 550 of the Bankruptcy Code.

B. Although AEP believes it had defenses to the foregoing claims, the total amount of payments received by AEP that could be the subject of such claims was \$22,212,824.

5. On July 31, 2013, the Debtors filed a *Motion For Expedited Approval Of Payment Deferral And Memorandum In Support Of Ormet Primary Aluminum Corporation* (the “Deferral Motion”) with The Public Utilities Commission Of Ohio (“PUCO”). In the Deferral Motion, the Debtors sought to avoid having to pay AEP’s bills for July and August charges that were due in August and September 2013.

A. The July 2013 charges, which had an August 22, 2013 due date, were as follows:

1. Acct No. xxx-xxx-905-0-9: \$4,367,246.65 (This is the amount after the \$2,750,000 monthly credit Ormet received under the Power Agreement was applied); and

2. Acct No. xxx-xxx-987-0-3: \$3,751,415.51 (This is the amount after the \$2,750,000 monthly credit Ormet received under the Power Agreement was applied). The bills referenced in paragraphs 5.A.1. and A.2. above shall hereinafter be referred to as the July 2013 Invoices.

B. The August 2013 charges, which had a September 26, 2013 due date, were as follows:

1. Acct No. xxx-xxx-905-0-9: \$2,229,507.08 (This is the amount after the \$2,750,000 monthly credit Ormet received under the Power Agreement was applied); and

2. Acct No. xxx-xxx-987-0-3: \$1,542,266.64 (This is the amount after the \$2,750,000 monthly credit Ormet received under the Power Agreement was applied). The bills referenced in paragraphs 5.B.1. and B.2. above shall hereinafter be referred to as the “August 2013 Invoices.”

6. AEP timely filed an objection to the Deferral Motion.

7. On August 15, 2013, the Debtors filed with the Bankruptcy Court, the *Debtors’ Emergency Motion For An Interpretation Of The Final Order For Authority Pursuant To Sections 363, 366 And 105(a) Of The Bankruptcy Code (I) Prohibiting Utility Services Providers From Altering, Refusing, Or Discontinuing Service; (II) Authorizing Payment Of Certain Pre-Petition Claims Of Certain Utility Providers As Part Of Adequate Assurance Payments; (III) Deeming Utilities Adequately Assured Of Payment; And (IV) Establishing Procedures For Determining Adequate Assurance Of Payment* (the “Emergency Motion”) [Docket No. 569].

8. On August 21, 2013, the Bankruptcy Court held a hearing on the Emergency Motion and AEP’s Objection. Although not evidenced by a formal Court Order, the Bankruptcy Court granted the Emergency Motion as follows:

Well, based on the language that is quoted in your order, the language from the final utility order, I agree with the debtor. It simply requires that the debtor pay AEP’s post-petition utility charges on or before the applicable due date. I agree that the PUCO has the authority to modify the due date. My order does not preempt that authority. So if PUCO does modify the due date, the debtors are simply required by my 366 order to pay it by that modified date. If PUCO does not modify the due date, then the debtors are obligated to pay by the one that is currently applicable which is tomorrow . . . .

9. On August 21, 2013, the PUCO granted the Deferral Motion as follows:

A. The Debtors may defer payment of \$5 million for the July 2013 Invoices (The July Invoices, after the \$5.5 million contractual discount, totaled \$8,118,662.16, so a balance of \$3,118,662.16 was due and paid by the Debtors);

B. The Debtors were entitled to a \$5.5 million discount on their August Invoices; and

C. Payment of the deferred amounts should occur within five business days of the closing of the sale to Smelter.

10. The Sale to Smelter did not occur.

11. On October 2, 2013, AEP issued the following invoices to the Debtors for September 2013 charges:

A. Acct No. xxx-xxx-905-0-9: \$3,871,751.98(No discount);

B. Acct No. xxx-xxx-987-0-3: \$3,472,208.06 (No discount); and

C. Total - \$7,343,960.04 (collectively, the “September 2013 Invoices).

12. The due date for the September 2013 Invoices was October 23, 2013.

13. Instead of paying the September 2013 Invoices, the Debtors filed pleadings with the PUCO to contest:(a) whether or not they were entitled to the \$5.5 million contractual discount for the September 2013 Invoices; and (b) contractual minimums. The total contested amount from the September 2013 Invoices was \$5,861,877.83, which left an uncontested balance of \$1,482,082.21.

14. The Debtors failed to tender payment for any portion of the September 2013 Invoices by the due date. Accordingly, AEP issued termination notices to the Debtors on October 28, 2013 for nonpayment of the undisputed portion of the September 2013 Invoices.

15. On October 22, 2013, the Debtors filed the *Motion Of Ormet Primary Aluminum Corporation And Request For Expedited Ruling* (the “October Emergency Motion”) seeking to prevent AEP from terminating service for the \$1,482,082.21 undisputed balance from the September 2013 Invoices.

16. On October 30, 2013, the PUCO granted the October Emergency Motion and prevented AEP from terminating service to the Debtors for failing to pay undisputed, past due charges owed to AEP (the “October 2013 PUCO Order”).

17. On November 1, 2013, AEP filed an *Emergency Motion Of Ohio Power Company, d/b/a AEP Ohio, Pursuant To Section 366(c)(3) Of The Bankruptcy Code, To Modify The Utility Order* (the “AEP Motion”) seeking to require the Debtors to pay:

- A. The \$5 million due and owing from the July 2013 Invoices;
- B. The uncontested balance of \$1,482,082.21 from the September 2013 Invoices; and
- C. the October 1 to October 29, 2013 charges in the amount of \$3,286,571.85.

18. On November 1, 2013, AEP filed an *Application Of Ohio Power Company, d/b/a AEP Ohio For Allowance And Immediate Payment Of Administrative Expenses* (the “AEP Application”) seeking the allowance and payment of the following: (A) \$5 million of the \$8,118,662.16 owed by the Debtors to AEP for the July 2013 charges; (B) the uncontested balance of \$1,482,082.21 from the September 2013 Invoices that remains due and payable (AEP reserved the right to seek the disputed portion of the September 2013 Invoices once the PUCO rules on the dispute); (C) estimated charges in the amount of \$1 to \$2 million for the period of October 1, 2013 to October 29, 2013; and (iv) estimated charges for October 30 and 31, 2013.

On November 5, 2013, AEP filed a Supplement to the AEP Application that set forth the actual charges for October 1 to October 29, 2013 were in the amount of \$3,286,571.85.

19. The Debtors are current on the payment for amounts due from AEP for charges incurred from October 30, 2013 forward.

20. As a result of the Bankruptcy Court refusing to require the Debtors to immediately pay the charges requested in the AEP Motion and the AEP Application and the Debtors lacking the funds to pay such charges, the Debtors and AEP ultimately resolved the AEP Application in the *Order Resolving Application Of Ohio Power Company d/b/a AEP Ohio For Allowance And Immediate Payment Of Administrative Expenses* that was entered in the Bankruptcy Court on February 21, 2014, which allows the post-petition claim of AEP in the amount of \$15,630,531.89 and requires the Debtors to pay the \$147,375.34 in charges they do not dispute from the October 1 to October 29, 2013 time period.

## CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the Direct Testimony of William A. Allen was served this 8th day of April, 2014 by electronic mail upon counsel listed below.

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Summary: Testimony -Direct Testimony of William A. Allen electronically filed by Mr. Steven T Nourse on behalf of Ohio Power Company