**Before**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

**APPLICATION FOR REHEARING**

**BY**

**THE OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

On behalf of approximately 1.2 million residential rate-paying consumers of the Ohio Power Company and the Columbus Southern Power Company (collectively “AEP Ohio”), OCC applies for rehearing of the October 17, 2012 Entry (“Entry”) of the Public Utilities Commission of Ohio (“Commission” or “PUCO”). In prior rulings, the PUCO resolved Ormet’s proposals for electricity discounts by instituting, among other things, safeguards for customers who reimburse AEP Ohio for the millions of dollars in discounts.[[1]](#footnote-1)

Consistent with the PUCO’s prior approach to this issue, the PUCO should modify its Entry in two respects. First, the PUCO should clarify that it will continue to require Ormet to maintain 650 full time jobs. Second, the PUCO should again include a provision that allows it to terminate the arrangement if long-term metal prices do not increase enough for Ormet to profitably operate. These rehearing claims are supported in the attached memorandum in support.

Respectfully submitted,

BRUCE J. WESTON

OHIO CONSUMERS’ COUNSEL

*/s/ Maureen R. Grady*\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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**MEMORANDUM IN SUPPORT**

# I. INTRODUCTION

Ormet is a major producer (smelter) of aluminum in the United States. [[2]](#footnote-2) Ormet’s smelter is located in Hannibal, Ohio.[[3]](#footnote-3) When the smelter is fully operating (six potlines),**[[4]](#footnote-4)**  Ormet employs approximately one thousand employees.[[5]](#footnote-5) Roughly sixty percent (60%) of Ormet’s smelter employees are Ohio residents and forty percent (40%) are residents of West Virginia or Pennsylvania.[[6]](#footnote-6)

On July 14, 2009, the PUCO approved, by Opinion and Order, a ten-year “unique arrangement” for Ormet.[[7]](#footnote-7) Under the arrangement Ormet receives a yearly discount on the power bill it would otherwise pay at AEP Ohio’s tariff rates. The customers of AEP Ohio were ordered to fund the discount, reimbursing AEP Ohio for the discount to Ormet. Over the term of the arrangement, the discount customers are expected to pay is $305.7 million.[[8]](#footnote-8)

The discount is for economic development--to retain Ohio jobs at Ormet. In arranging the discount to Ormet, the PUCO sought to protect Ohioans—by maintaining jobs at Ormet and putting a limit on the money customers would pay to reimburse AEP for the discount. One protection ordered was that Ormet must maintain 650 full-time employees for Ohio.[[9]](#footnote-9) A second protection ordered by the PUCO was a provision allowing it to terminate the arrangement (discount) if long-term metal prices did not increase enough for Ormet to profitably operate.[[10]](#footnote-10)

On October 12, 2012, Ormet requested that the Commission modify its earlier approved arrangement.[[11]](#footnote-11) Ormet sought to defer payments for the remainder of 2012 because it had already exhausted its yearly discount.[[12]](#footnote-12) Ormet asked that if it fails to make a scheduled payment for its electricity bill, the missed payment should be collected from AEP Ohio’s other customers.[[13]](#footnote-13) Ormet also stated that AEP Ohio consents to its request provided that AEP Ohio would be allowed to collect from other customers the amounts owed by Ormet.[[14]](#footnote-14)

On October 17, 2012, the Commission, in an Entry, ruled that Ormet may defer payment of its electric bill for October and November 2012, with payment to be prorated over a seventeen-month period.[[15]](#footnote-15) The Commission also granted AEP Ohio accounting authority to defer the amounts of Ormet’s unpaid electricity bills for 2012, not to exceed $20 million. It is expected that this $20 million will become part of the discount funded by AEP Ohio’s customers, in addition to the $305.7 million customers are already obliged to pay AEP Ohio for the discount to Ormet.

# II. STATUTORY BASIS FOR APPLICATIONS FOR REHEARING

Applications for rehearing are governed by R.C. 4903.10 and may be sought by any party who has entered an appearance in the proceeding. The Commission may grant and hold rehearing on matters raised in an application, if “in its judgment sufficient reason therefor is made to appear.” If the Commission grants rehearing and determines that its order is in any respect unjust or unwarranted, the Commission may “abrogate or modify” the Order.[[16]](#footnote-16)

As a party to the proceeding[[17]](#footnote-17) OCC meets the statutory condition necessary to file an application under R.C. 4903.10. OCC respectfully requests that the PUCO modify its Entry to continue its earlier ordered customer protections for the reasons discussed below.

# III. RECOMMENDATIONS

In its October 17, 2012 Entry, the PUCO concluded that the additional discount granted to Ormet is sufficient and “properly constrained” while considering the interests of AEP Ohio and its other ratepayers.[[18]](#footnote-18) The PUCO expressed concerns, however, as to the financial risk being incurred by AEP Ohio’s ratepayers, where “unprecedented” subsidies were approved to keep Ormet and hundreds of jobs in Ohio.[[19]](#footnote-19)

The PUCO should now clarify that the existing safeguards (for the customers who are paying AEP Ohio for the discounts to Ormet) will continue as part of the revised Ormet arrangement. As stated, the PUCO’s existing two safeguards, approved in 2009 in its original Opinion and Order, were job commitments and an independent termination provision.

One safeguard ordered by the PUCO in 2009 was that Ormet must maintain 650 full-time employees for Ohio. This should be a commitment as well for the additional $20 million discount.[[20]](#footnote-20) A second protection originally ordered by the PUCO is that it reserved the right to terminate the Ormet arrangement (discount) if long-term metal prices did not increase enough for Ormet to profitably operate (and afford its electricity bills).[[21]](#footnote-21) The PUCO previously concluded that “the primary purpose of the unique arrangement is to retain jobs rather than to boost world aluminum production or to enrich Ormet’s investors.”[[22]](#footnote-22)

The Commission should grant rehearing on this matter where the issues involve the continuation of the PUCO’s prior customer safeguards.

Respectfully submitted,

BRUCE J. WESTON

OHIO CONSUMERS’ COUNSEL

*/s/ Maureen R. Grady*\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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**Certificate Of Service**

I hereby certify that the foregoing Application for Rehearing was served via electronic transmission upon the following parties of record, this 16th day of November 2012.

*/s/ Maureen R. Grady*\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Maureen R. Grady

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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, Opinion and Order (July 15, 2009). [↑](#footnote-ref-1)
2. 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. [↑](#footnote-ref-2)
3. SeeId. [↑](#footnote-ref-3)
4. Ormet reduced production at the Hannibal smelter to four pot lines at the end of August 2012. As of October 1, 2012, Ormet has reduced its Hannibal smelter workforce by approximately 90 employees. Id. [↑](#footnote-ref-4)
5. See Affidavit of James Burns Riley (Oct. 19, 2012). [↑](#footnote-ref-5)
6. See Ormet Exhibit 5 at 5 (Coomes). [↑](#footnote-ref-6)
7. *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 (July 15, 2009). [↑](#footnote-ref-7)
8. In 2009 the discount provided to Ormet was $11.78 million. *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company to Adjust the Economic Development Cost Recovery Rider Rates*, Case No. 09-1075-EL-UNC, Application at Schedules 5, 5b (November 13, 2009).  For 2010, through 2018, the Commission imposed restrictions on the discount provided to Ormet. For 2010 and 2011, there is a maximum discount of $60 million per year. In 2012, the maximum discount is $54 million, for calendar years 2013 through 2018, the maximum discount is reduced by $10 million per year. See Opinion and Order at 10. [↑](#footnote-ref-8)
9. Id. [↑](#footnote-ref-9)
10. Specifically, the Commission determined that it could terminate the arrangement “if Ormet does not begin to reduce the amount of accumulated deferrals, and carrying charges [potentially created in years 2010 and 2011 through deferral accounting], through the payment of above-tariff rates, by April 1, 2012.” Order at 15. Termination was to become effective immediately upon issuance of a PUCO order terminating the arrangement. Id. [↑](#footnote-ref-10)
11. *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, Ormet Motion for Expedited Approval of Payment Deferral and Memorandum in Support (Oct. 12, 2012). [↑](#footnote-ref-11)
12. Ormet attributes this to the “declining metals market and an overabundance of supply.” Id. at ¶2. The 2012 discount provided to Ormet was $54 million, funded by customers. [↑](#footnote-ref-12)
13. Id. at ¶6. [↑](#footnote-ref-13)
14. Id. at ¶8. [↑](#footnote-ref-14)
15. *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. [↑](#footnote-ref-15)
16. R.C. 4903.10. [↑](#footnote-ref-16)
17. The PUCO granted OCC‘s Motion to Intervene on April 17, 2009. Entry at ¶4 (Apr.17, 2009). [↑](#footnote-ref-17)
18. Entry at ¶5 (Oct. 17, 2012). [↑](#footnote-ref-18)
19. Id. [↑](#footnote-ref-19)
20. Id. [↑](#footnote-ref-20)
21. Specifically, the Commission determined that it could terminate the arrangement “if Ormet does not begin to reduce the amount of accumulated deferrals, and carrying charges [potentially created in years 2010 and 2011 through deferral accounting], through the payment of above-tariff rates, by April 1, 2012.” Order at 15. Termination was to become effective immediately upon issuance of a PUCO order terminating the arrangement. Opinion and Order at 15. [↑](#footnote-ref-21)
22. Id. at 11. [↑](#footnote-ref-22)