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Via Overnight Mail

March 3, 2009

Public Utilities Commission of Ohio
PUCO Docketing
180 E. Broad Street, 10th Floor
Columbus, Ohio 43215

In re: Case No. 09-119-EL-AEC

Dear Sir/Madam:

Please find enclosed an original and twelve (12) copies of the OHIO ENERGY GROUP'S MOTION TO INTERVENE AND MEMORANDUM IN SUPPORT to be filed in the above-referenced matter.

Copies have been served on all parties on the attached certificate of service. Please place this document of file.

Respectfully yours,

Michael L. Kurtz

David F. Boehm, Esq.
Michael L. Kurtz, Esq.
BOEHM, KURTZ & LOWRY

MLKkew
Encl.
Cc: Certificate of Service
Chairman Alan R. Schriber
Ronda Hartman Fergus
Valerie A. Lemmie
Paul A. Centolella
Cheryl Roberto
Kim Bojko, Hearing Examiner
Greta See, Hearing Examiner
Steve Lesser, Esq.

CERTIFICATE OF SERVICE

I hereby certify that true copy of the foregoing was served by electronic mail (when available) and/or regular U.S. mail, this 3rd day of March, 2009 to the following:

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BEFORE THE
PUBLIC UTILITY COMMISSION OF OHIO

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

MOTION TO INTERVENE OF THE THE OHIO ENERGY GROUP

Pursuant to the Ohio Rev. Code §4903.22.1 and Ohio Admin. Code §4901-1-11, the Ohio Energy Group ("OEG") moves for leave to intervene in this proceeding. The Public Utility Commission of Ohio ("Commission") should grant OEG leave to intervene because OEG has a real and substantial interest in the proceeding, and the Commission's disposition of this proceeding may impair or impede OEG's ability to protect that interest.

Respectfully submitted,

Michael L. Kurtz

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March 3, 2009

COUNSEL FOR THE OHIO ENERGY GROUP

BEFORE THE
PUBLIC UTILITY COMMISSION OF Ohio

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

MEMORANDUM IN SUPPORT OF THE OHIO ENERGY GROUP'S MOTION TO INTERVENE

Pursuant to Ohio Rev. Code §4903.22.1 and Ohio Admin. Code §4901-1-11, the Ohio Energy Group (OEG) files this Memorandum in Support of Motion to Intervene.

OEG is a non-profit entity organized to represent the interests of large industrial customers in electric and gas regulatory proceedings before the Public Utility Commission of Ohio ("Commission"). OEG's members who are participating in this intervention are: AK Steel Corporation, Aleris International, Inc., ArcelorMittal, BP-Husky Refining, LLC, Brush Wellman, E.I. dupont de Nemours & Company, Ford Motor Company, GE Aviation, Griffin Wheel, Linde, Inc., Procter & Gamble Distribution Company, PPG Industries, Inc., Republic Engineered Products, Inc., Severstal Wheeling and Worthington Industries. These companies purchase large amounts of electric power from the Ohio Power Company and Columbus Southern Power Company ("AEP-Ohio"). Therefore, the interests of OEG's members may be directly affected by the outcome of this proceeding. The interests of OEG cannot be adequately represented by any other party. OEG intends to play a constructive role in this case and provide information which will assist the Commission.

No other party to this proceeding can adequately represent OEG's interest. Intervention would not unduly delay the proceeding nor unjustly prejudice any existing party.

Accordingly, OEG has a real and substantial interest and is entitled to intervene in this action under Ohio Rev. Code §4903.22.1 and Ohio Admin. Code §4901-1-11.

A. BACKGROUND

On February 17, 2009 Ormet Primary Aluminum Corporation ("Ormet") filed an Application for approval of a ten-year Unique Arrangement under R.C. Section 4905.31 and OAC Section 4901:1-38-05 between itself and AEP-Ohio. The Unique Arrangement ties the price of electricity ("Indexed Rate") paid by Ormet to the worldwide price of aluminum as established on the London Metal Exchange ("LME"). The Indexed Rate is the amount in \$/mWh that Ormet could pay to *"produce sufficient cash flow to sustain its operations at the Hannibal Facilities and to pay its required legacy pension costs, depending upon the Annual LME price of aluminum."* (Proposed Unique Arrangement at Paragraph 1.13). The difference between what Ormet determines that it is able to pay for electricity (the Indexed Rate) and the tariff rate it would otherwise pay is proposed to be charged to all other ratepayers ("Delta Revenue"). Ormet asserts that this variable electric rate tied to its ability to pay and LME pricing is balanced because *"when aluminum prices are low, Ormet will receive a discounted rate, and when aluminum prices are high, Ormet will pay a premium."* (Application at pp. 6, 8). The maximum amount of the premium is 5% more than the otherwise applicable AEP-Ohio tariff rate. At current AEP-Ohio tariff rates for Ormet's full load this 5% premium is approximately \$8.95 million.[1] This 5% premium will apply when the LME price is more than \$3,000/tonne. The current LME price is less than half that at approximately \$1,270/tonne (Attachment 1).

[1] 540 MW x 8,760 x 0.985 = 4,659,444 mWh. \$38.43/mWh x 4,659,444 x 0.05 = \$8,953,121.

B. OBJECTIONS TO PROPOSED UNIQUE ARRANGEMENT

1. There Is No Floor On How Low Ormet's Electric Rate Can Go.

While Ormet's proposed Unique Arrangement caps its power costs at 5% above the otherwise applicable large industrial rate in the event LME aluminum prices more than double from their current level, there is no floor. As proposed by Ormet, the rate that it would pay could go to zero. This means that Ormet proposes that other residential, commercial and industrial customers may be required to pay for the fuel, environmental (emission allowance costs for SO_2, NOX and very likely in the near future CO_2) and other out of-pocket variable costs to serve its 540 MW load over the period 2010-2018. We are aware of no power contract anywhere in the United States where the consumer did not have to pay at least for the out-of-pocket variable costs to serve its load. In sum, if the aluminum market stays depressed, Ormet wants the opportunity to receive free electricity.

In its response to this argument Ormet will likely point to Paragraph 2.03 of its proposed Unique Arrangement. Paragraph 2.03 provides that the Commission "*may*" require "*modification*" of the Unique Arrangement prior to January 1, 2016 if the cumulative net discount received by Ormet exceeds 50% of the amount Ormet would have paid under the AEP-Ohio Tariff Rate. But this provision ties the Commission's hands more than it provides ratepayer protection. Under Paragraph 2.03, the Commission is prohibited from amending the contract before 2016 if the cumulative net discount is 49% or less. It is only when the discount exceeds 50% that the Commission "*may*" act to modify the Agreement. Paragraph 2.03 provides no binding ratepayer protection and the fact remains that there is no floor in Ormet's proposed agreement.

Just as there is a hard 5% cap on the premium Ormet may pay, there should also be a hard floor. The floor should be either: 1) the payment of all out-of-pocket variable costs to produce the power consumed by Ormet, plus some contribution to fixed costs; or 2) some known discount to the tariff rate.

2. Using Current LEM Futures Prices, Ormet's Proposal Would Result In It Getting Free Electricity In 2010 And Would Result In Delta Revenues Of $179 Million For That Single Year.

Attached to Ormet's Application is Schedule A, Page 1. This is the formula rate Ormet proposes to pay in 2010 assuming that AEP-Ohio receives no ESP rate increase. This is a very conservative scenario. This schedule provides that if actual cash LME prices during 2010 average less than the $2,725/tonne Target Price, then Ormet will pay the current AEP-Ohio tariff rate of $38.43/mWh minus $0.0490/mWh for each $1/tonne that the actual LME prices are less than the Target Price.

No one will precisely know average actual cash LME prices during 2010 until after the fact, but right now, the LEM futures price for mid-2010 is $1,460/tonne. (Attachment 1). Applying this 2010 actual LME future price to Ormet's proposed formula results in it getting free electricity. It also requires consumers to pay $179,062,432 in Delta Revenue. This calculation is shown on Attachment 2.

As shown on Attachment 2, using current LME futures pricing to the formula proposed by Ormet would actually result in a negative rate. We doubt that is what the parties intended, but because AEP-Ohio's recovery of Delta Revenue is limited to the amount Ormet would have paid under the tariff, the funding of any negative balance is between Ormet and AEP's shareholders.

3. The Proposed Unique Arrangement Allows Ormet To Effectively Set Its Own Electric Rate.

This proposed Unique Arrangement effectively allows Ormet to set its own electric rate. The Target Price and Indexed Rate sought by Ormet for 2010 and 2011 are attached to its Application. Pursuant to Paragraph 5.02, beginning October 1, 2011, each year Ormet is to prepare and submit to the Commission a schedule showing the Target Price and Indexed Rate that Ormet unilaterally determines that it needs/wants for the following year. There is no contractual standard as to how Ormet will determine the electric price it needs/wants to pay, other than it will be the rate Ormet determines is necessary to "*produce sufficient cash flow to sustain its operations at the Hannibal Facilities and to pay its required legacy pension costs.*" (Proposed Unique Arrangement Paragraph 1.13). "*Sufficient cash flow*" is undefined. "*Sustain its operations*" is undefined. Nor can either term be quantified and therefore audited. The contract does provide that Ormet will pay for an independent third party to review "*any schedule*" submitted by Ormet. But the schedule is a one-page piece of paper in the form of Schedule A to the Application. There is no provision authorizing the third-party to inspect Ormet's books and records. There is no provision limiting the salaries or dividends Ormet can pay while it is receiving a ratepayer subsidy. There is no incentive for Ormet to control its costs because if its cash flow is hurt through excessive expenses, then its power rate will be correspondingly lower. But the power rates of all other consumers will then go up through increased Delta Revenue payments.

Ormet's proposal that it be able to set its annual electric rate based upon its determination of its cash flow needs is an abdication of the ratemaking function to itself. No utility is allowed to establish the rates it charges based upon its unilateral determination of its cash flow needs. Yet Ormet seeks this privilege regarding the rates it will pay, and therefore the Delta Revenue everyone else will pay.

4. The Economic Impact Of Ormet Extends 58% To Ohio And 42% To West Virginia, Yet Ohio Consumers Would Pay All Of The Ormet Subsidy.

Attachment E to the Application is a study showing the economic impact of Ormet to the surrounding seven county region. Four of these seven counties are in West Virginia. Ormet directly employs 1,027 people. 598 in Ohio, 427 in West Virginia and 2 in Pennsylvania. Ormet's employment is therefore 58% in Ohio and 42% in West Virginia. Ormet's study estimates that the total net annual impact on the seven county region is 3,441 jobs (1,996 in Ohio and 1,445 in West Virginia) and $195 million in total employee compensation ($113 million in Ohio and $82 million in West Virginia).

A subsidy by Ohio ratepayers of $179 million in 2010 to maintain 1,996 Ohio jobs is $89,679 per job. This means that the subsidy is more than the value of the job. Therefore, a legal and factual question exists as to whether this Unique Arrangement results in *"reasonably priced retail electric service"* and *"facilitates the state's competitiveness in the global economy."* R.C. §4928.02. Of course, there is no question that this Unique Arrangement is a tremendous benefit to the economy of West Virginia because it gets 42% of the benefit and pays none of the costs, but this Commission must consider only the impact on Ohio's economy.

5. **The Credibility AEP-Ohio's Support Should Be Heavily Discounted.**

On February 27, 2009 AEP-Ohio moved to intervene in support of Ormet's Application. *"AEP-Ohio's support is conditioned upon satisfactory outcomes in Case Nos. 08-917-EL-SSO and 08-918-EL-SSO"*. (AEP-Ohio Motion at p. 2). AEP-Ohio's support of the Unique Arrangement is also conditioned upon 100% of recovery of all Delta Revenue over the life of the Power Agreement. (Proposed Unique Arrangement at Paragraph 9.02). The Commission should not consider the proposed Unique Arrangement to be in any way the result of an arms-length negotiation between AEP-Ohio and Ormet. AEP-Ohio could afford to be so generous with the subsidies because of the full Delta Revenue recovery provision. Moreover, AEP-Ohio has cynically tried to leverage its support for this Unique Arrangement with a "*satisfactory outcome*" in its ESP case. In other words, impose a big rate increase on consumers over the next three years in the ESP case or else we will not support further increasing consumer rates by the ten-year Ormet contract. Thanks, but no thanks.

C. CONCLUSION

As proposed, this Unique Arrangement is unreasonable and unlawful and should be modified by the Commission. Power pricing to Ormet is a complex matter that deserves thorough Commission investigation and input from affected parties.

Respectfully submitted,

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March 3, 2009

COUNSEL FOR THE OHIO ENERGY GROUP

ATTACHMENT 1

LONDON METAL EXCHANGE

13.19 (local) 3 Mar 2009

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Primary Aluminium

Welcome to the **Primary Aluminium** hub page. In this useful section of the site you will find information relating to the LME's largest traded contract. For convenience, settlement prices, opening stocks and the forward price curve for Aluminium are detailed below. From this page you can also navigate to the Primary Aluminium contract specification, details of the Aluminium committee members, consumption and production information, and current listed brands.

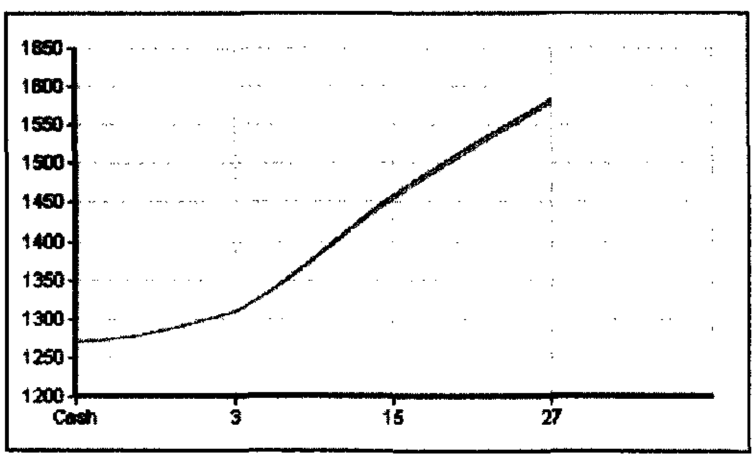
LME Official Prices (US$/tonne) for 2 Mar 2009

	ALUMINIUM
CASH BUYER	1,270.00
CASH SELLER & SETTLEMENT	1,270.50
3-MONTHS BUYER	1,310.00
3-MONTHS SELLER	1,310.50
15-MONTHS BUYER	1,455.00
15-MONTHS SELLER	1,460.00
27-MONTHS BUYER	1,578.00
27-MONTHS SELLER	1,583.00

LME Official Opening Stock (in tonnes)

DATE	ALUMINIUM
2 Mar 2009	3226700

LME Official Prices Curve



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ATTACHMENT 2

- Ormet Annual Energy Usage – 540 MW x 8,760 x 0.985 = 4,659,444 mWh
- Calculation of Indexed Rate for 2010 using LME Forward Pricing of $1,460/tonne and Schedule A, Page 1 of Application:

  $2,725 – $1,460 = $1,265

  1,265 x 0.0490 = $61.98/mWh

  $38.43 – $61.98 = ($23.55/mWh)

- Assuming that today's LME futures prices accurately predict 2010 LME daily cash settlement prices, Ormet's proposed formula results in free electricity in 2010.
- Under AEP-Ohio Tariff Rate Ormet would have paid $179,062,432.[2]
- Total Delta Revenue of $179,062,432.

[2] 4,659,444 x $38.43 = $179,062,432