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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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

COMMENTS OF INDUSTRIAL ENERGY USERS-OHIO

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I. BACKGROUND

On February 17, 2009, Ormet Primary Aluminum Corporation ("Ormet") filed an application ("Application") for approval of a reasonable arrangement with Ohio Power Company ("OP") and Columbus Southern Power Company ("CSP") (collectively, "American Electric Power" or "AEP"). Ormet's Application is a longer-term arrangement meant to supersede the temporary Ormet reasonable arrangement approved by the Public Utilities Commission of Ohio ("Commission") on January 7, 2009[1].

The proposed contract between Ormet and AEP will provide Ormet, under defined circumstances, generation service priced at a different rate than would otherwise apply under AEP's applicable tariffs. Under the first year of the contract, Ormet would pay the lower of $38/MWH or AEP's weighted average tariff price (an average of OP and CSP rates), whichever is lower.[2] For the remaining years of the ten-

[1] In addition to approving the temporary reasonable arrangement, the Commission also authorized AEP to defer all delta revenues associated with the temporary arrangement that were not offset by the Ohio Franchise Tax regulatory liability on AEP's books. The Commission did not rule upon the issue of cost recovery of deferred delta revenues, including AEP's proposal to recover delta revenues through the kilowatt hour ("kWh")-based fuel adjustment clause ("FAC") mechanism proposed in its electric security plan ("ESP") proceeding.

[2] Ormet has requested that the rates to be applied under the contract be effective as of January 1, 2009.

year contract, the price paid by Ormet would be tied to the London Metal Exchange ("LME") price for aluminum. Prior to the beginning of each remaining year under the contract, Ormet would propose a target LME aluminum price. During the subsequent contract year, if actual aluminum selling prices are equal to the target price, Ormet will pay AEP's tariff rate for generation.[3] If actual LME aluminum prices are higher than the target price, Ormet will pay a premium over AEP's tariff rate of either 102% or 105%, depending on the amount by which the actual LME price exceeds the target LME price. Conversely, if aluminum prices are below the target LME price, Ormet will be provided electricity at a discount relative to AEP's tariff rate. The discount will be set equal to $0.049/MWH for each $1 per tonne if the actual aluminum selling price is lower than the target price. In general terms, the structure of the contract would provide Ormet with a lower price for electricity when aluminum prices are lower and a higher price for electricity when aluminum prices are higher. In the Application, Ormet suggests other smelters worldwide have similar electricity pricing options.[4]

Ormet represents in the Application that AEP supports the reasonable arrangement on the condition that AEP be permitted to recover all delta revenues lost by entering into the reasonable arrangement.

II. COMMENTS

The Industrial Energy Users-Ohio ("IEU-Ohio") strongly supports the use of reasonable arrangements by Ohio as a tool to complement its economic development and retention efforts and has consistently conveyed this long-standing perspective

[3] The actual aluminum selling prices would be determined by a mathematical average of daily cash LME settlement prices for aluminum.

[4] Application at 2.

during legislative and regulatory proceedings. IEU-Ohio recognizes that the use of special arrangements is a real-world necessity for larger, energy-intensive customers that have price and service quality needs that cannot be most effectively addressed through standard tariff offerings designed, for the most part, for a "typical" customer. Special arrangements that provide customers with predictability and stability at a reasonable price should be high on the list of Ohio's economic development and retention tools, particularly during a period (like now) when energy costs and availability are of critical importance to Ohio's economy. The General Assembly has also recognized that special arrangements may play an important role in facilitating the development of customer-sited demand response, renewable energy, advanced energy technologies and energy efficiency projects that will lead to economic growth through manufacturing processes that are less energy-intensive per unit of production than might have otherwise been possible.

This is not the first instance in which Ormet has requested Commission action to establish rates for its operations in Hannibal, Ohio. The Commission previously approved an agreement that provided power to Ormet at a fixed rate of $43/MWH for the period of January 1, 2007 through December 31, 2008.[5] Under that agreement, other AEP customers indirectly assumed funding responsibilities for delta revenues of as much as $57 million, and potentially greater.[6] But there is more to the relationship between Ormet and AEP.

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[5] *In the Matter of the Complaint of Ormet Primary Aluminum Corporation and Ormet Aluminum Mill Products Corporation v. South Central Power Company and Ohio Power Company,* Case No. 05-1057-EL-CSS, Supplemental Opinion and Order at 5 (November 8, 2006).

[6] *Id.* at 5-6.

The historical record shows that the rates that OP charged Ormet pursuant to Ormet's original "reasonable arrangement" were not providing OP with a reasonable return. Indeed, an analysis conducted by the Commission's Staff in OP's last rate case indicated that "... there may actually be a net loss to the company associated with the R&O contracts." *In the Matter of the Application of Ohio Power Company for Authority to Amend its Filed Tariffs to Increase the Rates and Charges for Electric Service and Related Matters*, Case No. 94-996-EL-AIR, Opinion and Order at 40 (February 28, 1995).

In 1996, the Commission approved a joint application of OP and South Central Power Company for a reallocation of service territory so that Ormet would be served by South Central Power Company and any other supplier as necessary.[7] The reallocation was to take effect on December 31, 1999, two years after an agreement between OP and Ormet entered into in 1966 was set to expire. In the interim period, however, Ormet and OP received approval of an Interim Agreement from the Commission whereby OP served Ormet from November 30, 1997 through December 31, 1999.[8] The joint application approved by the Commission in 1996 permitted Ormet to obtain its electricity supply from the wholesale market without responsibility for the "transition costs" that ultimately became the responsibility of Ohio retail customers under Chapter 4928, Revised Code.

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[7] *See In the Matter of the Application of the Joint Petition of Ohio Power Company and South Central Power Company for Reallocation of Territory*, Case No. 96-1000-EL-PEB, Finding and Order (November 14, 1996).

[8] *See In the Matter of the Application of Ohio Power Company for Approval of a Special Contract Arrangement with Ormet Primary Aluminum Corporation*, Case No. 96-999-EL-AEC, Finding and Order (November 14, 1996).

In a complaint filing,[9] Ormet subsequently sought to reverse the previously requested and obtained service area assignment and to obtain access to OP tariff rates and charges (not its prior contract with OP). In the end, Ormet did not return to OP's service area based on standard rates and charges. It returned at a contract price which, as indicated above, was above the standard tariff rates with other customers responsible, indirectly or directly, for making up the difference between the "market price" as approved by the Commission and the Ormet contract price.

Regardless of what the historical record shows relative to Ormet's prior rates, the evidence available in Case Nos. 08-917-EL-SSO and 08-918-EL-SSO shows that AEP's Ohio companies are collecting retail prices that provide them with the largest gross margin per MWH of all the business units within the AEP system.[10] In their electric security plan ("ESP") cases, the Ohio companies are seeking substantial increases in retail electric prices and are requesting authority to defer substantial costs for future recovery. Since the Commission has not issued a final order in Case Nos. 08-917-EL-SSO and 08-918-EL-SSO, it is not possible to determine just how the proposed Ormet reasonable arrangement will, if approved, affect the bills of other retail customers.

In the AEP Ohio companies' proposed ESPs, they are also seeking authority to recover delta revenues associated with Commission-approved special arrangements

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[9] On August 25, 2005, Ormet Primary Aluminum Corporation and Ormet Aluminum Mill Products Corporation (herein referred to as "Ormet") filed a Petition to Transfer Rights to Furnish Electric Service and/or Reallocate Certified Electric Service Territories; Complaint for Inadequate Service; and Complaint for Unjust, Unreasonable and Discriminatory Proposed Rates against Ohio Power Company and South Central Power Company in *In the Matter of Ormet Primary Aluminum Corporation and Ormet Aluminum Mill Products Corporation v. South Central Power Company and Ohio Power Company*, Case No. 05-1057-EL-CSS, Application (August 25, 2005).

[10] IEU-Ohio Exhibit 2 at 2.

through the proposed Economic Development Cost Recovery Rider.[11] More specifically, the Ohio companies have proposed to track delta revenue amounts and make a quarterly filing to "establish rates which will be a percentage of base distribution revenue to recover those amounts resulting from Commission-approved special contracts."[12]

The present Application implicitly suggests that the prior $43/MWH previously available to Ormet must be further reduced,[13] implying that customers will be required to fund increasing levels of delta revenues on a going-forward basis. In this regard, it is noteworthy to observe that some of the other LME-based contracts cited by Ormet in its Application that are available to other aluminum smelters have not, in and of themselves, resulted in continued smelter viability.[14]

The substantial electricity requirements of the Ormet facility and the energy-intensive nature of the aluminum smelting process may be most reasonably addressed through a reasonable arrangement or schedule that is submitted to and approved by the Commission pursuant to Section 4905.31, Revised Code. When considering a

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[11] AEP Ohio companies' ESP Application at 8; Companies Exhibit 1 at 12, Case Nos. 08-917-EL-SSO and 08-918-EL-SSO.

[12] Companies Exhibit 1 at 12, Case Nos. 08-917-EL-SSO and 08-918-EL-SSO.

[13] The proposed contract provided that in year 2009 the electricity price to Ormet will be the lower of $38/MWH or the AEP Ohio tariff rate for 2009. Application at 5.

[14] In its Application, Ormet cites to a power supply agreement for Century Aluminum recently approved by the Public Service Commission of West Virginia as an example of an LME-based power pricing agreement available to another aluminum smelter. Application at 2, note 5. This power supply agreement provided Century Aluminum with power priced at the lower of $27.16/MWH or a cost-based rate, subject to a surcharge based upon LME prices for aluminum. *Appalachian Power Co. and Wheeling Power Co, both d/b/a American Electric Power,* Public Service Commission of West Virginia Case No. 05-1278-E-PC-PW-42T, Joint Stipulation and Agreement for Settlement at 14-16 (April 24, 2006). Notwithstanding this power supply contract, Century Aluminum curtailed all production at the Ravenswood smelter in February 2009 citing low aluminum prices and cash losses. Century Aluminum's press release announcing the facility shutdown is posted on its website at: http://investor.shareholder.com/cenx/releasedetail.cfm?ReleaseID=363588 (last accessed March 6, 2009).

proposed reasonable arrangement or schedule under Section 4905.31, the Commission must balance the costs and benefits, the sometimes competing interests of stakeholders and strive to advance the objectives in Section 4928.02 Revised Code. On balance, and based on the information presently available, IEU-Ohio recommends that the Commission find that the proposed arrangement may be unjust or unreasonable and subject the Application to further investigation.

As noted in comments filed on March 3, 2009, the proposed pricing formula could, under some circumstances, produce a very low price or even a zero price for electricity.[15] Thus, the proposed arrangement may result in a price that is less than the variable cost of production. In this circumstance, Ormet would make no contribution to the fixed costs associated with providing service to all customers. A proposed reasonable arrangement that may cause prices to be less than variable costs must be subjected to further analysis to determine if it properly respects the interests of other customers and works to advance Ohio's policy objectives.[16]

Further, the proposed arrangement also seems to relieve Ormet of any obligation to provide a deposit[17] as assurance towards payment of its invoices for electricity, at least so long as AEP is permitted to treat any actual default amounts as delta revenue and recover such amounts from other customers.[18] Although the proposed arrangement suggests this provision is intended to permit Ormet to increase the

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[15] OEG Comments at 5.

[16] IEU-Ohio recognizes that defining AEP's variable costs of proving service may not be an exact science given that a standard service offer is not necessarily based upon a traditional utility cost of service model. Nevertheless, variable costs must reflect some reasonable measure and allocation of actual AEP out of pocket costs such as fuel, emission allowances...etc.

[17] Application at Attachment A at 14, Section 6.03.

[18] Application at Attachment A at 6, Section 1.07.

otherwise applicable index rate used to fix its power supply price, this is speculative at best given that Ormet is afforded substantial latitude in defining what LME aluminum price would be sufficient to provide adequate cash flow to cover ongoing operations and fund legacy costs.[19] In any event, this provision of the proposed reasonable arrangement effectively places other AEP customers as involuntary financial guarantors for Ormet.

III. CONCLUSION

For the reasons stated herein, IEU-Ohio urges the Commission to find that the proposed arrangement may be unjust or unreasonable and subject the Application to further investigation.

Respectfully submitted,

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[19] Application at 6.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Comments of Industrial Energy Users-Ohio* was served upon the following parties of record this 9th day of March 2009, via first class mail, postage prepaid, hand-delivery or electronic transmission.

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