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**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 Unique Arrangement with) Case No. 09-119-EL-AEC
Ohio Power Company and Columbus)
Southern Power Company)

COMMENTS OF THE KROGER CO.

In accordance with the Entry issued on April 17, 2009 by the Public Utilities Commission of Ohio (the "Commission") in the above-captioned proceeding, The Kroger Co. submits these comments on the Application ("Application") of Ormet Primary Aluminum Corporation ("Ormet") for Approval of a Unique Arrangement with the Ohio Power Company ("OP") and Columbus Southern Power Company ("CSP") ("Collectively "AEP").

INTRODUCTION

The Kroger Co. is sympathetic to the difficult economic factors the aluminum industry now faces and the benefit Ormet provides to the community of Hannibal and the State of Ohio. For these reasons, The Kroger Co. does not oppose assistance to help Ormet through these difficult times. However, the Commission should consider all relevant factors before approving this Application "as is." First, the Commission should note that while Ormet faces a difficult economic climate, all AEP Ohio ratepayers also face similar difficulties, and the rate increase AEP ratepayers would pay due to this Application will be in addition to a substantial rate

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increase already authorized by the Commission. Second, any subsidy should be reasonable to ensure that ratepayer's money is put to wise use. For these reasons, if the Commission approves the Application, it should be modified to include certain measures that mitigate the risk and cost to AEP ratepayers. Further, before approving this Application, the Commission should consider submitting this matter to Governor Strickland with a request to investigate whether assistance to Ormet is better addressed through other economic development or legislative means.

COMMENTS

I. All Ohio Ratepayers Face Difficult Economic Times.

In March 18, 2009, the Commission authorized AEP to increase its rates by approximately 7% annually over the next three years amounting to an approximate 23% increase over that three year period. This increase comes in the face of the worst economic crisis since the Great Depression. As a result, many of AEP's ratepayers face economic difficulties. While Ormet's situation is somewhat unique because a high percentage of its overall costs are tied to the price of electricity, the Commission must also recognize that authorizing another rate increase during these difficult times may also cost Ohio jobs as the increasing cost of electric service pressures other industries to remain competitive. Therefore, when determining the appropriate level of subsidy to Ormet, the Commission must weigh the benefits Ormet will receive against the adverse affects to other ratepayers.

II. A Subsidy Must be Reasonable.

In its Application, Ormet asks the Commission to tie Ormet's electric rates to the price of aluminum through 2018. If this request is granted, and the price of aluminum stays low or drops further, other ratepayers will pay substantial subsidies to aluminum production for nearly 10 years. This may not be the most efficient way for ratepayer's money to be put to use.

Much can happen to a market for a particular product over a nine-year period. It is possible that long-term changes in market fundamentals could decrease the demand for aluminum and thus lower the market price for aluminum. The decrease in demand and price could occur irrespective of economic conditions.¹

By tying Ormet's electric rate to the market price for aluminum, the Commission runs the risk of subsidizing a product that may be used less in the future, even as economic conditions improve. The Kroger Co. notes that it is not speculating on the future of the aluminum market, but rather is pointing out a risk that all products and services face in a rapidly changing global economy. It would be unwise for the Commission to expose ratepayers to this type of risk without putting reasonable checks in place to ensure ratepayer money is used to maximum effectiveness.

III. Reasonable Protections Must Be Put In Place.

The Kroger Co. submits the Commission should have the ability to revisit this unique arrangement, and without any contractual constraint, have the ability to modify the arrangement when prudent. Further, the Commission should implement a mechanism to ensure that all revenues AEP collects during any periods when Ormet is required to pay rates that are *above* the tariff rate are credited to other ratepayers. Finally, the Commission should place reasonable limits on subsidies ratepayers are required to pay. Any unique arrangement should contain these checks in order to protect ratepayers from unjustifiable risks and costs.

¹ It is also possible that lowering the cost of electricity for Ormet could drive the price of aluminum down depending on the market share for aluminum Ormet holds. If this were to occur, a subsidy would be self defeating, and potentially harm other Ohio aluminum makers.

A. The Commission Must Have Unrestricted Authority to Review and Modify the Unique Arrangement.

The power sales contract between Ormet and AEP allows the Commission to modify the unique arrangement upon a finding that the arrangement is no longer just or reasonable. However, there is one important qualification. If the price of electricity Ormet pays does not fall 50% below AEP's tariff rate, the Commission's modification of the unique arrangement will not go into effect until 2016.² Under these circumstances, Ormet receives a broad subsidy for nearly 7 years as long as Ormet does not pay less than 50% of AEP's tariff rate. This limitation on the Commission's ability to modify the unique arrangement is an unreasonable restriction. The Commission must have the flexibility to modify the unique arrangement as economic circumstances change. Therefore, if the Commission approves this Application, the Commission should find that at all times the Commission shall have the authority to review, and if necessary modify Ormet's unique arrangement without restriction.

B. AEP Ratepayers Should Receive A Credit For Rates Paid Above the Tariff.

The Application provides that Ormet pay above AEP's tariff rate when the price of aluminum is high; however, The Kroger Co. is not aware of any mechanism in the Application to return to the benefit of higher rates to customers. If other customers are asked to bear the cost of subsidizing Ormet's rates when aluminum prices fall, those customers should receive the benefit when aluminum prices are high. Therefore, if this Application is approved, the Commission should find that all revenues from above-tariff rates should be credited to customers, and not

² See Ormet Application: *Power Agreement Between Ormet Primary Aluminum Corporation and Ohio Power Company and Columbus Southern Power Company*, at p. 9. The parties agree that a Commission modification "may not be effective earlier than January 1, 2016 unless the cumulative net discount from the AEP Ohio Tariff Rate exceeds 50 percent of the amount Ormet would have been required to pay under the AEP Ohio Tariff Rate."

retained by AEP. The Commission should also establish a mechanism that credits these revenues to customers, so that AEP does not receive a windfall.

C. Reasonable Limits Should Be Placed on a Subsidy.

Other than granting the Commission the authority to modify the unique arrangement if Ormet pays less than 50% of AEP's tariff rate, it does not appear to The Kroger Co. that there is a limit on the amount of subsidy Ormet may receive.³ The Kroger Co. submits that it would be unwise to subject AEP ratepayers to such steep costs, without placing reasonable limits on the amount of subsidy ratepayers are required to pay. Therefore, if the Commission approves this Application, the Commission should place an explicit limit on the amount of the total subsidy ratepayers must pay. For instance, the Commission could limit the discount Ormet receives to a certain percentage below AEP's tariff rates. In the alternative, the Commission could place a reasonable restriction on the amount of delta revenues AEP may recover annually from this arrangement. Without placing such a limit, AEP ratepayers may be subject to virtually limitless costs in addition to already increasing electric rates and a deteriorating economy.

The Commission should modify Ormet's arrangement with AEP to incorporate the suggestions of The Kroger Co., if this Application is approved. These modifications will help to ensure that ratepayers do not face unreasonable cost or take on undue risk.

IV. This Type of Unique Arrangement Should Not Serve As Precedent.

The Kroger Co. recognizes that in extreme circumstances it may be prudent for the Commission to assist an ailing business. However, if this unique arrangement is approved, other

³ Granting the Commission the authority to modify the unique arrangement if the electric rate falls 50% below the tariff price does not adequately protect customers. For one, although the Commission may modify the arrangement, it is not required to modify the arrangement. Second, any modification will not go into effect for 120 days, on top of the time it will take the Commission to order a modification.

industries may seek to tie their energy rates to market prices including possibly to the price of steel, rubber, ball bearings, wheat, etc. It will be difficult for the Commission to draw the line on which businesses to assist. Many Ohio businesses and industries have struggled over the years, and alternatively many have prospered. Often this is due to macro economic forces or competitive advantages beyond the Commission's control. It should not become a precedent to allow industry or business in Ohio to tie electric rates to market prices. To do so would not be a wise use of ratepayer's resources.

V. The Commission Should Request Assistance Through Other Means.

The Kroger Co. submits that it may be possible for Ormet to obtain assistance through other economic development or legislative means. Further, Ormet may be eligible for federal stimulus money to address many of the problems cited in the Application. For these reasons, other avenues of funding should be explored before the Commission approves this Application.

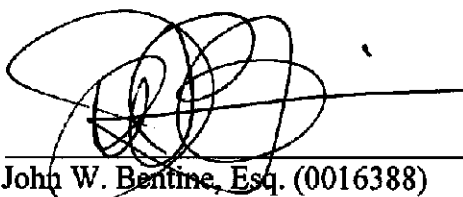
Payment directly from a government entity rather than from AEP ratepayers may be desirable for several reasons. First, a direct payment from the government will more likely address Ormet's specific problems, rather than a broad subsidy from ratepayers. For instance, if Ormet faces a disproportionate burden due to its entitlement costs (i.e. pensions and healthcare), government assistance can go directly to alleviating that burden. The savings from a blanket reduction of costs on the other hand may or may not be used to make Ormet more competitive in the long run. Second, direct government assistance is more likely to include the types of protections The Kroger Co. asks for in these comments such as explicit limits on the amount of subsidy and additional oversight mechanisms. Finally, assistance directly from the government will more evenly distribute the cost to all taxpayers rather than just AEP ratepayers.

For these reasons, The Kroger Co. asks that before a unique arrangement between AEP and Ormet is approved, the Commission submit this matter to Governor Strickland with a request to investigate whether assistance to Ormet is better addressed through other economic development or legislative means. All alternative avenues of funding should be exhausted before AEP ratepayers are required to bear the high cost and risk that are inherent in this Application.

CONCLUSION

The Kroger Co. respectfully requests that the Commission consider these comments on the Application of Ormet for approval of unique arrangements with AEP.

Respectfully submitted,

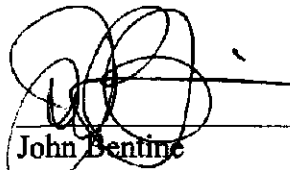
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the preceding pleading was served this 28th day of April, 2009 upon the parties of record at the addresses listed below via electronic mail or U.S. Regular mail, postage prepaid.



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