41

FILE Sonnenschein
SONNENSCHEIN NATH & ROSENTHAL LLP

1301 K Street, N.W.
Suite 600, East Tower
Washington, D.C. 20005-3364
202.408.6400
202.408.6399 fax
www.sonnenschein.com

Emma F. Hand
202.408.7094
ehand@sonnenschein.com

July 1, 2009

RECEIVED-DOCKETING DIV
2009 JUL -1 AM 10:09
PUCO

VIA FEDERAL EXPRESS

Public Utilities Commission of Ohio
Docketing Division
180 East Broad Street
Columbus, Ohio 43215-3793

Re: Enclosed Document for Filing in Case No. 09-119-EL-AEC

Dear Sir or Madam:

Enclosed please find an original and seven (7) copies of the *Post-Hearing Brief of Ormet Primary Aluminum Corporation* ("Ormet") in Case No. 09-119-EL-AEC. Also enclosed are two extra copies to be date-stamped and returned to me in the enclosed, self-addressed Federal Express envelope.

Thank you for your assistance in this matter, if you have any questions please contact me at the number above.

Sincerely,

Emma F. Hand

Emma F. Hand

Enclosures

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	))))))	**Docket No. 09-119-EL-AEC**

POST-HEARING BRIEF OF ORMET PRIMARY ALUMINUM CORPORATION

Clinton A. Vince, Counsel of Record
Douglas G. Bonner
Daniel D. Barnowski
Emma F. Hand
Sonnenschein Nath & Rosenthal LLP
1301 K Street NW
Suite 600 East Tower
Washington, DC 20005
202-408-6400 tel.
202-408-6399 fax
cvince@sonnenschein.com
dbonner@sonnenschein.com
dbarnowski@sonnenschein.com
ehand@sonnenschein.com

Attorneys for Ormet Primary Aluminum Corporation

TABLE OF CONTENTS

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	))))))	**Docket No. 09-119-EL-AEC**

POST-HEARING BRIEF OF ORMET PRIMARY ALUMINUM CORPORATION

Pursuant to the briefing schedule set by the Attorney Examiner in this proceeding, Ormet Primary Aluminum Corporation ("Ormet") respectfully submits its Brief in this proceeding in support of its Application for a Unique Arrangement under Section 4905.31 of the Ohio Revised Code ("Revised Code") and Section 4901:1-38-05 of the Ohio Administrative Code. Ormet hereby seeks the approval of its proposed Unique Arrangement with Ohio Power Company and Columbus Southern Power Company (jointly "AEP Ohio").

I. INTRODUCTION

The Unique Arrangement proposed by Ormet in this case is not merely about helping ensure the survival of a leading Ohio-based manufacturer, but is about sustaining the economy and community of Southeastern Ohio. Ormet's Hannibal, Ohio aluminum reduction plant ("Hannibal Facilities") is extremely important to the economy of the counties of Monroe, Belmont, and Washington Ohio, and to the surrounding region of Southeastern Ohio. Easily the largest industrial employer in Monroe County, Ormet is one of only two major employers in the region that generate significant national and international out-of-state revenue for the local Ohio economy.[1]

[1] Ex. ORM-5, at 2.

Ormet's Hannibal Facilities directly contribute 1000 high-paying jobs to an economically depressed area of Ohio, including salaries and wages of over $56 million, plus additional employee benefits of approximately $52 million.[2] And Ormet's Hannibal Facilities also generate over 2441 further spin-off jobs in the region dependent upon the operation of Ormet's Hannibal, Ohio reduction plant, at least 60% of which are Ohio jobs.[3] Therefore, nearly 2500 Ohio jobs in Southeastern Ohio are tied to the Ormet Hannibal plant's continued operation. Ormet's operations at the plant generate $195 million of annual revenue for the region, more than $100 million of which accrues to Ohio.[4] The Ohio state government receives about $6.8 million annually in individual income taxes, sales taxes, and electricity taxes from Ormet-related activity.[5] Similarly, Ormet's continued operation provides essential support for real property values in Southeastern Ohio (particularly in Monroe, Belmont, and Washington counties, where most of its Ohio employees reside).[6] The employment opportunities that Ormet offers employees help keep regional unemployment levels down and provide untold socioeconomic benefits, such as reduced crime, alcohol/drug abuse and other societal costs that accompany high unemployment.[7]

There is recent historical evidence of the critical importance of the Hannibal Facilities' operation to the Monroe County economy. When Ormet experienced a shutdown of the Hannibal Facilities in 2005, total wages and salaries paid in Monroe County plunged by 25.8% while the rest of the state averaged 4% growth.[8] Similarly, Monroe County unemployment

[2] *Id.*, at 1 and 11.
[3] *Id.*, at 1; Tr. 262:19-263:9.
[4] Ex. ORM-5, at 1; Tr. 261:17-20.
[5] Ex. ORM-5, at 11-12.
[6] *Id.*, at 1.
[7] *Id.*, at 1.
[8] *Id.*, at 3.

escalated to 13.1%, compared to the State average 6% unemployment at the time.[9] Ormet's survival is critical to the economic livelihood of the region, and of Monroe County in particular.

Unfortunately, Ormet has struggled over the last several years with electricity costs higher than those paid by much of its aluminum industry competition[10] and other AEP Ohio industrial ratepayers,[11] and has found it very difficult to maintain its operations. Ormet competes in the highly competitive global aluminum market, and has no ability to set the price of its output.[12] Ormet is therefore uniquely vulnerable to electricity costs, which account for approximately 35% of Ormet's cash costs.[13] If electricity costs are too high relative to the price at which Ormet can sell its aluminum, Ormet may be unable to operate the Hannibal Facilities because it simply will not be able to produce aluminum at a cost that is lower than the price at which it can sell the aluminum.[14]

To address this recurring problem, Ormet has proposed the Unique Arrangement at issue in this case. The primary and most critical feature of the Unique Arrangement is that the electricity rate Ormet would pay is to be tied to the price of aluminum on the London Metals Exchange ("LME"), which dictates the price at which Ormet can sell its product.[15] This would allow Ormet to pay less when aluminum prices fall and to pay more, including a premium above tariff rates, when aluminum prices rise.[16] As permitted under Section 4905.31 of the Revised

---

[9] *Id.*, at 3-4.
[10] *See, e.g.*, Ex. ORM-1, at 6:1-5.
[11] *See* Stipulation and Recommendation at 7, *In the Matter of the Complaint of Ormet Primary Aluminum Corp. v. S. Cent. Power Co.*, Case No. 05-1057-EL-CSS, (filed Oct. 20, 2006) (Ormet entered into a Stipulation agreeing to pay an above-tariff rate in order to be re-admitted to AEP Ohio's service territory.)
[12] Ex. ORM-1, at 3:14-15; ORM-7 at 3:10-11.
[13] Ex. ORM-1, at 3:6-7.
[14] Ex. ORM-7, at 4:15-16.
[15] Ex. ORM-8, at Attach. A, pp. 11-12, Article Five.
[16] *Id.*

Code, the Unique Arrangement also provides for the collection of delta revenues by AEP Ohio to keep AEP Ohio whole.[17] This contract is essentially an on-or-off switch. If Ormet does not receive sufficient assistance, it may be forced out of business.[18] Modifying the proposed Unique Arrangement too heavily could render it useless to Ormet. Ormet understands that it is asking Ohio ratepayers to bear risk related to fluctuations in aluminum markets, and that this is a policy decision the Commission will have to make. Ormet has made a good faith effort to minimize the impact of its request and believes that overall, any negative impact of its Unique Arrangement on AEP Ohio ratepayers will be less than the negative impact upon Ohio and the region if Ormet should go out of business.

Ormet's proposal is precisely the kind of situation that Section 4905.31 of the Revised Code was designed to address. Ormet is a large, industrial customer that is one of Ohio's largest single consumers of electricity through its smelting operation; Ormet also has a major impact -- $195 million annually -- on the economic welfare of the surrounding regional economy. Approval of the Unique Arrangement is critical to Ormet's continued operations and preservation of the approximately 1000 high-paying jobs that Ormet offers its workers (plus nearly 2500 additional spin-off jobs). The Unique Arrangement would allow Ormet to weather short-term economic downturns in the aluminum market, such as we are now experiencing with extraordinarily low aluminum prices associated with the global economic crisis (aluminum prices have plummeted from $3429/tonne in July, 2008 to $1416/tonne in April, 2009[19]), until aluminum prices return to more normal levels. The Unique Arrangement is simply meant to be a life preserver to help keep Ormet afloat when aluminum prices are low -- it is designed to produce the minimum cash flow necessary for Ormet to sustain its operations and pay its

[17] *Id.*, at Attach. A, p. 16, § 9.02.
[18] Ex. ORM-1, at 8:13-18.
[19] Tr. 165:19-24, 170:6-21, 302:16-303:23.

required legacy pension and VEBA (retiree health case) costs ("legacy costs").[20] It does not guarantee Ormet any particular profit or rate of return, but is instead structured so that if Ormet has adequate cash flow -- such as when aluminum prices return to July 2008 levels -- it will not receive a discount on its electricity, but could be paying a premium to other ratepayers.

II. BACKGROUND AND DESCRIPTION OF THE PROPOSAL

Ormet has struggled in recent years to continue operating the Hannibal Facilities in the face of high electricity costs, labor disturbances, and a bankruptcy proceeding. On January 30, 2004, along with its affiliates and parent company, Ormet filed for Chapter 11 Bankruptcy. Subsequently, due to a labor strike and increasing power costs, Ormet was forced to close its Hannibal Facilities. On December 15, 2004, the Bankruptcy Court approved Ormet's plan of reorganization, and Ormet emerged from bankruptcy in April 2005. Subsequently, although Ormet was able to settle with the union and end the strike, it could not immediately restart its Hannibal Facilities because the offered price of power Ormet was too high relative to the price of aluminum. It was not until 2006, when Ormet entered into a stipulation with AEP Ohio effective January 1, 2007 (the "2006 Stipulation") that Ormet was able to obtain power at a cost low enough relative to the price of aluminum to return its Hannibal Facilities to full operation. Thus, there is a real danger that if Ormet is unable to get a contract that ties its electric rate to the price of aluminum; it may be forced to close the Hannibal Facilities due to high relative power costs.

In light of the scheduled expiration date of the 2006 Stipulation and the fact that AEP Ohio's proposed Electric Security Plan ("ESP") filing had not yet been approved by the Commission as of January 1, 2009, the Parties entered into an Interim Agreement approved by the Commission on January 7, 2009 in Case Nos. 08-1338-EL-AAM and 08-1339-EL-UNC.

---

[20] Ex. ORM-7, at 5:12-19, 6:9-16.

That Interim Agreement provides for service from AEP Ohio to Ormet until the effective date of new AEP Ohio-approved tariffs based on a Commission ruling on the Companies' ESP application (*i.e.* if the Commission adopts the ESP as proposed or if the Companies accepts any Commission-ordered modifications to the ESP) and the effective date of a new special arrangement, such as the Unique Arrangement proposed herein, between AEP Ohio and Ormet subsequently approved by the Commission.

A. The Proposed Unique Arrangement

Therefore, the Unique Arrangement proposes a mechanism to mitigate the risk to Ormet of aluminum prices falling below a certain threshold relative to the price of energy, while sharing benefit of aluminum prices rising above that threshold. It sets forth pricing for Ormet as follows: Because Ormet has sold forward its 2009 metal production at a fixed price to secure its revenue for the calendar year 2009, Ormet will pay an all-in rate of the lesser of $38.00/MWh or the AEP Ohio Tariff Rate[21] for calendar year 2009.[22] If Ormet reduces metal production by the equivalent of at least two potlines,[23] Ormet's rate will be reduced to an all-in rate of the lesser of $34.00/MWh or the AEP-Ohio Tariff Rate for the balance of 2009 or the duration of the

[21] The AEP Ohio Tariff Rate means the applicable tariff and riders, defined in terms of $/MWh, as approved from time to time by the Commission for the total cost of energy delivered, including all generation, distribution, transmission, customer, and rider charges, existing and implemented during the term of this Power Agreement, that would otherwise be applicable to Ormet. At the outset, it will be determined by taking the sum of what Ormet would pay if fifty (50) percent of its load were billed under the applicable Ohio Power Co. Tariff and the other fifty (50) percent of its load were billed under the applicable Columbus Southern Power Co. tariff.

[22] The Unique Arrangement filed by Ormet proposes an effective date of January 1, 2009. To the extent that the Commission establishes an effective date later in the year, the rate established must be such that Ormet would have paid an average rate of $38/MWh for the portions of the year in which it was at full operation, and $34/MWh for those periods of the year it was operating at four potlines in order to meet the cash flow criteria.

[23] Ormet notes that it is currently subject to bank covenants that require it to continue to operate at the equivalent of a 4.6 potline level, and that pending the outcome of its current arbitration proceeding with Glencore Ltd. ("Glencore"), it may need to seek further modification of this Unique Arrangement to accommodate a the equivalent of 4.6 potline level of production. *See* Ex. ORM-11, at 6:11-20.

curtailment, whichever is shorter. Ormet is requesting that the rate for 2009 going forward be set at a level that, taking into account the rates Ormet has been paying for the year to date, would result in an average rate of $38.00/MWh for the portion of the year that Ormet is above a four-potline operating level and an average rate of $34.00/MWh for the portion of the year at which Ormet is operating at the equivalent of four potlines or less. This rate will ensure that Ormet has enough cash to run its day-to-day operations in 2009 and to pursue a refinancing of the company.[24]

For the years 2010 through 2018, Ormet's rate under the proposed Unique Arrangement will be determined based upon schedules filed each year with the Commission. Each schedule would be filed no later than October 1 of the year prior to which the subject rate would be in effect and would set forth an Indexed Rate and a Target Price. The Indexed Rate would be the rate schedule in $/MWh that Ormet could pay that would produce the minimum cash flow necessary to sustain operations and pay its required legacy costs depending upon the LME price of aluminum. The Target Price will be the average price of aluminum for the calendar year as reported on the LME at which Ormet would be able to pay the AEP Ohio Tariff Rate and still maintain the minimum cash flow necessary to maintain its operations and pay its required legacy costs. The Unique Arrangement provides at Section 5.02 that the Commission may require an independent third-party review of the schedule at Ormet's expense.

Under the Unique Arrangement, when the LME price of aluminum is less than or equal to the Target Price, Ormet will pay the Indexed Rate. When the LME price of aluminum is greater than the Target Price but not more than $300/Tonne above the Target Price, Ormet will pay 102% of the AEP Ohio Tariff Rate. When the LME price of aluminum is greater than the sum of

[24] Tr. 410:1-5.

\$300/Tonne plus the target Price, Ormet will pay 105% of the AEP Ohio Tariff Rate. At the end of each calendar year, there will be a limited annual true-up, only for the purposes of reconciling the projected LME prices for the year with the actual LME prices.[25] Thus, when aluminum prices are low, Ormet will receive a discounted rate, and when aluminum prices are high, Ormet will pay a premium.

Because this Unique Arrangement is a critical component of keeping the Hannibal Facilities in operation, it will significantly contribute to Ormet's ability to retain a minimum of 600 jobs at the Hannibal Facilities, and Ormet commits to the Commission that it will take reasonable steps to retain those jobs for the term of the Unique Arrangement.[26] Without the Unique Arrangement it would be difficult, if not impossible, for Ormet to sustain operations at the Hannibal Facilities given the volatility of LME prices.[27]

Ormet supports AEP Ohio's request for recovery of lost revenues in recognition that AEP Ohio must remain financially strong to ensure it can satisfy Ormet's load requirements. To provide some balance, however, when aluminum prices rise above the Target Price, Ormet has agreed to pay a premium of either 2% or 5% (depending on how high prices rise) over the applicable tariff rate, allowing other AEP Ohio customers to share in the benefit of rising aluminum prices.

---

[25] Ex. ORM-8, at Attach. A, pp. 13-14 §6.02.
[26] Ex. ORM-8, at 8.
[27] *Id.*

III. ISSUES

Ormet's proposed Unique Arrangement fits squarely within the requirements and intent of the statutory mechanism for approval of such arrangements. Ormet's application will help ensure the survival of an Ohio aluminum producer that is highly dependent on energy costs for 35% of its overall operating costs, and which competes in the global economy with other international aluminum producers, many of whom enjoy subsidized energy rates.[28] It is undisputed that Ormet's continued operation will mean thousands of jobs and more than $100 million in annual revenue to the Ohio economy (as well as considerable state tax revenue, sustained property values, lower unemployment compensation claims and other related socioeconomic benefits) through its continued operation and participation in the global aluminum market.

Ormet recognizes that it bears the burden of proof to prevail on its application. Ormet has met that burden of proof by demonstrating that its proposed application is reasonable, by filing a supporting affidavit, and by demonstrating how the Unique Arrangement advances the policy of Ohio under Section 4928.02 of the Revised Code. The Unique Arrangement meets the unique and specific needs of an aluminum producer with regard to the price, terms, conditions, and quality options under which it takes electric service so that it can sustain its operations at the Hannibal Facilities.

Second, the Unique Arrangement facilitates Ohio's effectiveness in the global economy by helping ensure that one of its leading industrial producers, Ormet, can continue to produce and sell aluminum in the global market for aluminum. This continued participation in the international markets for aluminum production contributes valuable "export" revenue to Ohio as

---

[28] *See, e.g.*, Ex. ORM-1, at 6:3-5.

Ormet aluminum is sold to national and international customers, contributing payroll, benefits, spin-off jobs, tax revenue, sustained property values, and other economic stimulus to the Ohio economy. Ormet's supporting affidavit filed in support of its Unique Arrangement, and the hearing testimony of Ormet's four witnesses (including its Chief Executive Officer, Mike Tanchuk; its Chief Financial Officer, James Riley; Mr. Henry Fayne; and Dr. Paul Coomes) as discussed below, establish without doubt that Ormet has met its burden of proof for approval of its proposed Unique Arrangement by the Commission.

The response to Ormet's concrete proof is very thin. Commission Staff ("Staff") and the Ohio Consumers' Counsel ("OCC") each presented the testimony of one witness, Mr. Robert Fortney and Dr. Amr Ibrahim, respectively. Mr. Fortney supports Ormet's proposed Unique Arrangement in 2009,[29] but seeks an admittedly non-fact-based, "subjective" cap on discounts of 25% of energy costs as the maximum reduction of rates that would be afforded to Ormet, irrespective of the price of aluminum.[30] Unfortunately, while both witnesses seek to curtail or scale back the proposed Unique Arrangement for the years 2010-2018, neither witness proposes a reasonable alternative solution that satisfies the statutory policy of ensuring Ohio industry's continued effective competition in the global economy. First, neither witness made any determination of the electricity costs that Ormet could afford to pay in order to stay in business, particularly while LME prices are depressed as they have been since at least the fall of 2008. For example, when asked what his recommendation would be if Ormet would need $60 million in annual energy discounts in order to stay in business due to then-prevailing aluminum LME prices, Mr. Fortney testified that his recommendation would remain at a fixed $54 million cap,[31] simply because he felt that should be the limit. But that recommendation fails to ensure a return

[29] Tr. 367:7-8, 469:2-4, 499:11-19.
[30] Ex. Staff-2 at 3:2-3.
[31] Tr. 507:25-508:9.

for Ohio ratepayers for supporting up to $54 million in discounts if Ormet should fail, because of insufficient cash flow. Further, Mr. Fortney acknowledges that no such 25% cap exists in the statute or the rules that have been adopted implementing the statute.[32] Indeed, Mr. Fortney testified that the statute does not set "*any type of cap, delta revenue cap, nor any type of limit to the reasonable arrangement the Commission could approve*."[33] This illustrates that the Staff proposal lacks the essential flexibility necessary for Ormet's Unique Arrangement to be successful, for the benefit of Ormet, its employees (most of whom are Ohio-based), and for Ohio residents, taxpayers and ratepayers.

Second, OCC and Staff witnesses admit that neither of them performed a detailed economic analysis of Ormet's impact on the regional economy of Ohio, or performed any independent analysis of the economic impact of Ormet's Hannibal Facilities on the Ohio economy.[34] The only such evidence is the study prepared by Ormet's expert regional economist, Dr. Paul Coomes, who has significant experience evaluating the economic impact of aluminum smelters in the Ohio River Valley, both in Ohio and Kentucky.[35] The impact of any future closure of the Hannibal Facilities would be significant, and goes well beyond merely the direct wages of Ormet employees, but also impacts their pension and health benefits, and the secondary jobs that are generated in the Southeastern Ohio region as a result of the Ormet smelter's continued operations. For example, Dr. Ibrahim admitted that he did not weigh the delta revenues that he identified in his testimony against the costs associated with the shutdown of the Hannibal Facilities.[36] Neither the OCC nor Staff witnesses consider these economic impacts,[37]

---

[32] Tr. 502:5-503:6.
[33] Tr. 503:3-6 (emphasis added).
[34] Tr. 506:21-24.
[35] *See, e.g.*, Tr. 268:1-269:12.
[36] Tr. 320:5-321:11.
[37] Tr. 504:2-505:10.

or present any independent analysis of the impact of the plant's closure on Ohio residential consumers, particularly the thousands of such consumers who would be most affected in Monroe County and the surrounding counties of Southeastern, Ohio. In fact, at no point does the OCC attempt to present a balanced, reasonable proposal that both satisfies the intent of the statute and protects ratepayers.

Section 4901:1-38-05(B) of the Ohio Administrative Code[38] provides that a mercantile customer of an electric utility may apply to the Commission for a unique arrangement with the electric utility for an electric rate. It also requires the customer to bear the burden of proof that the proposed arrangement is reasonable and does not violate the provisions of Sections 4905.33 and 4905.35 of the Revised Code. Under 4901:1-38-05(C), the customer must also describe how any such arrangement furthers the policy of the State of Ohio embodied in Section 4928.02 of the Revised Code. The customer must also provide an affidavit from a company official as to the veracity of the information provided, submit to the Commission and the electric utility verifiable information detailing the rationale for the arrangement, and the Unique Arrangement must reflect terms and conditions for circumstances for which the electric utility's tariffs have not already provided.[39] As described below, Ormet has met these criteria.

---

[38] Section 4901:1-38-05 of the Ohio Administrative Code amplifies Revised Code Sections 4905.31 and 4928.02.
[39] Ohio Admin. Code 4901:1-38-05(B)(1), (B)(2) and (D) (2009).

A. Ormet's Proposed Unique Arrangement is Reasonable

1. The Benefits to the Region from Keeping Ormet in Operation Will More Than Offset Electricity Discounts Paid by Other Ratepayers

a) *Ormet Provides Tremendous Economic Value to the Local Economy*

Ormet has placed undisputed expert testimony into the record demonstrating that when at full operations, Ormet provides $195 million of benefits to the regional economy.[40] The undisputed evidence demonstrates that Ormet provides a total net annual impact in the region of 3441 jobs and $195 million in total employee compensation, plus $7 million annually in state and local tax revenues as well as supporting local real estate and retail markets.[41] In addition, unemployment and crime are related to the plant's employment levels, as are public costs for unemployment benefits, retraining and social services.[42] Thus, the total regional benefit of keeping Ormet's Hannibal Facilities in operation exceeds $200 million.

The Ormet smelter is among the largest private sector employers in the regional economy, and clearly the largest industrial employer in Monroe County.[43] Ormet is one of only two major employers in Monroe County that generates dollars there -- most other employers in the County exist to serve the local market and do not bring new dollars into the area.[44] Dr. Coomes found that $62.9 million of the County's $107.1 million in total wages are attributed to the manufacturing industry, of which Ormet is essentially the only firm.[45] Dr. Coomes also

[40] Ex. ORM-5, at 1.
[41] *Id.*
[42] *Id.*
[43] *Id.*, at 2.
[44] *Id.*
[45] *Id.*

found that no other employer in the County approaches Ormet's average pay per worker of close to $55,000 per year.[46]

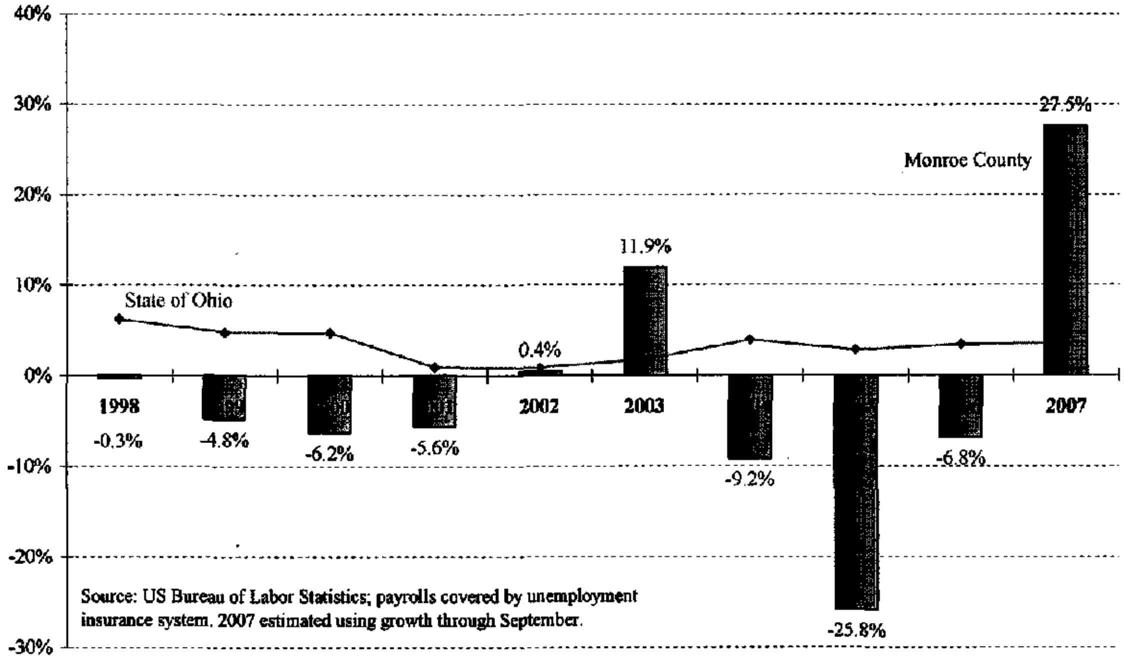
Keeping Ormet in business is not just about keeping the plant open, it is about keeping a community alive. Keeping the Hannibal Facilities at full operation would preserve approximately 1000 high-paying blue-collar jobs in Monroe County, Ohio, an economically depressed county suffering a net population loss in recent years. Dr. Coomes used actual data from the last period of time in which Ormet's Hannibal Facilities were idled (early 2005 until late 2006) and found a notable impact upon the wages and salaries and the unemployment rates of Monroe County. The following two charts from Dr. Coomes' study confirm that the growth rate of wages in Monroe County fell far behind the average for Ohio during that time period, while unemployment surged ahead of the State average.[47] Further confirming the significant economic impact of the Hannibal Facilities on the Monroe County economy, the data shows that the County began to recover as soon as the plant came back on line in late 2006 and early 2007.

---

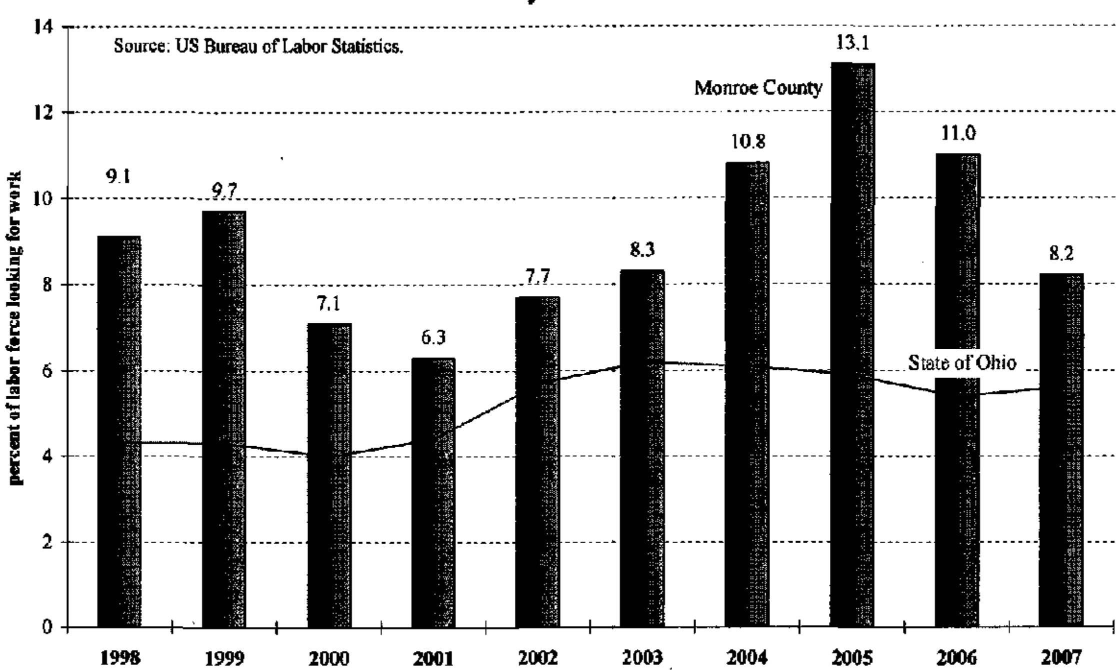
[46] *Id.*

[47] *Id.*, at 3-4.

Growth in Total Wages and Salaries Paid
Monroe County and State of Ohio



Estimated Unemployment Rates
Monroe County and State of Ohio



SOURCE: Ex. ORM-5, at 3-4.

Significantly, Dr. Coomes' calculations of the impact on Monroe County of closing the Ormet plant are not speculative -- they are derived from actual public statistics of Monroe County during a recent time period that the Ormet plant was idled.[48] Dr. Coomes' study also found that of the seven Ohio and West Virginia Counties in which the majority of Ormet's employees reside, Monroe County suffered by far the greatest job loss, and was the only county of the seven to have less wages and salaries in 2006 than 2001.[49] Moreover, due to the loss of so many high-paying jobs at Ormet, and as compared to the other six counties, Monroe County had almost no growth in average pay-per-job during the period of the closure.[50] The local economy is clearly very sensitive to production activity at Ormet.[51]

Dr. Coomes' testimony and study[52] are the *only* record evidence in this case regarding the economic benefits Ormet brings to Ohio and the larger region. No other witness performed an economic study regarding the benefits Ormet brings to Ohio. No witness even attempts to challenge the testimony of Dr. Coomes regarding these benefits. OCC and Staff witnesses simply, and without explanation, ignore it. OCC witness Dr. Ibrahim admits that he merely "glanced over" Dr. Coomes' report.[53] Staff witness Mr. Fortney acknowledged that he had no rebuttal testimony to contradict the study submitted by Dr. Coomes in this proceeding.[54]

Dr. Ibrahim's and Mr. Fortney's failure to address or effectively challenge Dr. Coomes testimony and study underscore their failure to adequately consider the economic impact of the Hannibal Facilities upon the Southeastern Ohio economy. They disregard all benefits that Ormet

[48] *Id.*, at 2-3.
[49] *Id.*, at 7.
[50] *Id.*
[51] *Id.*, at 3.
[52] Exs. ORM-2, and ORM-5, respectively.
[53] Tr. 321:23.
[54] Tr. 506:16-20.

offers to the region other than the wages and salaries it pays its employees.[55] Neither witness offers any reasoned analysis or justification for excluding from consideration(a) the $51 million in benefits (such as social security and Medicare, retirement, and health insurance) Ormet pays its employees; (b) the $7 million in state and local taxes that Ormet pays in Ohio; or (c) the secondary jobs and other benefits Ormet brings to the region from the calculation of Ormet's impact on Ohio and the region. OCC argues that the discount should be limited to payroll expense to Ohio employees,[56] but does not offer any reason why the costs of the health care, retirement, and social security Ormet pays on behalf of its employees, or value of annual compensation earned by spinoff employment, should not be included in this calculation.

Dr. Ibrahim's testimony is also flawed in another respect. Dr. Ibrahim takes into account only his own estimation of the salaries directly paid to Ohio residents by Ormet. In addition to failing to take into account any benefits to the greater region, and that all 1000 Ormet jobs are located in Ohio, Dr. Ibrahim also fails to take into account the non-wage and salary benefits to Ormet employees such as pensions and health care and the secondary jobs created to serve the Ormet facilities and employees. Even if one were to exclude benefits to the larger region, Dr. Ibrahim's estimate of $34 million in benefits to Ohio[57] dramatically understates the actual benefits. Although Dr. Coomes did not calculate the precise breakdown of benefits between Ohio and West Virginia, he testified that the benefits to Ohio of keeping the Hannibal plant at full operation will be between $100 million and $195 million.[58] Dr. Coomes' measurements of the indirect and secondary impacts of Ormet on the region are based on historical data measuring key economic indicators from a recent historical period in which the Hannibal Facilities were

[55] Exs. OCC-3, at 8:17-18, 9:9-10, 14:4-5, 15:20-21; Staff-2 at 3:5-6.
[56] OCC Comments at 11, Case No. 09-119-EL-AEC (filed Apr. 28, 2009).
[57] Ex. OCC-3 at 7:9-10.
[58] Tr. 261:17-20.

idled -- these are actual recent historical data, not hypothetical estimates. Dr. Ibrahim also fails to take into account the over $2 million in taxes paid annually by Ormet to Ohio State government and the $6.8 million annually in individual income taxes, sales taxes and electricity taxes attributable to Ormet-related activity.[59] Finally, Dr. Ibrahim also fails to consider the long-term benefits of keeping Ormet alive even beyond the end of this Unique Arrangement.[60] If Ormet goes out of business and the Hannibal Facilities are shut down, the effect of the loss will be felt long after the termination of the proposed Unique Arrangement.

b) The Potential Harm Predicted by Intervenors is Speculative and Based on an Unlikely Worst Case Scenario

OCC's assertions of potential harm to ratepayers of $179 million annually[61] and the Ohio Energy Group's ("OEG") estimate of $206.1 million[62] are speculative at best and are a worst case scenario. OCC witness Dr. Ibrahim admits that he is not an expert in, nor has worked in, the aluminum industry, , that he is not an expert in aluminum price forecasting, and that he has never worked with LME prices before this case.[63] He also admits that he has no idea what industry insiders or experts use or consider to be the most accurate predictors of future pricing in the aluminum industry.[64] Nor could he explain why historical prices went up significantly in 2006.[65] Notwithstanding these limitations, Dr. Ibrahim chose to use the current forward market prices for the LME, prices which have not historically proven to be good predictors of LME prices as his predictions for what LME prices would be in 2010.[66] Dr. Ibrahim admitted that he

[59] Ex. ORM-5, at 11, Tr. 270:21-271:13.
[60] Tr. 320:16-321:11.
[61] Ex. OCC-3, at 10:12-14.
[62] Ohio Energy Group Objections at 1, Case No. 09-119-EL-AEC (filed Apr. 29, 2009 ("OEG Objections").
[63] Tr. at 299:16 through p. 300, l. 23.
[64] Tr. at 300:24-301:3.
[65] Tr. at 316:25-317:3.
[66] Tr. at 301:11- 305:15.

had never looked at the Harbor Intelligence Aluminum Price Outlook,[67] which is the preferred source for LME projections by aluminum industry insiders, and is much more accurate at predicting LME prices than the LME forward price curves are.[68] Tellingly, Dr. Ibrahim responded that had he had the opportunity to look into the Harbor report, he would have included it in his analysis.[69]

The estimates by Dr. Ibrahim and the OEG are based on the flawed assumption that LME prices in 2010 and beyond will remain significantly below the index rate at which Ormet would theoretically receive free electricity.[70] Their calculations are based on the erroneous assumption that current LME forward prices are reliable predictors of future LME prices, and that future LME prices are likely to stay below $1941 per tonne.[71] The Harbor Report (admitted as Exhibit ORM- 9) which Ormet's witnesses with experience in the aluminum industry testified is a far more reliable predictor than LME forward prices, predicts that aluminum prices will be near $2,000 per tonne by the end of 2009.[72] While the Unique Arrangement is designed to allow Ormet to weather short-term downturns in a volatile market, such as the current economic downturn, both Ormet and Dr. Ibrahim agree that the extent of the discount, if any, received will vary in future years as the aluminum market returns to more normal levels.[73]

Furthermore, there are several factors that Ormet believes will lower its costs over time, allowing it to become less reliant upon discounted rates as time passes. The first is that Ormet has been deleveraging through the proceeds raised by asset sales and internally generated cash,

---

[67] Tr. 306:24-307:1.
[68] Tr. 170:3-175:23.
[69] Tr..329:7-12.
[70] OEG Objections at 4-5, Ex. OCC-3, at 11:17-12:2.
[71] *Id.*
[72] Ex. ORM-9, at 1.
[73] Tr. 327:15- 328:7.

which is reducing the cost of Ormet's debt.[74] Further, as Mr. Riley testified, Ormet's pension plan contributions will substantially decrease beginning in 2013, which will also help reduce Ormet's costs over time.[75] In addition to these factors, as has already been discussed, Ormet expects prices for aluminum to rise significantly in 2010 and 2011.[76] These factors should all enable Ormet to become less reliant on discounted electricity rates as time passes.

c) *The Cap Proposed by Staff is Inappropriate, Does Not Reflect the Value to the Economy Provided by Ormet, is Subjective and is Not Based on Any Fact-Based Rationale*

Ormet proposed a soft cap in its application that would allow the Commission to reopen the contract if the net cumulative discount Ormet received exceeded 50% of the tariff rate Ormet would otherwise pay.[77] This type of cap would best meet Ormet's needs by allowing it to weather short-term LME volatility while allowing the Commission to step in if the discount becomes too deep.[78] Ormet recognizes that several parties have voiced concerns that this cap would not provide sufficient protection for ratepayers, and have expressed a desire for a firm rate cap. Such a cap would not provide as much assurance that Ormet would be able to stay in business, and if Ormet were subject to such a cap, it would need to have the ability to request, with expedited treatment, that the Commission reopen the contract if it proves insufficient to allow Ormet to stay in business. Expedited treatment would be needed because under a fixed cap, a plummeting LME could put Ormet out of business in a matter of weeks. Due to the nature of potline operations, if a potline is curtailed, it takes several months to restart and millions of dollars.[79] A fixed cap could cause the plant to be idled when an LME price may be only low

[74] Ex. ORM-7 at 2:21-22.
[75] Tr. 434:21-436:1.
[76] Ex. ORM-7 at 2:22-3:1.
[77] Ex. ORM-8 at Attach. A, p. 9, § 2.03
[78] Exs. ORM-6 at 6:1-13; ORM-1 at 7:7-12.
[79] Ex. ORM-1 at 3:22-4:2.

enough to trigger the cap for a single month. This could result in a substantial loss to the Ohio economy forever in order to prevent a short-term increase in the discount provided to Ormet if Ormet cannot afford to restart once LME prices return.

Staff witness Mr. Fortney suggests a cap of $54 million that would set a floor price for Ormet's electricity rates. This cap is insufficient. While Ormet believes that the LME market will rebound sooner than might be indicated by current futures prices, the market remains highly volatile in nature. Ormet does not oppose the application of a cap or floor to its contract. However, as explained in Ormet's application and testimony[80] it is necessary that such a limiting mechanism accommodate short-term volatility. A cap of $54 million is simply too low to reasonably respond to the volatility of the LME markets. Ormet anticipates that while there are likely to be many years in the contract term when Ormet will require less than a $54 million discount, and that there are likely to be years when Ormet pays a premium rather than receiving a discount, there may be years, particularly early in the contract, such as in 2010, when Ormet may need a larger discount to continue operating.

The Commission should understand that this contract is essentially an on-or-off switch. If the discount in any given year is not sufficient to keep Ormet in business, then the whole contract fails and Ormet will likely need to curtail the Hannibal operations. Going only halfway with a discount in a year of significant short-term LME deterioration will not be sufficient to keep Ormet in business.

Mr. Fortney's suggested cap is unreasonable and speculative. Because it fails to consider what Ormet needs to operate, or to balance the costs of discounts against Ormet's benefit to the State of Ohio, it would be arbitrary and capricious for the Commission to adopt it. When asked

[80] Ex. ORM-6 at 6:1-13, 7:6-12.

why he chose a $54 million cap, he admitted: "*There is no clear-cut technical, fact-based rationale to make this determination. It is, to a great degree, subjective.*"[81] Mr. Fortney's suggested cap only corresponds to 28% of the benefits of keeping Ormet operating, and he offers little rationale for it, other than arbitrarily deciding that it "seem[ed] reasonable".[82] Mr. Fortney also offered no evidence to support his determination of what ratepayers can afford to pay.

Mr. Fortney argues that discounts provided to customers under reasonable arrangements should be limited to 25% of this rate, but offers no support for his determination.[83] He appears to have confected it out of thin air. He admits there is no requirement of such a cap in the statute or in the Commission's regulations.[84] Mr. Fortney admitted on the stand that Staff discussed putting such a bright line limit on economic development contracts when the Commission issued its rules, but the Commission determined not to put such a bright line cap in place.[85] Yet he is attempting to establish in this proceeding a bright line that he admits the Commission determined not to set by regulation.[86] A better solution would be to address reasonable arrangements on a case-by-case basis to determine whether it is in Ohio's interest to approve each contract.

Mr. Fortney agrees "that a subsidy that ratepayers are paying should be used wisely."[87] Yet, Mr. Fortney made no effort to determine whether the $54 million cap he proposed would actually procure for the region the $195 million in annual benefits of keeping Ormet's Hannibal Facilities in operation. He testified that he did not present any analysis of the impact of his $54

[81] Ex. Staff-2 at 3:2-3 (emphasis added).
[82] *Id.*, at 3-4.
[83] *Id.*, at 3:6-8.
[84] Tr. 502:13-18; 474:11-15.
[85] Tr. 474:7-15.
[86] Tr. 474:12-20, 502:13-18.
[87] Tr. 493:.7-8.

million cap on the ability of Ormet to stay in business for the years 2010 through 2018.[88] He also stated that he did not present any analysis of what electric rate based upon future LME pricing Ormet can afford to pay to remain in business.[89] Thus, Mr. Fortney made no effort to assure that his proposed cap would be sufficient to keep Ormet in business, and thereby advance the goals of the statute. Mr. Fortney has offered no alternative that would provide reasonable assurance of Ormet's viability. Without such assurance, there is a real possibility that ratepayers could be in a position of paying a subsidy to Ormet for some period of time only to have Ormet subsequently go out of business.

Other parties will likely point out that approximately 42% of Ormet's employees live in West Virginia. While they may argue that this warrants restricting the amount of the discount that Ormet is eligible for to reflect that percentage, such an approach is unreasonable for three reasons. First, if Ormet must reduce operations or go out of business due to high power prices or low LME prices, Ormet cannot lay off West Virginia employees first or only lay off the West Virginia employees. Ohio cannot pay only for Ohio employees and expect Ormet to be able to preserve all of the Ohio jobs. OCC would have Ohio cut off its nose to spite its face. Second, all 1000 jobs are offered by Ormet in Ohio, and as such all are "Ohio jobs."[90] Neither Ormet nor the state of Ohio can require that Ormet's workers reside in Ohio and the precise number of employees in Ohio vis-à-vis other states is likely to change over time as Ohio's employees move or as employees living in one state leave the company and are replaced by employees living in other states. Third, the greatest impact of the closure of the Ohio plant would occur in Monroe County, Ohio.[91] Dr. Coomes examined several key economic indicators in the seven counties

[88] Tr. 506:25-507:9.
[89] Tr. 507:10-14.
[90] Tr. 262:19-24.
[91] Ex. ORM-5, at 7.

(three Ohio counties and four West Virginia counties) where the most Ormet employees reside, and found that the impacts upon Monroe County were far more significant than the effects on the other counties. When the Hannibal Facilities were idled in 2005, Monroe County jobs, wages, and salaries suffered a growth rate of -32.4%.[92] By comparison, the most adversely affected West Virginia County, Wetzel County, suffered much less severe growth rate of -2.8%.[93] Similarly, Monroe County lost 82.9% of its jobs in manufacturing industries, while the most adversely affected West Virginia County, Marshall, WV suffered a loss of only 21.8% of its manufacturing jobs.[94] Additionally, in that time period, Monroe County had a 30.3% decline in total wages and salaries, while all other counties saw their total wages and salaries grow by at least 10.1%.[95] Finally, in the time period in which the Hannibal Facilities were idled, Monroe's average wages and salaries per job grew only 3.2% compared to growth rates of at least 11.3% for all other counties.[96] Thus, it is clear that Monroe County, Ohio is far more severely impacted by the closing of the Hannibal Facilities than are the other counties in which Ormet employees reside.

There are many methods to determine an appropriate cap, and many of them support a cap of at least twice what is proposed by Mr. Fortney. The most rational and logical way to set a cap would be to link it to the benefits received as a result of the contract. Ormet has submitted unchallenged evidence that the benefit to the region of keeping Ormet in business is $195 million. If, as some parties suggest, the Commission were only to consider benefits received by Ohio, then the undisputed evidence in the record demonstrates that Ormet provides at least $100

[92] *Id.*
[93] *Id.*
[94] *Id.*
[95] *Id.*
[96] *Id.*

million in benefits to Ohio.[97] Even if one were to discount the secondary jobs and benefits such as helping keep crime and unemployment levels down and keeping property values up, the sum of what Ormet pays directly in payroll, benefits and Ohio taxes comes to $114 million.[98] Even if one were to make the assumption that, because only 58% of Ormet's employees live in Ohio, only 58% of the benefits of keeping the Hannibal Facilities in operation accrue to Ohio, which limitation Staff does not support,[99] 58% of $195 million still comes out to $113 million. If the Commission were to set a cap of 50% of Ormet's energy costs at full operations, the cap would still amount to roughly $103 million.[100] Finally, if the Commission were to use variable costs to determine a cap, the cap would be in the range of $93 million.[101] Even Staff witness Mr. Fortney agrees that the variable cost of production would be a reasonable floor in many cases[102]. Such a strong cluster of caps supported by the facts in evidence in the range of $93 million to $114 million is a strong indication that Mr. Fortney's suggested cap of $54 million -- for which he admits there is no fact-based rationale -- is far too low.

But in the end result, the critical factor is to set a cap that provides for the reasonable likelihood that Ormet will survive through this unprecedented world-wide recession. Imposing a cap that is too stringent could result in a premature shutdown that deprives southeastern Ohio of the long-term benefits of Ormet's continued operation. The outlooks for 2010 are more robust

---

[97] Tr. 261:17-20.

[98] Ex. ORM-5 at 11 ("Wages and salaries" of $56,083,139, plus "Other compensation and labor costs"of $51,905,121, plus "Income, sales, property and other taxes to Ohio state government" of $6,762,839 equals $114,751,099).

[99] Tr. 487:3-9.

[100] Assuming OEG's calculation of Ormet's annual power costs under the ESP rate of $206.1 million is correct (*see* OEG Objections at 4), then one half of $206.1 million is approximately $103 million.

[101] Mr. Fortney suggests that the variable costs for Ormet would be approximately $93 million, but admits he had not actually examined the tariffs to see what the variable cost would be, though such a calculation could be done. Tr. 478:14-479:2; Ex. Staff 2-A, Example 7; Tr. 491:2-492:8.

[102] Tr. 479:10-12.

than current aluminum LME pricing. The average forecast for 2010 projects the LME price to be \$2490/tonne.[103] If that price were achieved for 2010, Ormet would require a discount of about \$92 million. If the optimistic forecast of \$3100/tonne[104] were achieved (and these were average market prices one year ago), Ormet would not require a discount, and based on the proposed arrangement, would be paying a premium.

Clearly the potential range is wide and no one has a crystal ball. To provide stability to Ormet and to provide a basis for Ormet to secure the necessary financing, therefore, Ormet believes a reasonable hard cap supported by the evidence would be \$90-100 million, with the ability for Ormet to seek relief from the Commission on an expedited basis if the circumstances arise that would cause the cap to push Ormet out of business.

2. <u>The Unique Arrangement is Designed to Assure that Ormet is Not Unreasonably Benefited at the Expense of the Ratepayer</u>

There are several aspects of the Unique Arrangement that are designed to assure that Ormet takes no more in discounts than is required to enable Ormet to survive. The Unique Arrangement is designed to keep Ormet on life support during downturns in the aluminum market -- it is not designed to keep Ormet healthy or profitable. It is designed to impose the minimum burden on other ratepayers consistent with keeping Ormet alive until aluminum prices rebound. The proposed Unique Arrangement is designed only to assure that Ormet has the minimum cash flow necessary to keep the Hannibal Facilities in operation and to pay its required legacy costs; it simply is designed to allow Ormet to survive financially; it does not guarantee that Ormet will earn a profit or a particular rate of return.[105] The Target Price is by definition the price at which Ormet could afford to pay the AEP Ohio Tariff Rate and still have the minimum

---

[103] Ex. ORM-9, at 15.
[104] *Id.*
[105] Ex. ORM-7 at 6:9-14.

cash flow needed to keep the Hannibal Facilities in operation.[106] Ormet would not begin to earn a profit until the Target Price is reached. Under the Unique Arrangement, Ormet's calculation of the Target Price will be audited each year at Ormet's expense, by an independent third party auditor who will have complete access to Ormet's books and records.[107]

Another measure taken to reduce the impact on ratepayers is that in times when the LME price of aluminum rises above the Target Price, Ormet will pay a premium. When the LME price of aluminum is greater than the Target Price, but not more than $300/Tonne above the Target Price, Ormet's rate will be 102% of the AEP Ohio Tariff Rate.[108] When the LME price of aluminum is greater than the sum of $300/Tonne plus the Target Price, the Ormet rate will be 105% of the AEP Ohio Tariff Rate.[109] These premiums are not required under the statute or regulations, but are being offered voluntarily by Ormet in an attempt to partially offset the discount to Ormet would receive. Some parties have suggested that the premiums Ormet has voluntarily offered to pay, even though there is no such requirement in the statute or Commission's regulations are insufficient.[110] Although Ormet has volunteered to share the any upside through payment of a premium, Ormet cannot support repayment of the entire discount without jeopardizing its own survival. Under the terms of this proposed Unique Arrangement, investors will already be foregoing the upside during any period the Index Rate is less than the full Tariff Rate.[111] Without some expectation of earning a reasonable return in a normal investment timeframe, investors will be unwilling to provide the necessary capital. In order to

[106] Exs. ORM-7 at 6:12-16; ORM-8 at Attach. A, p. 8, § 1.22.
[107] Ex. ORM-7 at 7:14-17.
[108] Ex. ORM-8, Attach. A, p. 12, § 5.03(b).
[109] *Id.*, at § 5.03(c).
[110] *See, e.g.,* Ex. OCC Comments at pp. 9-10.
[111] Ex. ORM-7, at 7:20-8:2.

attract investment to sustain Ormet's operations, it must be able to convince potential investors that they will earn an adequate return on their investment.

Finally, Ormet has every incentive under the Unique Arrangement to reduce its costs. As long as the LME price of aluminum remains under the Target Price, Ormet will be earning only enough cash to pay its bills.[112] It will not be earning an adequate return to obtain a satisfactory stock price or to grow and prosper.[113] The only ability Ormet has to control where the LME price falls relative to the Target Price is to keep the Target Price as low as possible by reducing its other costs to the greatest extent possible. If the Target Price is continually out of reach, then Ormet will not make a profit and it is unlikely that this Unique Arrangement would continue to be viable. Ormet must continually improve its performance and resulting cost structure, which includes managing electricity costs, if it is to be successful.[114]

B. Ormet's Proposed Unique Arrangement Furthers the Policy of the State of Ohio Embodied in Section 4928.02 of the Revised Code

Ormet's proposed Unique Arrangement advances State policy under Section 4928.02 of the Revised Code. Section 4928.02 states that it is the policy of the state, *inter alia*, to ensure the availability of "unbundled and comparable retail electric service that provides consumers with the supplier, price, terms, conditions, and quality options they elect to meet their respective needs," and to "[f]acilitate the state's effectiveness in the global economy."[115]

The Unique Arrangement is designed to meet unique and specific needs of Ormet with regard to the price, terms, conditions, and quality options under which it takes electric service.

[112] *Id.*, at 7:20-21.
[113] *Id.*, at 7:21-8:2.
[114] *Id.*, at 8:2-3.
[115] Ohio Rev. Code § 4928.02(B) and (N).

Electricity is a fundamental raw material in the aluminum industry,[116] and Ormet is unique in its vulnerability to energy costs. At full operation, Ormet consumes up to 540 MW of electricity 24 hours per day, 365 days per year at a 98 percent load factor.[117] Currently, electricity constitutes approximately 35% of Ormet's total cash costs, or 39% of the cash smelter costs.[118] When competitively priced electricity is available, it constitutes approximately 30% of the cost of producing aluminum in the United States and about 20% of the cash cost of the most competitive smelters.[119]

The cost of electricity has a substantial effect upon the price of Ormet's finished product. However, Ormet has no control over the price at which it sells its product.[120] The price of aluminum is set on the international market, specifically on the LME, which is a highly volatile market. The economic viability of an aluminum smelter is essentially determined by the relationship between the retail market price of an aluminum smelter's product, aluminum, and its costs, chiefly the cost of electricity.[121] If the cost of electricity becomes too high relative to the LME price of aluminum, then Ormet will not be able to continue to operate the Hannibal Facilities because it simply will not be able to produce aluminum at a price below the price at which it can sell the aluminum.[122] Therefore it is critical that Ormet's cost of electricity be tied to the LME price of aluminum if Ormet is to stay in business.[123] Ormet's cash costs cannot exceed the price at which it can sell the aluminum if Ormet is to sustain operations at the

---

[116] Ex. ORM-1, at 3:5-6.
[117] *Id.*, at 3:4-5.
[118] *Id.*,, at 3:6-7.
[119] *Id.*, at 3:7-10.
[120] Ex. ORM-1, at 3:14-15; ORM-7, at 3:10-11.
[121] Ex. ORM-1, at 2:21-23.
[122] Ex. ORM-7, at 4:15-16.
[123] Ex. ORM-1, at 8:13-18; ORM-7, at 3:13-20.

Hannibal Facilities.[124] As Ormet has demonstrated, many other aluminum smelters around the world have electricity contracts tied to the LME price of aluminum, and most of those that do not have such indexed contracts have electricity prices well below Ormet's cost of electricity.[125] If Ormet is to survive, it must have electricity prices, terms and conditions that enable it to compete on a global market.

Ormet's ability to manage other costs to keep its cost of production in check is somewhat limited. As mentioned electricity alone accounts for 35% of Ormet's cash costs. The other significant cost, reflecting 31% of Ormet's costs, is for baked anodes, which is highly dependent upon the world prices of petroleum coke.[126] Another 17% of Ormet's costs, specifically, pension payments, VEBA contributions, insurance and taxes are fixed and cannot be reduced in the short or intermediate term if Ormet is to continue to operate. This leaves Ormet with the ability to control only 17% of its non-electricity costs on a month-to-month basis, and three-quarters of that 17% consists of hourly labor costs controlled by a collective bargaining agreement.[127]

Ormet's electricity needs are unique. Ormet's power supply must be stable.[128] Ormet cannot respond easily to fluctuations in electricity pricing. The six potlines Ormet operates at the Hannibal Facilities must be kept energized at all times to keep the metal in them molten.[129] If electricity to a potline is reduced sufficiently that the metal solidifies, it takes several months and millions of dollars to bring the potline back into operation.[130]

---

[124] Ex. ORM-7, at 4:15-16.
[125] Ex. ORM-1, at 6:1-5; ORM-8, at 2-3, Attachs. B, C; Tr. at 87:1-90:25.
[126] Ex. ORM-7, at 5:7-9.
[127] *Id.*, at 5:9-11.
[128] Ex. ORM-1, at 3:20.
[129] *Id.*, at 3:22-23.
[130] *Id.*, at 3:23-4:2.

Keeping Ormet in Ohio will help Ohio compete in the global economy. As Dr. Coomes noted, Ormet is one of only two employers in the region that brings outside dollars to Ohio.[131] The loss of Ormet would be highly detrimental to the region because it would cut off a major flow of outside dollars into Ohio. Ormet competes in a global market, and needs affordable energy to continue to compete. While the forecasted 2009 global average power tariff is \$30.7/MWh, the forecasted 2009 power rates in the most competitive regions of the world are much lower -- for example, Africa is forecasted to be at \$15.4/MWh and Russia at \$18.1/MWh.[132] Ormet's global competitors generally have much lower power costs than Ormet. By tying Ormet's electricity costs to the LME price of aluminum, the Commission could help enable Ormet to survive in the global market.

C. Ormet's Proposed Unique Arrangement Does Not Violate Sections 4905.33 and 4905.35 of the Revised Code

Ormet's proposed Unique Arrangement does not violate Sections 4905.33 and 4905.35 of the Revised Code. Section 4905.33 states:

> (A) No public utility shall directly or indirectly, or by any special rate, rebate, drawback, or other device or method, charge, demand, collect, or receive from any person, firm, or corporation a greater or lesser compensation for any services rendered, or to be rendered, except as provided in Chapters 4901., 4903., 4905., 4907., 4909., 4921., and 4923. of the Revised Code, than it charges, demands, collects, or receives from any other person, firm, or corporation for doing a like and contemporaneous service under substantially the same circumstances and conditions.
>
> (B) No public utility shall furnish free service or service for less than actual cost for the purpose of destroying competition.

Section 4905.35 states:

---

[131] Ex. ORM-5 at 2.
[132] Ex. ORM-1, at 6:3-5.

> (A) No public utility shall make or give any undue or unreasonable preference or advantage to any person, firm, corporation, or locality, or subject any person, firm, corporation, or locality to any undue or unreasonable prejudice or disadvantage.[133]

Ormet's Unique Arrangement does not violate Sections 4905.33 and 4905.35 simply by way of being a special contract. Revised Code Section 4905.31 specifically states that "Chapters . . . **4905** . . . of the Revised Code do not prohibit a public utility from filing a schedule or establishing or entering into any reasonable arrangement with another public utility or with one or more of its customers . . . ." (emphasis added). Therefore, the type of Unique Arrangement proposed herein by Ormet does not violate the prohibition against unduly discriminatory and preferential rates on its face.

Nor does Ormet's Unique Arrangement violate either section by its terms. Any other customer has the right to propose a similar agreement if they so desire. While LME-based pricing is unusual in Ohio, Ormet's business is also unusually vulnerable to the interplay between LME prices and the cost of electricity. Rarely will the Commission find a situation in which the fate of so many (over 1000) high-paying blue collar jobs is so heavily dependent upon the price of electricity. Few, if any, other Ohio customers are likely to be pushed out of business if their cost of electricity is too high relative to the LME price of aluminum. If other such customers exist in Ohio, nothing in Ormet's proposed Unique Arrangement would prohibit them from entering into a similar arrangement with AEP Ohio.

While some parties may argue that the delta revenues mechanism inappropriately disadvantages other customers of AEP Ohio, Revised Code Section 4905.31 explicitly provides that a public utility, such as AEP Ohio, may enter into a reasonable arrangement with one of its

[133] The remaining subsection (B) of section 4905.35 pertains to natural gas companies, and so is inapplicable in this case.

customers providing any "financial device that may be practicable or advantageous to the parties interested," including "a device to recover costs incurred in conjunction with any economic development and job retention program of the utility within its certified territory, including recovery of revenue foregone as a result of . . . programs under section 4928.66 of the Revised Code . . . ."[134] Neither the statute, nor the Commission's regulations thereunder,[135] require that any limit be placed upon the extent to which such revenue foregone may be recovered, nor does it impose a cap or limit upon the discounts that customers entering into such arrangements may receive. Rather, with regard to reasonable arrangements, the Commission has the discretion on a case-by-case basis to determine which terms are reasonable.

Under the Commission's rules the level of incentives associated with any reasonable arrangement are not limited to a specific level, but are to be established as part of the Commission's review and approval of applications for such arrangements.[136] As Staff recognizes, a cap on such incentives (i.e., rate discounts) was considered at the time the rules were written, but none was established in the rules.[137] Therefore, it seems clear that it was the Commission's intent to consider the level of incentives appropriate for each reasonable arrangement on a case-by-case basis.

D. Ormet has Provided the Information Needed by the Commission to Approve this Unique Arrangement.

A customer filing a Unique Arrangement must provide an affidavit from a company official as to the veracity of the information provided, submit to the Commission and the electric utility verifiable information detailing the rationale for the arrangement, and the Unique

---

[134] Ohio Rev. Code 4905.31(E) (2009).
[135] Ohio Admin. Code 4901:1-38 (2009).
[136] Ohio Admin. Code 4901:1-38-07 (2009).
[137] Tr. 474:7-15.

Arrangement must reflect terms and conditions for circumstances for which the electric utility's tariffs have not already provided.[138] Ormet provided an Affidavit from Michael Tanchuk, President and Chief Executive Officer of Ormet Corporation in support of its Application,[139] and has provided sworn testimony of both Mr. Tanchuk and of James Burns Riley, Chief Financial Officer of Ormet Corporation in this case[140] (as well as testimony from two consultants employed by Ormet for this case, Dr. Paul Coomes and Mr. Henry Fayne).[141]

Ormet has also provided verifiable data in support of its Application. It has provided a substantial amount of data in support of its rate calculations. In Exhibits ORM-11, ORM-12, ORM-13, ORM-14, ORM-15 and ORM-16, Ormet witness James Burns Riley explained in detail how Ormet arrived at its $38/MWh and $34/MWh rates for 2009.[142] These costs, based on historical data, have since been corroborated by actual data by Ormet's Chief Financial Officer, who has thirty years of experience in making financial projections, as being well within a reasonable margin of error and are "exceedingly accurate."[143] Staff supports Ormet's proposed rates for 2009 and recommends that the Commission approve them.[144]

In Exhibit ORM-7, Mr. Riley explained in detail how the schedules for the years 2010 to 2011 would be developed.[145] Ormet also provided examples in its Application of the schedules

---

[138] Ohio Admin. Code Section 4901:1-38(B)(1), (B)(2) and (D).
[139] Ex. ORM-8, Attach. F.
[140] Exs. ORM-1, ORM-7 and ORM-11.
[141] Exs. ORM-2, ORM-6.
[142] Mr. Riley explained in his testimony that, dependent upon the outcome of the Glencore case, Ormet may need to make a subsequent filing to seek a different rate for 2009. Ex. ORM-7, at 8:12-17. Ormet has not yet done so because it believes that there is a significant possibility that Ormet will be made whole through the Glencore Ltd. arbitration, in which case, no such modification would be needed.
[143] Tr. 454:8-455:12.
[144] Tr. 367:7-8, 469:2-4, 499:11-19.
[145] Ex. ORM-7, at 7:1-17.

that will be developed using Ormet's then-current calculations for 2010 and 2011.[146] Exhibit OEG-7 consists of workpapers provided by Mr. Riley to demonstrate the data Ormet would utilize in calculating the Target Price and Index Price each year.

The Unique Arrangement filed by Ormet does contain all terms and conditions not already addressed in AEP Ohio's Tariffs. Any manner in which the arrangement between AEP Ohio and Ormet differs from AEP Ohio's standard tariffs is detailed in the Unique Arrangement and the Tariffs and the Unique Arrangement constitute the entire agreement between AEP Ohio and Ormet.[147]

E. Ormet's Proposal with Regard to the Deposit and Payment Terms is the Most Beneficial Option for Other AEP Ohio Customers.

The OCC has objected to the proposed Unique Arrangement's payment terms, namely that Ormet would not be required to keep a deposit with AEP Ohio and would pay under standard tariff payment terms of payment being due twenty-one days after billing, but that any losses AEP Ohio suffers due to an event of default on behalf Ormet would be considered delta revenues.[148] The OCC incorrectly argues that Ormet is seeking a "waiver" of deposit and prepayment terms,[149] when in fact, all Ormet is seeking is a return to standard tariff terms.[150] The OCC is also mistaken in its belief that this is detrimental to ratepayers. This arrangement actually works to the benefit of other AEP Ohio customers and objections to it should be overruled.

---

[146] Ex. ORM-8, Attach. A at Schedules A and B. Note that Ormet has reserved the right to file revised versions of these schedules with the Commission no later than October 1, 2009 and 2010, respectively in order to accounts for any changes in circumstances. *See* Ex. ORM-8, Attach. A, p. 11, § 5.02.

[147] Ex. ORM-8 Attach. A, p. 23, § 13.09.

[148] OCC Comments at 17-18.

[149] OCC Comments at 17.

[150] Tr. 124:10-15, 227:10-11.

The calculation of the rate that Ormet can afford to pay is currently based on the assumption that the cash deposit currently being held by AEP Ohio will be returned to Ormet, thereby increasing its cash flow.[151] If Ormet is required to keep a deposit with AEP Ohio and to continue the current contract terms under the Interim Arrangement of paying in advance for power, then Ormet's cash flow will be reduced, the magnitude of the discount required would necessarily increase, and the level of delta revenues to be collected from other AEP Ohio customers would need to be higher. While there may be a possible risk that customers could bear increased costs due to a default by Ormet, that eventuality is far from certain, whereas increased delta revenues would be certain if a deposit and prepayment were required. Ormet believes that the certainty of lower delta revenues offsets any potential risk of a possible default by Ormet in the future imposing increased costs.

F. Staff's Proposal to Bifurcate the Proceeding Would be Extremely Detrimental to Ormet

Ormet must refinance its debt no later than February 2010, and in order to get its financing in place by then it must be able to offer its investors some certainty as to what its electric rates will be. While Ormet appreciates that Staff is willing to support its proposed rates for 2009,[152] delaying consideration of Ormet's proposed 2010 to 2018 rates would have a highly detrimental impact upon Ormet's ability to refinance its debt. Ormet is seeking Commission's approval of the LME-based variable rate mechanism for the rates for 2010 to 2018, and will file the schedule with the actual rates each year at which time the Commission, the independent auditor, and the parties will have an opportunity to review the proposed rates before they go into effect.

[151] Ex. ORM-11, at 3:19-22.
[152] Tr. 367:7-8, 469:2-4, 499:11-19.

IV. CONCLUSION

WHEREFORE, for the reasons stated herein, Ormet respectfully asks that the Commission: (1) approve the Unique Arrangement as proposed herein; (2) in the event that the Commission decides a hard cap is necessary, that it be a reasonable cap that enables Ormet to weather short-term deteriorations of the LME price of aluminum and reflects the value Ormet brings to the region; and (3) deny the recommendation of Staff to bifurcate these proceedings.

Respectfully submitted,

Clinton A. Vince, Counsel of Record
Douglas G. Bonner
Daniel D. Barnowski
Emma F. Hand
Sonnenschein Nath & Rosenthal LLP
1301 K Street NW
Suite 600 East Tower
Washington, DC 20005
202-408-6400 tel.
202-408-6399 fax
cvince@sonnenschein.com
dbonner@sonnenschein.com
dbarnowski@sonnenschein.com
ehand@sonnenschein.com

Attorneys for Ormet Primary Aluminum Corporation

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Post-Hearing Brief of Ormet Primary Aluminum Corporation has been served upon the below-named persons via regular U.S. Mail Service, postage prepaid, this 1st day of July, 2009.

Emma F. Hand
Attorney for Ormet Primary Aluminum Corporation

SERVICE LIST

Marvin Resnik, Counsel of Record
Steven T. Nourse
American Electric Power Corporation
1 Riverside Plaza
Columbus, OH 43215

David F. Boehm
Michael Kurtz
Boehm, Kurtz & Lowry
36 East Seventh Street, Suite 1510
Cincinnati, OH 45202

Samuel C. Randazzo, Counsel of Record
Lisa McAlister
Joseph M. Clark
McNees Wallace & Nurick LLC
21 East State Street, 17th Floor
Columbus, OH 43215-4228

John W. Bentine
Mark S. Yurick
Matthew S. White
Chester Wilcox & Saxbe LLP
65 East State Street, Suite 1000
Columbus, OH 43215

Maureen Grady
Gregory Poulos
Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, OH 43215

Jennifer Duffer,
Armstrong & Okey, Inc.
222 East Town Street 2nd Floor
Columbus OH 43215

Duane Luckey
Attorney General's Office
180 E. Broad Street, 9th Floor
Columbus, OH 43215

Denis George
1014 Vine Street-GO7
Cincinnati, OH 45202