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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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PUCO

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

APPLICATION FOR REHEARING
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL
AND THE OHIO ENERGY GROUP

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Pursuant to R.C. 4903.10 and Ohio Adm. Code 4901-1-35, the Office of the Ohio Consumers' Counsel ("OCC"), on behalf of approximately 1.2 million residential electric consumers of the Ohio Power Company and the Columbus Southern Power Company (collectively "AEP"), and the Ohio Energy Group ("OEG"), on behalf of the AK Steel Corporation, Aleris International, Inc., ArcelorMittal, BP-Husky Refining, LLC, Brush Wellman, E.I. duPont de Nemours & Company, Ford Motor Company, GE Aviation, Griffin Wheel, Linde, Inc., Proctor & Gamble Distribution Company, PPG Industries, Inc., Republic Engineered Products, Inc. Severstal Wheeling and Worthington Industries, apply for rehearing of the July 14, 2009 Opinion and Order ("Order") of the Public Utilities Commission of Ohio ("Commission" or "PUCO").

OCC and OEG assert that the Commission Order was unjust, unreasonable, and unlawful and the Commission Erred in the following particulars:


1. Assignment of Error 1: The PUCO erred in failing to specify and ensure how AEP will apply the credit for the full amount of POLR charges that will reduce what customers will have to pay for Ormet's unique arrangement.

2. Assignment of Error 2: The PUCO erred by failing to specify that AEP and Ormet shall not be permitted to reduce the delta revenue credit, for example by negotiating a discount to the POLR charge, that is intended by the PUCO to reduce what customers will have to pay for Ormet's unique arrangement.

The need for rehearing of the PUCO's Order is discussed below in the attached Memorandum in Support.

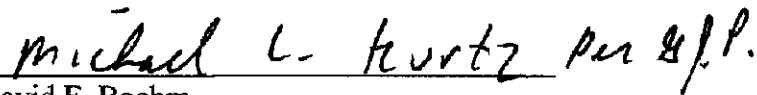
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MEMORANDUM IN SUPPORT

I. INTRODUCTION AND STATEMENT OF THE CASE

Ormet is a major producer (smelter) of aluminum in the United States.¹ Ormet's aluminum smelter is located in Hannibal, Ohio.² On February 17, 2009, Ormet filed an application for a "unique arrangement" ("Application") pursuant to R.C. 4905.31 and Ohio Adm. Code 4901:1-38-05. On April 10, 2009, Ormet amended the original application.³ On April 28, 2009, OCC and OEG, among others, filed separate detailed comments on the proposed Ormet arrangement. On April 30 and May 1, 2009, the Commission held a hearing in this matter. After all the parties had presented their evidence, Ormet was granted a continuance and an additional opportunity to supplement the record with evidence to support its proposed rates for 2009. On June 11, 2009, Ormet presented additional testimony of James Riley. Finally, on June 17, 2009, the PUCO Staff offered rebuttal testimony from Robert Fortney.

¹ See OCC Exhibit 11 at 1. (Ormet Corporation's Rule 15c2-11, Information and Disclosure Statement for the Quarter Ended March 31, 2009).

² See Id.

³ See Ormet Exhibit 8 at 1. (Amended Application).

On July 14, the Commission issued an Order approving a ten-year “unique arrangement” for Ormet but modifying certain provisions. For 2009, the Commission approved the rates proposed by Ormet --\$38 per Mwh at full production, \$34 per Mwh at 4 potlines and \$35 per Mwh at 4.6 potlines.⁴ With respect to the delta revenues, the Commission authorized AEP to defer the delta revenues created by this unique arrangement and then to file an application “to recover the appropriate amounts of the deferrals authorized by the Commission in [the temporary Ormet arrangement] case and the delta revenues for calendar year 2009.”⁵

For 2010-2018, the Commission adopted the indexed structure proposed by Ormet, tying the price of electricity to the price of aluminum on the London Metal Exchange (“LME”), but made a number of modifications to the proposal.⁶ The Commission modified Ormet’s proposal by ordering that there be a true-up of projected LME prices for the year with actual LME prices.⁷ In addition, the Commission ruled that Ormet will receive no more than a \$60 million subsidy per year for 2010 and 2011.⁸

The Commission also determined that, starting in 2011, customers will not pay more than an annual “ceiling” of \$54 million.⁹ The potential differential created between the \$54 million ceiling that customers could pay and the \$60 million maximum discount Ormet could receive in a year (\$6 million per year) is to be deferred by AEP with

⁴ See Opinion and Order at 5.

⁵ Id. at 5.

⁶ See Id. at 6.

⁷ See Id.

⁸ See Id. at 10.

⁹ See Id.

carrying costs at long term debt for the term of the arrangement.¹⁰ The \$60 million floor will be in effect for 2010 and 2011.¹¹ Beginning in 2012, the floor will be reduced to \$54 million; for calendar years 2013 through 2018, the floor will be reduced each year by \$10 million until it phases out completely in 2018.¹²

Ormet's discounted rate is conditioned upon the Company maintaining 650 full-time employees.¹³ The floor will be reduced by \$10 million each month for every 50 employees below 650 full-time employees from the previous month.¹⁴

The Commission found that since AEP would be the exclusive supplier to Ormet there would be no risk to AEP that Ormet will shop and then return to AEP's provider of last resort ("POLR") service.¹⁵ Accordingly, the Commission determined that AEP should not be compensated for a service it would not be providing. Thus, the Commission found that any POLR charges paid by Ormet should be credited to the economic development rider charged to AEP customers to reduce the AEP customer subsidy of Ormet's unique arrangement.¹⁶ For 2009, the POLR credit expected is approximately \$15 million.¹⁷ For 2010, the POLR credit will be approximately \$11 million.¹⁸ Notably, however, the Commission did not address how the POLR credit was to be applied. It is this issue on which OCC and OEG seek rehearing.

¹⁰ See Id.

¹¹ See Id.

¹² See Id.

¹³ See Id. at 11.

¹⁴ See Id.

¹⁵ See Id. at 13.

¹⁶ See Id.

¹⁷ Cite OCC brief

¹⁸ Cite OCC brief

II. STATUTORY BASIS FOR APPLICATIONS FOR REHEARING

Applications for rehearing are governed by R.C. 4903.10 and may be sought by any party who has entered an appearance in the proceeding on any matter determined in the proceeding. In considering an application for rehearing, Ohio law provides that the Commission “may grant and hold such rehearing on the matter specified in such application, if in its judgment sufficient reason therefore is made to appear.”

Furthermore, if the Commission grants a rehearing and determines that “the original order or any part thereof is in any respect unjust or unwarranted, or should be changed, the Commission may abrogate or modify the same”¹⁹

As parties to the proceeding OCC and OEG meet the statutory conditions applicable to an applicant for rehearing pursuant to R.C. 4903.10. Accordingly, OCC and OEG respectfully request that the Commission rehear its Order to clarify it in the following respect as discussed below.

III. ARGUMENT

- 1. Assignment of Error 1: The PUCO erred in failing to specify and ensure how AEP will apply the credit for the full amount of POLR charges that will reduce what customers will have to pay for Ormet’s unique arrangement.**
- 2. Assignment of Error 2: The PUCO erred by failing to specify that AEP and Ormet shall not be permitted to reduce the delta revenue credit, for example by negotiating a discount to the POLR charge, that is intended by the PUCO to reduce what customers will have to pay for Ormet’s unique arrangement.**

¹⁹ R.C. 4903.10.

The Commission's Order regarding POLR charges is clear in many respects. First, "under the terms of the unique arrangement, AEP-Ohio will be the exclusive supplier of electricity to Ormet."²⁰ The Commission also determined that there would be no risk that Ormet will shop for competitive generation and then return to AEP-Ohio's POLR service.²¹ AEP is the exclusive service provider to Ormet, according to the PUCO's Order, and thus, AEP should not retain the POLR charges it receives from Ormet. "If AEP-Ohio were to retain these [POLR] charges, AEP-Ohio *would be compensated* for a service it would not be providing."²² As a result, the Commission modified the unique arrangement to require that all POLR charges *paid* by Ormet to AEP must be credited to AEP's economic development rider and used to reduce the obligations of AEP's customers under the unique arrangement.²³ The Commission's Opinion and Order also established that \$54 million is the maximum amount of delta revenue which ratepayers should be expected to pay in a given year.²⁴

Notwithstanding the clear directives of the PUCO on the substantive POLR issues, the Commission failed to address the mechanics of how the POLR credits would be applied. The OCC and OEG request that the Commission clarify its Order to preclude AEP and Ormet from negotiating a "discount" to the POLR charge as part of Ormet's "discounted rate." Such a "discount" would inappropriately reduce the amount of POLR charges paid by Ormet—thus reducing or eliminating the delta revenue credit flowing to customers from the POLR payment. This turn of events would undermine the

²⁰ Id at 13.

²¹ See Id.

²² Id. (emphasis added).

²³ See Id. at 14.

²⁴ See Id.

Commission's ruling that AEP should not be compensated from the POLR charge and customers should receive a delta revenue credit for the POLR.

Thus, OCC and OEG propose that Ormet's discounted electric rate should be applied uniformly off of the AEP's total tariff rate, including all riders except the POLR rider. In effect, this should result in an equal percent reduction to all components of the tariff (except POLR), and AEP should be required to credit all POLR charges to the delta revenues -- to ensure that AEP is not "compensated for a service it would not be providing."²⁵ Without clear direction from the Commission regarding the mechanics of applying a "price floor", the minimum amount Ormet must pay under the tariff (and maximum discount Ormet will receive from AEP's tariff rate) AEP may seek to define the discounted portion of the tariff in a manner that "compensates" AEP -- by "discounting" the POLR charge, and thus lowering the delta revenue credit to AEP's customers.

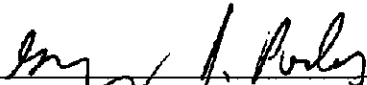
IV. CONCLUSION

For the reasons stated herein, OCC and OEG respectfully request that this Application for Rehearing be granted.

²⁵ Id. at 13.


Respectfully submitted,

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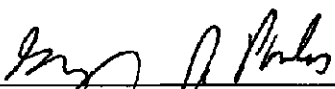
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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Application for Rehearing was served by regular U.S. Mail Service, postage prepaid, and a courtesy copy via electronic mail service, to the following parties of record, this 14th day of August, 2009.



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