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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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

APPLICATION FOR REHEARING
OF INDUSTRIAL ENERGY USERS-OHIO

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August 14, 2009

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APPLICATION FOR REHEARING

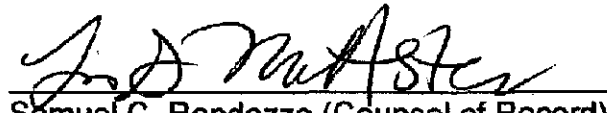
Pursuant to Section 4903.10, Revised Code, and Rule 4901-1-35, Ohio Administrative Code ("O.A.C."), Industrial Energy Users-Ohio ("IEU-Ohio") submits this Application for Rehearing of the Opinion and Order ("Order") issued by the Public Utilities Commission of Ohio ("Commission") on July 15, 2009 significantly modifying and approving the Application for approval of a reasonable arrangement with Ohio Power Company ("OP") and Columbus Southern Power Company ("CSP") (collectively, "American Electric Power" or "AEP") filed by Ormet Primary Aluminum Corporation ("Ormet") on February 17, 2009 and amended on April 10, 2009. As explained in more detail in the attached Memorandum in Support, the Commission's Order in this case is unreasonable and unlawful for the following reasons:

- 1) The Commission should grant rehearing to clarify the electricity rate that will apply to Ormet during 2009;
- 2) The Commission's failure to include a provision to terminate the reasonable arrangement automatically if Ormet fails to maintain operations is unreasonable; and,

- 3) The Commission's failure to require Ormet to maintain a deposit and advance payment provisions is unreasonable.

For these reasons and, as explained in more detail in the attached Memorandum in Support, IEU-Ohio respectfully requests that the Commission grant this Application for Rehearing.

Respectfully submitted,



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MEMORANDUM IN SUPPORT

I. INTRODUCTION

On February 17, 2009, Ormet filed the Application for approval of a reasonable arrangement with AEP. Ormet filed an Amended Application on April 10, 2009, that seeks an alternate and lower rate to reflect "changing market conditions since Ormet submitted its initial Application" that caused Ormet to curtail its operations.¹ On March 9, 2009, IEU-Ohio filed comments on Ormet's Application and on April 28, 2009, IEU-Ohio filed a Motion to Intervene. A hearing on Ormet's Application began on April 30, 2009 and, after several continuances, concluded on June 17, 2009. Parties, including IEU-Ohio, filed Briefs on July 1, 2009. The Commission issued an Order on

¹ Ormet stated:

It has become increasingly apparent to Ormet in recent weeks that, because of the very difficult prevailing aluminum market conditions, there is a very real possibility that Ormet will need to curtail the equivalent of at least two of its six potlines, possibly as early as late May. Therefore, Ormet is amending its Application to reflect that very real possibility.... However, in order to retain these 900 jobs with fewer than six potlines in operation, Ormet will need to reduce the rate it pays for power during this curtailment from the \$38/MWh initially proposed in the Application to \$34/MWh.

See Ormet Exhibit 8, Cover Letter at 1.

July 15, 2009 that significantly modified and approved the Application. Pursuant to Section 4903.10, Revised Code, and Rule 4901-1-35, O.A.C., IEU-Ohio submits this Application for Rehearing.

II. ASSIGNMENTS OF ERROR

A. The Commission should grant rehearing to clarify the electricity rate that will apply to Ormet during 2009.

The Commission may approve a proposed arrangement if it is shown to be just, reasonable and furthers the policy of the State.² Specifically, Rule 4901:1-38-05(B)(1), O.A.C., states that a mercantile customer, or a group of mercantile customers, that files for Commission approval of a unique arrangement "bears 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, and shall submit to the commission and the electric utility verifiable information detailing the rationale for the arrangement." Moreover, Rule 4901:1-38-05(C), O.A.C., requires a showing that such arrangement furthers the policy of the State of Ohio embodied in Section 4928.02, Revised Code,

² Section 4905.31, Revised Code, permits a mercantile customer of an electric distribution utility ("EDU") to establish a reasonable arrangement with that EDU providing for any of the following:

- (A) The division or distribution of its surplus profits;
- (B) A sliding scale of charges, including variations in rates based upon stipulated variations in cost as provided in the schedule or arrangement.
- (C) A minimum charge for service to be rendered unless such minimum charge is made or prohibited by the terms of the franchise, grant, or ordinance under which such public utility is operated;
- (D) A classification of service based upon the quantity used, the time when used, the purpose for which used, the duration of use, and any other reasonable consideration;
- (E) Any other financial device that may be practicable or advantageous to the parties interested.

which states, in pertinent part, that it is the policy of Ohio to do the following throughout the State:

(A) Ensure the availability to consumers of adequate, reliable, safe, efficient, nondiscriminatory, and reasonably priced retail electric service;

(B) 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;

* * *

(I) Ensure retail electric service consumers protection against unreasonable sales practices, market deficiencies, and market power;

(J) Provide coherent, transparent means of giving appropriate incentives to technologies that can adapt successfully to potential environmental mandates;

* * *

(L) Protect at-risk populations, including, but not limited to, when considering the implementation of any new advanced energy or renewable energy resource;

* * *

(N) Facilitate the state's effectiveness in the global economy.

As Ormet indicated, at full operations, it employs over 1,000 people and is a large contributor to the local economy in southeast Ohio. Further, Ormet committed to maintain at least 900 employees at its facility for calendar year 2009,³ and at least 600 employees thereafter for the term of the agreement. The Commission appears to have agreed that job retention is a principal benefit and, in fact, the "primary purpose of the unique arrangement." Order at 11. IEU-Ohio did not dispute these claims. However, Ormet never gave any commitment that the reasonable arrangement would be enough,

³ Order at 5.

in and of itself, to keep Ormet's doors open. IEU-Ohio Brief at 6-8. As the Commission noted in its Order, IEU-Ohio identified a list of contingencies that could affect Ormet's ability to maintain the jobs that Ormet held out as the principal benefit of the reasonable arrangement.

It now appears that some of the contingencies identified by IEU-Ohio have come to fruition. At the end of July, shortly after the issuance of the Commission's Order approving Ormet's Application with modifications, Ormet issued a notice of layoff and closure pursuant to the Worker Adjustment and Retraining Notification Act ("WARN") to 833 hourly and 149 salaried employees of its approximately 1,000 employees.⁴ United Steelworker ("USW") representative Denny Longwell confirmed that Ormet sent a WARN notice to the USW announcing that the projected date of the first reduction is September 26, 2009 with the rest of the cuts occurring October 11, 2009.⁵ Additionally, Ormet indicated that it plans to indefinitely shutdown all potlines at its aluminum smelter in Hannibal Ohio.

Although the precise circumstances that resulted in Ormet issuing the WARN notice are not known, a press release issued by Ormet on July 27, 2009, provides some possible suggestion.⁶ In the press release, Ormet indicates a decision in an arbitration proceeding with their alumina supplier ("Glencore") had been reached. As a result of that decision the tolling agreement with Glencore formally ends once the alumina, already received from Glencore, is processed into aluminum and paid for at the 2009

⁴ See Ormet Press Release, "Ormet Confirms WARN Notices" (July 30, 2009), attached hereto.

⁵ Dave Elias, *Ormet Shutting Down Potlines*, posted July 28, 2009, at <http://www.statejournal.com/story.cfm?func=viewstory&storyid=63689> (last viewed on August 12, 2009).

⁶ See Ormet Press Release, "Ormet/Glencore Arbitration Concludes and New Power Contract Authorized" (July 27, 2009, attached hereto).

tolling rate. Thus, it appears that the pending shutdown of the potlines at the smelter may be due to no continuing supply of raw material.

Since the issuance of the Order, an executed power contract has not been submitted in this proceeding. Because the 2009 electricity price to be provided through the reasonable arrangement is and was contingent upon Ormet maintaining at least 900 jobs at the facility throughout calendar year 2009, which no longer appears likely, it is not possible to submit an executed contract that complies with either the letter or spirit of the Commission's Order.

These developments require the Commission to grant rehearing to clarify how the 2009 electricity for Ormet is to be billed by AEP. In its Order, the Commission specified that:

[T]he Commission orders AEP-Ohio to bill Ormet, for the balance of 2009, at a rate which, for all of calendar year 2009, averages \$38.00 per MWh for the periods when Ormet was in full operation (i.e., six potlines), \$35.00 per MWh for the periods when Ormet curtailed production to 4,6 potlines, and \$34.00 per MWh for the periods when Ormet curtailed production to 4 potlines.

Order at 5. However, as previously noted, billing Ormet at these rates was contingent upon maintaining at least 900 employees at the facility for calendar year 2009.

If the smelter proceeds to close in the near future as announced, multiple interpretations of the Order are possible with respect to pricing for 2009. For example, if Ormet does not maintain 900 employees through 2009, is AEP required to send Ormet a corrected invoice to reflect being billed at the applicable tariff rate for all of 2009? Or, did Ormet's announcement of the planned closure of the smelter trigger a requirement for AEP to prospectively begin invoicing Ormet at the applicable tariff rates?

Alternatively, did the Commission intend for the 2009 rates specified in the Order to be applicable for so long as employment is maintained at or above 900 employees?

In order to minimize continuing disputes over possible interpretations of how 2009 prices are to be applied under these circumstances, which may likely arise in any further proceeding initiated by AEP to address delta revenues for 2009, IEU-Ohio urges the Commission to grant rehearing and clarify how 2009 electricity prices are to be billed by AEP.⁷

B. The Commission's failure to include a provision to terminate the reasonable arrangement automatically if Ormet fails to maintain operations is unreasonable.

The approved unique arrangement becomes effective for services rendered following the filing of an executed power agreement that conforms to the modifications in the Order. As previously noted, to date, AEP and Ormet have not yet filed an executed power agreement. Logically, it would seem that if an executed power agreement is not filed prior to Ormet ceasing operations, this case becomes moot. However, because the reasonable arrangement is for a ten year period, it is theoretically possible that AEP and Ormet could file an executed contract prior to Ormet ceasing operations or, at some point in the future, Ormet could resume operations and attempt to claim it is entitled to receive electricity service pursuant to the contract for the balance of the term.

IEU-Ohio notes that the Commission reserved the right, upon review of the executed power agreement, to order further revisions to the power agreement in order to ensure that the power agreement conforms to the modifications of the proposed

⁷ IEU-Ohio would note that any discount provided to Ormet no longer appears to contribute to the primary purpose of maintaining jobs, as the loss of employment appears unrelated to the 2009 price for electricity.

unique arrangement ordered by the Commission. Order at 5. However, the Commission did not modify the reasonable arrangement such that it terminates if Ormet ceases operations. In fact, despite arguments by IEU-Ohio, Commission Staff, the Ohio Energy Group, the Ohio Consumers' Counsel and Kroger requesting that the Commission not unlawfully limit its jurisdiction to at least periodically review and modify the agreement as necessary, the Commission specifically limited its ability to review and terminate the agreement by order if, as a result of long-term London Metal Exchange ("LME") prices failing to recover as predicted by Ormet, Ormet does not begin to reduce the amount of the accumulated deferrals, and carrying charges, through the payment of above-tariff rates, pursuant to the terms of the unique arrangement, by April 1, 2012. The Commission stated that it believes the provisions contained in the proposed unique arrangement for future review, with this modification, will be adequate to safeguard ratepayers from undue risks.

As noted above by Ormet's notice to layoff effectively all of its employees and cease operations, it is clear that delaying the Commission's ability to terminate the proposed arrangement to April 1, 2012 for only one purpose does not reasonably or sufficiently safeguard ratepayers from undue risks.

Accordingly, for these reasons, the Commission should grant rehearing for the purpose of modifying the proposed arrangement such that it automatically terminates upon Ormet providing notice that it will cease operation of all potlines.

C. The Commission's failure to require Ormet to maintain a deposit and advance payment provisions is unreasonable.

As the Commission noted, IEU-Ohio observed that the proposed unique arrangement would shift all risk of a potential default by Ormet to AEP's Ohio customers by relieving Ormet of its current obligation to provide a security deposit as long as AEP is permitted to treat any defaulted amounts as delta revenue to be recovered from its customers (Ormet Ex. 8, Attachment A at 14). IEU-Ohio argued that there is no real offset to the costs as a result of shifting the default risks to other ratepayers and that this is part of the excessive burden placed upon AEP's Ohio ratepayers under the proposed unique arrangement. Ormet countered that all it is seeking with respect to deposit and advance payment terms is a return to standard tariff terms, which it believes will **benefit** AEP's other Ohio ratepayers. The Commission held that the provisions related to deposit and advance payments should not be modified because they are an essential element of the proposed unique arrangement and Ormet's curtailment of operations results in less ratepayer exposure to the risk of default by Ormet. Order at 14.

As demonstrated above, ratepayer exposure to the risk of default by Ormet has not been reduced – it has, in fact, increased. The Commission should grant rehearing and require Ormet to maintain its current deposit and advance payment provisions.

III. CONCLUSION

For the reasons stated herein, IEU-Ohio urges the Commission to grant rehearing for the purposes set forth herein and deny Ormet's Application as it is not just or reasonable and does not further the policy of the State.

Respectfully submitted,


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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Application for Rehearing of Industrial Energy Users-Ohio* was served upon the following parties of record this 14th day of August 2009, via first class mail, postage prepaid, hand-delivery or electronic transmission.


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ON BEHALF OF THE PUBLIC UTILITIES COMMISSION OF OHIO

FOR IMMEDIATE RELEASE

July 30, 2009

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Ormet Confirms WARN Notices

Hannibal, OH – Ormet Corporation, an independent U.S. producer of aluminum, issued the following statement today. Ormet CEO Mike Tanchuk confirms that the company has issued a WARN notice to 833 hourly and 149 salaried employees as is required by law. However, at this time no definitive decisions have been made as to the extent of the layoffs. The number of employees that will be affected is, as of yet, undetermined. We recognize the challenging conditions we are facing and the difficult economic environment in which we are operating, and we want to assure everyone that we are doing everything in our power to protect the company, our workforce, and the communities in which we operate.

ABOUT ORMET: Headquartered in Hannibal, Ohio, Ormet Corporation is a major U.S. producer of aluminum. Ormet employs approximately 1,000 people from across Monroe County, Southeastern Ohio, and parts of West Virginia. Its aluminum smelter has an annual aluminum production capacity of approximately 266,000 metric tons.

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This press release contains forward-looking statements within the meaning of the federal securities laws. Such statements are based on current expectations, and the actual results and the timing of certain events could differ materially from those projected in or contemplated by these forward-looking statements due to a number of factors. Readers are cautioned that Ormet's business is subject to numerous significant risks and uncertainties, including those discussed in Ormet's 15c2-11 information and disclosure statements for the year ended December 31, 2008 and the quarter ended March 31, 2009 (copies of which are available at Ormet's website at www.ormet.com).

Headquartered in Hannibal, Ohio, Ormet Corporation is a major U.S. producer of aluminum. Ormet employs approximately 1,000 people. Its aluminum smelter based in Hannibal, Ohio has an annual aluminum production capacity of approximately 266,000 metric tons. For more information, visit Ormet's website at www.ormet.com.

FOR IMMEDIATE RELEASE

July 27, 2009

Contact Info:

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**Ormet/Glencore Arbitration Concludes
And New Power Contract Authorized
Evaluating Business Operations in Light of Ruling**

Hannibal, OH – Ormet Corporation ("Ormet") announced the conclusion last week of its previously disclosed arbitration with Glencore. The tribunal has determined that Glencore Ltd. ("Glencore") must pay specified monetary damages to Ormet. The tolling agreement with Glencore formally ends once the alumina, already received from Glencore, is processed into aluminum and paid for at the 2009 tolling rate.

Ormet also announced a recent order by the Public Utilities Commission of Ohio ("PUCO") approving a long-term power arrangement between Ormet and American Electric Power-Ohio ("AEP-Ohio"). The unique arrangement, which is planned to be in effect through 2018, would provide electric service to Ormet's Hannibal facility at rates below applicable large user industrial tariff rates when the LME falls below a predetermined level. The support is capped at \$60 million per year which will decrease beginning in 2012. In addition, Ormet was granted standard credit terms and the return of \$7 million held on deposit. Ormet is in the process of finalizing the arrangement with AEP, at which time it will become effective.

In light of the above announcements, Ormet is currently evaluating its business operations, and is evaluating the possible impact of the conclusion of the arbitration with Glencore on the recent PUCO order.

Given current aluminum industry conditions, market prices, reduced demand for aluminum, and worldwide economic conditions generally, Ormet expects that further reductions in its production will be necessary. Ormet is actively exploring other measures to minimize costs and rationalize its operations.

###

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