

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) Case No. 09-119-EL-AEC
Ohio Power Company and Columbus)
Southern Power Company.)

ENTRY ON REHEARING

The Commission finds:

- (1) On February 17, 2009, Ormet Primary Aluminum Corporation (Ormet) filed an application to establish a unique arrangement with the Ohio Power Company and Columbus Southern Power Company (AEP-Ohio) for electric service to its aluminum-producing facility located in Hannibal, Ohio. Ormet is requesting that the Commission establish a unique arrangement for electric service with AEP-Ohio that links the price of electricity for its facility with the price of aluminum as reported on the London Metal Exchange. Ormet filed an amended application on April 10, 2009, to reflect the possible curtailment of the equivalent of at least two of its six potlines.
- (2) On July 15, 2009, the Commission issued its Opinion and Order, approving the amended application as modified by the Commission.
- (3) Section 4903.10, Revised Code, states that any party to a Commission proceeding may apply for rehearing with respect to any matters determined by the Commission within 30 days of the entry of the order upon the Commission's journal.
- (4) On August 14, 2009, Industrial Energy Users-Ohio (IEU-Ohio) filed an application for rehearing, alleging that the Opinion and Order was unreasonable and unlawful on the following grounds:
 - (a) The Commission should grant rehearing to clarify the electricity rate that will apply to Ormet during 2009.
 - (b) The Commission's failure to include a provision to

terminate the reasonable arrangement automatically if Ormet fails to maintain operations is unreasonable.

- (c) The Commission's failure to require Ormet to maintain a deposit and advance payment provisions is unreasonable.
- (5) Moreover, the Ohio Consumers Counsel and the Ohio Energy Group (OCC and OEG) filed an application for rehearing on August 14, 2009, alleging that the Opinion and Order was unreasonable and unlawful on the following grounds:
- (a) The Commission erred in failing to specify and ensure how AEP-Ohio will apply the credit for the full amount of provider of last resort (POLR) charges that will reduce what customers will have to pay for Ormet's unique arrangement.
 - (b) The Commission erred by failing to specify that AEP-Ohio and Ormet shall not be permitted to reduce the delta revenue credit, for example by negotiating a discount for the POLR charge, that is intended by the Commission to reduce what customers will have to pay for Ormet's unique arrangement.
- (6) Further, on August 14, 2009, AEP-Ohio filed an application for rehearing, alleging that the Opinion and Order was unreasonable and unlawful on the following grounds:
- (a) The Commission's conclusion that during the ten-year term of this unique arrangement there is no risk that Ormet will be permitted to shop for competitive generation and then return to AEP-Ohio is unreasonable and conflicts with the Commission's orders in AEP-Ohio's electric security plan cases.
 - (b) Even assuming there is no risk that Ormet will be permitted to shop for competitive generation and then return to AEP-Ohio, requiring POLR charges

paid by Ormet to be credited by AEP-Ohio to its economic development rider is unlawful. Section 4905.31(E), Revised Code, does not permit the Commission to offset the amount of revenue forgone by alleged or real expense reductions. Further, the Commission's authority under Chapters 4901., 4903., 4905., 4907., 4909., 4921., 4923., 4927., 4928., and 4929., Revised Code, is not available to the Commission to prohibit AEP-Ohio from recovering all revenues forgone as a result of the unique arrangement.

- (c) The Opinion and Order commits a customer to refrain from acquiring its generation service from a competitive retail electric service provider in violation of the clearly stated public policy of this State. Contract provisions that are contrary to the public interest are unenforceable.
 - (d) The Commission ordered AEP-Ohio and Ormet to execute and file a power agreement conforming to the Commission's Opinion and Order even though AEP-Ohio did not agree with all of the terms of the modified reasonable arrangement. There is no "reasonable arrangement with" AEP-Ohio under Section 4905.31, Revised Code.
 - (e) Eliminating the existing requirement for AEP-Ohio to retain a deposit from Ormet and no longer requiring Ormet to make payments in advance to AEP-Ohio is unreasonable in light of the increased possibility of Ormet terminating production, either indefinitely or permanently, along with the related inability to make timely payments for electric services or Ormet's decision not to make such payments.
- (7) On August 24, 2009, IEU-Ohio and Ormet each filed memoranda contra AEP-Ohio's application for rehearing. OCC and OEG also filed a joint memorandum contra AEP-Ohio's application for rehearing on August 24, 2009. Further, on

August 24, 2009, AEP-Ohio filed a memorandum contra the application for rehearing filed by OCC and OEG.

- (8) The Commission grants the applications for rehearing filed by IEU-Ohio, OCC and OEG, and AEP-Ohio. We believe that sufficient reason has been set forth by the parties seeking rehearing to warrant further consideration of the matters specified in the applications for rehearing.

It is, therefore,

ORDERED, That the applications for rehearing filed by IEU-Ohio, OCC and OEG, and AEP-Ohio be granted. It is, further,

ORDERED, That a copy of this Entry on Rehearing be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Alan R. Schriber, Chairman

Paul A. Centolella

Ronda Hartman Fergus

Valerie A. Lemmie

Cheryl L. Roberto

GAP:ct

Entered in the Journal

SEP 09 2009

Renee J. Jenkins
Secretary