BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to § 4928.143, Ohio Rev. Code, In the Form of an Electric Security Plan	)	**Case No. 11-346-EL-SSO** **Case No. 11-348-EL-SSO**
In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Approval of Certain Accounting Authority	)	**Case No. 11-349-EL-AAM** **Case No. 11-350-EL-AAM**

POST-HEARING REPLY BRIEF OF ORMET PRIMARY ALUMINUM CORPORATION

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INTRODUCTORY STATEMENT

With its ruling in Case No. 10-2929-EL-UNC ("the Capacity Case"), the Commission has decided AEP Ohio's costs of capacity, as well as the price at which AEP Ohio must make that capacity available to CRES providers.[1] However, unless the Commission expressly holds in this case that non-shoppers in general, or Ormet Primary Aluminum Corporation ("Ormet") specifically, are entitled to receive similar capacity tariff rates from AEP Ohio, neither Ormet nor any of the other non-shoppers will enjoy the benefits of that decision.

To the contrary, that decision poses significant danger to Ormet because the Commission also ruled that AEP Ohio is entitled to recover <u>in this proceeding</u> at least some portion of the difference—or "deferred amount" (also referred to herein as the delta)—between its capacity cost of $188.88/MW-day and the Reliability Pricing Model ("RPM") pricing at which it must make that capacity available to CRES providers. If AEP Ohio's predictions prove accurate as to the extent of shopping that will occur, that delta will be a significant number—likely several hundred million dollars. While the Commission has not yet announced from whom AEP Ohio will recover that delta (or how), AEP Ohio's requested mechanism for doing so (the "Retail Stability Rider" or "RSR") would recover those costs on a per-kWh basis from all of its customers, including Ormet and all other non-shoppers. Thus, while Ormet will enjoy none of the benefits of the Commission's decision in the Capacity Case, a determination

[1] As is custom in this proceeding, "AEP Ohio" is used throughout this brief to refer to what is now, after the merger of Ohio Power Company and Columbus Southern Power Company, known only as the Ohio Power Company (the surviving entity). For the period prior to the merger, "AEP Ohio" or "the Company" refers to both companies.

that it is liable for the RSR would impose upon it a disproportionately high portion of the costs that flow from that decision (owing to Ormet's high load factor), and make it liable for almost 10 percent of the total deferred amount.

To be sure, such a determination would violate principles of cost causation because non-shoppers do not contribute in any way to the creation of the delta; nor do they enjoy any of the benefits associated with shopping. Such a determination would be especially inappropriate for Ormet because its special arrangement at least appears to prohibit it from shopping and from enjoying the benefits that flow from it. Ormet is not merely deciding not to avail itself of the benefits of shopping—the option to do so simply does not appear to be available to it due its Unique Arrangement.

The RSR, as designed by AEP Ohio, alone would impose an annual rate increase upon Ormet of at least $7.38 million, and perhaps significantly more (depending on how it is calculated). *See* Ormet Ex. 106B at 14. This amount represents only a fraction of the total increases that AEP Ohio's application would impose upon Ormet. Indeed, while AEP Ohio has repeatedly asserted that its present application would impose only a modest rate increase upon ratepayers, AEP Ohio's own projections acknowledge that the current Electric Security Plan ("ESP II") application could increase Ormet's electricity rates by 2013 by more than [**BEGIN CONFIDENTIAL INFORMATION** [redacted] **END CONFIDENTIAL INFORMATION**] over Ormet's 2011 rates. Hr'g Tr. vol. IV, 1233:24-1236:22, May 22, 2012 (Confidential). Unfortunately, AEP Ohio's projections understated the harm to Ormet. As was explained in the uncontested testimony of Ormet witness Whitfield A. Russell, Ormet's rates in 2013 will have increased over its 2011 rates by an astounding [**BEGIN CONFIDENTIAL INFORMATION** [redacted] **END CONFIDENTIAL INFORMATION**] if the fuel cost increases projected by AEP Ohio witness Oliver J. Sever prove accurate. *See* CONFIDENTIAL Ormet Ex. 106A at 10; Hr'g Tr. vol. XIV, 3920:7-12, June 6, 2012 (Confidential).

The component parts of this rate increase include: (a) annual RSR payments of anywhere from $7.38-$20 million per year (*see infra* p. 10; Ormet Ex. 106B at 14), (b) annual PIRR payments of approximately $13.25 million starting in mid-2013, (c) a decreasing special arrangement discount that will be $16 million less than its 2011 discount, and [**BEGIN CONFIDENTIAL INFORMATION** [redacted] **END CONFIDENTIAL SECTION**]. While not every one of these increases can be addressed in this proceeding, it is important for the Commission to understand the enormity of the rate impact upon Ormet.

In short, the ESP II application poses significant dangers in an already-down economy for large Ohio-based employers like Ormet. If the proposed rate increases drive Ormet out of business (or out of Ohio), Ohio will lose with it more than $280 million in annual contributions made by Ormet to the other ratepayers and the economy in general. These contributions include: (a) approximately $35 million in Ormet's annual net contributions to AEP Ohio's fixed costs each year for the three year period of the ESP II—contributions that otherwise would have to be made by other ratepayers;[2] (b) more than 1,000 direct jobs at Ormet's Hannibal Facility with annual wages and salaries of more than $63 million, and annual additional employee benefits of more than $55 million (Ormet Ex. 105 at 2:9-10, Attach. PAC-2 at 12; Hr'g Tr. vol. XIV, 3841:10-25); (c) 3,117 secondary jobs in a seven county region of

[2] *See* Ormet Ex. 106B at 14. The $35 million net contribution nets out the Ormet discount from the total (assuming Ormet receives a discount in those years). If those discounts are not netted out, the total contribution is $255 million over three years. *Id.*

Ohio and West Virginia (roughly a 60/40 split) with a total annual employee compensation impact of $238 million (Ormet Ex. 105, Attach. PAC-2 at 12); and (d) almost $9 million in Ohio state and local tax contributions. *See generally* Ormet Ex. 105 at PAC-2.

To avoid this result, Ormet respectfully requests the Commission to either deny approval to the entirety of the ESP II application or to include in its approval of the application the following four determinations:

First, Ormet's capacity tariff rate should be aligned with AEP Ohio's costs of capacity of $188.88/MW-day. Such a provision would save Ormet approximately $10 million out of the rate increases that are coming. It is clear the Commission believes fostering competitive markets is good for Ohio generally. But so too is protecting Ohio-based jobs by advancing the interests of large employers based in this State.

Second, Ormet should not be responsible for the RSR (or the deferred amount) because Ormet's special arrangement appears to prohibit it from shopping and from enjoying any of the benefits that flow from it. Exempting Ormet from the RSR would save Ormet at least $7.38 million in annual rate increases, and perhaps significantly more.[3]

Third, the Commission must control the Fuel Adjustment Clause ("FAC") rates that have driven, and will continue to drive, the bulk of the rate increases that have become substantial and unsustainable. AEP Ohio's application (and Post-Hearing Brief) would have the Commission simply continue the present FAC recovery mechanism, as is, until 2015. But this ignores the reality of the situation: the continuing and substantial FAC increases pose a grave and existential danger to Ohio businesses. More must be done to get control over them.

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[3] Alternatively, if the Commission believes that all ratepayers must contribute to the RSR (or the deferred amount), then it should design the recovery of the deferred amount so as to minimize the impact upon ratepayers.

Fourth and finally, the Commission should mitigate the rate impacts on customers caused by the Phase in Recovery Rider ("PIRR") by: (a) deferring collection of the PIRR balance until securitization, (b) suspending the carrying costs, and (c) not blending its balance across rate zones. By taking these actions, the Commission can mitigate the rate impact on Ormet in 2013 by approximately $11 million.

ARGUMENT

I. AEP Ohio's Cost of Capacity Should Form the Basis of Ormet's Capacity Tariff Rates in this Proceeding.

With its decision in the Capacity Case, the Commission has resolved the two related questions of: (a) the cost of capacity for AEP Ohio and (b) the price at which AEP Ohio must make that capacity available to CRES providers. Attempting to move Ohio toward more competition in electricity markets, the Commission decided that AEP Ohio must charge CRES providers at RPM pricing—a rate that is, at least for now, significantly lower than AEP Ohio's cost of capacity. Importantly, the Commission's ruling in the Capacity Case, however, does not expressly determine the capacity rates that should be charged to non-shopping SSO customers.

While the pricing mechanism announced in the Capacity Case appears to advance the Ohio policy of fostering competitive electricity markets, other important Ohio state policies support setting Ormet's capacity tariff rate in a similar manner. After all, it is also a policy of the State to facilitate Ohio's effectiveness in the global economy. *See* Ohio Rev. Code Ann. § 4928.02(N) (West 2011). Ormet would be in a far better position to compete in the global economy if its electricity rates are competitive and enable it to thrive. It is also important to protect Ohio-based jobs and to ensure that employees earn meaningful wages and benefits. Ormet also contributes significant additional benefits to the local economy, like millions of dollars of local and state taxes, as well as non-economic benefits, like reduced crime. *See* Ormet Ex. 105 Attach. PAC-2 at 4-5, 10-11.

By setting Ormet's capacity tariff rate at AEP Ohio's costs of capacity ($188.88), the Commission would soften for Ormet the potentially-crushing impact of the ESP II application, and the FAC increases that have driven, and will continue to drive, the increase in Ormet's rates. Such a provision would save Ormet approximately $10 million per year over the rates proposed by AEP Ohio in this case. While not enough to fully protect Ormet, and the 3000 Ohio-based jobs that depend on it, such a decision would help.

II. The Revenues AEP Ohio Seeks Through the RSR Are the Same as the "Deferred" Amounts Identified in the Commission's Decision in the Capacity Case; Recovery of One Should Preclude Recovery of the Other.

In its decision in the Capacity Case, the Commission held that AEP Ohio can recover at least some portion of the "deferred" amount—that is, the difference between its cost of capacity and the price at which it must make that capacity available to CRES providers. The Commission left open for another day how much of that delta AEP Ohio can recover, from whom it can recover it, and by what mechanism.

In this proceeding, AEP Ohio has asked the Commission to approve the RSR, through which it would recover the non-fuel generation revenues lost because of the ESP II application's provision of lower-priced capacity to CRES providers. To be sure, the Commission had not decided the Capacity Case when the ESP II application was filed, and thus, there was no expressly-denominated "deferred" amount for AEP Ohio to request in this proceeding. There can be no doubt, however, that the RSR seeks to recover the exact same category of lost revenues as those described as the "deferred amount" by the Commission in its Capacity Case decision. Like the lost revenues identified in the RSR, the deferred amount covers those revenues lost by AEP Ohio due to its provision of capacity to CRES providers at below-cost pricing. Like the deferred amount, the RSR represents AEP Ohio's attempt to be made whole for its provision of below-cost pricing. Because the amounts sought by AEP Ohio through the RSR and the amounts described by the Commission as deferred amounts are redundant (or at least overlapping), AEP Ohio should not be allowed to recover both of them. Recovery of one should preclude the other.

III. Non-Shoppers—Especially Those *Prohibited* from Shopping—Should Not Be Responsible for the RSR or any Deferred Amount.

Any deferred amount—including the RSR—would be designed to protect AEP Ohio from the losses incurred because of its provision of below-cost capacity to CRES providers to facilitate customer shopping. Customers who do not shop, however, neither contribute to those losses nor enjoy the benefits associated with shopping. In its decision in the Capacity Case, the Commission recognized this point: "the capacity service benefits shopping customers in due course."[4]

A very small handful of customers simply cannot shop. This appears to be the case with Ormet, whose Unique Arrangement provides the following: "AEP Ohio agrees to furnish to Ormet, and Ormet agrees to take from AEP Ohio, all of the electric energy of the character specified herein . . . except as otherwise set forth herein."[5] Parties who are prohibited from shopping, by definition, cannot cause the losses to AEP Ohio that flow from shopping. And those same parties are likewise foreclosed from enjoying any of the benefits that flow from shopping.

[4] In the Matter of the Commission Review of the Capacity Charges of Ohio Power Co. and Columbus Southern Power Co., Case No. 10-2929-EL-UNC, Opinion and Order (issued July 2, 2012), at 13 ("Capacity Case Decision") (emphasis added).

[5] 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. Case No. 09-119-EL-FAC, Revised and Executed Power Agreement Between Ormet Primary Aluminum Corporation and Ohio Power Company and Columbus Southern Power Company (entered Sept. 18, 2009), at 9 (§ 2.01) ("Unique Arrangement").

It would violate principles of cost causation to make non-shoppers pay for losses they neither contributed to, nor benefited from. *See Mahoning Cnty. Townships v. Pub. Utils. Comm'n of Ohio*, 388 N.E.2d 739, 742 (Ohio 1979) (the principal of cost causation—that customers should only be asked to pay for the costs they cause—is the "basic underlying consideration" in establishing reasonable rates). It would be even worse to require contribution from parties who do not even have the option of enjoying the fruits of shopping. Non-shoppers who choose not to shop have the option to benefit from the activities they are funding; they simply choose of their own free will not to do so. Non-shoppers who cannot shop, on the other hand, do not even have that option. It would be patently unfair to require them to fund benefits that are available only to others, and to pay costs that are caused only by others. This is especially true when one considers that Ormet, because of the size of its load, would likely be responsible for almost 10 percent of the total deferred amount.

Exempting Ormet from the deferred amount or RSR would reduce its overall rate increase by at least $7.38 million annually, and perhaps much more (depending on the structure of the recovery of the deferred amount). *See* Ormet Ex. 106B at 14. While this reduction would not solve all of the problems associated with the ESP II application for Ormet, it would represent a step in that direction.

IV. A Decision to Allow Recovery of the Deferred Amount from Ormet, Combined with All of the Other Increases Imposed by the ESP II Application, Would Be Devastating.

Putting aside the RSR (or deferred amount), the ESP II application would increase Ormet's 2013 rates over its 2011 rates by approximately [**BEGIN CONFIDENTIAL SECTION** [redacted]

[redacted] **END CONFIDENTIAL SECTION]**. *See* CONFIDENTIAL Ormet Ex. 106A at 10.

The component parts of that increase include: (a) annual RSR payments of anywhere from $7.38-$20 million per year (*see infra* p. 10; Ormet Ex. 106B at 14), (b) annual PIRR payments of approximately $13.25 million starting in mid-2013, (c) a decreasing special arrangement discount that will be $16 million less than its 2011 discount, and [**BEGIN CONFIDENTIAL INFORMATION** [redacted] **END CONFIDENTIAL SECTION**].

These increases are simply unsustainable for a company like Ormet. And a decision to impose the entirety of the deferred amount upon all ratepayers would only make it that much worse. A mere review of the effects of the RSR design recommended by Staff Witness Fortney shows how ruinous this rider could be.

Staff Witness Fortney recommended on the stand an RSR design that would allow AEP Ohio to recover the difference between its then-undecided cost of capacity (now, $188.88/MW-day) and the price at which it must make that capacity available to CRES providers. *See* Hr'g Tr. vol. XVI, 4556:23-4558:15, June 8, 2012. Thus, using present pricing of $20/MW-day, the calculation would look like the following:

Step 1: $188.88/MW-day minus $20.01/MW-day for Year 1 Pricing. The resulting amount, $168.87/MW-day, represents the per unit gap in pricing in Year 1.

Step 2: Convert to a per-MWh number. To do so, you must divide the result of Step 1 ($168.87/MW-day) by the product of (24 multiplied by .68).[6] The result is $10.347/MWh.

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[6] You must use the product of 24 multiplied by .68, instead of simply 24, in order to take into account the shopping customers' load factor.

Step 3: Multiply by 25,203,750 MWh (the average Year 1 shopping load assumed by AEP Ohio -- *See* Allen Rebuttal Workpaper Spreadsheet at Capacity Revenue Tab) = $260.78 million. This amount reflects the Year 1 RSR Deferred Amount.[7]

If the deferred amount is not levelized over the three year period, as AEP requested in its application, the Year 1 deferred charge would be $5.63/MWh. Ormet's approximate annual load is 4.2 million MWh, but pursuant to AEP Ohio's RSR rate design, its responsibility would be reduced to 84.5 percent to account for the average load factor of its customer class. The result is that Ormet would be responsible for $19.98 million in Year 1 deferred charges alone.

To determine the RSR deferred amounts in Years 2-3, the Commission need only repeat the same steps using the RPM pricing for those years.

Step 4: Repeat Steps 1-2 for Year 2 using $33.71/MW-day. The result is $9.508/MWh.

Step 5: Multiply the result by 28,693,250 MWh (the average Year 2 shopping load assumed by AEP Ohio (*See id.*) = $272.82 million. This amount reflects the Year 2 deferred RSR amount. If the deferred amount is not levelized over the three year period as requested by AEP Ohio, the Year 2 deferred charge would be $5.89/MWh. If Ormet is held responsible for the deferred amount, it would be responsible for $20.90 million in Year 2.

Step 6: Repeat Steps 1-2 for Year 3 using $153.89/MW-day. The result is $2.144/MWh. Multiplying that amount by AEP Ohio's average assumed Year 3 shopping load of 28,647,166 MWh results in $61.42 million. This amount reflects the Year 3 deferred RSR amount. If the deferred amount is not levelized over the three year period, the Year 3 deferred charge would be $1.33/MWh. Ormet would be responsible for $4.72 million in Year 3 alone.

[7] This calculation is offered to illustrate the magnitude of the substantial potential economic burden on Ormet posed by of Staff Witness Fortney's approach to the RSR or deferred amount. As noted in Ormet's initial Post-Hearing Brief, the recovery of lost demand revenues should be based on kW demands, not on kWh billing determinants.

As AEP Ohio requested in its application, this amount should be levelized and charged back in equal amounts each year.

Step 7: Add the three years' RSR Deferred Amounts. Divide the result by three to get an average annual RSR Deferred charge of $198.34 million

Step 9: Divide $198.34 million by the average total load of 46.318 million MWh to get the MWh charge (See WAA-4, Page 2 for AEP Ohio's total load estimates). This results in a levelized /MWh charge of $4.28/MWh.

Thus, under the methodology advanced by Staff Witness Fortney, and not taking into account any reductions or offsets (except the load factor reduction contained in AEP Ohio's RSR rate design), or any contributions by AEP Ohio or the CRES providers, the annual levelized RSR charge would be $4.28/MWh. Because Ormet's annual load approximates 4.2 million MWh, an RSR design of this nature would impose an annual rate increase for three straight years of more than $15.19 million.[8] Ormet would therefore be paying approximately eight percent of the total deferred amount, despite not causing any of the costs associated with shopping and not receiving any benefits from the reduced rates available to shoppers.

Ormet simply cannot sustain these massive rate increases. Nor can it simply pass these additional costs on to its customers because of the manner in which aluminum products are priced. *See* Hr'g Tr. Vol. XIV, 39432-10. All of these increases go straight to Ormet's bottom line and threaten its very survival.

The Commission could prevent this result by simply not imposing responsibility for the deferred amount upon Ormet because Ormet neither benefits from shopping nor contributes to the cost that the deferred amount would recover. Indeed, it certainly appears that its Unique Arrangement prohibits it from contributing to, or benefiting from, shopping.

[8] Pursuant to AEP Ohio's RSR rate design, Ormet's responsibility is reduced by multiplying it by .845 to account for the average load factor of its customer class.

Additionally, the Commission could reduce the impact of these charges by imposing a meaningful credit for shopped load. In designing its recommended RSR, AEP Ohio included a $3 credit and acknowledged that such a credit would be appropriate because of the increased load that would be available for re-sale due to shopping. A $3 credit, as recommended by AEP Ohio, would reduce the annual levelized deferred amount to $123.97 million and the annual levelized charge to Ormet to the more manageable rate of $2.68/MWh (or $9.51 million annually to Ormet). An even bigger credit would be appropriate.[9] For the reasons discussed at pages 10-12 of Ormet's Initial Post-Hearing Brief, the credit really should be at least $3.75. Using this amount as the credit would result in an annual levelized deferred amount of $110.50 million and an annual levelized charge of $2.39/MWh (or $8.48 million annually to Ormet). Using a $6.50 credit amount in Years 2-3 (which is proper for the reasons described at pages 11-12 of Ormet's Initial Brief and for the additional reason that the Staff's recommendation as to the cost of capacity did not take into account the 2014 termination of the AEP Pool and the transfer of generating assets to AEP Genco) and $3 or $3.75 in Year 1, would result in levelized annual RSR charges of $1.95/MWh and $1.82/MWh respectively.[10] While not ideal

[9] For the reasons discussed at Pages 10-12 of Ormet's initial Post-Hearing Brief, AEP Ohio has understated the credit for shopped load.

[10] If the Commission determines that AEP Ohio's RSR calculation is preferable to the Staff's recommended calculation, the Commission should adjust that calculation to remedy the understated credit for shopped load. *See* Ormet's Initial Post-Hearing Brief at 10-12. Moreover, the RSR should be tied to net income earned on a company-wide basis, not revenues earned in one revenue stream. After all, the purpose of the RSR, as explained by AEP Ohio's own Initial Post-Hearing Brief, is to protect AEP Ohio from significant financial harm caused by going to market rates. The RSR, therefore, needs to be tied to a meaningful measurement of AEP Ohio's financial performance, not to a metric that shows only part of the overall financial picture like gross revenues earned in one of many revenue streams. *See* Ormet's Initial Post-Hearing Brief at 12-13.

Finally, for the reasons explained in Ormet's initial Post-Hearing Brief, the Commission should reduce the RSR Target Revenue to reflect a lower ROE baseline. Ormet is the only party here who submitted evidence of a reasonable ROE for the RSR, utilizing well-recognized models and methodologies employed by Staff. AEP Ohio failed to present any direct evidence to support an ROE for the RSR, and in its Initial Post-Hearing Brief, simply summarizes its expert's rebuttal testimony as to why Ormet's expert calculations allegedly were too low. AEP Ohio will undoubtedly cite the 11.15% ROE recently awarded in the Capacity Case for AEP Ohio, but that figure was not reached through the customary ROE analysis performed by the Commission. It was based entirely on a rate AEP Ohio first provided in the Distribution Rate Case nearly a year and a half ago. *See* Ormet from Ormet's perspective, these would impose increases on Ormet of approximately $6.5-$7 million per year.

V. The Commission Should Design the Recovery of Any Deferred Amount to Minimize the Rate Impact upon Ratepayers.

In addition to the cost and pricing of AEP Ohio's capacity, the Commission's Capacity Case decision resolved only the category of interest rate to be applied at different phases to the deferred amount. The Commission stated that for the period until a "recovery mechanism is approved in 11-346," AEP Ohio will be allowed to accrue carrying charges on the deferred balance at its "Weighted Average Cost of Capital ("WACC"). *See* Capacity Case Decision at 23-24. Thereafter, carrying charges will be assessed at AEP Ohio's Long-Term Cost of Debt. *Id.* The Commission has not, however, approved a specific figure for each rate.

The Commission should use Ormet witness Wilson's testimony to calculate AEP Ohio's WACC and its Long Term Cost of Debt. Using Mr. Wilson's calculations would result in the Long Term Cost of Debt being applied at a rate of 5.46 percent. *See* Ormet Ex. 107, Attach. JWW-1a. This figure was taken from AEP's FERC Form 1 as of December 31, 2011. The WACC would be set at 6.75-7.28 percent. *Id.* But that number is likely far above AEP's current interim financing costs, which is more likely to be a short term debt rate in the range of approximately two percent. The WACC figure is based on capital structure costs taken from AEP's FERC Form 1, although the cost range for common equity (7.94-8.96 percent) was based on Dr. Wilson's ROE calculation. *Id.*

Ex. 108 (Avera testimony dated March 14, 2011). AEP provided no more direct evidence in the Capacity Case than it did in this current proceeding, simply citing the Avera testimony in the Distribution Rate Cases. The Commission should not rely on AEP's self-serving evidence in a no longer pending matter to establish an ROE for the RSR, especially because money rates have continued to go down since early 2011**.** The ROE applicable to the RSR is also distinguishable from and should be lower than the ROE for distribution. In the Distribution Rates Cases, Staff witness Smith suggested that in situations where generation rate recovery is assured (such as would be in the RSR), generation is less risky than distribution. Capacity Case, Tr. IX at 1991, 1993. The Commission instead should base its determination in this case on the only direct evidence presented, that of Dr. Wilson.

Additionally, there are a number of ways that the Commission could design the recovery mechanism for the deferred amount to limit the impact on ratepayers. First, the Commission should clarify what it means by until a "recovery mechanism is approved in 11-346" so that there is no ambiguity. Capacity Case Decision at 23. We anticipate parties disagreeing whether initial approval or a final, non-appealable approval is required by the Commission's language. To limit the costs imposed on ratepayers, this period should end once the Commission issues its decision in this case, and should not wait for all appeals to run their course. Second, AEP Ohio should be required to securitize the balance of the deferred amount. Third, amortization of the deferred capacity charge balances should be delayed as long as possible and, in no event, begin earlier than the point in time when the amounts can be securitized.

VI. Because the Fuel Adjustment Clause Is Driving The Most Dramatic of the Rate Increases, the Commission Should Not Simply Continue the FAC Recovery Mechanism As Is Until 2015.

In its application, and again in its Initial Post-Hearing Brief, AEP Ohio asks the Commission to redesign the FAC in this proceeding, thereby opening the door for the Commission to more appropriately balance and review the costs that are passed through the FAC as part of the total ESP package. AEP explicitly states in its Initial Post-Hearing Brief that "the Company is proposing to modify the FAC" by breaking out two of its components into new mechanisms for recovering dollars from ratepayers. AEP Post-Hearing Brief at 27; *see also* AEP Ohio Ex. 103 at 14-20.

The Commission should accept AEP Ohio's invitation to re-address the FAC because it is driving the most significant rate increases here. Indeed, the FAC component of the GS-4 tariff rate has increased 60 percent since 2009 and 22 percent since just 2011. AEP Ohio's own projections demonstrate that it is about to get much worse, predicting that the 2013 FAC rates will likely increase by another [**BEGIN CONFIDENTIAL SECTION** [redacted] **END CONFIDENTIAL SECTION**].

It is well within the Commission's jurisdiction to modify the FAC where, as here, AEP Ohio has requested the Commission to do so, and when the Commission has a sufficient record before it to support the action. The Commission "undoubtedly may change course, provided that" the Commission explains the reasons it "*believes* [the new policy] to be better."[11] In this case, the evidence, recognized as significant by Commissioner Porter himself, shows the dramatic rate increases customers face as a result of the runaway FAC. The evidence also shows that the FAC suffers from an inherently flawed design because it discriminates against high load factor customers like Ormet. *See* Ormet's Initial Post-Hearing Brief at 14.

The Commission cannot continue to accept automatically these FAC increases and their potentially devastating impacts upon Ohio residential and business ratepayers, as if they were *de minimis* and required no special attention. The opposite is true. These increases are substantial and unsustainable and require special attention. Ormet agrees wholeheartedly with Commissioner Porter's statement, made in the middle of these hearings after learning of AEP Ohio's projected increases, [**BEGIN CONFIDENTIAL PORTION** [redacted] **END CONFIDENTIAL PORTION**. *See* Hr'g Tr. vol. IV, 1233:24-1236:22 (confidential).

The impact of the seemingly ever-increasing FAC rate increases must be reduced. There must also be greater transparency in what is causing the continued FAC increases in a

[11] *Util. Serv. Partners, Inc. v. Pub. Utils. Comm'n of Ohio*, 921 N.E. 2d 1038, 1043 (Ohio 2009) (emphasis added).

period where the market price for coal is declining. Ormet made recommendations in its initial Post-Hearing Brief as to how to control some of these increases and monitor the FAC. *See* Ormet's Post-Hearing Brief at 14-15. Ormet continues to believe these controls, and perhaps others, are warranted here.

VII. The Commission Should Mitigate the Rate Impacts on Customers By Deferring Collection of the PIRR Balance Until Securitization and Suspending the Carrying Costs.

Ratepayers are already facing a meaningful rate increase in this case, as well as the prospect of another deferred recovery amount flowing from the Commission's recent decision in the Capacity Case. The Commission should therefore do everything in its power to mitigate the effects of the PIRR.

AEP Ohio proposes in its application and Initial Post-Hearing Brief to defer collection of the PIRR balance until June, 2013, but wants to keep applying carrying charges based on the WACC during the deferral period. Although the Commission did approve carrying charges based on the WACC in the ESP I cases, approval was for the ESP I time period of 2009-2011.[12] The Commission has not resolved the issue of what to do about carrying charges moving forward, but it has broad discretion under Ohio Revised Code section 4928.144 regarding the implementation and duration of the PIRR.[13] As the Ohio Supreme Court has explained, "[the Commission] undoubtedly may change course, provided that the new regulatory course is

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[12] *In the Matter of the Application of Columbus Southern Power Company for Approval of an Electric Security Plan; an Amendment to its Corporate Separation Plan; and the Sale or Transfer of Certain Generating Assets*, Case Nos. 08-917, *et al.*, Opinion and Order (Mar. 18, 2009).

[13] *See* Ohio Rev. Code Ann. §§ 4928.141 through 4928.144 (West 2011) (providing broad discretion to craft the details of the phase-in of a rate increase like the PIRR).

permissible."[14] A course-change is permissible when the Commission explains the reasons it "*believes* [the new policy] to be better."[15]

Here, circumstances for ratepayers have changed significantly since the Commission issued its ESP I order in early 2009. Expiration of the rate caps on the FAC has already subjected customers to a significant rate increase—in Ormet's case an increase of eight percent over the average GS-4 tariff rates applicable to Ormet in 2011. But the rate increases are just getting started. It is clear that AEP Ohio will be seeking dramatic rate increases into 2013 and beyond. Moreover, at least some of AEP Ohio's customers will have to pay a new deferred amount because of the Commission's recent Capacity Case Decision.

Deferring the PIRR balance without carrying costs will reduce the rate impacts to customers when the PIRR is implemented by $71 million dollars by June 2013 if AEP Ohio's proposal is adopted. Hr'g Tr. vol. XVI, 4542:14-4543:5, June 8, 2012.

The significant rate increases proposed by AEP Ohio, the prospect of a new deferred recovery amount, and the uncertainty of the economy constitute sufficient changed circumstances to justify deferring implementation of the PIRR, and suspending associated carrying costs until the balance is securitized. Alternatively, at the very least, the Commission should delay PIRR implementation until June 2013, as proposed by AEP Ohio, and carrying charges should be eliminated or reduced to AEP Ohio's Short Term Cost of Debt.

VIII. The PIRR Cannot Be Blended Across Rate Zones Because Doing So Would Constitute Retroactive Ratemaking.

Blending the PIRR across rate zones would constitute retroactive ratemaking because the PIRR relates to already-incurred fuel costs (whereas the FAC relates to costs not yet

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[14] *Util. Serv. Partners, Inc.*, 921 N.E. 2d at 1043.

[15] *Id.*

incurred). AEP Ohio neither presented at the hearing nor in its Initial Post-Hearing Brief any appropriate basis for engaging in this kind of retroactive ratemaking. Nor could it have because such a blend violates the law and is not within the Commission's power to allow.

Instead of addressing this fatal legal failing, AEP Ohio merely asserts that unifying the two "limits the impact on both CSP and OPCo rate zone customers." AEP Ohio Initial Post-Hearing Brief at 27. Even if that is true, which the record does not support, it is not a basis to engage in retroactive ratemaking by blending the PIRR. Nor can the Commission find such a basis in Staff witness Turkenton's stated basis, quoted by AEP Ohio in its Post-Hearing Brief, that "if you're going to merge fuel, you should merge fuel. So if you merge the FAC, you should merge the PIRR." *Id.* (quoting Hr'g Tr. vol. XVI at 4539-4540).

To the contrary, blending one does not go with blending the other. Blending the FAC makes sense as AEP Ohio will be procuring fuel for the merged entity in the future and the costs of that procurement can properly be shared. But the costs associated with the PIRR were already incurred and owed in different amounts by different customers across the zones. If the Commission blends the PIRR, it is simply decreasing one zone's responsibility for costs already incurred, at the expense of the ratepayers in the other zone. The Commission cannot and should not engage in such retroactive ratemaking; that would not be just and reasonable.

IX. The Interruptible Load Credit Should Be Based on the Embedded Cost of Capacity Paid by Standard Service Offer Customers.

For the reasons explained in Ormet's initial Post-Hearing Brief, AEP Ohio's proposed Rider Interruptible Power-Discretionary ("IRP-D") is reasonable and should be approved by the Commission. *See* Ormet's Post-Hearing Brief at 21-22. It is important to emphasize that the Commission's recent decision in the Capacity Case does <u>not</u> alter the formula for calculating the appropriate credit to be used. Staff recommended in the hearing of this matter that the credit should be calculated based on the capacity price recommended by the Staff in the Capacity Case. However, it would be inappropriate to use the Staff's recommended capacity cost, the Commission's determination of the capacity cost, or the Commission's determination of the capacity price to be charged to CRES providers. Instead, the credit should be based on the embedded cost of capacity paid by the Standard Service Offer customers eligible for IRP-D service. These customers will not be paying the capacity cost or the price announced in the Capacity Case (unless the Commission so allows in this proceeding). Thus, it would be illogical to reduce the IRP-D credit for SSO customers based on a reduction in capacity prices seen only by shopping customers.

X. Conclusion.

AEP Ohio's present application is seriously flawed and should not be approved without at least the changes requested herein. When considered along with the forecasted FAC increases that will be coming shortly, the application will impose exorbitant rate increases on many Ohio ratepayers and will cause significant harm to many Ohio businesses and the resulting loss of jobs.

Respectfully submitted,

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Dated: July 9, 2012

CERTIFICATE OF SERVICE

I hereby certify that a copy of the redacted version of Ormet's Post-Hearing Brief was served this 9th day of July, 2012, via the PUCO electronic filing system and by U.S. mail, on the parties listed below. The unredacted confidential version has today been sent to the Commission by overnight Federal Express as allowed by the Attorney Examiners in this proceeding and has been served on AEP via e-mail today, with a hard copy following. A copy of the unredacted version will be made available to the appropriate parties upon request.

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