

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

**APPLICATION FOR REHEARING AND REQUEST FOR CLARIFICATION
OF ORMET PRIMARY ALUMINUM CORPORATION**

Pursuant to section 4903.10, Ohio Revised Code and Rule 4901-1-35 of the Ohio Administrative Code, Ormet Primary Aluminum Corporation (“Ormet”) hereby applies for rehearing and seeks clarification of the August 8, 2012 Opinion and Order of the Public Utilities Commission of Ohio (“PUCO” or the “Commission”).¹

The Commission’s Order is unjust, unreasonable and unlawful for the following reasons:

1. The Order fails to increase the Credit For Shopped Load in 2014-15, when AEP indisputably no longer will be a party to the AEP Pool. This error improperly inflates the Retail Stability Rider (“RSR”) by \$121 million.
2. By forcing Ormet to pay RSR costs that it does not and cannot cause or benefit from, the Commission violated the principle of cost causation -- the fundamental underlying principle of ratemaking in Ohio.

¹ *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 Section 4928.143, Revised Code, in the Form of an Electric Security Plan, Case Nos. 11-346-EL-SSO, et al., Opinion and Order (Aug. 8, 2012) (“Order”).*

3. The Commission's Order is not clear whether the Tariff Capacity Rate for all Standard Service Offer customers will be \$188.88/MW-day. Any higher rate would exceed AEP's cost of capacity, exceed the rate the Commission already has determined to be fair for AEP, and exceed the rate the Commission already has determined is just and reasonable for customers.

Accordingly, for the reasons stated herein and in the attached Memorandum in Support, Ormet respectfully requests the Commission to grant this Application for Rehearing and Request for Clarification.

September 7, 2012

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MEMORANDUM IN SUPPORT

Summary of Argument

The Public Utility Commission of Ohio's ("PUCO" or the "Commission") Order deciding AEP Ohio's² Application for Authority to establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan ("ESP")³ was unjust, unreasonable and unlawful for three different reasons.

First, the Commission's use of a \$3/megawatt hour ("MWh") Credit for Shopped Load for planning year 2014-15 is understated, because it fails to account for the indisputable fact that AEP Ohio will no longer be a member of the AEP Pool in that time period and, therefore, will not have to share with other members of the Pool any of the proceeds received from sales of load freed up by shopping. AEP Ohio was very clear in its application, and throughout this proceeding, that the basis for its calculation of the \$3/MWh Credit included a reduction to account for the fact that AEP Ohio would be able to retain only 40 percent of the proceeds earned from the sale of load freed up by shopping. As a member of the AEP Pool, AEP Ohio would have to give the other 60 percent of those proceeds to the other members of the Pool.

As the Commission noted in its decision, however, AEP Ohio will get to keep 100 percent of the proceeds in the 2014-15 time period because AEP Ohio will no longer be a

² 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.

³ *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 Section 4928.143, Revised Code, in the Form of an Electric Security Plan*, Case Nos. 11-346-EL-SSO, *et al.*, Opinion and Order (Aug. 8, 2012) ("Order").

member of the Pool. For some unexplained reason, however, the Commission failed to increase the Credit for Shopped Load in 2014-15 to account for that change. Failing to make the adjustment resulted in overstating the Retail Stability Rider (“RSR”) by \$121 million.

Second, the Commission violated the basic “underlying purpose” of ratemaking in Ohio (as explained by the Ohio Supreme Court): to tie rates to costs. By forcing Ormet, which is contractually prohibited from shopping, to pay for the costs resulting from other parties’ shopping, the Commission has untethered cost recovery from cost causation. Under the Commission’s Order, Ormet must pay approximately eight percent of the total costs resulting from an activity that it simply does not and cannot pursue.

Third, the Commission should clarify whether the Tariff Capacity Rate for all Standard Service Offer (“SSO”) customers will be set at AEP Ohio’s cost of capacity, \$188.88/MW-day, an amount the Commission has already determined to be fair for AEP Ohio and just and reasonable for ratepayers. The Commission has already determined that this rate fully and adequately compensates AEP Ohio for the costs of its capacity. It would be unreasoned decision-making to charge SSO customers a Tariff Capacity Rate that is higher than the fair, just and reasonable, and adequate rate of \$188.88/MW-day.

Background

On August 8, 2012, the Commission issued its Order deciding AEP Ohio’s Application for Authority to establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan. Among the many issues addressed in the Order, the Commission determined that AEP Ohio should be allowed to recover a non-bypassable rider called the Retail Stability Rider, or the RSR, designed to compensate AEP Ohio for: (a) revenues

lost from shopping customers and (b) losses resulting from AEP selling its capacity to Competitive Retail Electric Service (“CRES”) providers for a price under AEP Ohio’s \$188.88/MW-day cost of capacity. The RSR will collect approximately \$508 million in revenue from AEP Ohio’s customers over the three-year course of the ESP plan, with the possibility of adjustment at the conclusion of the ESP II term if the Commission determines that \$508 million was insufficient.⁴

In calculating the \$508 million amount, the Commission added AEP Ohio’s expected retail non-fuel generation revenues, CRES capacity revenues, and credit for shopped load during the 2012-15 time period, and subtracted that total from a Commission-approved AEP Revenue Target of \$826 million per year. This calculation resulted in a revenue shortfall over the three year period of the ESP II of \$508 million.⁵ The Commission approved the RSR for the purpose of making up that shortfall for AEP Ohio.

The Commission also ordered that the RSR be charged to all customers -- even those who do not shop, and those who are prohibited from shopping. The Commission acknowledged that Ormet cannot shop, but required Ormet nevertheless to pay approximately eight percent of the total RSR charges because Ormet “is the beneficiary of a unique arrangement that results in Ormet receiving a discount at the expense of other AEP-Ohio customers. . . .while Ormet cannot shop . . . it directly benefits from AEP-Ohio’s customers receiving stability and certainty, as these customers ultimately pay for Ormet’s discounted electricity.”⁶ Thus, Ormet must pay the costs resulting from others’ shopping activities, but cannot enjoy those same activities or benefit

⁴ *Id.* at 27.

⁵ *Id.* at 35.

⁶ *Id.* at 37.

from them. Ormet also will be paying significantly higher capacity rates than any customers who shop, and will be paying approximately eight percent of the costs associated with getting those shoppers their reduced rates.

The Commission has left Ormet holding the bag here. By offering significantly reduced rates to all shoppers, the Commission has created a tremendous incentive to all AEP Ohio customers to shop. But Ormet is prohibited from enjoying those reduced rates. Instead, while being locked into the higher rates, Ormet also must pay a significantly higher share of the costs resulting from shopping than any other customer -- eight percent of the total costs.

Argument

I. Commission Orders Must Be Lawful And Reasonable And Based On Specific Findings Of Fact In The Record.

Ohio Revised Code section 4903.09 provides that “the commission shall file, with the records of [contested] cases, findings of fact and written opinions setting forth the reasons prompting the decisions arrived at, based upon said findings of fact.”⁷ Section 4903.13 further provides that a Commission order “shall be reversed, vacated, or modified by the supreme court on appeal, if, upon consideration of the record, such court is of the opinion that such order was unlawful or unreasonable.”⁸ See *Sunoco, Inc. v. Toledo Edison Co.*, 953 N.E.2d 285, 289 (Ohio 2011) (applying standard and reversing).

Commission orders are unlawful or unreasonable when they are not based upon the record or any specific finding of fact in the record. *Tongren v. Pub. Utils. Comm’n of Ohio*, 706 N.E.2d 1255, 1257 (Ohio 1999) (reversed and remanded); *Ideal Transp. Co. v. Pub. Utils.*

⁷ Ohio Rev. Code Ann. § 4903.09 (LexisNexis 2012).

⁸ *Id.* § 4903.13.

Comm'n of Ohio, 326 N.E.2d 861, 863-864 (Ohio 1975) (reversed); *Motor Serv. Co. v. Pub. Utils. Comm'n of Ohio*, 313 N.E.2d 803, 810 (Ohio 1974) (affirmed in part and reversed in part). It is not enough that a fact exist in the record that could support the Commission's decision. The Commission's Order must contain sufficient details to understand the reasoning behind how the Commission reached its decision. *MCI Telecoms. Corp. v. Pub. Utils. Comm'n of Ohio*, 513 N.E.2d 337, 344 (Ohio 1987).⁹ It is well recognized in Ohio that "when an opinion and order of the Commission fails to state specific findings of fact, supported by the record, and fails to state the reasons upon which the conclusions in the opinion and order were based, such order fails to comply with [Ohio Revised Code section 4903.09] and is unlawful." Samantha M. Khosla, *et al.*, 78 Ohio Jur. 3d Pub. Utils. § 53 (2012) (reiterating and synthesizing the holdings in *Tongren* and *Ideal* cited above).

The Court will not, however, "reverse or modify a PUCO decision as to questions of fact where the record contains sufficient probative evidence to show the PUCO's determination is not manifestly against the weight of the evidence and is not so clearly unsupported by the record as to show misapprehension, mistake, or willful disregard of duty." *Monongahela Power Co. v. Pub. Utils. Comm'n of Ohio*, 820 N.E.2d 921, 927 (Ohio 2004), citing *AT&T Commc'ns v. Pub. Utils. Comm'n of Ohio*, 728 N.E.2d 371,376 (Ohio 2000).

II. The Commission's Failure To Increase The Credit For Shopped Load In The Years In Which AEP Ohio Is Not A Member Of The AEP Pool Results In An Erroneously Overstated RSR.

The Commission designed the RSR to collect \$508 million in three years based on its determination that AEP's annual Revenue Target would exceed AEP's actual annual revenues

⁹ "PUCO orders which merely made summary rulings and conclusions without developing the supporting rationale or record have been reversed and remanded." *MCI Telecommunications*, 513 N.E.2d at 343.

(from retail non-fuel generation, CRES capacity revenues and Credit for Shopped Load) by approximately \$169.33 million per year -- or \$508 million over the three-year period of the ESP II.

In calculating the Credit for Shopped Load revenues used in this calculation, AEP Ohio explained on the stand that it arrived at the \$3/MWh credit amount by taking the usual margin earned on an off-system sale, then multiplying it by .4 because AEP Ohio has to provide 60 percent of those sale proceeds to the other members of the AEP Pool pursuant to the Pool agreement. AEP Ohio then multiplied the remaining amount by somewhere between .5 - .8, because AEP Ohio claimed an inability to sell somewhere between 20-50 percent of all freed-up load.¹⁰ The result, according to AEP Ohio, is approximately \$3/MWh freed up by shopping.¹¹

The Commission made no changes to AEP Ohio's \$3/MWh figure in calculating the overall Credit for Shopped Load, holding that "the \$3/MWh credit is reasonably based on appropriate OSS assumptions."¹² But this wholesale adoption of AEP Ohio's calculations contradicted the Commission's own findings of fact. In its Order, the Commission found that the \$3/MWh Credit for Shopped Load in planning year 2014-15 was too low because it erroneously assumed that AEP Ohio would be sharing 60 percent of the off-system sales proceeds for that period even though the AEP Pool would no longer be in place. Specifically, the Commission held as fact that:

¹⁰ In 2011, AEP sold 80 percent of freed-up load. *See* Hr'g Tr. vol. XVII 4902:15-20, June 15, 2012. 2011 is the only year for which AEP Ohio provided evidence of its ability to re-sell. *Id.* 4903:23-4904:4. The Commission has no basis to rely on any figure other than the 80 percent number.

¹¹ Hr'g Tr. vol. V, 1430, May 23, 2012.

¹² Order at 27.

Ormet also shows that AEP-Ohio will not need to reduce the credit by 60 percent beginning in 2013, as AEP-Ohio will no longer be in the AEP pool, resulting in the credit increasing to \$6.50 per year in 2014 and 2015.¹³

This determination by the Commission was correct. There is no basis in the record to conclude that AEP Ohio will have to share its revenues with other Pool members after the Pool is terminated. No party ever argued that the AEP Pool will exist in the 2014-15 planning year or that AEP Ohio will have to share its off-system sales revenues in that time period. Indeed, AEP Ohio's own direct testimony explicitly stated the unanimous intent of the AEP Pool members to "terminate the AEP Pool on January 1, 2014."¹⁴ Proceedings before the Federal Energy Regulatory Commission are already moving forward to terminate the AEP Pool by January 1, 2014 and "each Pool Member [has] provided notice to the other Pool Members (and to AEPSC) that it will terminate its participation under the Pool Agreement in accordance with the termination provision in the agreement."¹⁵

The Commission recognized all of these facts in its Order, but inexplicably chose to use the \$3/MWh number anyway.¹⁶ The Commission gave no reason for its acceptance of the \$3 Credit and, in fact, never analyzed the issue at all after correctly concluding that Ormet "show[ed]" that a \$6.50 Credit was appropriate in 2014-15.

¹³ *Id.* at 30-31 (emphasis added).

¹⁴ *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 Section 4928.143, Revised Code, in the Form of an Electric Security Plan*, Case Nos. 11-346-EL-SSO, *et al.*, Direct Testimony of Philip J. Nelson, 21:11 (Mar. 30, 2012).

¹⁵ Tariff Filing of Appalachian Power Co., *et al.*, Docket No. ER12-1042-000 (Feb. 10, 2012), at 3 (emphasis added).

¹⁶ Order at 30-31 (emphasis added).

Use of the proper \$6.50/MWh Credit for Shopped Load in planning year 2014-15 increases the overall Credit for Shopped Load in 2014-15 to \$225 million, instead of \$104 million (the number used by the Commission on page 35 of the Order). The RSR, in turn, is therefore overstated by \$121 million as well -- or \$40.33 million per year.¹⁷ The new annual RSR figure should be \$129 million.

III. The Commission's Order Violates The "Basic Underlying Consideration" Of Ratemaking By Forcing Ormet To Pay Costs That It Does Not And Cannot Cause.

Parties who are prohibited from shopping, by definition, do not and cannot cause AEP Ohio's loss of revenues that result from customer shopping. Those same customers are likewise foreclosed from enjoying any of the benefits that flow from shopping. It violates basic principles of cost causation to make parties who are foreclosed from shopping pay for losses they do not cause.¹⁸ According to the Ohio Supreme Court, this principle 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.¹⁹

The Commission disfavors shifting costs from a party who caused them to a party who did not. In *In re MCI WorldCom Communications*, the Commission found a particular fee “unjust and unreasonable . . . because [the fee] is a flat-rate fee . . . [that] will allow MCI to over-recover its costs from some customers and shift costs to other customers who do not cause those

¹⁷ *Id.* at 35 (emphasis added). The Commission's failure to account for the AEP Pool's termination in its RSR calculation also affects the RSR recovery amounts calculated on page 36 of the Commission's Order. Rather than \$4/MWh in planning year 2014-15, the RSR should be only \$2.68/MWh if the proper Credit for Shopped Load figure is used.

¹⁸ *See Twps. of Mahoning Cnty. v. Pub. Utils. Comm'n of Ohio*, 388 N.E.2d 739, 742 (Ohio 1979).

¹⁹ *Id.*

costs.”²⁰ The principle of cost causation formalizes in law the fundamental notion that it is unfair to require a customer to pay costs that are caused only by others.

The Commission’s Order in this proceeding does exactly that. It makes all parties equally liable for the costs of shopping -- even those parties who do not shop and those parties who cannot shop. This is an especially unfair result for Ormet, which, because of the size of its load, must now bear a greater share of the total costs flowing from customer shopping than any other customer -- eight percent of the total costs -- even though it is prohibited from shopping.

The Commission failure to employ cost causation principles with respect to the RSR directly contradicts the Commission’s decision to apply those same principles in other parts of the Order. For example, in refusing to blend the Phase-in Recovery Rider (“PIRR”) balances of two separate rate zones, for example, the Commission explained that “according to cost causation principles, the recovery of the balance should be from OP customers” because “[t]he PIRR balance was incurred primarily by OP customers.”²¹ Just twenty pages earlier in the same Order, however, the Commission abandoned cost causation principles without any explanation. The Commission never explains in its Order why it is appropriate to use cost causation principles with respect to some issues, but not others. This unjustified failure to apply cost causation principles consistently, without any rational explanation, constitutes an abuse of discretion by the Commission.

The Commission attempted to justify its treatment of Ormet on the basis that Ormet “is the beneficiary of a unique arrangement that results in Ormet receiving a discount at the expense

²⁰ Slip copy, No. 04-1901, 2005 WL 407346, at *1 (Ohio P.U.C. Feb. 9, 2005).

²¹ Order at 55 (emphasis added).

of other AEP-Ohio customers.”²² As such, the Commission observed, Ormet “directly benefits from AEP-Ohio’s customers receiving stability and certainty, as these customers ultimately pay for Ormet’s discounted electricity.”²³ But this distinction is unreasoned and immaterial for two reasons.

First, the Commission fails to recognize the record evidence in this case that demonstrates that the rate increases imposed by the Order will more than eliminate any discount that Ormet receives as a result of its Unique Arrangement.²⁴ The RSR will consume half of the discount itself and the soon-to-come FAC increases projected by AEP Ohio will more than consume the rest. Thus, Ormet does not benefit from customer shopping, the RSR, or the stability of other customers in any way. The Commission’s Order, and in no small part the RSR, very well may drive Ormet from business in Ohio.

Second, there is nothing in Ormet’s Unique Arrangement that ties Ormet’s receipt of a discount to other customers’ financial well-being or their “stability and certainty.”²⁵ Ormet receives its Unique Arrangement discount regardless of the stability of AEP Ohio’s customer base. Moreover, all ratepayers benefit from the stability of fellow Ohioans because all ratepayer bills decrease if more ratepayers use AEP Ohio’s services and spread the responsibility for riders like the RSR. Under the Commission’s reasoning, it could force any group of ratepayers to pay for benefits provided only to other ratepayers, because, after all, the first group benefits in some

²² *Id.* at 37.

²³ *Id.*

²⁴ *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 Section 4928.143, Revised Code, in the Form of an Electric Security Plan*, Case Nos. 11-346-EL-SSO, *et al.*, Direct Testimony of James Burns Riley, Ormet Ex. 104 at 8:19-9:13 (May 4, 2012).

²⁵ Order at 37.

small way from the stability and certainty provided to the second group. At that point, cost causation principles are rendered entirely meaningless.

Other precedent also supports charging lower rates to customers who cannot shop. The Commission and the Ohio Supreme Court have each implied by negative inference that customers who cannot shop should be charged lower rates than customers who can. For example, in *AK Steel Corporation v. Public Utilities Commission of Ohio*, the Ohio Supreme Court agreed with the Commission's reasoning that "the benefit [to shopping] does not amount to undue preference or discrimination, because all customers will have an equal opportunity to take advantage of the shopping incentives."²⁶ The Commission and Court therefore implied that if *not* all customers had an equal opportunity to shop, then charging them the same rates could be unfair. Such is the case here where Ormet is forced to pay for the benefits of shopping enjoyed by other ratepayers that it cannot access.

IV. The Commission Should Clarify Whether The Tariff Capacity Rate For AEP Ohio's SSO Customers Is \$188.88/MW-day.

With its ruling in Case No. 10-2929-EL-UNC ("the Capacity Case"), the Commission decided that AEP Ohio's cost of capacity is \$188.88/MW-day. The Commission further decided that AEP Ohio can charge CRES providers only RPM pricing for that capacity.²⁷ The Commission's ruling in the Capacity Case, however, did not expressly determine the capacity rates that AEP must charge its non-shopping SSO customers.

²⁶ *AK Steel Corp. v. Pub. Utils. Comm'n of Ohio*, 765 N.E.2d 862, 868 (Ohio 2002) (emphasis added).

²⁷ *In the Matter of the Commission Review of the Capacity Charges of Ohio Power Company and Columbus Southern Power Company*, Case No. 10-2929-EL-UNC, Opinion and Order at 33-36 (July 2, 2012) ("Capacity Case Order").

Nor did the Commission clearly decide the issue in its ESP II Order. In fact, the Commission's Order in this proceeding contains contradictory indications on the issue. For example, on page 59 of the Order, the Commission held:

we emphasize that based on the Commission's decision in the Capacity Case, AEP-Ohio will not receive any more than the state compensation capacity charge of \$188.88 per MW-day from Ohio customers during the term of this ESP."²⁸

Obviously, if AEP Ohio can charge its SSO customers more than \$188.88/MW-day for capacity, then the Commission's statement in the above paragraph is incorrect. In those circumstances, AEP Ohio would indeed receive "more than the state compensation capacity charge of \$188.88 per MW-day from Ohio customers."

Moreover, in its Capacity Case Order, the Commission decided that \$188.88/MW-day adequately compensated AEP-Ohio for its capacity.²⁹ The Commission further decided that \$188.88/MW-day is a just and reasonable rate to charge for the capacity.³⁰ There simply is no reason (or basis) to charge a rate that exceeds what is just and reasonable for ratepayers and what adequately compensates AEP Ohio for its capacity.

The Commission should therefore clarify that the SSO customers will be charged a Tariff Capacity Rate of \$188.88/MW-day. Any higher rate would be unjust and unreasonable and any decision by the Commission to charge a higher capacity rate would be unjust, unreasonable and unlawful.

²⁸ Order at 59 (emphasis added).

²⁹ Capacity Case Order at 36.

³⁰ *Id.*

V. Conclusion

For the foregoing reasons, Ormet respectfully requests that the Commission grant its application for rehearing and request for clarification.

Date: September 7, 2012

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Application for Rehearing and Request for Clarification of Ormet Primary Aluminum Corporation* was electronically served by the Public Utilities Commission of Ohio's E-Filing System and by United States mail upon counsel identified below on this 7th day of September, 2012.

/s/ Thomas R. Millar

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Summary: App for Rehearing Ormet Application for Rehearing and Request for Clarification of ESP II Order electronically filed by Ms. Emma F Hand on behalf of Ormet Primary Aluminum Corporation