

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

<b>In the Matter of the Application of Ormet</b>	)	
<b>Primary Aluminum Corporation for</b>	)	
<b>Approval of a Unique Arrangement with</b>	)	<b>Case No. 09-119-EL-AEC</b>
<b>Ohio Power Company</b>	)	
	)	

**OPPOSITION TO APPLICATION FOR REHEARING**

Ormet Primary Aluminum Corporation (“Ormet”) hereby files its Opposition to the Motion for Rehearing filed in this matter by the Office of the Ohio Consumers’ Counsel (“OCC”). Ormet states the following in support of its Opposition.

**Introduction**

Faced with a cash flow crisis caused by a declining metals market, an overabundance of supply, and an approximately \$20 million increase in its annual electricity bills, Ormet asked the Commission to allow it to defer its October and November 2012 electricity bills (otherwise due in November and December 2012) and repay them over a 17 month period commencing in the beginning of 2014. On October 17, 2012, the Commission approved the request and authorized AEP Ohio to collect up to \$20 million of the deferred amount from its other customers through its Economic Development Rider if Ormet is unable to meet the repayment obligations set forth in the Order.

The OCC asks the Commission to amend the October 17, 2012 Order by imposing two additional conditions on Ormet’s right to continued enjoyment of the deferral. *First*, the OCC asks the Commission to clarify that the Commission has the authority to terminate the deferrals, and require immediate repayment thereof, if long term prices do not increase sufficiently for Ormet to profitably operate. *Second*, the OCC asks the Commission to clarify that Ormet must

retain at least 650 employees to receive continued enjoyment of the deferral. Presumably, if Ormet is ever forced to reduce its workforce below 650 employees, the OCC's proposed change would give the Commission the authority to require immediate repayment of the deferred amount.

Neither request is appropriate and the OCC's motion should be denied. The OCC's first suggestion is redundant of provisions already contained in the Unique Arrangement that remains in force, and is, therefore, unnecessary. The OCC's second suggestion would be counterproductive and would only make it more likely that other ratepayers would have to shoulder responsibility for repaying the deferrals.

**The OCC's Proposals Should Be Denied Because They  
Are Either Redundant Or Counterproductive.**

With its first request, the OCC asks the Commission to "include a provision that allows it to terminate the arrangement if long-term metal prices do not increase enough for Ormet to profitably operate."<sup>1</sup> The Unique Arrangement already gives the Commission this power and thus, there is no need to "clarify" that Commission continues to enjoy such authority.

It is important to note that the payment deferral did not abrogate Ormet's Unique Arrangement or any provisions in it. To the contrary, the deferrals simply modified the Unique Arrangement by deferring two payments otherwise due under it. This is critical because Section 3.04 of the Unique Arrangement already gives the Commission the power to "modify this Power Agreement, up to and including termination of this Power Agreement," if Ormet's economic conditions do not improve, rendering it unable to pay above-tariff rates. Thus, the Commission

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<sup>1</sup> See Application for Rehearing at 1.

already has the power to commence proceedings to terminate the agreement. The OCC's suggestion adds nothing to the Agreement.

With its second request, the OCC asks the Commission to "clarify that it will continue to require Ormet to maintain 650 full time jobs" in order to keep the deferrals in place.

Presumably, if Ormet ever drops below the 650 employee threshold, the OCC would have the Commission order an acceleration and immediate repayment of the deferred amount.

Once again, however, the Unique Arrangement remains in place and it already imposes minimum employee thresholds with which Ormet must comply in order to receive the discounts set forth in the Agreement.<sup>2</sup> Because Ormet would lose its discounts, which are worth more than the deferrals, if it ever drops below the minimum employee thresholds, it has no incentive to reduce its workforce. Tying the deferrals to the thresholds, therefore, accomplishes little.

Moreover, in the event that Ormet's financial condition worsens, the OCC's suggested revision would only make it more likely that Ormet would fail. If Ormet's financial condition is weakened to the point that it is forced to reduce its workforce below the employee minimum thresholds (and thereby forfeit its Unique Arrangement discounts), it would only hasten Ormet's demise to require it to immediately repay more than \$20 million in deferrals. Imposing the OCC's additional condition would therefore increase the possibility of Ormet's financial failure and thereby make it more likely that other ratepayers have to repay the deferred amounts.

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<sup>2</sup> It is important to note that the OCC's minimum employee threshold proposal would impose a stricter threshold on Ormet than the Unique Arrangement. Under the Unique Arrangement, Ormet does not forfeit discounts unless its employment levels drop below 600 employees. The OCC would impose a higher 650 employee minimum. Yet the OCC offers no factual or legal basis to alter the Unique Arrangement in this manner.

Finally, the deferrals do not pose additional risks for other ratepayers that would be alleviated by imposing an employee minimum threshold on Ormet. The only risk posed by the deferrals is that Ormet goes out of business before it can re-pay them. This burden is not in any way alleviated by the imposition of an employee minimum.

**WHEREFORE,** Ormet respectfully requests the Commission to deny the OCC's Application for Rehearing.

Respectfully submitted,

/s/ Dan Barnowski

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## **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing Motion has been served upon the below-named persons via email and Federal Express overnight mail this 26th day of November, 2012.

/s/ Dan Barnowski

Dan Barnowski

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Summary: Response Opposition of Ormet Primary Aluminum Corporation to the Ohio Consumers' Counsel's Application for Rehearing. electronically filed by Mr. Daniel D Barnowski on behalf of Ormet Primary Aluminum Corporation