

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

INDUSTRIAL ENERGY USERS-OHIO'S POST-HEARING BRIEF

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September 9, 2013

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I. INTRODUCTION

Ormet Primary Aluminum Corporation ("Ormet") seeks to modify the reasonable arrangement between it and the Ohio Power Company ("AEP-Ohio") that was approved in 2009 ("2009 Reasonable Arrangement").¹ The proposed modifications would substantially increase the amount of potential delta revenue exposure of other customers. Rather than increasing other customers' exposure to increased subsidies to directly assist Ormet and indirectly subsidize the competitive generation business of AEP-Ohio, the Public Utilities Commission of Ohio ("Commission") should seek to eliminate or minimize the need for any such subsidization.

II. ORMET'S MOTION SEEKS TO MODIFY THE 2009 REASONABLE ARRANGEMENT

A. Ormet's current Reasonable Arrangement

As authorized by the Commission's Opinion and Order issued on July 15, 2009 ("Opinion and Order"), the 2009 Reasonable Arrangement provides that Ormet's price for electric service is established, among other things, through a formula that contains an index. The index varies Ormet's electric price in relationship to specified changes in

¹ Motion to Amend the 2009 Unique Arrangement Between Ohio Power Company and Ormet Primary Aluminum Corporation and Request for Emergency Relief (June 14, 2013) ("Motion").

the London Metals Exchange (“LME”) price for aluminum. The currently effective 2009 Reasonable Arrangement has a term that runs through December 2018.²

Beginning with the years 2010 and 2011, the structure of the 2009 Reasonable Arrangement responded to Ormet’s requests which Ormet said would provide it with positive cash flow and address legacy pension costs when LME prices are low. The 2009 Reasonable Arrangement also allowed the 2010-11 electric prices to rise when aluminum market conditions were more favorable to Ormet.³ For the years 2012 through 2018, the 2009 Reasonable Arrangement’s pricing formula operates in a similar fashion, but Ormet’s electric price rises slightly higher (104% or 108% of the otherwise applicable price) based on the price of aluminum relative to the target price.⁴

The 2009 Reasonable Arrangement calls for all the revenue provided by prices above the otherwise applicable weighted average tariff rate (“Positive Delta Revenue”) to be used as a credit against the accumulated delta revenue balance (“Negative Delta Revenue”) caused by electric prices below the otherwise applicable electricity reference price. Any Positive Delta Revenue is first applied to reduce the Negative Delta Revenue and then used to reduce AEP-Ohio’s Economic Development Rider (“EDR”).⁵

As approved by the Commission, the 2009 Reasonable Arrangement limits the maximum dollar amount of the Negative Delta Revenue to \$60 million annually in 2010

² The Opinion and Order also approved discounts over an interim period not relevant here. Opinion and Order at 4-5.

³ The 2009 Reasonable Arrangement formula calls for Ormet’s electric price to rise to 102% of the otherwise applicable AEP-Ohio weighted average price (when the LME price of aluminum is greater than the target price but less than \$300 per ton over the target price). If the LME price exceeds the target price by more than \$300 per ton, Ormet’s electric price moves to 105% of the otherwise applicable AEP-Ohio weighted average price. Opinion and Order at 6. The GS-4 rate schedules for the Ohio Power Company and Columbus Southern Power Company Rate zones are averaged with each zone weighted at 50%.

⁴ *Id.* at 12.

⁵ *Id.*

and 2011⁶ and then phases down the maximum amount of Negative Delta Revenue over time. The currently effective 2009 Reasonable Arrangement sets the maximum amount of Negative Delta Revenue at \$44 million for 2013 and thereafter reduces this amount by \$10 million each year until the potential for Negative Delta Revenue is eliminated in 2018.⁷ The Commission found that such time differentiated limits on the maximum amount of Negative Delta Revenue were necessary to protect customers from the delta revenue effects of the 2009 Reasonable Arrangement.⁸ Additionally, the Commission agreed with its Staff that the ability of AEP-Ohio customers to fund the recovery of delta revenue is not unlimited and determined that AEP-Ohio's other customers would pay no more than \$54 million annually in delta revenue associated with the 2009 Reasonable Arrangement.⁹

As an additional potential protection afforded other customers, the Commission may terminate the 2009 Reasonable Arrangement. "The Commission [modified] the proposed unique arrangement to allow the Commission to terminate, by order, the unique arrangement if Ormet [did] not begin to reduce the amount of the accumulated

⁶ *Id.* at 9.

⁷ *Id.* at 9-10. The as-approved 2009 Reasonable Arrangement contains other provisions designed to limit Negative Delta Revenue potential. The amount of Negative Delta Revenue recoverable through the EDR is capped at \$54 million in any year. For 2010 and 2011, the Commission authorized AEP-Ohio to defer, for future collection, Negative Delta Revenue between the \$60 and \$54 million (with the addition of a carrying cost allowance computed at a relatively high long term debt rate. Negative Delta Revenue below the maximum amount could be carried over for use in a subsequent year. The maximum amount of Negative Delta Revenue could also be reduced in the event Ormet did not maintain a full-time employment level of 650 people. As an additional means of mitigating the Negative Delta Revenue potential of the 2009 Reasonable Arrangement, the Commission also required that the provider of last resort ("POLR") charges paid by Ormet be treated as Positive Delta Revenue. *Id.* at 10-14.

⁸ *Id.* at 9.

⁹ *Id.* at 10.

deferrals, and carrying charges, through the payment of above-tariff rates, pursuant to the terms of the unique arrangement, by April 1, 2012.”¹⁰

B. AEP-Ohio’s Electric Security Plan (“ESP”) and Ormet’s first request for a modification of the 2009 Reasonable Arrangement

By April 1, 2012, Ormet’s financial performance had not moved into the “zone” specified by the Commission,¹¹ yet the Commission did not terminate the 2009 Reasonable Arrangement or modify the resulting delta revenue burden imposed on other customers. Meanwhile, AEP-Ohio commenced its application for a new ESP on January 27, 2011.¹²

On August 8, 2012, the Commission authorized substantial increases in AEP-Ohio’s electric prices through the approval of an ESP strongly opposed by Ormet, all other consumers, and many competitive retail electric service (“CRES”) providers.¹³ In particular, GS-4 customers have seen substantial rate increases under the *AEP-Ohio ESP II Order*.¹⁴

During the *AEP-Ohio ESP II* litigation, Ormet warned that the significant rate increases sought by AEP-Ohio would have a dramatic negative impact on Ormet’s efforts to turn things around.¹⁵ Following the approval of the ESP, Ormet sought additional relief from the Commission (Ormet’s first request to modify the 2009

¹⁰ *Id.* at 15.

¹¹ Tr. Vol. I at 143-44.

¹² *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*, PUCO Case Nos. 11-346-EL-SSO, *et al.*, Application (Jan. 27, 2011) (“*AEP-Ohio ESP II*”).

¹³ *AEP-Ohio ESP II*, Opinion and Order (Aug. 8, 2012).

¹⁴ IEU-Ohio Exs. 7-10.

¹⁵ *AEP-Ohio ESP II*, Post-Hearing Reply Brief of Ormet Primary Aluminum Corporation at 9 (July 9, 2012).

Reasonable Arrangement), claiming it could not pay its expected November and December 2012 electric bills.¹⁶ Ormet asked the Commission to allow Ormet to modify the 2009 Reasonable Arrangement so that Ormet could delay payment of its November and December 2012 electricity bills to a later date.¹⁷ While the Commission granted Ormet's payment modification request, it limited the exposure of other ratepayers to \$20 million of the projected deferred bill amounts and stated that it would not modify the 2009 Reasonable Arrangement again unless Ormet provided "a detailed business plan confirming its long-term ability to exist without ratepayer support."¹⁸

C. Ormet's second request to modify to the 2009 Reasonable Arrangement

Shortly after the Commission approved Ormet's first modification request and before beginning to pay the deferred November and December 2012 electricity bills, Ormet sought bankruptcy protection for the second time since 2004.¹⁹ On June 4, 2013, the bankruptcy court approved a sale of Ormet's assets to Wayzata Investment Partners, LLC ("Wayzata").²⁰ On June 14, 2013, Ormet filed a motion to modify the 2009 Reasonable Arrangement that sought both emergency and nonemergency relief. According to Ormet's Motion, the contract for the sale of assets was conditioned on modifications of the 2009 Reasonable Arrangement and was subject to termination if the sale did not close by July 31, 2013.²¹

¹⁶ The rate impacts for GS-4 customers are demonstrated in IEU-Ohio Exs. 7-10.

¹⁷ Motion for Expedited Approval of Payment Deferral and Memorandum in Support (Oct. 12, 2012).

¹⁸ Entry at 4 (Oct. 17, 2012).

¹⁹ Motion at 3.

²⁰ *Id.*

²¹ *Id.*

As emergency relief, Ormet first requested authorization to modify and terminate the 2009 Reasonable Arrangement in December 2015, rather than in December 2018.²² Second, Ormet sought permission to obtain supply from a CRES provider after January 1, 2014.²³ Third, Ormet requested that its generation price be fixed so as to produce an average annual price of \$45.89/Megawatt-hour (“MWh”) for 2013.²⁴ Ormet requested that it receive a discount of \$5.5 million each month in 2013 and a discount of \$4.5 million each month in 2014.²⁵

As nonemergency relief, Ormet’s Motion proposed to modify the 2009 Reasonable Arrangement to allow Ormet to pay the deferred November and December 2012 electric bills over 24 months beginning in January 2014 rather than the 17 installments the Commission specified in October 2012.²⁶ Ormet’s Motion also requested a modification to the 2009 Reasonable Arrangement to allow Negative Delta Revenue at the price of \$4.5 million per month during the first five months of 2015.²⁷ Ormet’s Motion proposed to modify the 2009 Reasonable Arrangement to provide Ormet with a shopping credit of \$9/MWh through May 31, 2015 for any incremental load associated with the restart of its fifth or sixth potline.²⁸ In the event a new on-site

²² *Id.* at 10.

²³ *Id.*

²⁴ Ormet has proposed to pay several riders and tariff distribution fees in addition to the price of \$45.89 per MWh, minus any Negative Delta Revenue benefit. Ormet did not include AEP-Ohio’s AER in the list of riders it will continue to pay while it continues to obtain generation service from AEP-Ohio. *Id.*

²⁵ *Id.* at 10-11.

²⁶ *Id.* at 11.

²⁷ *Id.*

²⁸ *Id.*

generation facility is not operational by June 2015,²⁹ Ormet's Motion also proposed to modify the 2009 Reasonable Arrangement and included a shopping credit of \$6/MWh for its entire load for the remainder of 2015.³⁰ Finally, Ormet's Motion also proposed to reduce the 2009 Reasonable Arrangement's LME prices for purposes of computing Positive Delta Revenue.³¹

D. Ormet's third request to modify the 2009 Reasonable Arrangement

In a July 11, 2013 Entry, the Attorney Examiner denied Ormet's request for emergency relief and set the Motion for a hearing on an expedited calendar. In response, Ormet filed an interlocutory appeal that the Commission denied on July 31, 2013. That same day, Ormet filed its third request for modification of the 2009 Reasonable Arrangement. In the third request, Ormet sought approval to defer two payments to AEP-Ohio and announced that it was shutting down two of the remaining four operating potlines at the smelter.³² In an August 21, 2013 Entry, the Commission granted Ormet a portion of the relief it requested. It permitted Ormet to defer payment of \$5 million for its bill due in August 2013 and, if its annual rate subsidies have been used, up to \$5.5 million for its bill for September 2013.³³ Ormet is to pay the deferred amounts within five days of closing the sale of the assets to Wayzata.³⁴

²⁹ Ormet suggests it plans to actively pursue building a natural gas-fired power plant to meet its electricity supply needs. *Id.* at 14.

³⁰ *Id.* at 12.

³¹ *Id.* at 11.

³² Motion for Expedited Approval of Payment Deferral and Memorandum in Support of Ormet Primary Aluminum Corporation at 1 (July 31, 2013).

³³ Entry at 6 (Aug. 21, 2013).

³⁴ *Id.* at 7.

III. ORMET'S PROPOSED MODIFICATIONS INCREASE THE POTENTIAL NEGATIVE DELTA REVENUE RESPONSIBILITY OF ALREADY BURDENED CUSTOMERS

Viewed collectively, the proposed modifications contained in Ormet's Motion would substantially increase the 2009 Reasonable Arrangement's potential Negative Delta Revenue. The currently effective limits in the 2009 Reasonable Arrangement for June 2013 through December 2018 would result in potential Negative Delta Revenue of \$92.5 million.³⁵ In contrast, the relief requested in Ormet's Motion pushes the potential Negative Delta Revenue amount to \$157 million:

	Proposed Contract Modifications	Estimated Delta Revenues
2013	Base Discount (June-Dec.)	\$49,500,000
2013	Fixed Generation Price	\$3,500,000
2014	Base Discount	\$54,000,000
2014	\$9/MWh Shopping Credit (June-Dec.)	\$7,233,000
2015	Base Discount	\$22,500,000
2015	\$9/MWh Shopping Credit (Jan-May)	\$5,167,000
2015	\$6/MWh Shopping Credit (June-Dec.)	\$15,400,000
	Total	\$157,300,000

Although the amounts vary from the estimate identified by IEU-Ohio in its Comments filed on July 5, 2013, Ormet and AEP-Ohio agree that the consequences of Ormet's proposed modifications are substantial. Ormet estimated that the total subsidy is \$132.1 million if the Motion is granted.³⁶ AEP-Ohio estimates the incremental

³⁵ The 2009 Reasonable Arrangement provides for a cap on Negative Delta Revenue of \$44 million in 2013, \$34 million in 2014, \$24 million in 2015, \$14 million in 2016, and \$4 million in 2017. Opinion and Order at 10.

³⁶ Ormet Ex. 7 at 10.

additional cost of the Ormet Motion as \$117 million,³⁷ and it expects to recover \$99 million of the \$117 million from other customers.³⁸

Approval of the Motion also will increase the risk of other customers in less direct ways. For example, Ormet proposes to spread the repayment of its November and December 2012 electricity bills over an additional seven months. The risk of nonpayment will fall substantially on other customers.³⁹ Delay increases the risk of nonpayment.

Additionally, Ormet appears to be seeking an exemption from paying the Alternative Energy Rider (“AER”).⁴⁰ While supportive of this proposal, IEU-Ohio would further note that the Commission should assure that other customers are not adversely affected if the Commission adopts this portion of Ormet’s proposed modifications. Without an adjustment to AEP-Ohio’s baseline for compliance with alternative energy requirements to remove Ormet’s total kilowatt hours sold, exempting Ormet from paying the AER will shift the costs of compliance to other customers.⁴¹

Ormet’s Motion thus threatens additional rate increases on other customers in addition to the substantial increases resulting from the *AEP-Ohio ESP II* Order. For example, the *AEP-Ohio ESP II* Order authorized AEP-Ohio to increase its rates by \$392,000 to \$418,000 monthly for a GS-4 customer served at transmission voltage with

³⁷ AEP-Ohio Ex. 2 at DMR-1.

³⁸ *Id.* at DMR-2 (full amount of each year’s increase in subsidies to Ormet treated as a “Cost to Other Customers”).

³⁹ Entry at 3 (Oct. 17, 2012) (deferred revenue up to \$20 million will be treated as foregone revenue if Ormet defaults).

⁴⁰ According to its Motion, the AER is not a rider that Ormet proposes to continue paying while it continues to take generation service from AEP-Ohio. Motion at 10.

⁴¹ The Commission may adjust the baseline of the electric distribution utility (“EDU”) for new economic growth in the EDU’s certified territory. Section 4928.64(B), Revised Code.

a monthly load profile of 50,000 Kilowatts (“KW”) and energy of 32.5 million Kilowatt-Hours (“KWh”).⁴² These same customers are facing additional increases because of AEP-Ohio’s recent transmission cost recovery rider filing.⁴³

The bill impact data, however, do not reflect more recent filings AEP-Ohio has made to increase its prices. On August 30, 2013, AEP-Ohio filed an application to update its rates for the Fuel Adjustment Clause (“FAC”) and the AER.⁴⁴ The revised FAC rates are proposed to go into effect with bills rendered in the first billing cycle of October 2013 and will add to the significant electric bill increases that have already taken place. The FAC and AER changes that AEP-Ohio has proposed for the rate schedules applicable to businesses are:

	Current	Proposed	% Increase
Columbus Southern FAC			
Secondary	\$0.0406652	\$0.0435464	7%
Primary	\$0.0392546	\$0.0420357	7%
Sub-transmission/Transmission	\$0.0384725	\$0.0411983	7%
Ohio Power FAC			
Secondary	\$0.0341979	\$0.0372933	9%
Primary	\$0.0330117	\$0.0359996	9%
Sub-transmission/Transmission	\$0.0323539	\$0.0352824	9%
	Current	Proposed	% Increase
Columbus Southern AER			
Secondary	\$0.0005249	\$0.0016093	207%
Primary	\$0.0005067	\$0.0015535	207%
Sub-transmission/Transmission	\$0.0004966	\$0.0015226	207%
Ohio Power AER			
Secondary	\$0.0001981	\$0.0010064	408%
Primary	\$0.0001913	\$0.0009716	408%

⁴² IEU-Ohio Exs. 7-10.

⁴³ The Commission denied authorization for a portion of the increase, but left open the possibility that AEP-Ohio may seek to justify the portion not allowed. *In the Matter of the Application of Ohio Power Company to Update its Transmission Cost Recovery Rider Rates*, Case No. 13-1406-EL-RDR, Finding and Order (Aug. 28, 2013).

⁴⁴ *In the Matter of the Fuel Adjustment Clauses for Ohio Power Company*, Case No. 13-1892-EL-FAC (Aug. 30, 2013).

Sub-transmission/Transmission \$0.0001875 \$0.0009523 408%

While Ormet has offered evidence that a closure of the remaining potlines would adversely affect the communities surrounding Ormet's plant,⁴⁵ it failed to address the additional impacts that increased rates would have on customers located in AEP-Ohio's distribution service area. This limitation on Ormet's analysis is one which Ormet's economic expert, Dr. Paul Coomes, was aware because the same issue was raised with a similar study he prepared to support Ormet's application for the 2009 Reasonable Arrangement. In the prior hearing, Dr. Coomes acknowledged that there would be adverse consequences to other ratepayers, but had not measured them. In the recent hearing, he again acknowledged that rate increases would likely have adverse impacts, but once again failed to address them.⁴⁶

The Commission cannot ignore the adverse consequences of further increasing other customers' rates beyond the already significant and detrimental increases resulting from the *AEP-Ohio ESP II* Order. As the Commission recognized when it approved the 2009 Reasonable Arrangement, "the ability of ratepayers to fund the recovery of delta revenues is not unlimited."⁴⁷ The concerns that drove the cap in 2009 are no less relevant in light of increased rates customers are paying currently.

IV. THE COMMISSION SHOULD SEEK TO REDUCE OR ELIMINATE RELIANCE ON RATEPAYER SUPPORT BY LEVERAGING AVAILABLE MARKET-BASED ALTERNATIVES

The Commission's decisions in favor of much higher and much more non-bypassable AEP-Ohio electric prices have added to Ormet's already considerable

⁴⁵ Ormet Ex. 2.

⁴⁶ Tr. Vol. I at 72-74.

⁴⁷ Opinion and Order at 10.

challenges. The market-based approach enabled and favored by Ohio law could have and should have made things much better for Ormet and all other AEP-Ohio customers. In many respects, Ormet's Motion is the consequence of AEP-Ohio's successful efforts to secure above-market retail generation rates from its competitive generation business even though Ohio law requires AEP-Ohio's competitive generation business to be fully on its own in the competitive market.⁴⁸ As Ormet has shown, competitive generation prices are lower than the generation supply prices it pays AEP-Ohio.⁴⁹ Thus, it is understandable that Ormet seeks to go to market to begin solving its current financial problems.⁵⁰

Despite AEP-Ohio's assertion to the contrary,⁵¹ Ormet is not prohibited from shopping. There is no provision in the 2009 Reasonable Arrangement that bars Ormet from shopping.⁵² In its review of the 2009 Reasonable Arrangement, the Commission on rehearing concluded "that the relevant period when Ormet cannot shop is the duration of AEP-Ohio's current approved electric security plan. It is not necessary to reach the question of whether Ormet can shop beyond the duration of the current ESP because no determination has been made whether future standard services offers will include a comparable POLR [Provider of Last Resort] charge."⁵³ Since the

⁴⁸ Section 4928.38, Revised Code.

⁴⁹ Ormet Ex. 7 at 5.

⁵⁰ Given the recent low prices in the aluminum market, at least one other processor has sought to lower its generation price by seeking a market-based solution. Century Kentucky, a Kentucky-based aluminum smelter, recently secured approval of a set of contracts from the Public Service Commission of Kentucky that permit it to secure power through market transactions. *In the Matter of Joint Application of Kenergy Corp. and Big Rivers Electric Corporation for Approval of Contracts and for a Declaratory Order*, Case No. 2013-00221, Order (Pub. Serv. Comm'n of Ky. Aug. 14, 2013).

⁵¹ AEP-Ohio Ex. 2 at 7.

⁵² AEP-Ohio Ex. 1.

⁵³ Entry on Rehearing at 8 (Sept. 15, 2009).

Commission issued this Order, the Commission has found that there was no legal basis for the POLR charge approved in the first AEP-Ohio ESP proceeding.⁵⁴ Based on the terms of the 2009 Reasonable Arrangement and the Commission's 2009 orders approving it, therefore, Ormet may shop now.⁵⁵

Even if the 2009 Reasonable Arrangement implicitly requires Ormet to take its generation service from AEP-Ohio, the Commission can modify that requirement because it retains jurisdiction over the reasonable arrangement.⁵⁶ Thus, the Commission could alter the 2009 Reasonable Arrangement to permit Ormet to shop if the Commission finds that the modification to permit shopping is lawful, reasonable, and in the public interest.

If, as suggested in Ormet's Motion, it is possible to reduce Ormet's electric bill by recourse to the electric generation market, the Commission is obligated to proactively facilitate reliance on the market-based approach.⁵⁷ Therefore, IEU-Ohio urges the Commission to favor modifications (if they are necessary) that permit Ormet to access the competitive market in ways that may be beneficial to Ormet while reducing the potential for Negative Delta Revenue.

⁵⁴ *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 No. 08-917-EL-SSO, *et al.*, Order on Remand at 15-34 (Oct. 3, 2011).

⁵⁵ Nothing in the Supreme Court's decision of the 2009 Reasonable Arrangement required Ormet to take service from AEP-Ohio for the remainder of the term of the Arrangement. In that case, AEP-Ohio asserted that the Commission erred when it determined that Ormet presented no risk of shopping because the Commission could modify the 2009 Reasonable Arrangement. The Court held that the issue was not ripe. *In re Application of Ormet Primary Aluminum Corp.*, 129 Ohio St.3d 9, 14 (2011) ("*Ormet Decision*").

⁵⁶ Section 4905.31, Revised Code.

⁵⁷ Section 4928.02, Revised Code.

V. ORMET HAS NOT SATISFIED THE COMMISSION'S DEMAND THAT ORMET PROVIDE A VIABLE BUSINESS PLAN BEFORE THE COMMISSION WILL ORDER FURTHER MODIFICATIONS EXPOSING OTHER CUSTOMERS TO INCREASED NEGATIVE DELTA REVENUE RESPONSIBILITY

The Commission has repeatedly warned Ormet that relief that relies on funding from other ratepayers is contingent on Ormet's demonstration of financial viability. When the Commission approved the 2009 Reasonable Arrangement, the Commission added a provision that permitted the Commission to modify or terminate the arrangement if Ormet did not begin to reduce the amount of Negative Delta Revenue through the payment of above-tariff rates by April 1, 2012.⁵⁸ When the Commission granted Ormet's request to defer payment of its electric bills in 2012, it also warned Ormet that any further relief it requested should be accompanied by a detailed business plan confirming its long-term ability to exist without ratepayer support.⁵⁹ Through this Motion, Ormet has sought several material modifications of the 2009 Reasonable Arrangement that may require additional support from other customers (particularly if the Commission accepts AEP-Ohio's position that \$99 million of Ormet's proposed \$117 million benefit addition to the 2009 Reasonable Arrangement must be picked up by other AEP-Ohio customers). Ormet, however, has failed to provide the Commission with the detailed business plan the Commission demanded.

While benefiting from the substantial discounts of the 2009 Reasonable Arrangement and while under the protection of the bankruptcy court, Ormet continues to incur substantial monthly losses. Since filing for bankruptcy, Ormet has lost \$70.78

⁵⁸ Opinion and Order at 15. Ormet was required to pay above-tariff prices if aluminum prices recovered to certain pre-determined levels. Payments in excess of the tariff rates went first toward accumulated deferrals and then to reduce the EDR.

⁵⁹ Entry at 4 (Oct. 17, 2012).

VI. OHIO POWER'S ALTERNATIVE SOLUTION IS NOT JUST AND REASONABLE

AEP-Ohio protests that Ormet is not legally permitted to shop for generation service during the period covered by the agreement, demands that any additional revenue lost from modifications of Ormet's Reasonable Arrangement be made up by AEP-Ohio's other customers, and proposes an alternative that it claims would achieve an equivalent financial outcome for Ormet, but which also would substantially increase potential Negative Delta Revenue. The Commission should reject each of AEP-Ohio's positions.

AEP-Ohio's claim that Ormet cannot shop is incorrect. As noted above, the 2009 Reasonable Arrangement does not prevent Ormet from shopping, and even if it did, the Commission can modify the reasonable arrangement to allow Ormet to shop.

Additionally, the Commission should not approve AEP-Ohio's request to increase its recovery of Negative Delta Revenue from other customers if the Commission modifies the 2009 Reasonable Arrangement. The Commission previously determined that customers should be responsible for no more than \$54 million annually in Negative Delta Revenue during the current term of the 2009 Reasonable Arrangement and reduced that potential exposure by at least \$10 million annually beginning in 2013.⁶⁴ AEP-Ohio has offered no reasoned basis for modifying that limitation.

Further, the Commission has no legal obligation to increase AEP-Ohio's recovery of Negative Delta Revenue from other customers if the Commission materially modifies the 2009 Reasonable Arrangement. Section 4905.31(E), Revised Code, grants the

⁶⁴ Opinion and Order at 10. The Commission further determined that the amount of the discount would be further decreased if Ormet failed to maintain employment levels exceeding 650 employees.

Commission the authority to limit delta revenue recovery. As the Supreme Court concluded, “recovery is permitted but not required.”⁶⁵

Finally, the Commission should reject AEP-Ohio’s proposal that would require Ormet to secure power from AEP-Ohio for a shortened term at a discount. As described by its witness, AEP-Ohio’s proposal would require Ormet to remain with AEP-Ohio for generation service and increase the discounts available to Ormet to produce the same generation price it is seeking for 2013, \$45.89/MWh. For every \$5 increase in the auction price, the cost of AEP-Ohio’s proposal increases \$19 million.⁶⁶ AEP-Ohio’s proposal, however, is contingent on an unknown auction price; the examples are “illustrative.”⁶⁷

The amount of the discounts AEP-Ohio is proposing, thus, depends on the results of the competitive bidding process. The price increases that will result from the competitive bidding process, however, are already well understood. As the record developed in the Commission’s review of AEP-Ohio’s competitive bidding process proposal showed, the predictable outcome of the energy-only auction is an increase in default generation prices, not the decrease that the Commission said would offset the many other increases authorized by the Commission in the *AEP-Ohio ESP II Order*.⁶⁸

The predictable outcome of AEP-Ohio’s proposal in this case, then, is that the discounts

⁶⁵ *Ormet Decision*, 129 Ohio St.3d at 12.

⁶⁶ Tr. Vol. II at 446.

⁶⁷ Tr. Vol. II at 446. Even those examples understate the potential total Negative Delta Revenue. When AEP-Ohio’s witness performed what he described as “an apples to apples” comparison of the Ormet and AEP-Ohio proposals, the cost of the AEP-Ohio proposal was substantially higher than each of the examples presented in his testimony as DMR-3. Tr. Vol. II at 443-46.

⁶⁸ *In the Matter of the Application of Ohio Power Company to Establish a Competitive Bidding Process for Procurement of Energy to Support its Standard Service Offer*, Case No. 12-3254-EL-UNC, Joint Post-Hearing Brief of the Ohio Energy Group and the Office of the Ohio Consumers’ Counsel at 2 (Aug. 16, 2013).

afforded to Ormet will increase as the cost of generation service increases. This outcome is not a reasonable solution that would mitigate the potential Negative Delta Revenue.

In summary, AEP-Ohio has not offered the Commission any reason to reject the use of a market-based approach to assist Ormet and reduce the exposure of other ratepayers to Negative Delta Revenue. Its claim that it has an exclusive right to serve Ormet is not supported by the 2009 Reasonable Arrangement itself and is unwarranted under Section 4905.31, Revised Code, and Chapter 4928's elimination of any exclusive service rights for competitive retail electric service such as generation supply. Additionally, AEP-Ohio should not be permitted to recover additional Negative Delta Revenue from other customers. Finally, its alternative proposal to provide generation service likely would add to the already large burden caused by the *AEP-Ohio ESP II* Order.

VII. CONCLUSION

The solutions to Ormet's financial problems offered by both Ormet and AEP-Ohio rest on an approach that imposes additional and significant Negative Delta Revenue on other customers. The Commission, however, has held that the Negative Delta Revenue previously authorized to support Ormet is "the maximum amount of delta revenue which ratepayers should be expected to pay in a given year."⁶⁹ Ormet and AEP-Ohio have not offered any legitimate basis for increasing that burden. The Commission, therefore, should not authorize any acceleration or increase in the collection of Negative Delta Revenue from other customers in this case.

⁶⁹ Opinion and Order at 10.

Ormet, moreover, has other options. In particular, it has the ability to secure market-based generation service from CRES providers currently. Because it has an alternative that has not been developed, Ormet must show that it has exhausted other means of securing lower priced generation service and lowering the exposure of other customers to Negative Delta Revenue.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Industrial Energy Users-Ohio's Post-Hearing Brief* was served upon the following parties of record this 9th day of September 2013, via electronic transmission, hand-delivery or first class mail, postage prepaid.

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This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

9/9/2013 2:09:53 PM

in

Case No(s). 09-0119-EL-AEC

Summary: Brief Post-Hearing Brief of Industrial Energy Users-Ohio electronically filed by Mr. Frank P Darr on behalf of Industrial Energy Users-Ohio