

**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>	)	

**OHIO POWER COMPANY’S MEMORANDUM IN OPPOSITION TO ORMET  
PRIMARY ALUMINUM CORPORATION’S MOTION  
AND REQUEST FOR EXPEDITED RULING**

**I. INTRODUCTION**

Ormet Primary Aluminum Corporation (Ormet) has an existing unique arrangement with Ohio Power Company (AEP Ohio) that was approved by the Public Utilities Commission of Ohio (Commission) in 2009. On June 14, 2013, Ormet filed a motion to amend the 2009 unique arrangement and request for emergency relief. The Commission determined that the motion should be treated as an application for a reasonable arrangement under R.C. 4905.31 and OAC 4901:1-38-05(B) and rejected the notion that the request should be handled on an emergency basis. (June 27, 2013 Entry; July 11, 2013 Entry.) After a robust process with discovery, testimony, an evidentiary hearing and briefing, the Commission issued an Opinion and Order on October 2, 2013 that modified and approved the amendments sought by Ormet, subject to the parties executing a new power agreement such that the terms of the new agreement would apply to services rendered following the filing of the updated contract. Ormet subsequently announced its decision to reject the modified terms and fully curtail its operations at the Hannibal Facilities. (See Attachment A.) On October 22, 2013, Ormet filed a motion and request for expedited ruling, again improperly seeking amendments to the existing unique arrangement. In its motion,

Ormet asks the Commission to either directly or indirectly sanction – on an expedited basis – each of the following items:

- Effectively terminate the existing unique arrangement such that none of the current bill (overdue and unpaid) or outstanding deferred charges need to be paid by Ormet and no minimum demand charges would apply in the future.
- Creation of an open-ended requirement on AEP Ohio to continuously provide electric service to the Hannibal Facilities throughout the bankruptcy proceedings.
- To create a new arrangement whereby Ormet would prepay tariff rates for service during the indeterminate period when the bankruptcy proceeding remains pending.

AEP Ohio opposes Ormet’s request for the reasons stated below.

Ormet has failed to pay its September usage bill that was due on October 23, 2013. As Ormet admits in its motion, “if Ormet is not able to make payment by October 25, 2013, Ohio Power may declare an event of default and disconnection service to Ormet as early as October 30, 2013.” (Ormet memo in support at 5.) AEP Ohio is willing to defer any disconnection until November 1, 2013 in order to give the Commission an opportunity to address Ormet’s filing – if it chooses to do so. Absent such a ruling, however, AEP Ohio intends to proceed with disconnection of Ormet’s service. Because Ormet sought an expedited ruling, it is not permitted to file a reply memorandum in support of its motion. OAC 4901-1-12(C).

## **II. ARGUMENT**

### **A. The Commission has no jurisdiction to order AEP to continue service without payment during the pendency of Ormet’s bankruptcy.**

Once again, Ormet seeks to modify a bankruptcy court order regarding security in the bankruptcy, and this Commission has no jurisdiction to modify that order. Ormet’s promise to pay AEP Ohio’s bill as it comes due is the security it was required to “post” under Federal law in order to proceed in bankruptcy. AEP Ohio and Ormet agreed to this arrangement and it was

entered into a final Order in the Bankruptcy with respect to the existing contract. While the Commission has the right to adjust the due date of the payment, it does not have the right to allow Ormet not to make that payment at all – or to “wipe the slate clean” for the existing contract and start over with a new arrangement. Ormet admits that it is not paying any of the bill, not just the disputed charges. Paying the bill as it came due was a material part of its Section 366 Agreement in the bankruptcy court, and Ormet’s failure to pay the bill when due is a breach of that agreement. The Commission cannot order AEP to continue to serve Ormet without being paid for its service.

As discussed in connection with Ormet’s request to defer payment of its electric bills, Section 366 of the Bankruptcy Code governs the post-petition security that a debtor in bankruptcy must provide to its utility companies in order to proceed with any bankruptcy. In deciding the post-petition security that a utility company is entitled to from a debtor in bankruptcy, the bankruptcy judge is governed only by federal bankruptcy law and not by any state proceeding, regulation or tariff. *See In re Adelphia Business Systems Solutions, Inc.*, 280 B.R. 63, 80 (Bankr. S.D.N.Y. 2002); *Lloyd v. Champaign Tel. Co.*, 52 B.R. 653, 656 (Bankr. S.D. Ohio 1985). Thus, the payments Ormet seeks to alter cannot be altered in any state proceeding, and the Commission has no jurisdiction to do so while Ormet is in bankruptcy.

AEP Ohio and Ormet reached an agreement in the bankruptcy court regarding the security Ormet would provide AEP in order to continue service during the pendency of the bankruptcy case, which was evidenced by a *Final Order For Authority Pursuant To Sections 363, 366 and 105(a) Of The Bankruptcy Code (I) Prohibiting Utility Services Providers From Altering, Refusing, Or Discontinuing Service; (II) Authorizing Payment Of Certain Pre-Petition Claims Of Certain Utility Providers As Part Of Adequate Assurance Payments; (III) Deeming*

*Utilities Adequately Assured Of Payment; And (IV) Establishing Procedures For Determining Adequate Assurance Of Payment* entered by the Bankruptcy Court on March 20, 2013 (the “Final Utility Order”) [Docket No. 135]. In the Final Utility Order, Ormet agreed to provide AEP Ohio with the following as adequate assurance of payment under Section 366 of the Bankruptcy Code:

- A. Tender payment to AEP Ohio in the amount of \$6,403,598.98, which was the final prepetition balance owed by Ormet to AEP Ohio, aside from the prior deferral amount;
- B. Tender payment to AEP Ohio in the amount of \$797,709.47, which was the post-petition balance of the invoices for February 2013 charges;
- C. Pay AEP Ohio’s post-petition utility charges on or before the applicable due date of the invoice; and
- D. Ormet agreed to waive certain bankruptcy claims against AEP Ohio.

(emphasis added)

Ormet’s agreement to pay AEP Ohio’s post-petition utility charges on or before the applicable due date was a material part of the agreement between AEP Ohio and Ormet. It constitutes Ormet’s security in the bankruptcy, and can only be altered by application to the bankruptcy court, not the Commission. If Ormet wants to modify the adequate assurance of payment agreement that it reached with AEP Ohio, which is evidenced by the Final Utility Order, Ormet must file a motion pursuant to Section 366(c)(3) of the Bankruptcy Code in the bankruptcy court, not with the Commission. Accordingly, the Commission should deny Ormet’s motion for a payment deferral because the Bankruptcy Court has exclusive jurisdiction over this matter pursuant to Section 366 of the Bankruptcy Code.

By its own admission, Ormet is administratively insolvent – so it can convert its bankruptcy case to a Chapter 7 liquidation instead of a reorganization. In that situation, it might

be possible to treat the Chapter 7 Trustee as a new customer and put it on a tariff that matches the load the facility is currently using. As long as Ormet remains in a Chapter 11 reorganization, the parties are bound by the terms of the current unique arrangement absent Ormet seeking relief in the Bankruptcy court. Under federal law, only Ormet can reject that contract, and it must do that in the bankruptcy court. Once again, these are matters governed by federal bankruptcy law and cannot be overruled by state utility law.

**B. There is no lawful basis in R.C. 4905.31 or OAC Chapter 4901:1-38 for the Commission to grant the relief Ormet requests.**

Ormet's latest request asks the Commission to modify the existing unique arrangement and, as with its prior request for modification, is tantamount to requesting a new unique arrangement. Ormet plainly admits (at page 5) that it does not anticipate being able to continue meeting its obligations under the existing contract and would like to set aside its current outstanding financial obligations under the existing contract as well as get out from minimum demand charges under the existing contract going forward (page 7). Thus, it is obvious that Ormet wants to modify and effectively terminate the existing agreement. As discussed above, that is a problem under bankruptcy law. But such modification, in the manner and scope requested by Ormet, is also beyond the Commission's statutory authority and would also violate the Commission's rules. If the Commission decides to move forward with Ormet's request – as opposed to summarily rejecting it – the Commission should deem the filing as a new application (as with its prior request to modify) and process it in accordance with OAC 4901:1-38-05(B).

Because Ormet's filing is a request for a unique arrangement request under OAC Chapter 4901:1-38 (see June 27 Entry), those rules (which govern this proceeding) do not provide any opportunity to summarily modify an existing contract on an exigent basis like Ormet requests. If the Commission had envisioned emergency amendments to unique arrangements in the context

of OAC Chapter 4901:1-38, it would have included some reference or process to accommodate such a request. But it did not and cannot now alter the operation of those governing procedural rules. In sum, the Commission has no legal basis to retroactively amend the existing contract or summarily amend or terminate it in order to replace it with a new arrangement.

**C. Provisions of the existing contract would be violated if Ormet's motion is granted and it would be unlawful for the Commission to retroactively change the contract, especially with respect to existing rights and obligations.**

As discussed below, multiple provisions of the existing contract would be violated if Ormet's relief is granted over AEP Ohio's objection. Those provisions were specifically designed and contemplate the prospect of a Commission-approved modification. It would be an unlawful retroactive impairment of contract rights to allow Ormet to simply bypass and terminate those provisions through the current request for relief. *See* U.S. Const. Art. I, § 10; U.S. Const. Amend. XIV, § 1; Ohio Const. Art. I, § 16; and Ohio Const. Art. II, § 28. Stated differently, it would unlawfully impair AEP Ohio's vested contract rights to retroactively sweep away Ormet's obligations under the existing contract, as movant seeks to do. Such permanent relief violates constitutional restraints against impairment of the obligations of contract and constitutional guarantees of due process. *See* U.S. Const. Art. I, § 10; U.S. Const. Amend. XIV, § 1; Ohio Const. Art. I, § 16; and Ohio Const. Art. II, § 28.

The Commission does not have the power to cancel a contract under R.C. 4905.31 either. When AEP sought to cancel a prior special arrangement with Ormet in the 1970s, Ormet successfully argued that the Commission lacked authority to cancel the special arrangement. The Commission stated, "The Commission must agree on this point. It is axiomatic that this Commission, as a creature of statute, has no powers beyond those conferred by statute. *Akron v. Barberton Belt Rd. v. Pub. Util. Comm.* (1956), 165 Ohio St. 316 (1956). Considering this

constraint in conjunction with that maxim of statutory construction, *expressio unius est exclusio alterius*, compels the conclusion that the absence of specific legislative reference to the remedy of cancellation in Section 4905.31 precludes this Commission from authorizing cancellation *in toto*.” *In the Matter of the Application of Ohio Power Company to cancel certain special power agreements and for other relief*, Case No. 75-161-EL-SLF, Opinion and Order at 14-15 (Aug. 4, 1976).

There are multiple provisions of the existing contract (attached as Exhibit B) that would be violated if Ormet’s current request for relief is granted. Under Section 2.03 of the existing contract, any modification by the Commission upon a finding that rates under the contract are no longer just and reasonable (absent early termination for default) “(i) may not be effective earlier than January 1, 2016 unless the cumulative net discount from the AEP Ohio Tariff Rate exceeds 50 percent of the amount Ormet would have been required to pay under the AEP Ohio Tariff Rate and (ii) shall not go into effect between the Parties until the later of the beginning of the next calendar year or 120 days.” The cumulative discount Ormet has received is not more than half of the tariff rate to date. In that context, Section 2.03 only permits a change to the rate structure of the agreement to take effect *the later of* 120 days after a Commission order adopting modifications or the beginning of the next calendar year – which would be sometime in 2014 relative to the requested relief. Thus, Ormet’s current proposal clearly violates Section 2.03.

In addition, the existing contract specifically addresses the scenario of the Hannibal Facilities being shut down. Section 3.02 provides that “Ormet may terminate the Power Agreement upon twelve months notice.” Ormet has not served that notice and twelve months has not elapsed. Replacing the existing unique arrangement with Ormet’s current request for a new arrangement – especially without resolving all of the outstanding charges and financial

obligations – would violate Section 3.02, which specifically addresses the present context of Hannibal Facilities shutting down.

Finally in this regard, Section 3.01(c) permits AEP Ohio to terminate the agreement if the Commission requires any modification that is “materially adverse” to AEP Ohio (as determined by AEP Ohio). More specifically, Section 3.01(d) permits AEP Ohio to terminate the agreement “if the Commission, in any order, whether specifically modifying this Power Agreement or otherwise, limits AEP Ohio’s recovery of Delta Revenues associated with this Power Agreement in a manner more adverse than the July 15, 2009 Opinion and Order in Case No. 09-119-EL-AEC.” Thus, if the Commission does consider adopting Ormet’s requested relief, it must ensure that the decision would not result in lower delta revenue collection by AEP Ohio and would otherwise not result in more adverse financial impact on AEP Ohio. Under that scenario, the Commission should clarify and confirm that AEP Ohio’s total cost of any Ormet default would continue to be delta revenue collectible from ratepayers pursuant to Section 1.07 of the Unique Arrangement and the Commission’s July 15, 2009 Opinion and Order (at page 14).

Instead, the Commission should reject Ormet’s invitation for the Commission to retroactively impair AEP Ohio’s contract rights.

**D. The existence of another customer served through Ormet’s substation and other implications for Ormet of the loss of power to the Hannibal Facility should not prevent AEP Ohio’s lawful disconnection of Ormet.**

In advancing the proposal to avoid its own disconnection, Ormet purports to raise concerns about another customer that is served through its substation, Hannibal Real Estate, Inc. Ormet’s motion states (at page 6) that “[i]f service to Ormet is disconnected, it will also result in the inadvertent disconnection of service to Hannibal Real Estate, Inc.” As a related matter, Ormet mentions its concern about continued operation of a sewage treatment plant located on the

property of Hannibal Real Estate. AEP Ohio submits that Ormet's position in this regard – to the extent it has any standing to raise concerns affecting other customers – is disingenuous and without merit. If AEP Ohio is given access to the substation on Ormet's premises, it can safely disconnect power to Ormet's Hannibal Facilities while maintaining uninterrupted service to Hannibal Real Estate. Thus, unless Ormet intends to interfere with or prevent such safe and accurate disconnection, there should be no problem in this regard and Hannibal Real Estate's service should not be affected.

Section 13.01 of the existing contract already grants AEP Ohio a right of entry for purposes of the service agreement and there is no reason it would not apply in the context of implementing disconnection under Article Eight of the same contract. (Attached as Exhibit B.) In addition, there are more specific procedures outlined in an agreed addendum to Ormet's 2007 special arrangement with AEP Ohio regarding the same issue. (Attached as Exhibit C.) Moreover, there is an existing contract between Ormet and Hannibal Real Estate that also obligates Ormet to grant access to AEP Ohio. (Attached as Exhibit D.) In this regard, the undersigned counsel for AEP Ohio has been in contact with Ormet's counsel and has received no indication that Ormet disagrees with AEP Ohio's right to disconnect (subject to the notice and cure provisions of the existing contract) or to enter the Hannibal Facilities for that purpose while keeping power on for Hannibal Real Estate. So, there no reason to believe there will be a problem with the disconnection process that causes Hannibal Real Estate to lose power.

Next, Ormet references a consent decree with the USEPA and alleges (page 6) that it will not be able to fulfill its obligations under the consent decree without power. It is AEP Ohio's understanding, based on knowledge and belief, that the USEPA required Ormet to post a bond for several hundred thousand dollars to cover Ormet's compliance under just such an occasion

(having already learned that Ormet's financial condition was suspect). AEP Ohio has informally advised the USEPA and Ohio EPA of the potential for Ormet's electric service to be disconnected, and AEP Ohio will continue to provide any reasonable cooperation requested by those agencies. But Ormet's responsibilities under the consent decree cannot be used as a basis for avoiding disconnection of service to the entire facility.

**E. The existence of billing disputes has no bearing on AEP Ohio's right to disconnection because Ormet did not pay the undisputed amount due, but the Commission may need to resolve those disputes if Ormet attempts to cure its default.**

Ormet has raised a billing dispute regarding a portion of the September usage bill (that was due and went unpaid on October 23). But even Ormet acknowledges that "if Ormet is not able to make payment by October 25, 2013, Ohio Power may declare an event of default and disconnection service to Ormet as early as October 30, 2013." (Ormet memo in support at 5.) And Ormet has not made payment even for the undisputed billing amount. If Ormet does cure its current default, the Commission may have to help resolve the billing dispute. Those matters do not, however, need to presently be resolved in addressing the current disconnection dispute.

### **III. CONCLUSION**

For the foregoing reasons, the Commission should deny Ormet's request and clarify the matters addressed herein.

Respectfully submitted,

/s/ Steven T. Nourse

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**Counsel for Ohio Power Company**

# Exhibit A

FOR IMMEDIATE RELEASE

October 4, 2013

Contact Info:

James Burns Riley

740-483-2602

### Full Curtailment of Hannibal Operations

Hannibal, Ohio – On October 2, the Public Utilities Commission of Ohio (PUCO) denied the majority of Ormet's request for an energy transition plan that would allow it to operate while constructing an onsite natural gas based power generation facility. Due to this decision, Ormet cannot emerge from bankruptcy and must immediately shut down operations. Ormet estimates that an additional 600 people will be affected under the existing WARN notice.

Ormet was forced to file for bankruptcy on February 25, 2013 due to historically low metal prices and exceedingly high and uncontrollable power costs. The Ohio Power industrial rate which establishes the base rate for Ormet to procure power has increased from \$39.66 per MWh, when the Unique Arrangement was established in 2009, to \$60.83/MWh in September 2013 an increase of over 53 percent. During the same period, wholesale power costs in the region have decreased by over 10 percent. The Unique Arrangement was created as an economic incentive to maintain and create jobs, which Ormet has successfully done to date. At full operations, Ormet's projected 2014 energy cost would reflect an increase of \$108 million, before the potential discount of \$54 million as provided for in the PUCO ruling.

*"The economic impact of PUCO's decision is simply a restructuring of the existing economic incentives already pledged to Ormet for maintaining the jobs and does not address the continued rate increases from AEP. It is not sufficient to maintain, let alone increase, operating levels at Hannibal and begin construction of an onsite power plant. The Chairman and one of the Commissioners went out of their way to insult Ormet's efforts to reduce costs. I want to set the record straight and recognize that the USW and secured creditors have coordinated in a collaborative effort with the Company to reduce the company's financial liabilities by almost \$300 million. The PUCO Commissioners never mentioned in their comments that Ohio's energy policy transition to market has massively increased energy costs and is misguided, with its first major casualty being Ormet. How can this Administration justify an energy policy that puts thousands of people out of work?"* said Mike Tanchuk, Chief Executive Officer and President of Ormet Corporation.

A restart of the Hannibal smelter in the future would be contingent upon obtaining a long term economical power supply, similar to that achieved by Century Aluminum in Kentucky, and an improving aluminum pricing environment.

###

## **Cautionary Statement**

This Statement contains forward-looking statements that can be identified by use of words such as “anticipates,” “believes,” “estimates,” “expects,” “hopes,” “targets,” “should,” “forecast,” “outlook,” “projects” or other words of similar meaning. All statements that address the Company’s expectations or projections about the future, including statements about the Company’s strategy for growth, cost reduction goals, expenditures, financial results, liquidity and capital needs, are forward-looking statements. Forward-looking statements are based on the Company’s estimates, assumptions and expectations of future events and are subject to a number of risks and uncertainties and may or may not be realized. The Company cannot guarantee its future performance or results of operations. All forward-looking statements in this press release are based on information available to the Company on the date hereof. The Company disclaims any intention or obligation to update or revise any forward-looking statements, except as may be required by law. The Company’s business is subject to a number of significant risks and uncertainties, including the potential adverse impact of its Chapter 11 cases. Given the significant uncertainties and risks to which the Company is subject (a) the reader should not place undue reliance on forward-looking statements contained in this press release and (b) the Company’s future results could differ materially from the Company’s current results and from those anticipated in the Company’s forward-looking statements.

# # #

# Exhibit B

Emma F. Hand  
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2009 SEP 18 AM 10:54

PUCO

September 17, 2009

VIA FEDERAL EXPRESS

Public Utilities Commission of Ohio  
Docketing Division  
180 East Broad Street  
Columbus, Ohio 43215-3793

Re: Enclosed Document for Filing in Case No. 09-119-EL-AEC

Dear Sir or Madam:

Enclosed please find an original and seven (7) copies of the revised and executed Power Agreement between Ormet Primary Aluminum Corporation ("Ormet") and Ohio Power Company and Columbus Southern Power Company (collectively "AEP Ohio") in Case No. 09-119-EL-AEC. Also enclosed are 8 copies of a redline showing revisions to the proposed contract as filed by Ormet with its amended application on April 10, 2009. One additional copy of each is enclosed to be date-stamped and returned to me in the enclosed, self-addressed Federal Express envelope.

The attached revised Power Agreement is submitted in compliance with the Commission's July 15, 2009 Order and Opinion in Case No. 09-119/EL-AEC.

Thank you for your assistance in this matter. If you have any questions please contact me at the telephone number above.

Sincerely,

*Emma F. Hand*  
-206 for

Emma F. Hand

Enclosures

This is to certify that the images appearing are an accurate and complete reproduction of a case file document delivered in the regular course of business.  
Technician Jim Date Processed SEP 18 2009

### **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing filing has been served upon the below-named persons via regular U.S. Mail Service, postage prepaid, this 17<sup>th</sup> day of September, 2009.

*Emma F. Hand*

Emma F. Hand - *DOB for*  
Attorney for Ormet Primary Aluminum Corporation

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Original

**POWER AGREEMENT**

**between**

**ORMET PRIMARY ALUMINUM CORPORATION**

**and**

**OHIO POWER COMPANY**

**and**

**COLUMBUS SOUTHERN POWER COMPANY**

**POWER AGREEMENT**

**between**

**ORMET PRIMARY ALUMINUM CORPORATION**

**and**

**OHIO POWER COMPANY**

**and**

**COLUMBUS SOUTHERN POWER COMPANY**

This Power Agreement is entered into on September 16, 2009, between Ormet Primary Aluminum Corporation ("Ormet"), a Delaware Corporation, and Ohio Power Company ("Ohio Power") and Columbus Southern Power Company ("Columbus Southern") (collectively "AEP Ohio").

WHEREAS Ormet owns an aluminum reduction facility at Hannibal, Ohio that when at full operation (1) has approximately 1,000 employees with wages totaling approximately \$56,000,000 per year; (2) covers approximately 7,000 of its workers', retirees', and family members' health care, at a cost of more than \$16,000,000 per year; (3) pays approximately \$300,000 annually in taxes to Monroe County and its School District; and (4) purchases approximately \$15,000,000 to \$20,000,000 per year in goods and services in the Ohio Valley;

WHEREAS Ohio Power and Columbus Southern are electric utilities providing electric service to customers in the State of Ohio;

WHEREAS Ormet and AEP Ohio were parties to a Stipulation dated November 8, 2006, as amended ("2006 Stipulation"), under which AEP Ohio provided electric energy to Ormet's facilities at Hannibal, Ohio, which stipulation by its own terms was scheduled to expire on December 31, 2008;

WHEREAS in light of the scheduled expiration date of the 2006 Stipulation and the fact that AEP Ohio's proposed Electric Security Plan ("ESP") filing had not yet been approved by the Commission as of January 1, 2009, the Parties entered into an Interim Agreement approved by the Commission on January 7, 2009 in Case Nos. 08-1338-EL-AAM and 08-1339-EL-UNC. That Interim Agreement provides for service from AEP Ohio to Ormet until the effective date of new AEP Ohio approved tariffs based on a Commission ruling on the Companies' ESP application (*i.e.* if the Commission adopts the ESP as proposed or if the Companies accept any modifications made to the ESP by the Commission) and the effective date of a new special arrangement between AEP Ohio and Ormet subsequently approved by the Commission;

WHEREAS under Section 4905.31 of the Ohio Revised Code, a utility and a customer may enter into any financial device practicable or advantageous to the parties interested, including a device to recover costs incurred, including revenues foregone, in conjunction with any economic development and job retention program of the utility;

WHEREAS under Section 4901:1-38-05 of the Ohio Administrative Code ("OAC"), a customer may apply to the Commission for approval of a unique arrangement with the electric utility;

WHEREAS the cost of electricity represents almost one third of Ormet's costs and Ormet asserts it cannot operate unless it can obtain electricity below a certain price relative to the price at which it can sell its output;

WHEREAS Ormet has sold forward its metal production for most of 2009 to secure revenue and thus financing for its operations;

WHEREAS Ormet desires to enter into a power agreement that will assure that it has sufficient cash flow to sustain its operations at the Hannibal Facilities and to pay its required legacy costs for 2010 to 2018; and

WHEREAS Ormet desires to enter into a new power agreement pursuant to Section 4905.31 of the Ohio Revised Code and Section 4901:1-38-05 of the OAC in order to ensure that Ormet is able to continue operations at its Hannibal Facilities;

WHEREAS the Commission on July 15, 2009 issued an *Opinion and Order* in Case No. 09-119-EL-AEC requiring Ormet and AEP to file an executed Power Agreement that conforms to the modifications to Ormet's proposed power agreement ordered by the Commission;

NOW, THEREFORE, Ormet and AEP Ohio set forth their agreement for electric service at the Hannibal Facilities as follows:

#### ARTICLE ONE. DEFINITIONS

1.01 AEP Ohio Tariff Rate means the applicable tariff and riders, defined in terms of \$/MWh, as approved from time to time by the Commission for the total cost of energy delivered, including all generation, distribution, transmission, customer and rider charges, existing and implemented during the term of this Power Agreement, that would otherwise be applicable to Ormet, but excluding any charges or credits that may result pursuant to Article Eleven or Twelve. For example, at the outset of this Power Agreement, the applicable tariff would be equal to (a) the amount Ormet would pay if 50 percent of its load were billed based on the Ohio Power Company Schedule GS-4 Transmission Voltage Service, presently found at Original Sheet No. 24-1, *et seq.* of P.U.C.O. No. 19 and applicable riders, and 50 percent of its load were billed based on the Columbus Southern Power Company Schedule GS-4 Service, presently found at Original Sheet No. 24-1, *et seq.* of P.U.C.O. No. 7 and applicable riders, divided by (b) the

metered energy billing determinant for the billing month. Notwithstanding any other provision of this Power Agreement, Ormet will be responsible for paying the KWH Tax through self-assessment.

1.02 Annual LME Price is a load-weighted average of the Monthly LME Prices calculated by dividing (a) the sum of the product for each month in the year of (i) the Monthly LME Price and (ii) the metered energy billing determinant, by (b) the sum of the metered energy billing determinant for each month in the year.

1.03 Annual Ormet Rate means the rate in \$/MWh on a delivered basis as calculated in accordance with Section 5.06, 5.07, 5.08 and 5.09. The Annual Ormet Rate includes all generation, distribution, transmission, customer and rider charges, existing and implemented during the term of this Power Agreement, that would otherwise be applicable to Ormet, but excludes any charges or credits that may result pursuant to Article Eleven or Twelve. Notwithstanding any other provision of this Power Agreement, Ormet will be responsible for paying the KWH Tax through self-assessment.

1.04 Annual Target Price. In a calendar year where the AEP Ohio Tariff Rate was modified the Annual Target Price means a load-weighted average of the Target Prices calculated by dividing (a) the sum of the product for each period to which different AEP Ohio Tariff Rates applied and (i) the Target Price and (ii) the metered energy billing determinant for that period, by (b) the sum of the metered energy billing determinant for each period. In years where there is no modification of the AEP Ohio Tariff Rate over the course of the calendar year, the Annual Target Price would equal the Target Price.

1.05 Business Day means any day except a Saturday, Sunday or Federal Reserve Bank holiday. A Business Day shall open at 8:00 am and close at 5:00 pm local time for the relevant Party's place of business.

1.06 Commission means the Public Utilities Commission of Ohio.

1.07 Delta Revenue means all revenue which would be recoverable from Ormet under the AEP Ohio Tariff Rate, but for this Power Agreement, foregone by AEP Ohio as a result of the provisions of the Power Agreement, including as a result of an Event of Default by Ormet of this Power Agreement. Because Ormet has committed to pay the KWH Tax under this Power Agreement through self-assessment, such amounts will not be included in the Delta Revenue.

1.08 Delivery Point means the interconnection of AEP's two double-circuit 138 KV steel tower transmission lines in Ohio Township, Monroe County, Ohio at Tower 39 on double-circuit Line #1 and at Tower 38 on double-circuit Line # 2.

1.09 Defaulting Party shall have the meaning set forth in Section 8.01.

1.10 Event of Default shall have the meaning set forth in Section 8.01.

1.11 Force Majeure means an event or circumstance which prevents one Party from performing its obligations under this Power Agreement, which event or circumstance was not reasonably anticipated, which is not within the reasonable control of, or the result of the negligence of the claiming Party, including, but not limited to, the following: (i) physical events such as acts of God, landslides, lightning, earthquakes, fires, storms or storm warnings, such as hurricanes resulting in evacuation of the affected area, floods, washouts, explosions, breakage or accident or necessity of repairs to machinery or equipment; (ii) weather related events affecting an entire geographic region; (iii) acts of others such as strikes, lockouts or other industrial disturbances, riots, sabotage, insurrections or wars, or acts of terror; and (iv) governmental

actions such as necessity for compliance with any court order, law, statute, ordinance, regulation, or policy having the effect of law promulgated by a governmental authority having jurisdiction.

1.12 Hannibal Facilities means the aluminum reduction facility that, as of the date of this Power Agreement, is owned and operated by Ormet in Hannibal, Ohio.

1.13 Indexed Rate means the rate schedule in \$/MWh Ormet could pay that would produce sufficient cash flow to sustain its operations at the Hannibal Facilities and to pay its required legacy costs, depending upon the Annual LME Price of aluminum. The Indexed Rate schedule will be submitted to the Commission by Ormet in accordance with Section 5.03.

1.14 KWH Tax means the Ohio kWh tax associated with Ormet's consumption of electricity normally accounted for in AEP Ohio's KWH Tax Riders presently found at Original Sheet No. 62-1 of both P.U.C.O. No. 19 and P.U.C.O. No. 7. Under this Power Agreement Ormet shall pay the KWH Tax applicable to Ormet through self-assessment.

1.15 Metering Point shall mean the Kammer substation owned and operated by Ohio Power.

1.16 Monthly LME Price means the simple monthly average of the daily cash settlement price in \$/Tonne for high grade aluminum as quoted on the London Metals Exchange and as published by Reuters. If the London Metals Exchange or Reuters experiences a disruption that causes the daily cash settlement price not to be published, or ceases to publish such price, the Parties shall work in good faith to agree upon a suitable replacement index or price source. Once the Parties have reached agreement upon a suitable replacement index, the Parties' decision shall be filed with the Commission.

1.17 Monthly Ormet Rate means the monthly rate in \$/MWh on a delivered basis as calculated in accordance with Section 5.04, 5.05, 5.08 and 5.09. The Monthly Ormet Rate

includes all generation, distribution, transmission, customer and rider charges, existing and implemented during the term of this Power Agreement, that would otherwise be applicable to Ormet, but excludes any charges or credits that may result pursuant to Articles Eleven or Twelve. Notwithstanding any other provision of this Power Agreement, Ormet will be responsible for paying the KWH Tax through self-assessment.

1.18 Non-Defaulting Party shall have the meaning set forth in Section 8.02.

1.19 Party or Parties means AEP Ohio and/or Ormet.

1.20 Performance Assurance means collateral in the form of either cash held in escrow, letter(s) of credit or other security acceptable to the Party to whom it is offered.

1.21 POLR means the provider of last resort under the AEP Ohio tariffs.

1.22 Ramp-Up Period means the period of time during which Ormet is actively restoring the Hannibal Facilities operations, with the intent of restoring operations to at least four potlines, following any shutdown of all or part of the Hannibal Facilities.

1.23 Target Price means the LME Price in \$/Tonne at which Ormet could afford to pay the AEP Ohio Tariff Rate and still maintain sufficient cash flow to sustain its operations at the Hannibal Facilities and to pay its required legacy costs. The Target Price will be set annually in the schedule submitted to the Commission by Ormet pursuant to Section 5.03.

1.24 Terms and Conditions of Service means the Terms and Conditions of Service contained within the Ohio Power Company tariff for bundled retail electric service, P.U.C.O. No. 19 as of the date of filing of this Power Agreement, or any successor tariff as approved from time to time by the Commission.

1.25 Tonne means a metric ton equal to 1,000 kilograms.

ARTICLE TWO.  
SCOPE AND TERM

2.01 During the term of this Power Agreement, 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, subject to the Terms and Conditions of Service, except as otherwise set forth herein. In the event the Terms and Conditions of Service conflict with the terms and conditions set forth herein, the terms and conditions set forth in this Power Agreement shall be controlling.

2.02 Term: This Power Agreement shall be effective from the filing date of this executed contract through December 31, 2018, subject to Article Three.

2.03 Section 2.02 notwithstanding, the Parties agree that the Commission may, upon petition or *sua sponte*, require modification of this Power Agreement upon a finding that the rates produced under this Power Agreement are no longer just and reasonable. The Parties further agree that, subject to Section 3.01, such modification (i) may not be effective earlier than January 1, 2016 unless the cumulative net discount from the AEP Ohio Tariff Rate exceeds 50 percent of the amount Ormet would have been required to pay under the AEP Ohio Tariff Rate and (ii) shall not go into effect between the Parties until the later of the beginning of the next calendar year or 120 days.

ARTICLE THREE.  
EARLY TERMINATION

3.01 Either Party may terminate this Power Agreement (a) in an Event of Default, as specified in Section 8.01; (b) if the Commission rejects or requires a materially adverse modification of a schedule submitted by Ormet pursuant to Section 5.03 of this Power Agreement; (c) if the Commission requires any modification to this Power Agreement that is materially adverse to that Party (as determined in the sole discretion of the relevant Party); or (d) if the Commission, in any order, whether specifically modifying this Power Agreement or

otherwise, limits AEP Ohio's recovery of Delta Revenues associated with this Power Agreement in a manner more adverse than the July 15, 2009 Opinion and Order in Case No. 09-119-EL-AEC. Except as provided in Sections 3.02, 3.04, and 8.02, or as agreed to by the Parties in writing, such Early Termination can occur only upon ninety (90) days written notice.

3.02 Notwithstanding Section 3.01, in the event that Ormet determines there may be a need to shut down the Hannibal Facilities, it shall timely provide AEP Ohio with a copy of the notice required to be issued in such circumstances under the Worker Adjustment and Retraining Notification Act (29 U.S.C. 2101, *et seq.*) ("WARN Notice"). Should Ormet subsequently shut down the Hannibal Facilities, Ormet may terminate the Power Agreement upon twelve months notice. The Power Agreement shall in any event terminate 24 months from the date of shut down, unless, prior to the expiration of the 24-month period, Ormet is in a Ramp-Up Period.

3.03 Upon such Early Termination the Party seeking Early Termination shall determine a termination payment by netting all amounts then owing to the Party seeking termination against all amounts owing to the other Party under this Power Agreement. The Party seeking termination shall give written notice to the other Party of the amount of the termination payment and whether the payment is due to or due from the Party seeking termination. The notice shall include a written statement explaining in reasonable detail the calculation of the termination payment. The termination payment shall be made by the Party that owes it within 2 (two) Business Days of the receipt of such notice. The Party not seeking termination may dispute the calculation of the termination payment in whole or in part, by providing to the Party seeking termination a detailed written explanation of the basis for such dispute, provided, however, that the Party from whom termination payment is due shall first pay any non-disputed amount and offer Performance Assurance for the other Party. The only payments that may be

used by Ormet to offset termination payments owing to AEP Ohio are payments resulting from the True-Up calculation under Section 6.02, the Indemnification provision (Section 13.06), or billing/metering errors.

3.04 In the event that Ormet does not begin to reduce the amount of the accumulated deferrals and carrying charges resulting from this Power Agreement, through the payment of above-tariff rates, pursuant to the terms of this Power Agreement, by April 1, 2012, the Commission may modify this Power Agreement, up to and including termination of this Power Agreement. The crediting of any POLR charges by AEP Ohio in the form of delta revenue credits shall not constitute the payment of above-tariff rates by Ormet for purposes of this provision.

#### ARTICLE FOUR. POWER SUPPLY

4.01 AEP Ohio shall supply up to 540 MWh of electric energy in each hour at Ormet's Hannibal Facilities, subject to any reductions agreed to by the Parties in writing pursuant to Articles Eleven or Twelve of this Power Agreement. Ormet shall endeavor to give AEP twenty-one (21) days notice if it plans to increase or reduce its load by greater than 80 MW.

4.02 The electric energy delivered by AEP Ohio under this Power Agreement shall be delivered at the Delivery Point.

#### ARTICLE FIVE. COMPENSATION

5.01 For the calendar year 2009: Upon the effective date of this Power Agreement, AEP Ohio shall bill Ormet, for the balance of 2009, at a rate which, except as described in section 5.02, for all of calendar year 2009, averages \$38.00/MWh.

5.02 For the calendar year 2009, the Ormet rate shall average \$35.00/MWh for the periods when Ormet curtailed production to between the equivalent of 4.6 potlines (810 pots )

and the equivalent of 4 potlines (688 pots), and \$34.00/MWh for the periods when Ormet curtailed production to the equivalent of 4 potlines (less than 688 pots but more than 500). The \$35.00/MWh rate and \$34.00/MWh rate are contingent upon Ormet maintaining employment levels at 900 employees for calendar year 2009.

5.03 For each year of the 2010 through 2018 term, Ormet shall prepare a schedule showing the Indexed Rate and the Target Price. The schedules for calendar years 2010 and 2011 are attached to this Power Agreement as Schedules A and B. Ormet shall have the right to submit to the Commission revised schedules for 2010 and 2011, no later than October 1, 2009 and 2010, respectively. Beginning in 2011, Ormet will submit a schedule no later than October 1 of each year for Commission approval for the following calendar year. In the event that the AEP Ohio Tariff Rate is modified during any calendar year, Ormet may submit a revised schedule to the Commission to reflect the changed AEP Ohio Tariff Rate. The Commission may require an independent third-party review at Ormet's expense of any schedule submitted. In the event that a proposed schedule has not been approved by the Commission prior to the proposed effective date of the schedule, the existing schedule shall remain in effect until the new schedule is approved. Upon approval by the Commission, the new schedule shall then go into effect retroactively to the proposed effective date of the schedule.

5.04 The Monthly Ormet Rate for the calendar years 2010 and 2011 shall be determined as follows (and as further modified in Sections 5.08 and 5.09):

- (a) When the Monthly LME Price is less than or equal to the Target Price, the Monthly Ormet Rate shall equal the Indexed Rate.

- (b) When the Monthly LME Price is greater than the Target Price but not more than \$300/Tonne above the Target Price, the Monthly Ormet Rate shall equal 102 percent of the AEP Ohio Tariff Rate.
- (c) When the Monthly LME Price is greater than the sum of \$300/Tonne plus the Target Price, the Monthly Ormet Rate shall equal 105 percent AEP Ohio Tariff Rate.

5.05 The Monthly Ormet Rate for the years 2012 through 2018 shall be determined as follows (and as further modified in Sections 5.08 and 5.09):

- (a) When the Monthly LME Price is less than or equal to the Target Price, the Monthly Ormet Rate shall equal the Indexed Rate.
- (b) When the Monthly LME Price is greater than the Target Price but not more than \$300/Tonne above the Target Price, the Monthly Ormet Rate shall equal 104 percent of the AEP Ohio Tariff Rate.
- (c) When the Monthly LME Price is greater than the sum of \$300/Tonne plus the Target Price, the Monthly Ormet Rate shall equal 108 percent AEP Ohio Tariff Rate.

5.06 The Annual Ormet Rate for the years 2010 through 2011 shall be determined as follows (and as further modified in Sections 5.08 and 5.09):

- (a) When the Annual LME Price is less than or equal to the Annual Target Price, the Annual Ormet Rate shall equal the Indexed Rate.
- (b) When the Annual LME Price is greater than the Annual Target Price but not more than \$300/Tonne above the Annual Target Price, the

Annual Ormet Rate shall equal 102 percent of the AEP Ohio Tariff Rate.

- (c) When the Annual LME Price is greater than the sum of \$300/Tonne plus the Annual Target Price, the Annual Ormet Rate shall equal 105 percent of the AEP Ohio Tariff Rate.

5.07 The Annual Ormet Rate for the years 2012 through 2018 shall be determined as follows, and as further modified in Sections 5.08 and 5.09:

- (a) When the Annual LME Price is less than or equal to the Annual Target Price, the Annual Ormet Rate shall equal the Indexed Rate.
- (b) When the Annual LME Price is greater than the Annual Target Price but not more than \$300/Tonne above the Annual Target Price, the Annual Ormet Rate shall equal 104 percent of the AEP Ohio Tariff Rate.
- (c) When the Annual LME Price is greater than the sum of \$300/Tonne plus the Annual Target Price, the Annual Ormet Rate shall equal 108 percent of the AEP Ohio Tariff Rate.

5.08 Maximum Rate Discount:

- (a) The maximum monthly discount from the AEP Ohio Tariff Rate to which Ormet is entitled as defined in Sections 5.04 and 5.05 shall be the greater of (i) the maximum annual discount as defined in this section and Section 5.09 times 12.5% or (ii) the unused maximum annual discount divided by the remaining months in the calendar year. Nonetheless, the monthly discount may never exceed the monthly AEP

Ohio Tariff Rate. If the annual discount is consumed prior to the end of the calendar year, Ormet shall pay the full AEP Ohio Tariff Rate for the remaining months of the year.

(b) The maximum annual discount from the AEP Ohio Tariff Rate to which Ormet is entitled, as calculated by aggregating the Delta Revenue amounts for each month in the applicable year under Sections 5.03 through 5.06, shall be as follows and as further defined in Section 5.08:

- (1) For calendar years 2010 and 2011, the maximum discount from the AEP Ohio Tariff Rate to be received by Ormet will be \$60 million per year.
- (2) For calendar year 2012, the maximum discount from the AEP Ohio Tariff Rate to be received by Ormet shall be \$54 million.
- (3) For calendar years 2013 through 2018, the maximum discount from the AEP Ohio Tariff Rate to be received by Ormet shall be reduced each year by \$10 million, until the discount phases out completely for calendar year 2018, except as otherwise specified in Section 5.08(b)(4).
- (4) Notwithstanding Section 5.08(b)(3), in calendar years 2013 through 2018, Ormet may elect to use, in the current year, any unused portion of the maximum discount from a previous year, determined by comparing the aggregate annual discount to the maximum discount permitted according to this Section 5.08.

Ormet shall make this election by providing written notice to AEP-Ohio and by filing such notice at the Commission in Case No. 09-119-EL-AEC. The adjusted maximum discount shall not exceed \$54 million in any year between 2013 and 2018.

5.09 The Maximum Rate Discount defined in Section 5.08 above shall be further modified as follows based on the number of full-time employees at the Hannibal Facilities:

- (a) For calendar years 2010 through 2018, Ormet will be required to provide a report by the third business day of each month to Commission Staff and AEP Ohio detailing employment levels for the prior month.
- (b) If Ormet's average employment level in any month is below 650 full-time employees by at least 50 employees, the Maximum Rate Discount for the calendar year shall be reduced by one-twelfth of \$10 million for each 50 employees below 650 for each month such reduced employment is applicable. This reduction would be in addition to the yearly phase-out of the discount in Section 5.08.

#### ARTICLE SIX. BILLINGS AND PAYMENT

6.01 Monthly Billing: Monthly billings to Ormet shall equal the product of (i) the Monthly Ormet Rate (as defined in Sections 5.04, 5.05, 5.08 and 5.09) and (ii) the metered energy billing determinant for the billing month. Ormet shall be obligated to pay only for electric energy it consumes, as determined by the metered energy billing determinants.

$$MB = (MOR \times MBD)$$

Where:

MB = monthly billing (\$)

MOR = Monthly Ormet Rate (\$/MWh)

MBD = metered energy billing determinant (MWh)

#### 6.02 Annual True-Up

- (a) In February of 2010, AEP Ohio shall calculate a true-up value for calendar year 2009. The true-up value shall be equal to the difference between (i) the total billings made to Ormet under this Power Agreement in 2009 and (ii) the billings due from Ormet under Sections 5.01 and 5.02, given Ormet's actual production levels and the actual metered energy billing determinants in each month of 2009.
- (b) Beginning in 2011, each February, AEP Ohio shall calculate a true-up value for the prior year. Such true-up value shall be equal to the difference between (i) the total billings made to Ormet in the prior year in accordance with Section 6.01; and (ii) the greater of (a) the product of the Annual Ormet Rate and the actual metered energy billing determinants for the entire calendar year, and (b) the AEP Ohio Tariff Rate times the actual metered energy billing determinants for the entire calendar year, less the Maximum Discount determined pursuant to Sections 5.08 and 5.09.

$T = B - \text{greater of } (AOR \times AB) \text{ or } (AEP \text{ Ohio Tariff Rate} \times AB) \text{ less the Maximum Discount}$

#### 6.03 Where:

T = true-up value (\$)

B = total billings to Ormet during the year (\$)

AOR = Annual Ormet Rate (\$/MWh)

AB = actual metered energy billing determinants for Ormet during the year (MWh)

If the true-up calculation yields a positive value, it shall be reflected as a credit on Ormet's bill that shall be divided into twelve equal parts and billed over the next twelve (12) consecutive months. If the true-up calculation yields a negative value, it shall be reflected as a surcharge on Ormet's bill that shall be divided into twelve equal parts and billed over the next twelve (12) consecutive months. The true-up for calendar year 2018 shall be billed or refunded in a lump sum or by any other method upon which the Parties mutually agree. If the Parties mutually agree, they may voluntarily perform a true-up prior to the end of the calendar year for that portion of the year for which LME Prices and actual year-to-date metered billing determinants are available at the time of the true-up.

#### 6.04 Payment

- (a) Ormet shall pay its monthly bill in accordance with the Terms and Conditions of Service. Ormet shall not be required to provide a deposit or pay in advance. This provision is intended to increase Ormet's cash flow and thereby allow Ormet to increase the Indexed Rate reflected in Ormet's schedule, thus reducing the Delta Revenue. The Parties agree that these payment terms are conditioned upon a Commission order that provides AEP Ohio recovery of Delta Revenue should there be an Event of Default by Ormet.
- (b) Notwithstanding Section 6.04(a), in the event that Ormet issues a WARN notice indicating its intent to shut down all potlines at the Hannibal Facilities, Ormet shall adjust its payments such that it

prepays for its electricity on a weekly basis until either (1) the WARN Notice expires without the corresponding shut down or (2) Ormet enters a Ramp-Up period. There would not be a deposit required.

**ARTICLE SEVEN.  
CHARACTER OF SERVICE AND METERING**

7.01 All electric energy delivered by AEP Ohio under this Power Agreement will be alternating current at approximately 138,000 volts, three-wire, three phase, 60 HZ delivered at the Delivery Point.

7.02 Each Party shall exercise reasonable care to maintain and operate, or cause to be maintained and operated, their respective facilities related to the receipt and transmission of power in accordance with good utility practice.

7.03 Electric energy delivered by AEP Ohio under this Power Agreement shall be metered at the Metering Point.

**ARTICLE EIGHT.  
DEFAULT**

8.01 An "Event of Default" shall mean, with respect to a Party (the "Defaulting Party"), the occurrence of any of the following:

- (a) Failure to make a payment within two (2) Business Days of when it is due for reasons other than the occurrence of a force majeure event that precludes Ormet's ability to process its payment;
- (b) Failure by AEP Ohio to deliver the electric energy required under this Power Agreement, for reasons other than the occurrence of a Force Majeure event;
- (c) Such Party assigns this Power Agreement as permitted under Section 13.04 and the assignee fails to assume all the obligations of such Party

under this Agreement to which the assignor or its predecessor was bound by operation of law or pursuant to an agreement reasonably satisfactory to the other Party;

- (d) Any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated; or
- (e) Any failure to perform any other material covenant or obligation set forth in this Power Agreement if such failure is not remedied within three (3) Business Days after written notice.

8.02 If an Event of Default with respect to a Defaulting Party shall have occurred, the other Party (the "Non-Defaulting Party") has the right, but not the obligation, to terminate this Power Agreement upon three (3) Business Days written notice if the Default is not cured. In the event of Default by Ormet, AEP Ohio has the right to terminate service to Ormet three (3) Business Days after providing written notice of termination to Ormet. Either Party may cure the Event of Default within three (3) Business Days of receipt of the written notice of Default from the Non-Defaulting Party.

#### ARTICLE NINE. REGULATORY AUTHORITIES

9.01 The Parties specifically recognize that this Power Agreement is subject to approval by and ongoing jurisdiction of the Commission. To that end, this Power Agreement is subject to modification to reflect any Commission order in Case No. 09-119-EL-AEC or expressly requiring or permitting modification of this contract. Any such modification shall be submitted to the Commission in writing.

9.02 Notwithstanding Section 9.01, this Power Agreement and its continued effectiveness is expressly conditioned upon approval by the Commission, without change or condition that is more adverse to either Party (as determined in the sole discretion of the relevant Party) than the July 15, 2009 Opinion and Order in Case No. 09-119-EL-AEC.

#### ARTICLE TEN. FORCE MAJEURE

10.01 Except with regard to a Party's obligation to make payment(s) then due or becoming due to the other Party, neither Party shall be liable to the other for failure to perform its obligations under this Power Agreement, to the extent such failure was caused by Force Majeure. The Party not claiming Force Majeure shall not be required to perform or resume performance of its obligations to the Party claiming Force Majeure corresponding to the obligations of the Party claiming Force Majeure excused by Force Majeure.

10.02 The Party claiming Force Majeure shall make reasonable efforts to avoid the adverse impacts of a Force Majeure and to resolve the event or occurrence once it has occurred in order to resume performance; provided, however, that the settlement of strikes, lockouts or other industrial disturbances shall be within the sole discretion of the Party experiencing such disturbance.

10.03 Neither Party shall be entitled to the benefit of the provisions of Force Majeure to the extent performance is affected by any or all of the following circumstances: (i) the Party claiming Force Majeure failed to remedy the condition and to resume the performance of such covenants or obligations with reasonable dispatch; or (ii) economic hardship, to include, without limitation, AEP Ohio's ability to sell power at a higher or more advantageous price than the price set forth in this Power Agreement, Ormet's ability to purchase power at a lower or more advantageous price than the price set forth in this Power Agreement; or (iii) the loss or failure of

AEP Ohio's power supply where AEP Ohio fails to procure a replacement power supply in a manner consistent with good utility practice. If sufficient power supply to serve this load cannot be procured, in a manner consistent with good utility practice, then AEP Ohio's ability to serve Ormet will be subject to the requirements of Section 4901:5-19, Ohio Administrative Code, and AEP Ohio's emergency plan required by Section 4901:1-10-08, Ohio Administrative Code and will be considered a Force Majeure Event.

10.04 Notwithstanding anything to the contrary herein, the Force Majeure event as claimed by a Party must have actually prevented or restricted that Party from performing the subject obligations under the Power Agreement and the particular affected transactions at the Delivery Point. Without limiting the generality of the foregoing, if the Force Majeure event partially interrupts or curtails one Party from performing its delivery or receipt obligations under a transaction at the Delivery Point, then the obligations of such Party will be reduced only in direct proportion to the effect that the Force Majeure event has had on the ability of the restrained Party to meet all of its firm delivery or receipt obligations at such Delivery Point.

10.05 The Party claiming Force Majeure must provide notice to the other Party. Initial notice may be given orally; however, written notice with reasonable details of the event or occurrence is required as soon as reasonably possible. Upon providing written notice of Force Majeure to the other Party, the Party claiming Force Majeure will be relieved of its obligation, from the onset of the Force Majeure event, to make or accept delivery of power, as applicable, to the extent and for the duration of Force Majeure, and neither Party shall be deemed to have failed in such obligations to the other during such occurrence or event.

**ARTICLE ELEVEN.  
ENERGY EFFICIENCY**

11.01 To the extent that Ormet has implemented or implements during the term of the Power Agreement energy efficiency measures in the normal course of its process improvement activities, such energy efficiency gains may be included by AEP Ohio in meeting its energy efficiency requirements.

11.02 To the extent that Ormet identifies potential energy efficiency projects that would require capital investment outside the normal course of its process improvements, it may inform AEP Ohio of such potential projects. If AEP Ohio and Ormet reach an agreement whereby Ormet undertakes such an energy efficiency project and commits the energy efficiency project for inclusion by AEP Ohio in meeting its energy efficiency requirements, the parties will then determine whether to amend this Power Agreement or develop a separate agreement to reflect such an agreement.

**ARTICLE TWELVE.  
DEMAND RESPONSE**

12.01 AEP Ohio and Ormet may from time to time evaluate demand response options to determine the extent to which Ormet can provide value to AEP Ohio by managing its load and the cost that such activities would impose on Ormet. If AEP Ohio and Ormet reach an agreement whereby Ormet undertakes such demand response activities at the request of AEP Ohio and commits those efforts for inclusion by AEP Ohio in meeting its peak demand reduction requirements, the parties will then determine whether to amend this Power Agreement or develop a separate agreement to reflect such an agreement.

ARTICLE THIRTEEN.  
GENERAL PROVISIONS

13.01 Right of Entry: Ormet shall grant to AEP Ohio throughout the term of this Power Agreement reasonable rights in or on Ormet property, including rights of ingress or egress reasonably necessary for AEP Ohio to fulfill its responsibilities under this Power Agreement for the installation, operation, maintenance, testing and replacement of facilities of AEP Ohio in or on Ormet's property, provided that AEP Ohio shall give Ormet reasonable notice prior to exercising those rights, and AEP Ohio shall not exercise such rights prior to approval by Ormet, which approval shall not be unreasonably withheld. In no event shall Ormet be held liable for any damage to any person or property resulting from the actions of AEP Ohio personnel while on Ormet's property, unless such damage is the result of gross negligence or willful misconduct on the part of Ormet.

13.02 Notice: All notices under this Power Agreement shall be in writing, and if to AEP Ohio, shall be sufficient in all respects if delivered in person to the President of Ohio Power Company or sent by registered mail addressed to the President at AEP Ohio, 850 Tech Center Drive, Gahanna, OH 43230, or to any person or at any subsequent address of which AEP Ohio may notify Ormet in writing; and if to Ormet, shall be sufficient in all respects if delivered in person to its President, Vice President or Secretary, or sent by registered mail addressed to Ormet at the Hannibal Reduction Division, P.O. Box 176, State Route 7, Hannibal, Ohio 43931, or to any person or at any subsequent address of which Ormet may notify AEP Ohio in writing.

13.03 Waiver: The failure of either Party to insist in any one or more instances upon strict performance of any of the provisions of this Power Agreement or to take advantage of any of its rights hereunder shall not be construed as a waiver of any such provision or the relinquishment of any such rights; but the same shall continue and remain in force and effect.

13.04 Assignment: This Power Agreement shall inure to the benefit of and be binding upon the Parties hereto and their respective successors and permitted assigns. In the event that Ormet consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets related to the Hannibal Facilities to another entity, this Power Agreement may be assigned to such entity. In the event that AEP Ohio or either Columbus Southern or Ohio Power consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its or their facilities required to serve Ormet to another entity, this Power Agreement shall be assigned to such entity. No other assignment of this Power Agreement may be made by either Party without the written consent of the other, which consent shall not be unreasonably withheld. At the time of any such assignment, the assignee must assume all the obligations of the assignor under this Power Agreement by operation of law or pursuant to an agreement reasonably satisfactory to the other Party. Any assignment in violation of this section is void.

13.05 Title: Title to and risk of loss related to the electric energy shall transfer from AEP Ohio to Ormet at the Delivery Point. AEP Ohio warrants that it will deliver to Ormet the quantity of electric energy free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any person arising prior to the Delivery Point.

13.06 Indemnification: To the extent permitted by law, each Party (the "Indemnifying Party") shall indemnify, defend and hold harmless the other Party and such Party's partners, directors, officers, employees, agents and representatives (collectively the "Indemnified Parties") from and against that portion of any claims, losses, liabilities or costs, including reasonable attorneys' fees and other costs of litigation, for third party property damage or personal injury, arising from or out of the Indemnifying Party's negligence and resulting from any event, circumstance, act or incident occurring on the Indemnifying Party's side of the Delivery Point,

except to the extent, as to any Indemnified Party, such claims are attributable to the gross negligence or willful misconduct of such Indemnified Party.

13.07 Representations and Warranties: On the effective date of this Power Agreement, each Party represents and warrants to the other Party that:

- (a) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;
- (b) it has all regulatory authorizations necessary for it to legally perform its obligations under this Power Agreement;
- (c) the execution, delivery and performance of this Power Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it;
- (d) this Power Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms, subject to any equitable defenses;
- (e) it is not bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming bankrupt;
- (f) there is not pending or, to its knowledge, threatened against it or any of its affiliates any legal proceedings that would materially adversely affect its ability to perform its obligations under this Power Agreement;

- (g) no Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Power Agreement;
- (h) it is acting for its own account, has made its own independent decision to enter into this Power Agreement and as to whether this Power Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding, and understands and accepts the terms, conditions and risks of this Power Agreement; and
- (i) it is a "forward contract merchant" within the meaning of the United States Bankruptcy Code.

13.08 Choice of Law: This Power Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the State of New York, without regard to principles of conflicts of law. Each Party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this Power Agreement.

13.09 Entire Agreement: This Power Agreement constitutes the entire agreement between the Parties related to the subject matter. This Power Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof. Except to the extent herein provided for, no

amendment or modification to this Power Agreement shall be enforceable unless reduced to writing and executed by both Parties. AEP Ohio agrees that if it seeks to amend or propose any tariff or rider that would be applicable to Ormet during the term of this Power Agreement, AEP Ohio shall provide timely notice to Ormet. Each Party further agrees that it will not assert, or defend itself, on the basis that any applicable tariff or proposed tariff or rider is inconsistent with this Power Agreement. This Power Agreement shall not impart any rights enforceable by any third Party (other than a permitted successor or assignee bound to this Agreement).

IN WITNESS WHEREOF, the Parties have caused this Power Agreement to be executed by their authorized officers as of the date first above written.

ORMET PRIMARY ALUMINUM CORPORATION

By   
Michael Tanchuk  
Chief Executive Officer

September 15, 2009

OHIO POWER COMPANY

By \_\_\_\_\_

President

COLUMBUS SOUTHERN POWER COMPANY

By \_\_\_\_\_

President

IN WITNESS WHEREOF, the Parties have caused this Power Agreement to be executed by their authorized officers as of the date first above written.

ORMET PRIMARY ALUMINUM  
CORPORATION

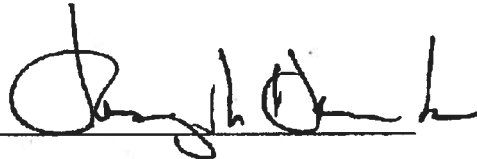
By \_\_\_\_\_  
Michael Tanchuk  
Chief Executive Officer

OHIO POWER COMPANY

By 

President

COLUMBUS SOUTHERN POWER  
COMPANY

By 

President

# Exhibit C

**ADDENDUM TO CONTRACT FOR ELECTRICAL SERVICE  
DISCONNECT AND FACILITIES CONDITIONS AGREEMENT  
Made a Part of Contract for Electric Service Dated July 9, 2007**

**This Contract** entered into this 9th day of July 2007, by and between Columbus Southern Power Company and Ohio Power Company, hereafter called AEP Ohio, and Hannibal Real Estate, LLC, 711 Westchester Avenue, White Plains, New York 10604, hereafter called Hannibal Real Estate, and Ormet Primary Aluminum Corporation, 1233 Main Street, Wheeling, West Virginia 26003, hereafter called Ormet.

Because the 138 kV service to Hannibal Real Estate from AEP Ohio feeds through Ormet's 138 kV and 13.2 kV electric system facilities as shown in the attached drawing, a disconnect agreement is required to help ensure the continuity of service to each of these customers should the disconnection of power to the other customer be deemed necessary by AEP Ohio.

In the event that AEP Ohio has the right under applicable law to disconnect power to Hannibal Real Estate while keeping Ormet energized, Ormet and Hannibal Real Estate agree to permit AEP Ohio personnel access to the property owned by Ormet or Hannibal Real Estate at Hannibal, Ohio to open and lock open 13.2 kV circuit breakers #3A and #3B, which feed through the 138 kV circuit breaker #700 in Ormet's main substation at Hannibal, Ohio. Should access to any of these circuit breakers located on Ormet's property be denied or become unavailable for any other reason to AEP Ohio personnel for the purpose of disconnecting service to Hannibal Real Estate, Ormet agrees to open these circuit breakers to disconnect power to Hannibal Real Estate immediately following notification by AEP Ohio to do so, unless undue safety conditions would prohibit such action. If Ormet fails to perform such disconnection activity, then AEP Ohio may proceed to disconnect electric service to both Hannibal Real Estate and Ormet via AEP Ohio's 138 kV circuit breakers located in its substation at the Kammer Power Plant. Under such circumstances, Ormet will relieve AEP Ohio of all obligations to provide electric service until safe access is granted to the circuit breakers identified previously in this paragraph.

In the event that AEP Ohio has the right under applicable law to disconnect power to Ormet while keeping Hannibal Real Estate energized, Ormet and Hannibal Real Estate agree to permit AEP Ohio personnel access to the property owned by Hannibal Real Estate or Ormet at Hannibal, Ohio to open and lock open 13.2 kV circuit breakers #1A, #2A, #4A, #1B, #2B, and #4B, which feed through 138 kV circuit breaker #700, 13.2 kV circuit breaker #20 which feeds through 138 kV circuit breaker #200, and 13.2 kV circuit breaker #60 which feeds through 138 kV circuit breaker #600 in Ormet's main substation. Under such circumstances, in addition to these 13.2 kV circuit breakers, the 138 kV circuit breakers #100, #300, #400, #500, #800, #900E, #900W, and TH100 in Ormet's main substation will be opened and locked open by AEP Ohio personnel. Should access to any of these circuit breakers located on Ormet's property be denied or become unavailable for any other reason to AEP Ohio personnel for the purpose of disconnecting service to Ormet, then AEP Ohio may proceed to disconnect electric service to both Hannibal Real Estate and Ormet via AEP Ohio's 138 kV circuit breakers located in its substation at the Kammer Power Plant. Under such circumstances, Hannibal Real Estate will relieve AEP Ohio of all obligations to provide electric service until safe access is granted to the circuit breakers identified previously in this paragraph.

This agreement also permits AEP Ohio personnel access to the property owned by Hannibal Real Estate or Ormet at Hannibal, Ohio to re-energize the same apparatus that AEP Ohio had previously de-energized. This agreement also permits AEP Ohio personnel access to this property for the purpose of reading and maintaining AEP Ohio meters and ancillary equipment.

**ADDENDUM TO CONTRACT FOR ELECTRICAL SERVICE  
DISCONNECT AND FACILITIES CONDITIONS AGREEMENT  
Made a Part of Contract for Electric Service Dated July 9, 2007**

Hannibal Real Estate will enter into an agreement with Ormet to utilize capacity on its 138 kV and 13.2 kV electric system facilities. Hannibal Real Estate and Ormet agree to allow AEP Ohio to review this document to ensure that it provides proper security for this type of service arrangement. AEP Ohio assumes no responsibility should any of Ormet's equipment that is utilized to provide service to Hannibal Real Estate fail to operate as designed or be unavailable for any reason. Should there be any electric service reliability issues affecting either Hannibal Real Estate or Ormet as a result of both Parties utilizing Ormet's electric system facilities, they will be addressed and mutually resolved between Hannibal Real Estate and Ormet. Furthermore, AEP Ohio shall be held harmless of any consequences of such reliability issues and shall have no obligations to compensate, mediate or resolve such issues. If the aforementioned agreement between Hannibal Real Estate and Ormet is terminated and Hannibal Real Estate is no longer provided service through Ormet's facilities, Hannibal Real Estate agrees to pay AEP Ohio, pursuant to AEP Ohio's Terms and Conditions of Service as then filed with the PUCO, all line extension charges required to provide service directly from AEP facilities, should Hannibal Real Estate desire to continue service.

Unless the Parties mutually agree otherwise, this Addendum shall be in effect for so long as the Electric Service Agreement dated ~~June 9, 2007~~ <sup>July 9, 2007</sup> between AEP Ohio and Hannibal Real Estate is in effect. The provisions under this Addendum are subject to revision should Hannibal Real Estate's or Ormet's Electric Service Agreement or shared electric system facilities be modified.

Columbus Southern Power Company  
Ohio Power Company

By: Mark A. Gundelfinger  
(Signature)  
Mark A. Gundelfinger  
(Printed Name)  
Title: Manager - Customer Services  
Date: 7/19/07

Hannibal Real Estate, LLC

By: [Signature]  
(Signature)  
JEFFREY A. HUMMEL  
(Printed Name)  
Title: MANAGING MEMBER  
Date: 7-10-07

Ormet Primary Aluminum Corporation

By: [Signature]  
(Signature)  
Thomas G. Temple  
(Printed Name)  
Title: V.P. Alumina & Engineering  
Date: 7/16/07

# Exhibit D

## **ELECTRIC ACCESS, USE AND EASEMENT AGREEMENT**

**THIS ELECTRIC ACCESS, USE AND EASEMENT AGREEMENT** ("Agreement"), is effective this 5th day of July, 2007, by and between **ORMET PRIMARY ALUMINUM CORPORATION, a Delaware corporation** (hereinafter "Grantor") and **HANNIBAL REAL ESTATE, LLC, a Delaware limited liability company** (hereinafter "Grantee").

### **WITNESSETH:**

**WHEREAS**, Grantor is the owner of certain real property in Monroe County, Ohio described on Exhibit A attached hereto and incorporated herein by reference (hereinafter "Grantor's Property"); and

**WHEREAS**, Grantee is the owner of certain real property described on Exhibit B attached hereto and incorporated herein by reference (hereinafter "Grantee's Property"), which is adjacent to Grantor's Property; and

**WHEREAS**, the parties acknowledge that the only currently practical source for electric power for Grantee's Property is through the electric lines and electric substation owned and maintained by Grantor and located on Grantor's Property, and Grantee desires easements for certain rights for the use of portions of Grantor's Property for the purposes set forth herein, and Grantor is willing to grant such easements to Grantee upon the terms and conditions set forth in this Agreement.

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor does hereby grant, bargain, sell, convey, transfer and confirm unto Grantee, its successors and assigns the following described easements upon the following terms and conditions:

1. **Use**. The rights and easements are granted for the following specific purposes:

(a) **Electrical Power Substation Easement**. Grantor grants to Grantee, its successors and assigns, a non-exclusive, irrevocable easement solely for the purposes of transmission of electrical power by Ohio Power Company or the current or any future supplier of electric power to Grantor's Property (collectively, the "Power Company"), and receipt thereof by Grantee through Grantor's existing transformers, switches, lines, wires, conduits and related facilities (including any replacements or substitutions thereof or therefor) into, upon, under or over Grantor's Property through and including Grantor's Electrical Power Substation located on Grantor's Property described in Exhibit "A" (the "Electrical Power Substation") and with such Electrical Power Substation Easement Area being more fully and specifically described on Exhibit "C" and depicted on Exhibit "D", attached hereto and incorporated herein by reference (the "Power Easement Area").

Nothing contained within the grant of this easement shall be construed as creating any rights in or for the benefit of the general public or any other party except as expressly set forth in this Agreement. In addition, nothing contained in this Agreement is intended or shall be construed to constitute an agreement by Grantor to sell or transmit electrical power to Grantee.

(b) **Access Easement**. Grantor grants to Grantee, its successors and assigns, a non-exclusive, irrevocable easement and right of way for pedestrian and motor vehicular traffic and depicted on Exhibit "E" (the "Access Easement"), solely for the purposes of ingress and egress by Grantee, its successors and assigns, and the agents and contractors of such party, to and from the Electrical Power Substation located on Grantor's Property solely for the purposes of maintaining and utilizing the equipment necessary for the receipt of electric power from the Power Company to and by Grantee and matters related thereto. Provided, however, that Grantee shall only use the Access Easement in the event of emergency or in such event as is necessary to maintain electric power at Grantee's Property, subject to and in accordance with the

terms of this Agreement. Provided, further that anyone entering the Property at Grantee's direction shall be properly trained and licensed as may be required by Grantor and any public authority having responsibility for the matters covered by this Agreement. The Power Easement Area and the Access Easement are sometimes hereinafter referred to together as the "Easement Premises".

Nothing contained within the grant of this easement shall be construed as creating any rights in or for the benefit of the general public or any other party except as expressly set forth in this Agreement.

2. **Duration.** The rights and easements granted hereunder shall continue in full force and effect in perpetuity unless earlier terminated by written agreement of the parties or their respective successors or assigns.

3. **Maintenance, Repair and Replacement.** Grantor shall use commercially reasonable efforts to maintain the Electrical Power Substation and electrical power lines within the Power Easement Area, or cause the same to be maintained, in good and workable condition; provided, that, Grantee shall promptly reimburse Grantor for the cost and expense of any maintenance, repairs or replacements necessary as a result of the negligence or intentional misconduct of Grantee, its agents or contractors. All maintenance, repair and replacement performed hereunder shall be performed in a good and workmanlike manner.

To the extent any maintenance and/or repairs are required to the Electrical Power Substation providing power to Grantee, including but not limited to, the repair, maintenance, or replacement of the revenue class meters installed therein, Grantee shall pay the cost for performing same.

Grantor and Grantee agree that the cost of maintenance and repairs to the Electrical Power Substation and equipment and machinery within the Power Easement Area and all replacements thereof shall be paid by Grantee in full or in part as follows:

(a) Grantee shall pay 100% of the costs associated with the machinery and equipment used solely for delivering power to Grantee.

(b) Grantee shall pay a percentage equal to 40% or the Grantee's Demand Share, whichever is greater, of the costs associated with the 40,000 KVA and 138/13.2KV transformer (the "Transformer"), used to deliver electricity.

(c) Grantee shall pay its prorated share of other maintenance and operation costs based on a demand apportionment ratio of electric usage between Grantor and Grantee calculated as follows: the ratio of the Maximum Peak Load (with "Maximum Peak Load" defined as "the single highest 30-minute integrated peak in kW as registered during any month by a 30-minute integrating demand meter") for Grantee to the sum of the Maximum Peak Loads for Grantee and Grantor, expressed as a percentage ("Grantee's Demand Share").

(d) Grantee shall pay Grantee's Demand Share of the fixed charges associated with the Electrical Power Substation.

Grantee's monthly share of the cost incurred as set forth herein, as reasonably estimated by Grantor, shall be due and payable monthly on the first day of each month. Within sixty (60) days after the end of each calendar year Grantor shall provide Grantee with an accounting of the actual amount that should have been due and payable by Grantee under this Agreement during such year. In the event such accounting reveals that Grantee has paid Grantor a greater sum than should have been paid under this Agreement, Grantor shall reimburse Grantee the difference within thirty (30) days and in the event such accounting reveals that Grantee has paid a lesser sum that should have been paid, then Grantee shall pay such difference to Grantor within thirty (30) days of receipt of billing of same.

Grantor shall have the sole and exclusive right to determine when and if to replace equipment in order to maintain existing capacity. In the event replacement is

necessary to insure existing capacity to both Grantor's and Grantee's properties, then Grantor shall pay the cost of such replacement (subject to proportionate reimbursement as provided in this sub-paragraph (d) above). If replacement is necessary to insure existing capacity to only Grantee's property, then Grantee shall pay for the cost of replacement. If replacement is necessary to insure existing capacity to only Grantor's property, the Grantor shall pay for the cost of replacement. In any event, Grantor shall be responsible for the design, acquisition and installation of such replacement equipment and Grantor shall be the owner of such equipment.

In the event replacement of equipment is proposed by Grantee for the purpose of capacity upgrades to Grantee, then such replacement shall be subject to the approval of Grantor in good faith and in its sole discretion. In such event, Grantor shall design, acquire and install the replacement equipment with the parties to mutually agree upon payment for such replacement equipment. In any event, ownership of such replacement equipment shall remain with Grantor.

4. **Metering.** Grantee shall enter into a separate agreement with the Power Company for the supply of electricity through the easements granted hereunder. Grantor shall not supply electrical power to Grantee. Grantee shall also make arrangements with the Power Company to install metering equipment on the 13.2KV feeder to Grantee's facility to enable the Power Company to accurately determine the amount to be billed for power usage to Grantee (the "Metering Equipment"). All costs associated with such metering and/or other arrangements between Grantee and the Power Company shall be the sole responsibility of Grantee. Grantee shall make all data received by Grantee from the Power Company, including but not limited to, any and all readings on the Power Company meter to Grantor.

5. **Payment for Electric Usage.** Grantee shall be solely responsible to pay the Power Company directly for any and all electricity used by Grantee at its facility.

6. **Curtailment.** In the event of curtailment of electric power by the Power Company to Grantor's Electrical Power Substation, Grantee shall reduce its operation to an emergency power usage only pending resolution of such curtailment. For purposes of this Paragraph 6, emergency power usage shall not include the operation of the rolling mill on Grantee's Property.

7. **Power Usage.** Grantee agrees to limit its power usage to a Maximum Peak Load of 16,000 KW, which is Grantor's good faith estimate of the sum equal to approximately 80% of the power utilized at the Rolling Mill site during the time period that the Rolling Mill facility was in operation.

Grantee understands and acknowledges that the current limitation on capacity of the Transformer is 40,000 KVA, which may restrict increases in Grantee's power usage. Grantee agrees not to install or connect any new load to the existing 40,000 KVA transformer that could exceed the agreed upon power usage without the consent of Ormet, which consent shall not be unreasonably withheld, but in any event subject to the first sentence of this Paragraph 7.

8. **Access to Power Company.** Pursuant to this Agreement, Grantor hereby grants to the Power Company, its successors and assigns, an easement within the Power Easement Area to install, maintain and access the Metering Equipment, and the right of ingress and egress over the Access Easement to access the Metering Equipment.

9. **Insurance.** So long as this Agreement remains in effect, each of Grantor and Grantee agrees to obtain, and shall thereafter continually maintain, at its respective sole cost and expense, Broad Form Commercial General Liability insurance, including, without limitation, personal injury and broad form property damage coverage against claims for personal injury and property damage on or about the Easement Premises attributable to the use of the Easement Premises subject to a combined single limit of not less than \$2,000,000 of personal injury or property damage as the result of any one occurrence. All such policy or policies of insurance shall name the other of Grantor or Grantee as an additional insured. Each party hereby waives any right of subrogation

which such party's insurer may have against the other party and such other party's officers, directors, agents, employees and contractors. Upon request of Grantor from time to time, Grantee shall provide evidence reasonably satisfactory to Grantor of Grantee's compliance with this Paragraph 9.

10. **Indemnity.**

(a) **By Grantor.** Grantor shall indemnify, defend (by counsel reasonably acceptable to Grantee), protect, and hold Grantee, Grantee's officers, directors, partners, members, managers, employees, authorized agents, contractors, visitors and invitees (collectively, "Grantee's Indemnified Parties"), harmless from and against all claims, liabilities, penalties, losses, damages, costs and expenses, claims or judgments (including, without limitation, attorneys' fees) in connection with or arising out of any injury to persons or damage to property occurring on the Easement Premises which is directly related to and proximately caused by Grantor or Grantor's Indemnified Parties, or arising from Grantor's use, maintenance, occupation or operation of the Easement Premises; provided, however that Grantor shall not indemnify Grantee for any injury or damage to the extent arising as the result of the negligence or willful misconduct of Grantee or Grantee's Indemnified Parties. Grantee need not have first paid any such claim in order to be defended or indemnified.

(b) **By Grantee.** Grantee shall indemnify, defend (by counsel reasonably acceptable to Grantor), protect, and hold Grantor, Grantor's officers, directors, partners, members, managers, employees, authorized agents, contractors, visitors and invitees (collectively, "Grantor's Indemnified Parties"), harmless from and against all claims, liabilities, penalties, losses, damages, costs and expenses, claims or judgments (including, without limitation, attorneys' fees) in connection with or arising out of any injury to persons or damage to property occurring on the Easement Premises which is directly related to and proximately caused by Grantee or Grantee's Indemnified Parties, or arising from Grantee's use, maintenance, occupation or operation of the Easement Premises; provided, however that Grantee shall not indemnify Grantor for any injury or damage to the extent arising as the result of the negligence or willful misconduct of Grantor or Grantor's Indemnified Parties. Grantor need not have first paid any such claim in order to be defended or indemnified.

(c) This Paragraph 10 shall survive the expiration and termination of this Agreement.

11. **Special Damages.** Neither party shall be liable to the other for any punitive, consequential, incidental, special or similar damages arising out of this Agreement unless such damages are caused by the intentional act of the party against whom damages are sought.

12. **Injunctive Relief.** The parties agree that the loss of electric power to the property owned by either party will cause irreparable harm. The parties agree that in the event either party takes any action that interferes with the provision of electric power to such other party contrary to the terms of this Agreement or pursuant to the agreement with the company providing electric power or otherwise as required by the company providing the electricity, that the party whose power has been interrupted shall have the right to injunctive relief if applicable to secure the restoration of such power.

13. **Covenants Running With the Land.** The covenants, easements, and agreements contained in this Agreement shall be appurtenant to, and run with, the land described herein unless earlier terminated by written agreement of the parties or their respective successors and assigns.

14. **Termination.** Grantee shall have the right to terminate this Agreement by written notice to Grantor no less than 180 days prior to the date that Grantee seeks to terminate the Agreement.

15. **Termination of Electric Service By THE POWER COMPANY.** In the event Grantor decides to terminate its relationship with the Power Company which is

then providing service to Grantor for the provision of power, Grantor agrees to provide Grantee with as much notice of such termination as is reasonably practicable but in any event no less than 180 days prior written notice. In such instance, Grantor will provide commercially reasonable assistance to Grantee in securing power from the same replacement source as Grantor or alternatively Grantor shall take such actions as will be reasonably practicable in enabling Grantee to continue to receive electric power from the Power Company with which Grantor is terminating its relationship.

16. **Notices.** All notices, demands, requests, consents, approvals and other instruments required or permitted to be given pursuant to the terms of this Agreement shall be in writing and shall be deemed to have been properly given if hand delivered, sent by a nationally-recognized overnight delivery service or sent by registered or certified mail, postage prepaid, (a) with respect to Grantor, addressed to:

(a) with respect to Grantor:

Ormet Primary Aluminum Corp.  
ATTN: Chief Financial Officer  
43840 State Route 7  
Hannibal, OH 43931

(b) with respect to Grantee:

Hannibal Real Estate, LLC  
ATTN: Jeffrey A. Himmel  
711 Westchester Avenue  
White Plains, New York 10604

Grantor and Grantee shall each have the right from time to time to specify as its address for purposes of this Agreement any other address in the United States of America upon giving of fifteen (15) days written notice thereof, similarly given, to the other party.

17. **Designation of Representative.** Each party shall designate to the other in writing the appropriate representative of such party for dealing with electrical issues provided for in this Agreement. In the event either party fails to provide written notice of the appropriate contact person, then the person designated as the party to receive notice in this Agreement shall be deemed such party's representative. Such party's representative shall be reasonably knowledgeable in the technical issues associated with the operation and maintenance of Grantor's Electrical Power Substation and the delivery of electricity to Grantee.

18. **Assignment.** Either party shall have the right to assign the benefits of this Agreement to a purchaser or lessee of Grantor's or Grantee's property, subject to the prior written consent of Grantor or Grantee as applicable and provided further that such consent shall not be unreasonably withheld. Provided, however, that Grantee shall not have the right to re-sell or otherwise provide electricity to any other party other than a tenant, if any, in Grantee's facility. And, provided further, that in any event the limitations on power usage as provided herein shall remain applicable. Provided further, that any such assignment shall require the express written consent of the Power Company then providing power to Grantor and Grantee.

19. **Relationship of Parties.** Nothing contained herein shall be deemed or construed by the parties hereto, or by any third party, as creating the relationship of principal and agent or of partnership or of joint venture between the parties hereto, it being understood and agreed that no provision contained herein, nor any acts of the parties hereto, shall be deemed to create any relationship between the parties hereto other than the relationship of easement grantor and easement grantee.

20. **Representations and Warranties.** Grantor makes no representations, warranties or covenants as to the quality or quantity of electric service that will be available to Grantee under this Agreement. Grantor further makes no representations or warranties as to the condition or fitness of the equipment currently being utilized and the subject of this Agreement and use and availability of such equipment is on an "as is" basis. Further, Grantor makes no representations, warranties or covenants with respect to Grantee's ability to receive electricity from the Power Company for any demand, period of time or rate.

Grantor shall have no liability to Grantee for loss of power at Grantee's facilities unless such loss of power is caused by the intentional and willful act of the Grantor. Provided further that in the event Grantee fails to pay Grantor any monies due and owing under this Agreement or defaults in any of its other obligations under this Agreement, and such failure to pay or default remains in existence for a period of thirty (30) days after written notice from Grantor to Grantee, then Grantor shall, in addition to any and all other rights and remedies to which Grantor may be entitled under this Agreement or applicable law, have the right to terminate power to Grantee until such failure to pay or default is cured.

21. **Dispute Resolution.** In the event a dispute arises under the terms and conditions of this Agreement, such dispute shall be resolved by mandatory and binding arbitration. Arbitration shall occur pursuant to the rules and regulations of the American Arbitration Association. However, such arbitration may be held without the intervention of the American Arbitration Association if the parties so agree. Arbitration shall be conducted at a mutually agreeable location, however, if such mutually agreeable location cannot be agreed to by and between the parties, then such arbitration such be held in Hannibal, Ohio. The arbitration shall be conducted by a single arbitrator, agreed to by the parties, and in the event the parties cannot agree on a single arbitrator, each party shall appoint one (1) arbitrator and the two (2) arbitrators shall appoint a third arbitrator and the three (3) arbitrators shall jointly hear the matter and determine its resolution by majority rule. In the event the parties cannot agree upon the arbitration terms within thirty (30) days of either party receiving written notice of a demand for arbitration, then the party demanding such arbitration shall submit the matter to the American Arbitration Association and the arbitration shall be conducted through such governed body. The decision reached in arbitration may be filed in any court of competent jurisdiction as a final order.

22. **Paragraph Headings.** The captions in this Agreement are for convenience only and shall not be deemed to be a part hereof.

23. **Amendment.** This Agreement may not be modified or amended except by a written agreement duly executed by the parties hereto or by their respective successors or assigns, as the case may be.

24. **Entire Agreement.** This Agreement fully sets forth all agreements and understandings of the parties to this Agreement with respect to the subject matter hereof.

25. **Recording.** This Agreement shall be executed in recordable form and either party shall have the right to record, at its expense, this Agreement at the Office of the Recorder of Monroe County, Ohio.

(Signatures and Notary Provisions on Next Page)

**Signature Page for Electric Access, Use and Easement Agreement**

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives on the day and year first above written.

**GRANTOR:**

**Ormet Primary Aluminum Corporation, a Delaware corporation**

By: [Signature]  
Name: MICHAEL F. TANCHUK  
Its: PRESIDENT & CEO

**GRANTEE:**

**Hannibal Real Estate, LLC,  
a Delaware limited liability company**

By: [Signature]  
Name: Jeffrey A. Himmel  
Its: Managing Member

STATE OF OHIO,  
COUNTY OF MONROE, ss:

The foregoing instrument was acknowledged before me this 3 day of July, 2007 by Ormet Primary Aluminum Corporation, by MICHAEL F. TANCHUK, its PRESIDENT & CEO, on behalf of and under authority of such company.



BRENDA MIRACLE  
NOTARY PUBLIC, STATE OF OHIO  
MY COMMISSION EXPIRES June 12, 2011  
2006-12-744521

[Signature]  
Notary Public

STATE OF NEW YORK,  
COUNTY OF WESTCHESTER, ss:

The foregoing instrument was acknowledged before me this 26<sup>th</sup> day of June, 2007 by Hannibal Real Estate, LLC by Jeffrey A. Himmel, its Managing Member, on behalf of and under authority of such company.

LOKRAINE C. DE MAITRE  
Notary Public, State of New York  
No. 4885394  
Qualified in Westchester County  
Commission Expires 3/2/11

[Signature]  
Notary Public

This instrument prepared by:  Michael N. Schaeffer, Esq. 88 West Mound Street Columbus, OH 43215 (614) 224-2678	After recording please return to:
--	-----------------------------------

**EXHIBIT "A"**

June 20, 2007

Ormet Corporation – Reduction Mill Facility  
Description – 255.412 Acres

Situated In the State of Ohio, County of Monroe and the Township of Ohio. Being part of the northeast quarter of section 14, the southeast quarter of section 15, the southwest quarter of section 9 and the northwest quarter of section 8 Township 2 Range 3 and all of a 269.753 acre parcel recorded in Volume 133 Page 381 of the Monroe County Deed Records.

Beginning at a 1/2 inch diameter Iron pin (set) at the westernmost corner of the herein described parcel and on northernmost corner of a 159.8 acre parcel recorded as Tract II in Volume 6 Page 813 and on the southeasterly boundary line of the Ormet Railroad Corporation (formerly known as the Pennsylvania Railroad) as recorded in Volume 22 Page 855 of the Monroe County Official Records where a 4" X 4" marked stone (found) at the northeast corner of section 15 bears North 28 degrees 59 minutes 12 seconds East 5353.59 feet. The bearing on the east line of section 15 being South 03 degrees 21 minutes 58 seconds West. Said place of beginning also being at the beginning of a curve concave to the southeast having a radius of 1382.69 feet.

Thence from said place of beginning and following the boundary line of the Ormet Railroad Corporation northeasterly along said curve an arc length of 72.09 feet through a central angle of 02 degrees 59 minutes 14 seconds a chord of North 65 degrees 39 minutes 30 seconds East 72.08 feet;

thence North 67 degrees 10 minutes 21 seconds East 4019.11 feet to a point at the beginning of a curve concave to the northwest having a radius of 1687.28 feet;

thence northeasterly along said curve an arc length of 521.31 feet through a central angle of 17 degrees 42 minutes 09 seconds a chord of North 58 degrees 17 minutes 38 seconds East 519.24 feet;

thence leaving the boundary line of the Ormet Railroad Corporation South 22 degrees 51 minutes 03 seconds East 1620.03 feet to a point in the Ohio River;

thence following along the Ohio River South 21 degrees 57 minutes 13 seconds West 144.15 feet;

thence South 24 degrees 58 minutes 13 seconds West 456.17 feet;

thence South 35 degrees 30 minutes 13 seconds West 672.05 feet;

thence South 47 degrees 47 minutes 13 seconds West 531.48 feet;

thence South 57 degrees 50 minutes 13 seconds West 899.56 feet;

thence South 62 degrees 37 minutes 13 seconds West 574.71 feet;

thence South 65 degrees 50 minutes 13 seconds West 636.15 feet;

thence South 67 degrees 23 minutes 13 seconds West 489.31 feet;

thence South 77 degrees 22 minutes 41 seconds West 388.98 feet to a point at the southeastern corner of the above referenced 159.8 acre parcel;

thence leaving the Ohio River and following the boundary line of said 159.8 acre parcel North 22 degrees 49 minutes 52 seconds West 1633.86 feet to a 1/2 inch diameter iron pin (set), passing through a 1/2 inch diameter iron pin (set) by previous survey at 294.88 feet;

thence South 67 degrees 10 minutes 08 seconds West 124.00 feet to a 1/2 inch diameter iron pin (set);

thence North 22 degrees 47 minutes 10 seconds West 977.74 feet to the place of beginning.

Containing 255.412 acres. The difference in the aggregate acreage being due to a new survey.

Bearings in this description refer to the Grid Meridian of the Ohio Coordinate System (South Zone – NAD83 CORS96) based on GPS observations.

This description prepared by Terry L. Steffl, Licensed Surveyor #6846, based on field surveys performed during July, August and September 1989 and May and June 2007.

## EXHIBIT "B"

### Ormet Corporation to Artco Steel Corporation Description – 122.100 Acres

Situated in the State of Ohio, County of Monroe and the Township of Ohio. Being part of the north half of section 14 and the south half of section 15 Township 2 Range 3 and a portion of a 159.8 acre parcel recorded as Tract II in Volume 6 Page 813 of the Monroe County Official Records.

Beginning at a ½ inch diameter iron pin (set) at the northernmost corner of the herein described parcel and on the southeasterly boundary line of the Ormet Railroad Corporation as recorded in Volume 22 Page 855 of said Monroe County Official Records (formerly known as the Pennsylvania Railroad) where a 4" X 4" marked stone (found) at the northeast corner of section 15 bears North 28 degrees 59 minutes 12 seconds East 5353.59 feet. The bearing on the east line of section 15 being South 03 degrees 21 minutes 58 seconds West.

Thence from said place of beginning, leaving the boundary line of the Ormet Railroad Corporation and following the boundary line of the above referenced Tract II South 22 degrees 47 minutes 10 seconds East 977.74 feet to a ½ inch diameter iron pin (set);

thence North 67 degrees 10 minutes 08 seconds East 124.00 feet to a ½ inch diameter iron pin (set);

thence South 22 degrees 49 minutes 52 seconds East 1633.86 feet to a point in the Ohio River, passing through a ½ inch diameter iron pin (set) by previous survey at 1338.98 feet;

thence following along the Ohio River South 77 degrees 22 minutes 41 seconds West 856.40 feet;

thence South 73 degrees 10 minutes 13 seconds West 826.21 feet;

thence South 70 degrees 44 minutes 13 seconds West 447.47 feet;

thence South 60 degrees 19 minutes 13 seconds West 471.94 feet;

thence leaving the boundary line of said Tract II North 22 degrees 51 minutes 22 seconds West 805.03 feet to a ½ inch diameter iron pin (set), passing through a ½ inch diameter iron pin (set) at 310.00 feet;

thence South 87 degrees 08 minutes 40 seconds West 199.09 feet to a ½ inch diameter iron pin (set);

thence North 86 degrees 52 minutes 39 seconds West 146.80 feet to a ½ inch diameter iron pin (set);

thence North 70 degrees 04 minutes 34 seconds West 98.40 feet to a ½ inch diameter iron pin (set);

thence South 81 degrees 11 minutes 50 seconds West 56.00 feet to a ½ inch diameter iron pin (set);

thence South 73 degrees 19 minutes 54 seconds West 94.81 feet to a ½ inch diameter iron pin (set) on the boundary line of the above referenced Tract II and southeasterly boundary line of the Ormet Railroad Corporation;

thence following the common boundary line of said Tract II and the Ormet Railroad Corporation North 29 degrees 17 minutes 40 seconds East 416.95 feet to a ½ inch diameter iron pin (set) at the beginning of a non-tangent curve concave to the southeast having a radius of 3749.83 feet;

thence northeasterly along said curve an arc length of 1179.75 feet through a central angle of 18 degrees 01 minute 34 seconds a chord of North 38 degrees 17 minutes 26 seconds East 1174.89 feet to a ½ inch diameter iron pin (set);

thence North 47 degrees 17 minutes 12 seconds East 1327.47 feet to a ½ inch diameter iron pin (set);

thence North 42 degrees 41 minutes 33 seconds West 20.00 feet to a ½ inch diameter iron pin (set) at the beginning of a non-tangent curve concave to the southeast having a radius of 1382.69 feet;

thence northeasterly along said curve an arc length of 406.81 feet through a central angle of 16 degrees 51 minutes 26 seconds a chord of North 55 degrees 44 minutes 10 seconds East 405.34 feet to the place of beginning.

Containing 122.100 acres. Being 115.191 acres in Section 14 and 6.909 acres in section 15.  
The difference in the aggregate acreage being due to a new survey.

This description prepared by Terry L. Steffl, Licensed Surveyor #6846, based on field surveys performed during July, August and September 1989 and May and June 2007.

**EXHIBIT "C"**

**Legal Description for  
Electric Power Supply Easement**

Granting an easement encompassing the existing electric power supply and appurtenances described as follows:

Beginning at a point on the easterly boundary line of the above described 122.100 acre parcel where the southeast corner of said 122.100 acre parcel bears South 22 degrees 49 minutes 52 seconds East 836.69 feet.

Thence from said place of beginning and leaving the boundary line of said 122.100 acre parcel  
North 69 degrees 20 minutes 24 seconds East 209.61 feet;

thence North 67 degrees 09 minutes 02 seconds East 353.28 feet;

thence South 22 degrees 56 minutes 11 seconds East 70.54 feet;

thence South 66 degrees 52 minutes 05 seconds West 29.37 feet;

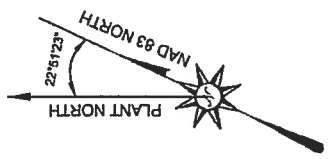
thence North 73 degrees 38 minutes 53 seconds West 64.36 feet;

thence South 67 degrees 09 minutes 02 seconds West 274.71 feet;

thence South 69 degrees 20 minutes 24 seconds West 209.04 feet to a point on the easterly boundary line of said 122.100 acre parcel;

thence following the easterly boundary line of said 122.100 acre parcel North 22 degrees 49 minutes 52 seconds West 30.02 feet to the place of beginning.

This description prepared by Terry L. Steffi, Licensed Surveyor #6846, based on field surveys performed during July, August and September 1989 and May and June 2007.



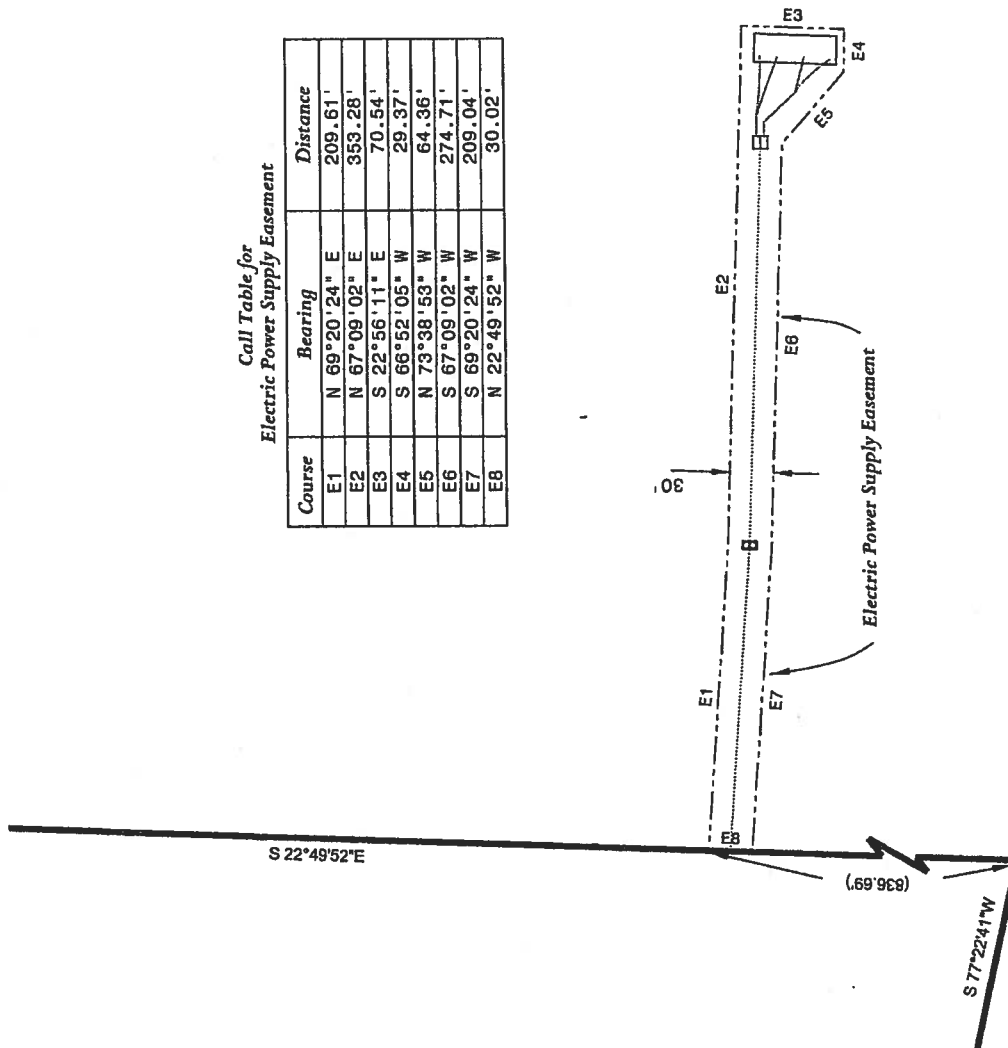
BASIS OF BEARINGS

BEARINGS ON THIS MAP REFER TO THE GRID MERIDIAN  
OF THE OHIO COORDINATE SYSTEM (SOUTH ZONE - NAD 83 CORRS96)  
BASED ON GPS OBSERVATIONS

----- **ELECTRIC POWER SUPPLY EASEMENT**

*Call Table for  
Electric Power Supply Easement*

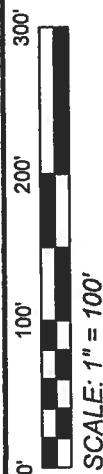
Course	Bearing	Distance
E1	N 69°20'24" E	209.61'
E2	N 67°09'02" E	353.28'
E3	S 22°56'11" E	70.54'
E4	S 66°52'05" W	29.37'
E5	N 73°38'53" W	64.36'
E6	S 67°09'02" W	274.71'
E7	S 69°20'24" W	209.04'
E8	N 22°49'52" W	30.02'



**EXHIBIT D**

**ELECTRIC POWER SUPPLY EASEMENT**

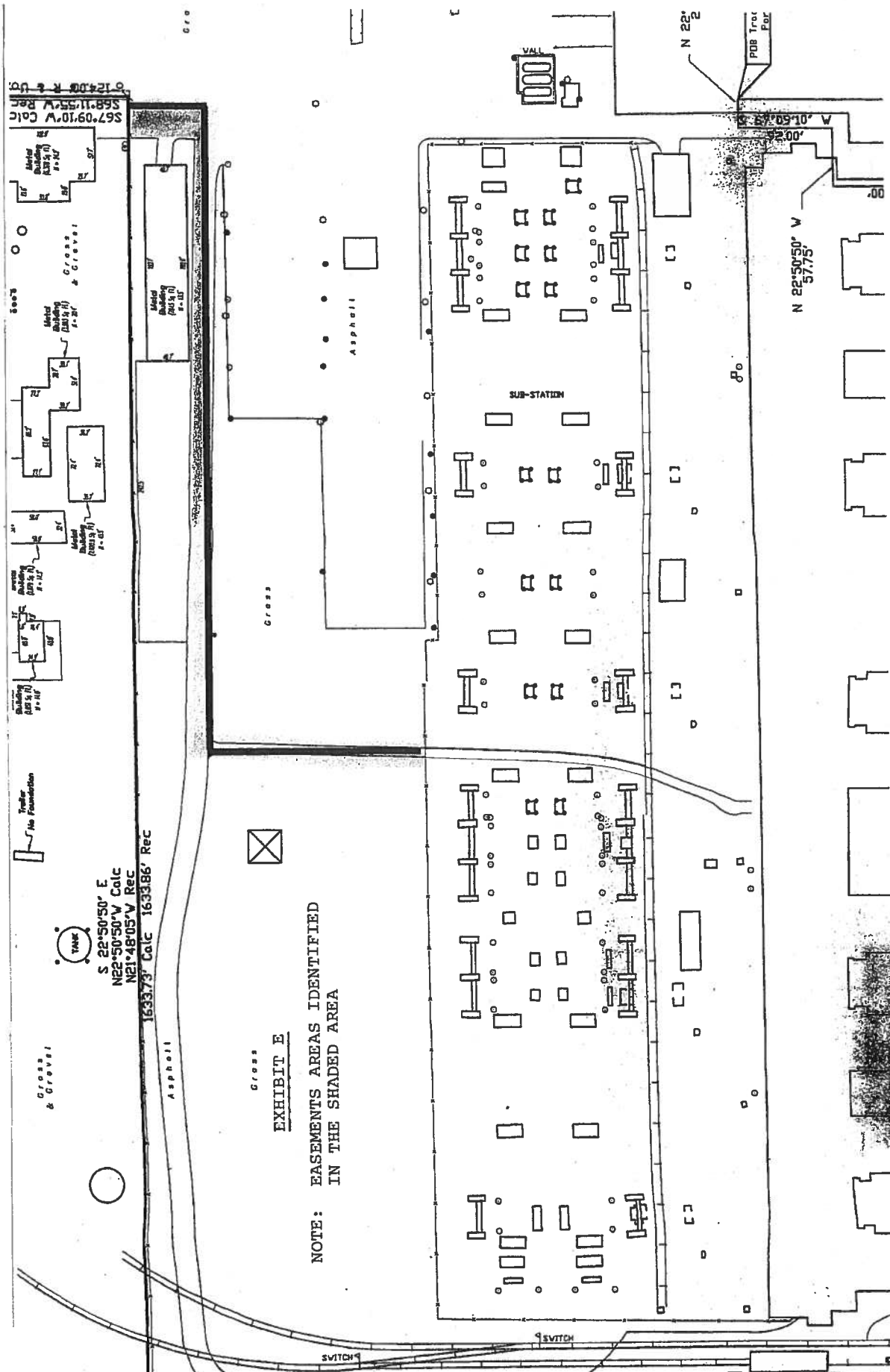
MAP SHOWING A PORTION OF NORTH HALF OF SECTION 14,  
THE SOUTH HALF OF SECTION 15, AND THE SOUTHEAST  
QUARTER OF SECTION 20, TOWNSHIP 2, RANGE 3, OHIO  
TOWNSHIP, MONROE COUNTY, OHIO



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COMM # 07020



## CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing document was served this 24<sup>th</sup> day of October, 2013 by electronic mail upon counsel listed below.

/s/ Steven T. Nourse

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Summary: Memorandum in Opposition to Ormet Primary Aluminum Corporation's Motion and Request for Expedited Ruling electronically filed by Mr. Steven T Nourse on behalf of Ohio Power Company