

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio        )  
Power Company to Adjust the Economic        ) Case No. 14-193-EL-RDR  
Development Cost Recovery Rider Rate.        )

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**COMMENTS AND OBJECTIONS  
BY  
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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The Office of the Ohio Consumers' Counsel ("OCC") files these Comments and Objections on behalf of Ohio Power Company's ("Utility" or "Ohio Power" or "AEP") 1.2 million residential electric distribution customers.<sup>1</sup> To date, AEP has succeeded in having customers<sup>2</sup> pay it for 100% of the subsidy (known as "delta revenues") to Ormet Primary Aluminum Corporation ("Ormet"), with no sharing by AEP itself in paying for the subsidy to assist its customer. Delta revenues refer to the difference between the discounted rate that Ohio Power charged to Ormet and the tariffed-rate that would otherwise apply. And under prior Public Utilities Commission of Ohio ("PUCO" or "Commission") decisions, delta revenues for the Ohio Power/Ormet reasonable arrangement include certain of Ormet's electric bills that it was permitted to defer payment on.<sup>3</sup>

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<sup>1</sup> See R.C. Chapter 4911, R.C. 4903.221 and Ohio Adm. Code 4901-1-11.

<sup>2</sup> Residential customers pay the lion's share of the subsidy under the rates designed by Ohio Power, as the economic development recovery ("EDR") rates are allocated consistent with base distribution rates. The EDR is allocated on the basis of distribution rates. In the CSP rate zone 41.4% of the delta revenues are the responsibility of the residential customer class. In the OP rate zone 35.2% of the delta revenues are the responsibility of the residential customer class. See *In the Matter of the Application of Ormet Primary Aluminum Corporation for Approval of a Unique Arrangement with Ohio Power Company and Columbus Southern Power Company*, Case No. 09-119-EL-AEC, Direct Testimony of Amr Ibrahim, at 17, footnote 32. Thus, residential ratepayers as a class are the class of customers most affected by increases to the EDR.

<sup>3</sup> See, e.g., *In re: Ormet*, Case No. 09-119-EL-AEC, Entry (Oct. 17, 2012); Entry (Aug. 21, 2013).

From 2009 through 2013, the Utility has charged its customers \$232 million<sup>4</sup> to support what the PUCO described as “unprecedented subsidies”<sup>5</sup> to Ormet. At the same time, Ohio Power has sought at every turn to avoid paying for any assistance to Ormet. Its February 3, 2014 application in this proceeding is no different.<sup>6</sup>

In its February 3, 2014 application, the Utility proposes to charge customers for 100% of the remaining \$49.336 million that it has not collected from Ormet due to the subsidized rates, unpaid bills, and associated carrying charges. The subsidy consists of \$38.853 million of unpaid Ormet charges pertaining to earlier PUCO approved deferrals—which the PUCO ruled customers must pay for.<sup>7</sup> The subsidy also includes approximately \$10.5 million (\$10,483,156.55) of new charges that pertain to Ormet’s unpaid bills for September and October 2013 usage, along with a September 2013 usage deferral.<sup>8</sup> These new charges have not been ruled upon by the PUCO.

Having to date charged customers more than \$200 million for the subsidy, AEP should not be given further approval from the PUCO to charge customers for the unpaid bills for September and October 2013 usage. Charging customers would be unjust and

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<sup>4</sup> *In re: Ormet*, Case No. 09-119-EL-AEC, Opinion and Order at 2 (Oct. 2, 2013).

<sup>5</sup> See *In re: Ormet*, Case No. 09-119-EL-AEC, Entry at ¶5 (Oct. 17, 2012).

<sup>6</sup> See also *Ormet Primary Aluminum Corp. v. Ohio Power Company*, Case No. 13-2206-EL-CSS, Stipulation and Recommendation at 6 (Feb. 3, 2014) (asking that the PUCO confirm that the Utility has the right to collect from customers, through its EDR, delta revenues of \$49.2 million relating to Ormet’s unpaid bills, an issue OCC raised on rehearing with the PUCO). See *In re: Ormet*, Case No. 09-119-EL-AEC, OCC Application for Rehearing (Nov. 1, 2013).

<sup>7</sup> See *In re: Ormet*, Case No. 09-119-EL-AEC, Entry at ¶5 (Oct. 17, 2012) (approving the deferral for Ormet’s billings for October and November 2012 not to exceed \$20 million, recovered through the EDR); Entry at ¶20 (Aug. 21, 2013) (approving the deferral of Ormet’s billings due in August and September 2013, not to exceed \$10.5 million, to be recovered through the EDR).

<sup>8</sup> *In the Matter of Application of Ohio Power Company to Adjust the Economic Development Cost Recovery Rider Rate*, Case No. 14-193-EL-RDR, Ohio Power Application, Schedule No. 3.1. This \$10,483,156.55 is the sum of September 2013 Usage Unpaid Bill (\$1,843,960.04), the September 2013 Usage Deferral (\$5,500,000.00), and the October 2013 Usage Unpaid Bill (\$3,139,196.51).

unreasonable. As the Commission aptly noted, back in 2009, the ability of customers to fund the delta revenues is not unlimited.<sup>9</sup> As the PUCO recognized, the economic burden already imposed on Ohio Power's customers who paid the subsidies has been significant.<sup>10</sup>

At a time when Ohioans are (on average) paying higher electricity rates than their counterparts in thirty-two other states,<sup>11</sup> the focus should be on reducing Ohioans' electric bills. The PUCO has discretion to change, alter, or modify AEP's revenue recovery rider.<sup>12</sup> The PUCO should exercise that authority to protect customers from AEP's request that customers pay 100% of the subsidy. The PUCO should order the Utility to pick up a share of the rate discount by requiring it to pay for \$10.5 million of the new Ormet charges. There is adequate justification for doing so, as discussed below. Otherwise the economic development cost recovery rider application will be unjust and unreasonable.

Ohio Power assumes that it is automatically entitled to full recovery from customers of all delta revenue that it does not collect from this unique arrangement. It is not. The PUCO has recognized that the plain language of R.C. 4905.31 does not require it to approve the full recovery of all delta revenue resulting from a unique arrangement.<sup>13</sup>

The PUCO concluded that the statutory use of the term "may" authorizes, but does not

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<sup>9</sup> *In re Ormet*, Case No. 09-119-EL-AEC, Opinion and Order at 10 (July 15, 2009).

<sup>10</sup> *In re: Ormet*, Case No. 09-119-EL-AEC, Opinion and Order at 20 (Oct. 2, 2013).

<sup>11</sup> U.S. Energy Information Administration, Table 5.6B (October 2013).

<sup>12</sup> See Ohio Adm. Code 4901:1-38-08(B)(2).

<sup>13</sup> *In re: Ormet*, Case No. 09-119-EL-AEC, Entry on Rehearing at ¶12 (Sept. 15, 2009) (affirming its earlier ruling that the Provider Of Last Resort charge paid for by Ormet could be credited to the economic development rider); affirmed by the Ohio Supreme Court in *In re: Ormet Primary Aluminum Corp.*, 129 Ohio St.3d 9, 2011-Ohio-2477, 949 N.E.2d 991.

require, it to approve the Utility's recovery of delta revenues from customers. The PUCO reasoned that "[i]f the General Assembly had intended to require the recovery of delta revenues, the General Assembly would have used 'shall' or 'must' rather than 'may.'"<sup>14</sup> Instead, the PUCO found that it has discretion to determine if a utility will be allowed to charge customers for delta revenues.

The Ohio Supreme Court, in Ohio Power's appeal from the PUCO's decision, affirmed the PUCO.<sup>15</sup> The Court found that R.C. 4905.31 does not require full recovery of delta revenues but is "permissive."<sup>16</sup> It concluded that the PUCO has discretion to compensate the Utility for delta revenues because the statute used permissive language in describing whether such revenue may be recovered.

In exercising its discretion, the PUCO should consider the inequity that exists whereby Ohio Power has benefitted from the economic development for its customer, but only other customers (and not AEP) have paid for the discount. Sharing the responsibility for paying delta revenue (between the utility and customers) recognizes that "both the company and its customers benefit from the company's policy of providing economic incentive rates to retain customers to attract new business in the utility's service territory." *In the Matter of the Application of Columbus Southern Power Company for Authority to Amend its Filed Tariffs to increase the Rates and Charges for Electric Service*, Case No. 91-418-EL-AIR, Opinion and Order at 110 (May 12, 1992).

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<sup>14</sup> Id.

<sup>15</sup> *In re: Ormet Primary Aluminum Corp.*, 129 Ohio St.3d at 129.

<sup>16</sup> Id. at 12.

Ohio Power has charged customers for \$232 million in electric rate subsidies to Ormet through 2013.<sup>17</sup> Ohio Power paid none of the electricity discount that was intended to help Ormet and its employees.

Ohio Power's application seeks to have customers pay it an additional \$49.336 million and associated carrying charges to fund the electricity discounts.<sup>18</sup> Part of the \$49.336 million includes \$10.5 million (\$10,483,156.55) of new charges that pertain to Ormet's unpaid bills for September and October 2013 usage, along with September 2013 usage deferrals.<sup>19</sup> These are "new charges" because the PUCO has not ruled on whether these charges are appropriate. Neither has the PUCO assigned responsibility for these charges.

Requiring Ohio Power to share \$10.5 million (\$10,483,156.55) of the additional \$49.336 million that it seeks from customers is fair. Requiring Ohio Power to bear \$10.5 million of the subsidy will not be inconsistent with any prior PUCO ruling. This is because there has been no ruling by the PUCO that customers should bear the burden of these unpaid bills. Rather, the PUCO's August 21, 2013 Entry allowed Ormet to postpone its payments for bills from the Utility related to *July and August usage*.<sup>20</sup> And the PUCO ruled that it would allow Ohio Power to recover such amounts through its Economic Development Rider, if Ormet failed to make timely payments of those deferred bills.

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<sup>17</sup> *In re: Ormet*, Case No. 09-119-EL-AEC, Opinion and Order at 2 (October 2, 2013).

<sup>18</sup> *In the Matter of the Application of Ohio Power Company to Adjust the Economic Development Cost Recovery Rider Rate*, Case No. 14-193-EL-RDR, Application Schedule No. 3.1.

<sup>19</sup> *Id.* This \$10,483,156.55 is the sum of September 2013 Usage Unpaid Bill (\$1,843,960.04), the September 2013 Usage Deferral (\$5,500,000.00), and the October 2013 Usage Unpaid Bill (\$3,139,196.51).

<sup>20</sup> See *In re: Ormet*, Case No. 09-119-EL-AEC, Entry at ¶19-20 (Oct. 17, 2012).

But the Commission made no ruling on bills pertaining to Ormet's *September and October usage*. Nor did the Commission rule that Ormet could defer payment related to its September 2013 usage. OCC, in its application for rehearing filed just five months ago, raised this very issue. OCC asked that the PUCO protect customers from paying to AEP any additional unpaid bills.<sup>21</sup> In denying OCC's application for rehearing, the PUCO characterized OCC's recommendation as "premature."<sup>22</sup> The PUCO then ruled that "OCC may raise its concerns regarding allocation of the delta revenue responsibility at the proper time for the Commission's consideration."<sup>23</sup> Now is the proper time for the PUCO to consider taking measures to protect consumers—such as requiring Ohio Power to pay \$10.5 million (\$10,483,156.55) of the total subsidy (\$49.336 million) that AEP asks customers to pay this time.

With Ormet terminating/winding down its operations, Ohio Power has gained 540 MW of capacity and the associated energy available for sale into the wholesale market that was previously being used to serve Ormet's load.<sup>24</sup> Ohio Power should be able to sell the energy and capacity previously used to serve Ormet. This should serve as additional income for Ohio Power that can be used to offset the \$10.5 million of unpaid bills. And the PUCO has decided that AEP will keep all that income without sharing any benefits with customers.<sup>25</sup> Customers on the other hand have no such ability to mitigate

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<sup>21</sup> *In re: Ormet*, Case No. 09-119-EL-AEC, Application for Rehearing (Nov. 1, 2013).

<sup>22</sup> *In re: Ormet*, Case No. 09-119-EL-AEC, Entry on Rehearing at ¶10 (Nov. 13, 2013).

<sup>23</sup> *Id.*

<sup>24</sup> *In re: Ormet*, Case No. 09-119-EL-AEC, Executed Power Agreement, Article 4.01 at 11 (Sept. 18, 2009).

<sup>25</sup> *In re: Ormet*, Case No. 09-119-EL-AEC, Entry on Rehearing at ¶12 (Nov. 13, 2014).

their 100% share of paying the costs of the subsidy,<sup>26</sup> and other economic development arrangements.

Additionally, Ohio Power seeks to collect the \$10.5 million from customers in this application while at the same time this sum (plus an additional \$5 million for the July 2013 usage deferral) is part of an administrative expense claim in bankruptcy court.<sup>27</sup> If the PUCO authorizes Ohio Power to collect the \$10.5 million from customers at this time, and Ohio Power prevails on its administrative claim, there will be a windfall to the Utility. Allowing for a double recovery of Ormet expenses is not supported in Ohio by any law or policy. It is unjust and unreasonable in every sense.

For these reasons, the PUCO should reject Ohio Power's application to charge its customers \$49.336 million for payment of subsidies. Instead, the PUCO should require the Utility to bear \$10.5 million of the subsidy pertaining to Ormet's unpaid bills associated with September and October 2013 usage. Otherwise, AEP's rider application will be unjust and unreasonable.

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<sup>26</sup> The PUCO in the past, allowed Ormet subsidies to be reduced if the London Metal Exchange (LME) prices exceeded the target prices in the agreement. *In re: Ormet*, Case No. 09-119-EL-AEC, Opinion and Order at 12 (July 15, 2009). Unfortunately, customers never received delta revenue credits because the price of aluminum in the LME never rose above the target price. *Id.*, Opinion and Order at 19-20 (Oct. 17, 2013). Customer contributions were also reduced by Ormet's payment of provider of last resort charges. *In re: Ormet*, Case No. 09-119-EL-AEC, Opinion and Order at 13-14 (July 15, 2009), upheld on appeal, *In re: Ormet Primary Aluminum Corp.*, 2011-Ohio-2377, 129 Ohio St.3d 9.

<sup>27</sup> See *In re: Ormet Corp.*, Del. Bankr. Case No. 13-10334, Application of AEP Ohio for Allowance and Immediate Payment of Administrative Expenses in Doc. 770 (Nov. 1, 2013).

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## **CERTIFICATE OF SERVICE**

I hereby certify that a copy of these *Comments and Objections* was served on the persons stated below via electronic transmission, this 24th day of February 2014.

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Summary: Comments Comments and Objections by the Office of the Ohio Consumers' Counsel electronically filed by Ms. Deb J. Bingham on behalf of Grady, Maureen R. Ms.