ORIGINAL

IN THE SUPREME COURT OF OHIO

Columbus Southern Power Company and Ohio Power Company	:	**Case No.** 09-2060
Appellants,	:	**Appeals from Public Utilities Commission of Ohio**
v.	:	
The Public Utilities Commission of Ohio,	:	**Public Utilities Commission of Ohio Case No. 09-119-EL-AEC**
Appellee.	:	

NOTICE OF APPEAL OF COLUMBUS SOUTHERN POWER COMPANY AND OHIO POWER COMPANY

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NOTICE OF APPEAL OF APPELLANTS COLUMBUS SOUTHERN POWER COMPANY AND OHIO POWER COMPANY

Appellants, Columbus Southern Power Company and Ohio Power Company ("AEP Ohio" or "Appellants"), hereby gives notice of their appeal, pursuant to R.C. 4903.11 and 4903.13, and Supreme Court Rule of Practice II, Section 3(B), to the Supreme Court of Ohio and Appellee, the Public Utilities Commission of Ohio ("Commission"), from an Opinion and Order (Attachment A) and an Entry on Rehearing (Attachment B) of the Commission, entered on July 15, 2009 and September 15, 2009, respectively, in PUCO Case No. 09-119-EL-AEC. That case involved an application filed by Ormet Primary Aluminum Corporation ("Ormet") for a unique arrangement with AEP Ohio pursuant to R.C. 4905.31.

Appellants are parties in Commission Case No. 09-119-EL-AEC and timely filed their Application for Rehearing of Appellee's July 15, 2009 Opinion and Order in accordance with R.C. 4903.10. The assignments of error listed below were raised in Appellants' Application for Rehearing. Further, in its September 15, 2009 Entry on Rehearing, the Commission granted rehearing regarding an issue jointly raised on rehearing by two other intervenors in the proceeding below. AEP Ohio actively opposed their rehearing request and the Commission's granting of their rehearing request harmed the Appellants' interests.

The Commission's Opinion and Order and Entry on Rehearing are unlawful and unreasonable in multiple respects.

1. The orders adopt a provision requiring that AEP Ohio's largest customer forego its statutory right to shop for competitive generation service for a period of ten years, in violation of public policy of the State of Ohio.

2. The Commission's conclusion that it was necessary to consider only the first three years of the ten-year contract to determine if there is a shopping risk under the contract is unreasonable and unlawful. The Commission's conclusion that there is no risk that Ormet will be permitted to shop for competitive generation service is unreasonable and unlawful.

3. R.C. 4905.31 does not authorize the Commission to deny AEP Ohio recovery of revenue foregone as the result of a unique arrangement adopted by the Commission over AEP Ohio's objection. The Commission unlawfully applies R.C. 4905.31 in a manner which requires AEP Ohio to enter into a contract and then disallows the ability to recover the revenue foregone as a result of that contract.

4. The Commission erred in concluding that "the recovery of delta revenues is a matter for the Commission's discretion" under R.C. 4905.31.

5. The requirement that AEP Ohio reduce its recovery of revenue foregone by an amount equal to the charge Ormet would pay for AEP Ohio's Provider of Last Resort service, but for the unique arrangement, conflicts with the Commission's orders in AEP Ohio's recently-adopted Electric Security Plan cases, Case Nos. 08-917-EL-SSO and 08-918-EL-SSO.

6. There is no reasonable arrangement with AEP Ohio under R.C. 4905.31 where the Commission approves an arrangement unilaterally filed by a mercantile customer that causes harm to AEP Ohio's financial interests.

WHEREFORE, Appellants respectfully submit that Appellee's July 15, 2009 Opinion and Order and September 15, 2009 Entry on Rehearing are unlawful, unjust, and unreasonable and should be reversed. The case should be remanded to the Commission with instructions to correct the errors complained of herein.

Respectfully submitted,

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PROOF OF SERVICE

I certify that Columbus Southern Power Company's and Ohio Power Company's Notice of Appeal was served by First-Class U.S. Mail upon counsel for all parties to the proceeding before the Public Utilities Commission of Ohio identified below and pursuant to Section 4903.13 of the Ohio Revised Code, this 12th day of November, 2009.

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CERTIFICATE OF FILING

I hereby certify that, in accordance with Supreme Court Rule of Practice XIV, Section 2 (C)(2), Columbus Southern Power Company's and Ohio Power Company's Notice of Appeal has been filed with the docketing division of the Public Utilities Commission of Ohio and with the Chairman of the Public Utilities Commission of Ohio by leaving a copy at the office of the Chairman in Columbus, Ohio, in accordance with Rules 4901-1-02(A) and 4901-1-36 of the Ohio Administrative Code, on November 12, 2009.

Steven T. Nourse
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ATTACHMENT A

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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

OPINION AND ORDER

The Commission, considering the above-entitled application, hereby issues its opinion and order in this matter.

APPEARANCES:

Sonnenschein Nath & Rosenthal LLP, by Clifton A. Vince, Douglas G. Bonner, Daniel D. Barnowski, and Emma F. Hand, 1301 K Street NW, Suite 600 East Tower, Washington, D.C. 20005, on behalf of Ormet Primary Aluminum Corporation.

Richard Cordray, Ohio Attorney General, by Duane W. Luckey, Section Chief, and Thomas Lindgren and Thomas McNamee, Assistant Attorneys General, 180 East Broad Street, Columbus, Ohio 43215, on behalf of the staff of the Public Utilities Commission of Ohio.

Marvin I. Resnik and Steven T. Nourse, American Electric Power Service Corporation, 1 Riverside Plaza, 29th Floor, Columbus, Ohio 43215, on behalf of Columbus Southern Power Company and Ohio Power Company.

Janine L. Migden-Ostrander, Ohio Consumers' Counsel, by Gregory J. Poulos, and Maureen R. Grady, Assistant Consumers' Counsel, Office of Consumers' Counsel, 10 West Broad Street, Columbus, Ohio 43215, on behalf of the residential consumers of Columbus Southern Power Company and Ohio Power Company.

Boehm, Kurtz & Lowry, by David F. Boehm and Michael L. Kurtz, 36 East Seventh Street, Suite 1510, Cincinnati, Ohio 45202, on behalf of Ohio Energy Group.

McNees, Wallace & Nurick, LLC, by Samuel C. Randazzo, Lisa G. McAlister and Joseph M. Clark, 21 East State Street, Columbus, Ohio 43215, on behalf of Industrial Energy Users-Ohio.

Chester, Willcox & Saxbe, LLP, by John W. Bentine, Mark S. Yurick, and Matthew S. White, 65 East State Street, Suite 1000, Columbus, Ohio 43215-4213, on behalf of The Kroger Company.

OPINION:

I. History of the Proceeding

On February 17, 2009, Ormet Primary Aluminum Corporation (Ormet) filed an application pursuant to Section 4905.31, Revised Code, to establish a unique arrangement with the Ohio Power Company and Columbus Southern Power Company (AEP-Ohio) for electric service to its aluminum-producing facility located in Hannibal, Ohio. In its application, Ormet requests that the Commission establish a unique arrangement for electric service with AEP-Ohio that links the price of electricity for its facility for calendar years 2010 through 2018 with the price of aluminum as reported on the London Metal Exchange (LME). Ormet filed an amended application on April 10, 2009, to reflect the possible curtailment of the equivalent of at least two of its six potlines.

On March 9, 2009, Industrial Energy Users-Ohio (IEU-Ohio) filed comments regarding Ormet's application. Further on April 28, 2009, Ohio Energy Group (OEG) and Kroger Company (Kroger) each filed comments regarding Ormet's amended application.

Motions to intervene were filed by AEP-Ohio, IEU-Ohio, OEG, Kroger, and the Ohio Consumers' Counsel (OCC). Those motions were granted by the attorney examiner.

Based upon the comments, the attorney examiner set this matter for hearing. The hearing in this matter commenced on April 30, 2009, and concluded on June 17, 2009. At the hearing, Ormet presented four witnesses, OCC presented three witnesses, and Staff presented one witness. Briefs were filed on July 1, 2009, by Ormet, AEP-Ohio, OCC and OEG, IEU-Ohio, Kroger, and Staff.

II. Discussion and Conclusions

In support of the unique arrangement, Ormet argues that the benefits to the region of keeping Ormet in operation will more than offset the delta revenue paid by other ratepayers. Ormet claims that the undisputed expert testimony in the record of this proceeding demonstrates that, at full operations, Ormet provides $195 million of benefits to the regional economy (Ormet Ex. 5 at 1).

Ormet also contends that the proposed unique arrangement furthers the policy of the State of Ohio as codified in Section 4928.02, Revised Code. Ormet claims that the unique arrangement is designed to meet the specific needs of Ormet with respect to the price, terms, conditions, and quality options of electric service as specified by Section 4928.02(B), Revised Code. Further, Ormet claims that the unique arrangement will help Ohio compete in the global economy pursuant to Section 4928.02(N), Revised Code. Ormet contends that it competes in a global market and needs affordable energy in order to compete.

Ormet further contends that it has provided the information needed by the Commission to approve the unique arrangement. Ormet notes that it has provided an affidavit from its chief executive officer verifying the information provided in the application and that it has also provided verifiable data in support of the application.

OCC and OEG claim that Ormet's economic analysis of its impact on the region is flawed because it fails to factor in the negative economic impact on the rest of the state from raising electric rates to pay for the delta revenues (Tr. I at 263, 265). OCC and OEG assert that there will be a clear negative economic impact to requiring all other AEP-Ohio ratepayers to pay increased rates to pay for the delta revenues under the proposed unique arrangement.

IEU-Ohio notes that the Commission may approve a proposed unique arrangement if it is shown to be just and reasonable and that it furthers the policy of this state. However, IEU-Ohio argues that Ormet's application should not be approved. IEU-Ohio claims that there are no clear or reliable indications of how the proposed unique arrangement will produce sufficient beneficial outcomes to make the transfer of revenue responsibility just and reasonable. IEU-Ohio alleges that there are many unanswered questions regarding the proposed unique arrangement, including questions related to the future price of aluminum, the treatment of delta revenue, pending litigation between Ormet and its alumina supplier, Ormet's ability to negotiate a new tolling contract, the sale of significant assets currently owned by Ormet, and the minimum cash requirement associated with labor costs for 2010 and beyond.

The Commission finds that Ormet's application for a unique arrangement should be approved subject to a number of modifications set forth below. The evidence in the record of this proceeding demonstrates that Ormet provides significant economic benefits to the region. Specifically, the evidence demonstrates that Ormet provides $195 million in total employee compensation and benefits to the regional economy (Ormet Ex. 5 at 1). The evidence also indicates that Ormet is a key employer for the region (Ormet Ex. 5 at 3-4) and that Ormet's operations are responsible, indirectly, for the creation of an additional 2,400 jobs in the region (Tr. 1 at 262-263). Further, the record shows that Ormet's operations generate over $6.7 million in tax revenue each year (Tr. 1 at 271). Finally, although OCC and OEG, as well as Staff, claim that the increased rates paid by ratepayers will have a negative economic effect on the state's economy, no party presented evidence in the record which quantified this negative effect (TR. 1 at 264-265).

The Commission notes that, although the proposed unique arrangement covers the period between January 1, 2009 and December 31, 2018, the specific terms and conditions of the unique arrangement are distinctly different for calendar year 2009 than for the remaining years of the unique arrangement. Therefore, the Commission will address the terms related to calendar year 2009 separately.

A. Terms of the Unique Arrangement for Calendar Year 2009

Under the terms of the amended application, for the balance of calendar year 2009, Ormet will pay AEP-Ohio the lesser of the applicable AEP-Ohio tariff rate or $38.00 per MWh. If Ormet reduced its production by the equivalent of at least two potlines, Ormet's rate would be reduced to the lesser of the applicable AEP-Ohio tariff rate or $34.00 per MWh. Ormet requests that the rate for 2009 going forward be set at a level that, taking into account the rate that Ormet has been paying to date, would result in an average rate of $38.00 per MWh for the portion of the year that Ormet was above the four potline operating level and an average rate of $34.00 per MWh for the portion of the year that Ormet was operating at four potlines or less.

OCC and OEG argue that, while Ormet's proposed unique arrangement for 2009 is reasonable in most respects, the provisions calling for retroactive recovery of discounted rates should be rejected. OCC and OEG note that the proposed unique arrangement requests the Commission make the unique arrangement retroactive to January 1, 2009. OCC and OEG allege that this would result in Ormet receiving discounted rates for electricity that were different from the rates which were approved and in effect at the time the service was delivered. OCC and OEG argue that this would constitute retroactive ratemaking which is prohibited. *Lucas County v. Public Util. Comm.* (1997), 80 Ohio St.3d 344, 348-349. Further, OCC and OEG contend that Ormet should be required to pay AEP-Ohio's economic development rider. OCC and OEG note that this rider is unavoidable and that Ormet should pay this rider just like all other customers.

Finally, OCC and OEG claim that the proposed unique arrangement for 2009 is unreasonable and unlawful because it provides compensation to AEP-Ohio for its POLR responsibilities when Ormet cannot shop under the contract. OCC and OEG claim that, because AEP-Ohio will not incur any risk that Ormet would leave and come back to system and seek service when the market makes it more economical, AEP-Ohio should not assess a POLR charge on Ormet, and ratepayers should not pay any discount which compensates AEP-Ohio for a non-existent POLR risk for this consumer.

AEP-Ohio argues that the Commission should not reopen its prior approval of the temporary amendment to the 2007-2008 contract between Ormet and AEP-Ohio. This temporary amendment was approved by the Commission effective January 1, 2009. AEP contends that, if the Commission approves the proposed unique arrangement, the unique arrangement should be effective on a prospective basis only because an earlier effective date would violate the terms of the temporary amendment.

Staff notes that Ormet's rate for 2009, the first year of the agreement, would be fixed at either $38 per MWh or $34 per MWh, depending on the number of potlines in operation (OCC Ex. 3 at 6-7). Although Staff had previously recommended that the Commission bifurcate this proceeding and address calendar year 2009 separately, Staff recommends Commission approval of the terms for the first year of the unique arrangement.

The Commission finds that the terms of the unique arrangement for 2009 should be approved subject to the following modifications. With respect to price, the Commission orders AEP-Ohio to bill Ormet, for the balance of 2009, at a rate which, for all of calendar year 2009, averages $38.00 per MWh for the periods when Ormet was in full operation (i.e., six potlines), $35.00 per MWh for the periods when Ormet curtailed production to 4.6 potlines, and $34.00 per MWh for the periods when Ormet curtailed production to 4 potlines. This rate will ensure that Ormet will receive the benefits of the rates proposed for calendar year 2009 in its amended application without bifurcating the proceeding as originally proposed by Staff. Further, this rate is contingent upon Ormet maintaining employment levels at 900 employees for calendar year 2009 pursuant to Ormet's representations in the record of this proceeding (Ormet Ex. 11A at 5-6; Tr. III at 425).

However, with respect to the delta revenue for 2009, the Commission believes further proceedings are necessary regarding the recovery of delta revenues by AEP-Ohio for calendar year 2009. Therefore, the Commission authorizes AEP-Ohio to defer the delta revenues created by the unique arrangement for the remainder of calendar year 2009, and the Commission directs AEP-Ohio to file an application to recover the appropriate amounts of the deferrals authorized by the Commission in Case No. 08-1338-EL-AAM and the delta revenues for calendar year 2009.

The approved unique arrangement shall be effective for services rendered following the filing in this docket of an executed power agreement which conforms to the modifications ordered by the Commission in this Opinion and Order. Although the power agreement shall be effective for services rendered after the filing of an executed power agreement, the Commission retains the right, upon review of the executed power agreement, to order further revisions to the power agreement in order to ensure that the power agreement conforms to the modifications of the proposed unique arrangement ordered by the Commission in this Opinion and Order.

B. Terms of the Unique Arrangement for Calendar Years 2010 through 2018

For calendar years 2010 through 2018, the rate Ormet will pay under the proposed unique arrangement will be determined based upon schedules filed each year with the Commission. Each schedule would include an "indexed rate" and a "target price." The indexed rate would be the rate that Ormet could pay to produce the minimum cash flow necessary to sustain operations and pay its required legacy costs depending upon the LME price of aluminum. The target price will be the projected average price of aluminum for the calendar year as reported on the LME at which Ormet would be able to pay the AEP-Ohio tariff rate and still maintain the minimum cash flow necessary to maintain its operations and pay its required legacy costs. Under the proposed unique arrangement, the Commission may require an independent third-party review of each year's schedule at Ormet's expense.

When the LME price of aluminum is less than or equal to the target price, Ormet will pay the indexed rate. When the LME price of aluminum is greater than the target price, but not more than $300 per tonne above the target price, Ormet will pay 102 percent of the AEP-Ohio tariff rate. When the LME price is greater than $300 per tonne than the target price, Ormet will pay 105 percent of the AEP-Ohio tariff rate. At the end of each year, there will be a true-up to reconcile the projected LME prices for the year with the actual LME prices.

With respect to the terms of the unique arrangement for calendar years 2010 through 2018, intervenors in this proceeding and Staff have raised a number of specific arguments related to: (1) the proposed discount and delta revenue recovery; (2) potential delta revenue credits; (3) POLR charges; (4) deposit and advance payment requirements; and (5) the need for future review of the proposed unique arrangement. Although the Commission will approve the proposed unique arrangement, the Commission will order a number of modifications to the unique arrangement in order to address the issues raised by intervenors and Staff.

1) Proposed Discount and Delta Revenue Recovery

IEU-Ohio argues that the unique arrangement, if approved, would impose an excessive burden on other customers of AEP-Ohio. IEU-Ohio claims that, under the pricing formula contained in the proposed unique arrangement and assuming an AEP-Ohio tariff rate of $44.24 per MWh, Ormet would need to sell aluminum at $2,843 per tonne to avoid creating delta revenues; however, if Ormet sold aluminum in 2010 at $1,602 per tonne, which was the LME forward price as of April 29, 2009, delta revenues would amount to $283 million (OEG Ex. 1; OEG Ex. 6).

Likewise, OCC and OEG claim that the proposed unique arrangement is unreasonable because it fails to limit the delta revenues that ratepayers could be asked to pay. OCC and OEG note that any LME price less than $2,200 per tonne will result in Ormet being paid, in the form of a credit on its bill, to use electricity (Tr. I at 153; Tr. II at 297). As of May 1, 2009, the LME futures price for July 2010 was $1,602 per tonne (Tr. I at 150-155). OCC and OEG claim that, if the futures price for July 2010 accurately reflects the actual LME price for July 2010, Ormet will be paid $77.1 million to use power in 2010 (Tr. I at 153). OCC and OEG contend that there is no basis in law for the proposed unique arrangement and that Ormet has failed to provide any credible legal justification for requiring ratepayers to pay cash to a company beyond discounting rates to zero dollars. Therefore, OCC and OEG conclude that the proposed unique arrangement would not be reasonable without an appropriate floor for the rate Ormet will pay.

OCC and OEG note that, although the total impact of wages on the states of Ohio, West Virginia and Pennsylvania, if Ormet were to close, would be $195 million per year (Ormet Ex. 8 at 4), half of the employees and retirees identified in the amended application reside in Pennsylvania and West Virginia (Ormet Ex. 5 at 5), and a substantial amount of the tax revenues received from Ormet goes to West Virginia (Ormet Ex. 5 at 11-12). Thus, OCC and OEG conclude that Ormet's economic study should be discounted by 42 percent before it can be considered a relevant study on the Ohio economic impact of a potential closing by Ormet. OCC and OEG note that Staff recommended in the hearing that the amount of the rate discount be limited to $54 million per year and that the discount be phased out over the term of the contract (Staff Ex 2 at 3). However, OCC and OEG maintain that the limit should not exceed $32 million, the amount of wages of the Ohio workers at the Ormet plant.

Kroger argues that, when considering a proposed unique arrangement, the Commission must balance all costs of the proposed arrangement with the benefits of assuming those costs. Further, Kroger contends that, in order to avoid exposing ratepayers to unreasonable and unlimited risk, any unique arrangement approved by the Commission in this proceeding should include reasonable protections for AEP-Ohio ratepayers. Kroger believes that the reasonable protections should include a definitive limit on the cost that ratepayers are required to pay, by either limiting the discount Ormet receives to a certain percentage below AEP-Ohio's tariff rates or placing a dollar limit on the amount of delta revenues AEP-Ohio may recover annually from the unique arrangement.

AEP-Ohio believes that the amount of any discount to be provided to Ormet is a matter for the Commission's judgment. However, AEP-Ohio claims that, under Section 4905.31(E), Revised Code, AEP-Ohio must be provided full recovery of all delta revenues under the unique arrangement because the statute specifies that all costs of an economic development program or job retention program are recoverable by an electric utility, including all "revenue forgone."

Ormet claims that the potential harm predicted by the intervenors in this proceeding is speculative and based upon an unlikely worst case scenario. Ormet contends that the delta revenue calculations by OCC and OEG are based upon the erroneous assumption that current LME forward prices are reliable predictors of future LME prices and that future LME prices are likely to stay below $1,941 per tonne (OCC Ex. 3 at 11-12). However, Ormet contends that a more reliable projection predicts that aluminum prices will be near $2,000 per tonne by the end of 2009 (Ormet Ex. 9 at 1; Tr. I at 173-174). Ormet also claims that there are several additional factors that will lower its costs, and the need for rate discounts, over time; these factors include deleveraging through the proceeds raised by asset sales and internally-generated cash (Ormet Ex. 7 at 2), and reductions in Ormet's pension contributions beginning in 2013 (Tr. III at 434-436).

Staff argues that any unique arrangement approved by the Commission should contain a floor and a ceiling. The Staff believes that a price floor, below which a customer's payments cannot go, reflects the need to maintain the customer's incentive to operate efficiently and effectively. Staff maintains that a maximum reduction of 25 percent from the tariff rate is the appropriate balance, keeping the customer focused on efficiency but providing temporary assistance as well (Staff Ex. 2). This floor would result in a maximum rate discount of $54 million.

In addition, Staff argues that there should be a ceiling on the amount of delta revenue to be recovered from other ratepayers. Staff notes that the benefits of unique arrangements to other ratepayers are limited and that the ability of other ratepayers to pay for delta revenues is likewise limited. Staff believes that the primary benefit of the unique arrangement is the potential preservation of jobs in Ohio; thus, Staff argues that the cap on annual delta revenue recovery should be set initially at $54 million, which is the amount of Ormet's payroll. In addition, Staff recommends that the amount of any discount be reduced by 11 percent of the initial discount each year during the term of the unique arrangement.

Ormet argues that the $54 million cap proposed by Staff is insufficient. Although Ormet believes that the aluminum market will rebound, Ormet claims that this market is highly volatile and that any cap must address this volatility (Ormet Ex. 6 at 6-7). Ormet maintains that the $54 million cap proposed by Staff is inadequate given the volatility of the aluminum market. Ormet claims that, if the discount in any given year is not sufficient to keep Ormet in business, then the entire contract will fail and Ormet will likely need to curtail production at its Hannibal facility.

Moreover, Ormet contends that Staff's proposed cap is unreasonable and speculative. Ormet believes that Staff's proposed cap fails to consider what Ormet needs to operate or to balance the costs of discounts against Ormet's benefits to this state. Ormet also claims that Staff has provided no support for its position that a maximum reduction of 25 percent from the tariff rate is appropriate. Further, Ormet contends that Staff has not demonstrated that its proposed $54 million cap would enable Ormet to remain in business for the years 2010 through 2019.

The Commission agrees with Staff's position that, generally, unique arrangements must contain a floor, a minimum amount that the party seeking a unique arrangement should be required to pay, and a ceiling, a maximum amount of delta revenue which the ratepayers should be expected to pay. Ormet represents that it does not oppose the application of a cap or floor to its contract (Ormet Brief at 21).

With respect to a floor, Ormet proposes a number of different methods for establishing a floor, with a range of $93 million to $114 million as the maximum discount from tariff rates. This range includes the variable costs of production of the electricity consumed by Ormet, which testimony indicates would be approximately $90 million (Tr. I at 235; Staff Ex. 2A, Tr. IV. at 478-479, 491-492). On the other hand, Staff has proposed a floor in which Ormet would receive a maximum discount from tariff rates of $54 million. OCC and OEG propose a floor of $32 million, based upon the total wages paid to Ormet's employees who reside in this state.

Based upon the record in this case, the Commission finds that Ormet's rate should be determined as proposed in the unique arrangement, but with a floor, or maximum discount from tariff rates. Although the Commission does not agree with Staff's recommendation on the amount of the floor, this floor should be implemented in the manner proposed by Staff at the hearing (Staff Ex. 2). Moreover, the Commission is not persuaded by the arguments presented by OCC and OEG that the Commission should consider only the Ohio portions of the regional economy. All of the jobs which would be retained under the proposed unique arrangement are located in this state irrespective of where the employees reside. Further, neither OCC nor OEG presented any economic analysis regarding how much of the indirect benefits of Ormet's continuing to remain in operation advantage the residents of this state as opposed to other states.

Therefore, the Commission will modify the proposed unique arrangement to set the maximum rate discount at $60 million for calendar years 2010 and 2011. The Commission has based the floor upon the variable costs of production of the electricity consumed by Ormet at full capacity, which the testimony at hearing indicates would be approximately $90 million. However, testimony in the record also indicates that, at the time of the hearing, Ormet was in the process of curtailing production to 4 potlines (Tr. 1 at 70-71). This curtailment of operations should reduce Ormet's demand for electricity by approximately one-third; therefore, the Commission has reduced the estimate of the variable costs of production of the electricity of $90 million by one-third to $60 million. The Commission finds that this is an appropriate floor or maximum discount for Ormet. This floor will be subject to two adjustments: a flexible phase down and a reduction in the discount due to reductions in employment, both of which will be discussed below.

With respect to the ceiling, or the maximum amount ratepayers should be expected to pay in any given year, the Commission agrees with Staff and the intervenors that the ability of ratepayers to fund the recovery of delta revenues is not unlimited. Ormet contends that the Staff has not offered proof for its recommendation of what ratepayers can afford to pay. However, Ormet, not Staff nor the intervenors, has the burden of proof in this proceeding, and it is Ormet that has failed to present evidence contravening the Staff's expert testimony, which was based upon substantial experience in relevant utility matters in this state (Staff Ex. 1 at 1; Tr. II at 336-338; Tr. IV at 505). Therefore, the Commission will adopt Staff's recommendation of $54 million as the maximum amount of delta revenue which ratepayers should be expected to pay in a given year.

However, this will result in a potential differential of up to $6 million per year between the $60 million maximum discount from tariff rates for Ormet and the $54 million maximum in delta revenues which ratepayers can be expected to pay. AEP-Ohio will be authorized to defer this differential, with carrying costs equal to AEP-Ohio's long term cost of debt, during the term of the unique arrangement. During this time, all delta revenue credits attributable to above-tariff payments by Ormet, to be calculated as discussed below, will be first applied to reduce or eliminate the deferral and carrying charges before being applied to AEP-Ohio's economic development rider. At the end of the term of the unique arrangement, AEP-Ohio will be permitted to recover any remaining deferred amounts, including carrying charges, through its economic development rider.

With respect to the adjustments to the floor, or maximum rate discount, the Commission agrees with Staff's recommendation that the unique arrangement be modified to phase down the discount over time. Ormet represents that there are several additional factors that will lower its costs, and in turn the need for rate discounts, over time; these factors include deleveraging through the proceeds raised by asset sales and internally-generated cash (Ormet Ex. 7 at 2) and reductions in Ormet's pension contributions beginning in 2013 (Tr. III at 434-436, 457-458). Therefore, although the $60 million floor will be in effect for calendar years 2010 and 2011, the Commission finds that, for calendar year 2012, the floor should be reduced to $54 million; for calendar years 2013 through 2018, the remaining six years of the contract, the floor should be reduced each year by $10 million, until it phases out completely for calendar year 2018.

The Commission also acknowledges that the aluminum market is subject to a great deal of volatility and that the unique arrangement should address that volatility.

Therefore, for calendar year 2013 through 2018, Ormet may elect to use, in the current year, any unused portion of the floor from a previous year (or years). Ormet shall apply this election by providing written notice to AEP-Ohio and by filing such notice in this docket. For example, if, due to LME prices in 2014, Ormet only uses a discount of $28.75 million, leaving $6 million of the 2014 discount unused, Ormet may elect to increase the floor in calendar year 2015 (or 2016 through 2018) by the $6 million unused discount. In no event will an adjusted floor be permitted to exceed $54 million in any year between 2013 and 2018. This should assist Ormet in weathering any short-term swings in the LME market while ensuring that the floor, or maximum rate discount, phases out over the duration of the unique arrangement.

Second, the Commission notes that the primary purpose of the unique arrangement is to retain jobs rather than to boost worldwide aluminum production or to enrich Ormet's investors. Any rate discounts provided to Ormet must be directly related to Ormet maintaining certain levels of employment. The record in this case demonstrates Ormet cannot continue to employ 900 employees beyond 2009 with curtailed production (Tr. III at 425). Therefore, under the unique arrangement, Ormet will be required to maintain an employment level of full-time employees of 650. Ormet will be required to provide a monthly report to Staff and AEP-Ohio detailing its employment levels. The floor will be reduced each month by $10 million for every 50 employees below 650 full-time employees that were employed by Ormet for the previous month. This reduction will be in addition to any planned phase down of the floor discussed above.

2) Potential Delta Revenue Credits

Kroger argues that the unique arrangement must provide for a greater share in the benefits for AEP-Ohio ratepayers in the event that aluminum prices rise above the target price. Kroger claims that ratepayers are being asked to bear the risk of declining aluminum prices and, therefore, should receive a reasonable return in the event that aluminum prices rebound. Kroger does not believe that a potential five percent gain is sufficient to compensate ratepayers for these risks.

OCC and OEG also allege that, under the proposed unique arrangement, AEP-Ohio's ratepayers bear great risks related to the price of aluminum while receiving little benefit if the price of aluminum rises. OCC and OEG cite to the testimony of OCC witness Ibrahim that the proposed unique arrangement lacks symmetry regarding the risks and benefits born by AEP-Ohio's customers (OCC Ex. 3 at 14-15). OCC and OEG claim that, if aluminum prices double from the price when Dr. Ibrahim filed his testimony, the possible benefit to AEP-Ohio's ratepayers would only be $3.6 million to $8.9 million (OCC Ex. 3 at 15). On the other hand, if the futures price for July 2010 accurately reflects the actual LME price for July 2010, Ormet will be paid $77.1 million to use power in 2010 and ratepayers would be responsible for delta revenues of $281.1 million. OCC and OEG contend that this asymmetry is extremely disadvantageous to AEP-Ohio's ratepayers because these ratepayers will bear huge risks for delta revenues while the benefits are extremely unlikely and minimal compared to the risks. Consequently, OCC and OEG recommend that a reasonable symmetry would require Ormet to pay a rate that exceeds the tariff rate by $0.049 per MWh times 50 percent for each $1 per tonne when the actual LME price exceeds the target price. AEP-Ohio would receive delta revenue credits for the amount that Ormet pays in excess of tariff rates with a maximum delta revenue credit cap of $16.35 million per year.

Ormet contends that the proposed unique arrangement is designed to assure that Ormet is not unreasonably benefitted at the expense of AEP-Ohio's ratepayers. Ormet notes that the unique arrangement is designed to impose the minimum burden on ratepayers by providing for the minimum cash flow necessary to keep its Hannibal facility in operation and pay its required legacy costs; the unique proposed arrangement does not guarantee that Ormet will earn a profit or a particular rate of return. Further, Ormet notes that it has voluntarily offered to pay above-tariff rates when the LME price of aluminum is greater than the target price.

The Commission finds that the unique arrangement, as filed, contains insufficient potential benefits to ratepayers in relation to the risks which Ormet proposes the ratepayers bear. Further, the Commission notes that the record indicates that Ormet will be able to substantially reduce its pension fund obligations beginning in the future (Tr. III at 434-436). However, the Commission finds that this can be addressed by increasing the amounts that Ormet will pay when LME prices exceed the LME target price. Therefore, beginning in 2012, if the LME price is greater than the LME target price, but not more than $300 above the LME target price, Ormet will pay 104 percent of the AEP-Ohio tariff rate rather than 102 percent of the AEP-Ohio tariff rate. Assuming full operations at Ormet's facility, this will increase the Ormet's potential contribution to delta revenue credits to approximately $8.74 million per year from $4.37 million. Further, if the LME price is greater than $300 above the LME target price, Ormet will pay 108 percent of the AEP-Ohio tariff rate rather than 105 percent of the AEP-Ohio tariff rate. This will increase Ormet's potential contribution to delta revenue credits to approximately $17.48 million per year from $10.91 million.

The Commission finds that any amounts paid by Ormet in excess of AEP-Ohio's tariff rates should be considered as delta revenue credits. AEP-Ohio is directed to apply the delta revenue credits first to any deferred amounts, including carrying charges, of delta revenues. Any remaining delta revenue credits should be applied to AEP-Ohio's economic development rider.

3) <u>POLR Charges</u>

OCC and OEG claim that the proposed unique arrangement is unreasonable and unlawful because it compensates AEP-Ohio for POLR charges when Ormet cannot shop under the unique arrangement. Under terms of the proposed unique arrangement, AEP-Ohio would be the exclusive supplier to Ormet's Hannibal facility (Ormet Ex. 8, Attachment A at 8-9; Tr. I at 37; Tr. IV at 484). OCC and OEG reason that, since there is no risk that Ormet will shop generation service while the contract is in effect, there is no risk to AEP-Ohio that it will be called to serve as Ormet's provider-of-last-resort; therefore, a POLR charge should not be assessed upon Ormet, and the other ratepayers should not pay delta revenues for POLR charges.

Kroger also contends that POLR charges should be excluded from the amount of delta revenues recovered by AEP-Ohio. Kroger reasons that, because Ormet will be contractually obligated to receive electricity from AEP-Ohio under the proposed unique arrangement, there is no risk to AEP-Ohio that Ormet will purchase electricity from an alternative electric service supplier. Kroger claims that, under the proposed unique arrangement, AEP-Ohio would still receive compensation for being the POLR supplier without incurring POLR costs. Further, Kroger believes that AEP-Ohio should be required to share the cost of any discount to Ormet since AEP-Ohio benefits financially from continued Ormet operations.

AEP-Ohio argues that the POLR charges authorized in its electric security plan should not be reduced. AEP-Ohio notes that the policy of the State is to promote competitive generation markets and customer choice. Section 4928.02, Revised Code. AEP-Ohio believes that any Commission order keeping Ormet's load out of the competitive markets for ten years would conflict with that policy. Further, AEP-Ohio contends that the Commission has already determined, in its electric security plan proceeding, that a customer should not be able to give up its statutory right to obtain service from a competitive supplier in exchange for avoiding the POLR charge. Instead, the only opportunity for a customer to avoid the POLR charge is to switch to a competitive supplier and agree to pay market rates for generation upon any return to the electric utility. *In re Columbus Sothern Power Co. and Ohio Power Co.*, Case No. 08-917-EL-SSO et al., Opinion and Order (March 18, 2009) at 40.

The Commission finds that, under the terms of the unique arrangement, AEP-Ohio will be the exclusive supplier to Ormet (Tr. I at 37-38; Tr. IV at 484). Therefore, there is no risk that Ormet will shop for competitive generation and then return to AEP-Ohio's POLR service. If AEP-Ohio were to retain these charges, AEP-Ohio would be compensated for a service it would not be providing. Moreover, our decision in the AEP-Ohio electric security plan is inapplicable to this case because that holding addressed customers receiving service under AEP-Ohio's standard service offer rather than a customer receiving service under a unique arrangement specifically approved by the Commission. Therefore, the Commission finds that the unique arrangement should be modified such that any POLR charges paid by Ormet are used to reduce the AEP-Ohio's ratepayers' obligations under the unique arrangement. During the term of the unique arrangement, AEP-Ohio shall credit any POLR charges paid by Ormet to its economic development rider in order to reduce the impact of the unique arrangement on other ratepayers' bills.

4) Deposit and Advance Payment Provisions

IEU-Ohio observes that the proposed unique arrangement would shift all risk of a potential default by Ormet to AEP-Ohio's customers by relieving Ormet of its current obligation to provide a security deposit as long as AEP-Ohio is permitted to treat any defaulted amounts as delta revenue to be recovered from its customers (Ormet Ex. 8, Attachment A at 14). IEU-Ohio argues that there is no real offset to the costs as a result of shifting the default risks to the other ratepayers and that this is part of the excessive burden placed upon AEP-Ohio's ratepayers under the proposed unique arrangement.

Ormet claims that all it is seeking with respect to deposit and advance payment terms is a return to standard tariff terms (Tr. I at 124, 227). Ormet believes that these terms will benefit AEP-Ohio's other ratepayers. Ormet notes that the calculation of the rate that Ormet can afford to pay is based on the assumption that the cash deposit currently held by AEP-Ohio will be returned to Ormet, thereby increasing its cash flow. If this deposit is not returned, it will result in increasing the magnitude of the discount required and in increasing the delta revenues to be collected from ratepayers. Thus, Ormet claims that, if the deposit is returned, the certainty of lower delta revenues would offset any potential risk of default.

AEP-Oho argues that the provisions in the proposed unique arrangement regarding waiver of deposit and advanced payment should not be modified. AEP avers that any modification would jeopardize the ability of AEP-Ohio to recover any unpaid amounts.

The Commission finds that the provisions related to deposit and advance payments should not be modified. The record clearly demonstrates that these provisions are an essential element of the proposed unique arrangement (Ormet Ex. 11A at 3, 4). Further, the record also demonstrates that Ormet has curtailed its operations, which will result in less ratepayer exposure to the risk of default by Ormet.

5) Future Review of the Proposed Unique Arrangement

In addition, IEU-Ohio claims that the proposed unique arrangement would prohibit the Commission and other stakeholders from seeking to modify the unique arrangement, except in very limited circumstances, while allowing Ormet to request modifications that would further benefit Ormet. Likewise, OCC and OEG claim that the proposed unique arrangement would unlawfully limit the Commission's jurisdiction to review and modify the agreement. Kroger also states that the Commission must have the ability to periodically review and, if necessary, modify the unique arrangement. Further, Kroger claims that ten years is an unreasonable amount of time to expose ratepayers to the risk and cost of a unique arrangement; thus there must be a reasonable time limit on the unique arrangement. Staff agrees that there should be some limit upon the length of the unique agreement. Thus, Staff believes that there should be periodic reviews of whether the unique agreements should continue.

The Commission believes that the provisions contained in the proposed unique arrangement for future review will be adequate to safeguard ratepayers from undue risks if supplemented by an additional, independent provision. The Commission notes that Ormet has repeatedly, throughout this proceeding, represented to the Commission its belief that, in the long-term, LME prices will recover sufficiently for Ormet to profitably operate. Ormet has disparaged the use of futures prices by OCC and OEG to predict future LME prices and has argued instead that the Commission should rely instead upon an analyst report which predicts a future rise in LME prices (Ormet Ex. 9 at 14).

Therefore, the Commission will modify the unique arrangement to provide an additional, independent, termination provision in the event that long-term LME prices do not recover as Ormet predicts. The Commission, above, has determined that, for calendar years 2010 and 2011, AEP should be permitted to defer for future recovery the differential between the floor, or maximum discount, of $60 million and the ceiling of $54 million. The Commission will modify the proposed unique arrangement to allow the Commission to terminate, by order, the unique arrangement if Ormet does not begin to reduce the amount of the accumulated deferrals, and carrying charges, through the payment of above-tariff rates, pursuant to the terms of the unique arrangement, by April 1, 2012. The Commission specifically notes that the crediting of POLR charges by AEP in the form of delta revenue credits shall not constitute the payment of above-tariff rates by Ormet for purposes of this termination provision. Unless otherwise ordered by the Commission, such termination shall be effective immediately upon issuance of a Commission order terminating the unique arrangement.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

(1) On February 17, 2009, Ormet filed an application pursuant to Section 4905.31, Revised Code, to establish a unique arrangement with AEP-Ohio for electric service to its aluminum-producing facility located in Hannibal, Ohio.

(2) Ormet filed an amended application on April 10, 2009.

(3) Comments regarding Ormet's application and amended application were filed by IEU-Ohio, OEG, and Kroger.

(4) Based upon the comments, the attorney examiner set this matter for hearing before the Commission.

(5) The hearing in this matter commenced on April 30, 2009, and concluded on June 17, 2009.

(6) The amended application is reasonable and should be approved as modified by the Commission.

ORDER:

It is, therefore,

ORDERED, That the amended application for a unique arrangement filed by Ormet be approved as modified by the Commission. It is, further,

ORDERED, That Ormet and AEP-Ohio file an executed power agreement in this docket that conforms to the modifications ordered by the Commission. It is, further,

ORDERED, That the approved unique arrangement shall be effective for services rendered following the filing in this docket of an executed power agreement. It is, further,

ORDERED, That AEP-Ohio be authorized to defer delta revenues for the remainder of calendar year 2009 and for calendar years 2010 and 2011, to the extent set forth in this Opinion and Order. It is, further, ORDERED, That a copy of this Opinion and Order be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Alan R. Schriber, Chairman

Paul A. Centolella

Ronda Hartman Fergus

Valerie A. Lemmie

Cheryl L. Roberto

GAP:ct

Entered in the Journal
JUL 15 2009

Reneé J. Jenkins
Secretary

ATTACHMENT B

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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

ENTRY ON REHEARING

The Commission finds:

(1) On February 17, 2009, Ormet Primary Aluminum Corporation (Ormet) filed an application to establish a unique arrangement with the Ohio Power Company and Columbus Southern Power Company (AEP-Ohio) for electric service to its aluminum-producing facility located in Hannibal, Ohio. Ormet is requesting that the Commission establish a unique arrangement for electric service with AEP-Ohio that links the price of electricity for its facility with the price of aluminum as reported on the London Metal Exchange. Ormet filed an amended application on April 10, 2009, to reflect the possible curtailment of the equivalent of at least two of its six potlines.

(2) On July 15, 2009, the Commission issued its Opinion and Order, approving the amended application as modified by the Commission.

(3) Section 4903.10, Revised Code, states that any party to a Commission proceeding may apply for rehearing with respect to any matters determined by the Commission within 30 days of the entry of the order upon the Commission's journal.

(4) On August 14, 2009, Industrial Energy Users-Ohio (IEU-Ohio) filed an application for rehearing, alleging that the Opinion and Order was unreasonable and unlawful on the following grounds:

(a) The Commission should grant rehearing to clarify the rate that will apply to Ormet during 2009.

(b) The Commission's failure to include a provision to terminate the reasonable arrangement automatically if Ormet fails to maintain operations is unreasonable.

(c) The Commission's failure to require Ormet to maintain deposit and advance payment provisions is unreasonable.

(5) Moreover, the Ohio Consumers Counsel and the Ohio Energy Group (OCC and OEG) filed an application for rehearing on August 14, 2009, alleging that the Opinion and Order was unreasonable and unlawful on the following grounds:

(a) The Commission erred in failing to specify and ensure how AEP-Ohio will apply the credit for the full amount of provider of last resort (POLR) charges that will reduce what customers will have to pay for Ormet's unique arrangement.

(b) The Commission erred by failing to specify that AEP-Ohio and Ormet shall not be permitted to reduce the delta revenue credit, for example by negotiating a discount for the POLR charge, that is intended by the Commission to reduce what customers will have to pay for Ormet's unique arrangement.

(6) Further, on August 14, 2009, AEP-Ohio filed an application for rehearing, alleging that the Opinion and Order was unreasonable and unlawful on the following grounds:

(a) The Commission's conclusion that, during the ten-year term of this unique arrangement, there is no risk Ormet will be permitted to shop for competitive generation and then return to AEP-Ohio is unreasonable and conflicts with the Commission's orders in AEP-Ohio's electric security plan cases, *In re Columbus Southern Power Co. and Ohio Power Co.*, Case No. 08-917-EL-SSO, et al.

(b) Even assuming there is no risk Ormet will be permitted to shop for competitive generation and then return to AEP-Ohio, requiring that POLR charges paid by Ormet must be credited by AEP-

Ohio to its economic development rider is unlawful. Section 4905.31(E), Revised Code, does not permit the Commission to offset the amount of revenue forgone by alleged or real expense reductions. Further, the Commission's authority under Chapters 4901., 4903., 4905., 4907., 4909., 4921., 4923., 4927., 4928., and 4929., Revised Code, is not available to the Commission to prohibit AEP-Ohio from recovering all revenues forgone as a result of the unique arrangement.

(c) The Opinion and Order commits a customer to refrain from acquiring its generation service from a competitive retail electric service provider in violation of the clearly stated public policy of this State. Contract provisions that are contrary to the public interest are unenforceable.

(d) The Commission ordered AEP-Ohio and Ormet to execute and file a power agreement conforming to the Commission's Opinion and Order even though AEP-Ohio did not agree with all the terms of the modified reasonable arrangement. There is no "reasonable arrangement with" AEP-Ohio under Section 4905.31, Revised Code.

(e) Eliminating the existing requirement for AEP-Ohio to retain a deposit from Ormet and no longer requiring Ormet to make payments in advance to AEP-Ohio is unreasonable in light of the increased possibility of Ormet terminating production, either indefinitely or permanently, along with the related inability to make timely payments for electric services or Ormet's decision not to make such payments.

(7) On August 24, 2009, IEU-Ohio, and Ormet each filed memoranda contra AEP-Ohio's application for rehearing. OCC and OEG also filed a joint memorandum contra AEP-Ohio's application for rehearing on August 24, 2009. Further, on August 24, 2009, AEP-Ohio filed a memorandum contra the application for rehearing filed by OCC and OEG.

(8) In its first assignment of error, IEU-Ohio requests that the Commission clarify the rate for electric service which Ormet will pay in 2009. IEU-Ohio notes that, after the Commission issued its Opinion and Order in this proceeding, Ormet issued a notice of layoff and closure pursuant to the Federal Worker Adjustment and Retraining Notification Act (WARN). IEU-Ohio also cites to a recent press release issued by Ormet regarding a decision in its arbitration proceeding with its alumina supplier. IEU-Ohio claims that, because the 2009 rates approved by the Commission in the Opinion and Order were expressly contingent upon Ormet maintaining at least 900 employees at its Hannibal facility, these developments require the Commission to clarify the rates that Ormet should pay in 2009.

In its memorandum contra, Ormet claims that it issued its initial WARN notices in order to preserve all of its available options in light of the arbitration decision and the Commission's Opinion and Order in this proceeding. Further, Ormet represents that it has issued a supplemental WARN notice stating its intention to shutdown two of its six potlines and reduce its workforce by 100 employees and that it has issued a subsequent press release regarding its intention to operate four of its six potlines through the balance of 2009. With respect to its 2009 rate under the unique arrangement, Ormet argues that, if it is not able to maintain an employment level of 900 employees, it will not be entitled to the 2009 rate set forth in the Opinion and Order; and AEP-Ohio will charge Ormet the default rate set forth in the power agreement, which is an average of $38.00 per MWh for 2009 until such time as Ormet resumes employment of 900 employees.

As a preliminary matter, the Commission notes that none of the WARN notices and press releases cited by both IEU-Ohio and Ormet have been admitted into the evidentiary record in this proceeding. Further, no witnesses have testified regarding the nature or the implications of the WARN notices. Therefore, the WARN notices and press releases will not be considered by the Commission in this Entry on Rehearing. The Opinion and Order provided that, if Ormet maintained an employment level of 900 employees for calendar year 2009, AEP-Ohio would bill Ormet, for the balance of 2009, at a rate which averages $38.00 per MWh for the periods when Ormet was in full production (i.e., six potlines), $35.00 per MWh for the periods when Ormet curtailed production to 4.6 potlines, and $34.00 per MWh for the periods when Ormet curtailed production to 4 potlines. Further, the Commission ordered Ormet to provide AEP-Ohio and Staff with monthly reports detailing its employment levels. The Commission agrees with Ormet that, to the extent that Ormet fails to maintain the required employment level in 2009, AEP-Ohio should charge Ormet $38.00 per MWh, which is the default rate in the power agreement, irrespective of Ormet's production levels. Moreover, the Commission will clarify that the termination provision contained in Section 2.03 of the proposed power agreement shall not apply for 2009 billing periods (Ormet Ex. 8, Attachment A at 9). Although the Commission does not believe that any further clarification is necessary, we will direct Staff to review Ormet's monthly billing records for 2009 and the submitted monthly employment reports to ensure that Ormet was billed in accordance with the unique arrangement. Rehearing on this assignment of error should be denied.

(9) In its second assignment of error, IEU-Ohio claims that the Commission's failure to include a provision to terminate the reasonable arrangement automatically if Ormet fails to maintain operations is unreasonable. IEU-Ohio notes that, because the unique arrangement is for a ten-year period, once AEP-Ohio and Ormet file an executed power agreement, it is possible that Ormet may cease operations and, at some point in the future, resume operations and attempt to claim it is entitled to receive electric service pursuant to the contract for the balance of the term. Therefore, IEU-Ohio contends that the termination provisions of the unique arrangement, as modified by the Commission in the Opinion and Order, do not sufficiently protect ratepayers from undue risks.

Rehearing on this assignment of error should be denied. The Commission finds that the provisions of the unique arrangement, as modified by the Commission, adequately protect ratepayers in the event that Ormet ceases operations. The power agreement introduced into the record of this proceeding provides that the power agreement shall terminate 24 months after any shutdown, unless Ormet begins ramping up production (Ormet Ex. 8, Attachment A at 10). Further, in the Opinion and Order, the Commission modified the unique arrangement such that Ormet is required to maintain an employment level of 650 full-time employees. In the event that Ormet does not maintain this employment level, the maximum rate discount, or floor, would be reduced by $10 million for every 50 employees below 650 full-time employees that were employed for the previous month. This modification ensures that the maximum rate discount funded by ratepayers is directly linked to continued employment at the Hannibal facility. Therefore, we find that the provisions of the power agreement, as modified, provide sufficient protection to ratepayers from any risk of curtailment of production or shutdown of the Hannibal facility by Ormet.

(10) In its third assignment of error, IEU-Oho contends that the Commission's failure to require Ormet to maintain deposit and advance payment provisions is unreasonable. Likewise, in its fifth assignment of error, AEP-Ohio claims that the Commission's failure to maintain the existing requirements for a deposit and advance payments from Ormet is unreasonable.

IEU-Ohio argues that ratepayer exposure to the risk of default by Ormet has increased due to the issuance of the WARN notice, discussed above, by Ormet. Similarly, AEP-Ohio argues that it may be unreasonable to release Ormet from the requirement that it provide a deposit and advance payments due to Ormet's recent issuance of the WARN notice.

Ormet claims that the absence of deposit and advance payment provisions actually benefits ratepayers. Ormet notes that the annual calculation of the rate that Ormet can afford to pay is currently based upon the assumption that the cash deposit currently held by AEP-Ohio will be returned to Ormet, thereby increasing its cash flow (Tr. I at 19-21, 22-23). However, Ormet contends that, if it is required to keep a deposit with AEP-Ohio and to continue paying in advance for power, then its cash flow will be reduced and the magnitude of the discount required by Ormet to continue in operation would increase.

The Commission finds that IEU-Ohio and AEP-Ohio have not raised any new arguments, based upon evidence in the record in this proceeding, in support of their assignments of error. IEU-Ohio's argument relies solely on the issuance by Ormet of the WARN notice, an event which the Commission has already determined was not part of the evidentiary record in this proceeding and will not be considered on rehearing. The evidence in the record in this case demonstrates that payment provisions contained in the power agreement, as proposed by Ormet, reflect the same terms available to customers receiving service under AEP-Ohio's standard service offer (Tr. I at 124, 227). Moreover, the record demonstrates that such terms are necessary for Ormet to continue operations under the unique arrangement (Ormet Ex. 6 at 7, Ormet Ex. 11A at 3, 4). Rehearing on this assignment of error is denied.

(11) In support of its first assignment of error, AEP-Ohio argues that there is a risk that, during the ten-year term of the unique arrangement, Ormet will be permitted to shop for competitive generation and then return to AEP-Ohio. AEP-Ohio argues that the Commission's authority over the unique arrangement is continuous and that, as circumstances change, the Commission can order a modification of the unique arrangement. AEP-Ohio specifically notes that the Commission modified the proposed unique arrangement to provide provisions related to employment levels and the requirement that any accumulated deferrals be reduced through payment of above-tariff rates no later than April 2012. Further, AEP-Ohio notes that Ormet has not just shopped for competitive generation in the past but has also sought and been granted permission to switch to another electric supplier's certified territory. *See Ormet Primary Aluminum Corporation et al., v. South Central Power Co. and Columbus Southern Power Co.,* Case No. 05-1057-EL-CSS. Therefore, based upon the Commission's continuing jurisdiction over the special arrangement and upon its experience with this customer, AEP-Ohio argues that the Commission should reverse its conclusion that there is no risk of Ormet shopping and then returning to POLR service.

In their joint memorandum contra AEP-Ohio's application for rehearing, OCC and OEG argue that the Commission's conclusion that there is no risk of Ormet shopping and returning to AEP-Ohio during the ten-year term of the unique arrangement was reasonable and consistent with the Commission's order in AEP-Ohio's ESP case. OCC and OEG claim that the record established that Ormet made the decision that it would not shop and that the Opinion and Order simply ratifies Ormet's decision to make AEP-Ohio its exclusive electric supplier for the next ten years. Further, OCC and OEG dispute AEP-Ohio's assertion that the Commission's ability to modify the arrangement at any time provides an opportunity for Ormet to shop for a different supplier.

The Commission finds that rehearing on this assignment of error should be granted in order to clarify that the relevant period when Ormet cannot shop is the duration of AEP-Ohio's current approved electric security plan (ESP). It is not necessary to reach the question of whether Ormet can shop beyond the duration of the current ESP because no determination has been made whether future standard services offers will include a comparable POLR charge. Under the terms of the unique arrangement as approved by the Commission, AEP-Ohio will be the exclusive supplier to Ormet for ten years, commencing January 1, 2009 (Tr. I at 37-38; Tr. IV at 484). Accordingly, in the Opinion and Order the Commission determined that AEP-Ohio would not be subject to POLR risk (i.e., the risk that Ormet may shop and subsequently seek to return to AEP-Ohio's standard service offer) and, therefore, that AEP-Ohio should not be compensated for bearing this risk. Although AEP-Ohio argues that there is a risk of Ormet shopping and then returning to AEP-Ohio's standard service offer because the unique arrangement remains under the Commission continuing jurisdiction, the Commission notes that any modification to the unique arrangement would take place only after notice and an opportunity for hearing for any party affected by such modification, including AEP-Ohio.

Moreover, the unique arrangement provides that the Commission may modify the unique arrangement only after January 1, 2016, unless the cumulative net discount under the unique arrangement exceeds 50 percent of the amount that Ormet would have been required to pay under AEP-Ohio's applicable tariff rates (Ormet Ex. 8, Attachment A at 9). Although the Commission modified the unique arrangement to provide an additional independent termination provision, this termination provision, by its terms, cannot be effective before April 1, 2012. However, AEP's electric security plan, and its authority to assess POLR charges to its standard service offer customers, expires on December 31, 2011. Therefore, under the terms of the unique arraignment as modified by the Commission, there is no risk that Ormet will shop and return to

AEP-Ohio's standard service offer during its current electric security plan.

With respect to AEP-Ohio's argument there is a risk of Ormet shopping based upon AEP-Ohio's experience with this customer, specifically the repeated transfer of Ormet's Hannibal facilities pursuant to Section 4933.83, Revised Code, the Commission notes that both the initial transfer and the return of Ormet's Hannibal facilities were approved with AEP-Ohio's consent and that AEP-Ohio was fully compensated for the return of Ormet to its service territory. *Ormet Primary Aluminum Corporation*, Case No. 05-1057-EL-CSS, Supplemental Opinion and Order (November 8, 2006) at 2, 4, 5-6, 8, 10. This experience, therefore, has no bearing upon whether there is any risk of Ormet shopping for a competitive retail electric supplier.

(12) In support of its second assignment of error, AEP-Ohio argues that the Commission lacks authority to preclude AEP-Ohio from recovering all revenue foregone as a result of the unique arrangement and that the failure to permit AEP-Ohio to recover all revenue foregone conflicts with AEP-Ohio's approved electric security plan. AEP-Ohio contends that the plain language of Section 4905.31, Revised Code, provides the Commission with no statutory authority to offset the recovery of the revenue foregone by any expense the Commission believes will not be incurred by the electric utility due to the unique arrangement. AEP-Ohio claims that any such reduction in the recovery of revenue foregone would not be "advantageous" to both parties to the contract, as required by Section 4905.31, Revised Code. AEP-Ohio claims that, in other contexts, the General Assembly provided explicit offset authority to the Commission and that the absence of such explicit authority is particularly telling in light of the presence of explicit offset authority in other provisions amended by Am. Sub. Bill 221. AEP-Ohio also contends that the Opinion and Order is contrary to the Commission's order approving AEP-Ohio's ESP. AEP alleges that the Commission determined in the ESP proceeding that all customers would pay the POLR charge for the entire time they are served under AEP-Ohio's standard service offer and that customers would avoid POLR charges during the period they are actually served by a CRES provider if they agreed to return at a market price. Further, AEP-Ohio contends that the Commission cannot distinguish its decision in

the ESP proceeding from this case because the same POLR risk that formed the basis for the POLR charge adopted in the ESP proceeding is present with Ormet.

OCC and OEG argue that Section 4905.31, Revised Code, does not preclude the Commission from requiring that the POLR charge for Ormet be credited to the economic development rider. OCC and OEG contend that Section 4905.31, Revised Code, allows for reasonable arrangements which are either "practicable" or "advantageous" to the "parties interested." Thus, according to OCC and OEG, the reasonable arrangement can be either practicable *or* advantageous; but it need not be both. Further, OCC and OEG argue that the plain meaning of the term "parties interested" goes beyond just the parties to the contract and includes other ratepayers, who have a distinct interest in how the agreement will affect the rates they must pay. Finally, OCC and OEG claim that the POLR provisions of AEP-Ohio's ESP do not apply to Ormet, which is not receiving service under AEP-Ohio's standard service offer.

The Commission finds that rehearing on this assignment of error should be denied. Contrary to AEP-Ohio's analysis, the plain language of Section 4905.31, Revised Code, does not require the Commission to approve the full recovery of all delta revenue resulting from the unique arrangement. Section 4905.31, Revised Code, states that a unique arrangement "*may include* a device to recover *costs incurred* in conjunction with any economic development and job retention program . . . including recovery of revenue foregone." The Commission finds that the use by the General Assembly of "may" in this context authorizes, but does not require, the recovery of delta revenues. If the General Assembly had intended to require the recovery of delta revenues, the General Assembly would have used "shall" or "must" rather than "may." Moreover, Section 4905.31, Revised Code, states that "[e]very . . . reasonable arrangement shall be under the supervision and regulation of the commission, and is subject to change, alteration, or modification by the commission." This provision provides the Commission with broad statutory authority to change, alter, or modify proposed unique arrangements and includes no exception to that authority with respect to the recovery of delta revenues. Thus, the Commission finds that, according to the plain language of the statute, the recovery of delta revenues is a matter for the Commission's discretion.

In addition, Section 4905.31, Revised Code, provides for the recovery of "costs incurred." In this Entry on Rehearing, the Commission has determined that there is no risk that Ormet will shop for a competitive supplier during AEP-Ohio's current approved ESP. Therefore, if there is no risk of Ormet shopping and returning to standard offer service during its ESP, AEP-Ohio will incur no costs for providing POLR service which can be recovered under Section 4905.31, Revised Code. Accordingly, the Commission determined in the Opinion and Order that AEP-Ohio should credit any POLR charges paid by Ormet to its economic development rider in order to reduce the recovery of delta revenues from other ratepayers.

Finally, the Commission finds that AEP-Ohio's reliance upon our orders approving its ESP to be misplaced. Under the unique arrangement, Ormet will *not* be receiving service under AEP-Ohio's standard service offer; instead, Ormet will be receiving service under a unique arrangement. Although AEP-Ohio posits that this is a distinction without a difference, the Commission notes that service under a unique arrangement is authorized by a different statute, Section 4905.31, Revised Code, than service under a standard service offer, Section 4928.141, Revised Code. By its very nature, service under a unique arrangement provides for service under different prices, terms, and conditions than service under a standard service offer. In fact, in this proceeding, AEP-Ohio, enumerating several factors that it believes distinguishes Ormet from customers who are on the standard service offer, has argued that Ormet should not receive standard service offer terms for security deposits and advance payments. The Commission agrees that Ormet is different from customers on the standard service offer, and one of those differences is that Ormet has committed to AEP-Ohio to be its exclusive supplier (Tr. I at 37-38; Tr. IV at 484). Therefore, since there is no risk that Ormet will shop during AEP-Ohio's ESP, Ormet does not present the same POLR risk as customers on the standard service offer as claimed by AEP-Ohio. Moreover, the Commission's decision that AEP-Ohio's ESP was more favorable in the aggregate than the expected results that would otherwise apply under Section 4928.142, Revised Code, does not imply that the electric utility's ESP is the only basis for setting rates. The rates established by a reasonable arrangement under Section 4905.31, Revised Code, will frequently differ from the rates established under an ESP.

(13) In its third assignment of error, AEP-Ohio argues that the Opinion and Order commits a customer to refrain from acquiring its generation service from a competitive retail electric service provider in violation of the clearly stated public policy of this state, as codified in Section 4928.02, Revised Code. Specifically, AEP-Ohio claims that the statute sets forth the state's policy to ensure diversity of electric supplies and suppliers, to recognize the continuing emergence of competitive electric markets through the development and implementation of flexible regulatory treatment, and to ensure effective competition in the provision of retail electric service. AEP-Ohio claims that it is clear from these policy pronouncements that a contract by which a customer states a commitment not to pursue competitive options for 10 years stifles the development of a competitive retail electric market. Therefore, AEP-Ohio concludes that the Commission should not approve this provision.

OCC and OEG argue that allowing a customer to choose AEP-Ohio as an exclusive provider does not violate any public policy of the state but, rather, furthers the policy of the state in facilitating reasonable rates and customer choice. OCC and OEG claim that competition is not the end-all purpose of Am. Sub. Senate Bill 221; rather, Am. Sub. Senate Bill 221 is intended to ensure "reasonably priced electric retail service" by providing customers with tools and opportunities to achieve such reasonably priced rates. OCC and OEG also claim that customer choice means that a customer, who agrees to contract provisions, including a long-term exclusive supplier provision, should not be second-guessed by AEP-Ohio.

The Commission finds that rehearing on this assignment of error should be denied. AEP-Ohio does not cite to any evidence in the record of this proceeding to support its claim that the exclusive supplier provision of the proposed unique arrangement violates state policy as codified in Section 4928.02, Revised Code. There is no testimony in the record that the exclusive supplier provision will adversely impact the diversity of electric suppliers and supplies. There is no evidence that the proposed unique arrangement fails to recognize the continuing emergence of competitive markets or adversely impacts the development and implementation of flexible regulatory treatment. There is no testimony cited by AEP-Ohio regarding the impact of the exclusive supplier provision upon competition in the provision of retail electric service. The exclusive supplier provision may, or may not, adversely affect competition in this state, but there is no evidence in the record to support that *determination.*

In the absence of evidence to support its assignment of error, AEP-Ohio argues that, as a matter of law, the unique arrangement violates Section 4928.02, Revised Code. However, Section 4905.31, Revised Code, states, in relevant part:

> Chapters 4901., 4903., 4905., 4907., 4909., 4921., 4923., 4927., 4928., and 4929. of the Revised Code do not prohibit a public utility from filing a schedule or establishing or entering into any reasonable arrangement with another public utility or with one or more of its customers, consumers, or employees, and *do not prohibit a mercantile customer of an electric distribution utility* as those terms are defined in section 4928.01 of the Revised Code or a group of those customers *from establishing a reasonable arrangement* with that utility . . . [emphasis added].

Therefore, nothing in Chapter 4928, Revised Code, including the policy provisions of Section 4928.02, Revised Code, should be construed as prohibiting a reasonable arrangement for the supply of retail electric service. Accordingly, the Commission cannot find, as a matter of law, that the proposed unique arrangement, which includes an exclusive supplier provision violates Section 4928.02, Revised Code.

Further, AEP-Ohio's concern is misplaced in this case. This is not an instance in which the electric utility is seeking to become a customer's exclusive electric supplier as a condition of a unique arrangement. Rather, it is Ormet who is committing to AEP-Ohio to be its exclusive electric supplier. In a competitive retail market, a consumer has the right to choose to enter into a long-term forward contract for generation service.

(14) With respect to its fourth assignment of error, AEP-Ohio argues that a reasonable arrangement proposed by an electric utility's mercantile customer cannot be approved by the Commission under Section 4905.31, Revised Code, unless the electric utility agrees to be bound by the proposed reasonable arrangement. Although AEP-Ohio acknowledges that the term "arrangement" in the statute is ambiguous, AEP-Ohio claims that a fair and reasonable interpretation of the term, is "mutual agreement or understanding." Further, AEP-Ohio contends that the context of the statute confirms that "arrangement" should be interpreted as "mutual agreement" because the statute envisions that a reasonable arrangement submitted to the Commission is an arrangement already in existence which becomes lawful and immediately enforceable upon approval by the Commission.

In addition, AEP-Ohio contends that the amendment to Section 4905.31, Revised Code, contained in Am. Sub. Senate Bill 221, which allows mercantile customers to submit a reasonable arrangement to the Commission for approval, merely clarified that an electric utility may offer a general arrangement to all of its customers or to customers in a specific class and allow the individual customers to decide whether to actually "enter into" the offered arrangement. Moreover, AEP-Ohio posits that the amendment recognizes that a mercantile customer has the option of establishing a reasonable arrangement not only with its electric utility but also with some other public utility electric light company. AEP-Ohio claims that this language suggests mutual agreement because it would be strange for the Commission to force a CRES provider or an electric utility serving another territory to enter into an arrangement. Moreover, AEP-Ohio argues that the mercantile customer may apply for a proposed reasonable arrangement because the mercantile customer has a key role to play in persuading the Commission that the reasonable arrangement furthers its intended purpose.

Ormet responds that the Commission has already rejected the arguments raised by AEP-Ohio. Ormet notes that, in adopting the rules governing reasonable arrangements, the Commission specifically rejected a claim that a reasonable arrangement required the electric utility's agreement, holding that:

> FirstEnergy argues that the Commission should make it clear that such applications require the electric utility's consent before they can be approved by the Commission. We believe FirstEnergy's position is not consistent with Section 4905.31, Revised Code, as modified by [Am. Sub. Senate Bill 221]. This section provides that a mercantile customer may apply to the Commission to establish a reasonable arrangement with an electric utility. *Although such arrangement requires Commission approval, there is no requirement that the electric utility must consent to the arrangement before the Commission approves it.*
>
> *In the Matter of the Adoption of Rules for Reasonable Arrangements,* Case No. 08-777-EL-ORD, Entry on Rehearing (February 11, 2009) at 21 [emphasis added].

OCC and OEG also contend that the Commission may order AEP-Ohio and Ormet to enter into a reasonable arrangement without mutual agreement by the electric utility. OEG and OCC claim that AEP-Ohio's assumption that "establishing" a reasonable arrangement and "entering into a reasonable arrangement" mean the same thing violates the rule of statutory interpretation that the entire statute is intended to be effective. *See* Section 1.47(B), Revised Code. Instead, OCC and OEG argue that "establishing" a reasonable arrangement and "entering into a reasonable arrangement" are listed separately under Section 4905.31, Revised Code, and constitute two separate acts. Thus, OCC and OEG posit that "establishing a reasonable arrangement" can be completed through a filed design or plan *without mutual agreement* while "entering into a reasonable arrangement" specifically means to reach an agreement and cannot be completed without mutual consent. Moreover, OCC and OEG argue that AEP-Ohio's interpretation of "establishing a reasonable arrangement" within the context of Section 4905.31, Revised Code, is faulty. OCC and OEG claim that, in assuming that the arrangement becomes immediately enforceable upon approval, AEP-Ohio neglects to recognize the last paragraph of the statute, which states that "[e]very such . . . reasonable arrangement shall be under the supervision and regulation of the commission, and is subject to change, alteration, or modification by the commission." OCC and OEG contend that this provision means that the "establishment of a reasonable arrangement" is not final until the Commission finds that the arrangement is reasonable and in the public interest.

Finally, OCC and OEG allege that AEP-Ohio's interpretation of Section 4905.31, Revised Code, fails to recognize that a major reason that the General Assembly amended Section 4905.31, Revised Code, was to encourage economic development contracts. OCC and OEG claim that the General Assembly wanted to ensure that mercantile customers have the opportunity to propose reasonable arrangements to the Commission even if the electric utility was unwilling to "enter into an agreement" with the mercantile customer. OCC and OEG argue that, irrespective of whether an arrangement is filed by the utility or a mercantile customer, an arrangement should be approved only if it is "reasonable," which OCC and OEG define as an arrangement which does not impose economic burdens on the customers paying any subsidies.

IEU-Ohio argues that AEP-Ohio seeks an absolute veto over authority delegated to the Commission by Section 4905.31, Revised Code, to enable a reasonable arrangement that is filed by a mercantile customer or group of such customers. IEU-Ohio claims that Am. Sub. Senate Bill 221 did not modify the requirement that the Commission review and approve any reasonable arrangement before it becomes lawful and effective; however, Am. Sub. Senate Bill 221 did explicitly expand the persons eligible to submit a reasonable arrangement for the Commission's consideration and approval. Moreover, IEU-Ohio notes that, despite expanding the scope of persons eligible to submit a proposed reasonable arrangement to the Commission, the General Assembly did not modify the requirement that, upon Commission approval of a reasonable arrangement, the electric utility is required to conform its schedule of rates, tolls, and charges to the arrangement. IEU-Ohio also notes that there is no new language requiring the agreement of the electric utility with the Commission-approved reasonable arrangement even though, in Am. Sub. Senate Bill 221, the General Assembly did provide such a provision where the Commission modifies a proposed ESP.

According to IEU-Ohio, the clear and plain language in Section 4905.31, Revised Code, states that: (1) an electric utility, a mercantile customer, or group of mercantile customers may submit a proposed reasonable arrangement to the Commission for the Commission's consideration and approval; (2) the proposed reasonable arrangement may become lawful and effective only upon Commission approval; and (3) the electric utility must then conform its rates to the Commission-approved reasonable arrangement.

The Commission notes that, although AEP-Ohio argues that a reasonable arrangement proposed by an electric utility's mercantile customer cannot be approved by the Commission unless the electric utility agrees to be bound by the proposed reasonable arrangement, the record in this case demonstrates that AEP-Ohio did not engage in negotiations with Ormet in order to reach such an agreement (Tr. I at 13, 15, 17). Thus, AEP-Ohio appears to believe that it can effectively veto reasonable arrangements simply by declining to negotiate with mercantile customers. However, AEP-Ohio ignores the language of Section 4905.31, Revised Code, as amended by Am. Sub. Senate Bill 221, which provides that a mercantile customer may submit an application for a reasonable arrangement to the Commission. Prior to the enactment of Am. Sub. Senate Bill 221, a reasonable arrangement required the electric utility's agreement because only the electric utility was authorized to file an application for a reasonable arrangement. In Am. Sub. Senate Bill 221, the General Assembly expressly authorized mercantile customers to file applications with the Commission for reasonable arrangements. If the General Assembly had intended on retaining the requirement that an electric utility agree to a proposed reasonable arrangement, there would have been no need for the General Assembly to amend Section 4905.31, Revised Code, to authorize the filing of an application by a mercantile customer.

Moreover, AEP-Ohio does not address the plain language of Section 4905.31, Revised Code, which provides that the proposed reasonable arrangement is subject to "change, alteration, or modification" by the Commission but does not provide for the opportunity for the electric utility to reject such modifications. If the General Assembly had intended to provide the electric utility with the opportunity to reject modifications by the Commission, the General Assembly would have expressly provided that opportunity as it did in a similar situation in Section 4928.143(C)(2)(a), Revised Code. Instead, the General Assembly enacted a statutory framework under which an electric utility or mercantile customer (or a group of mercantile customers) may file an application with the Commission for a proposed reasonable arrangement. The Commission may approve or change, alter, or modify the proposed reasonable arrangement. After the Commission has approved, or modified and approved, a reasonable arrangement, the electric utility must conform its rates to the reasonable arrangement. There is no provision in this statutory framework for an electric utility to reject the modifications ordered by the Commission. Accordingly, the Commission finds that rehearing on this assignment of error should be denied.

(15) In support of their two assignments of error, OCC and OEG contend that the Opinion and Order failed to address the mechanics of how POLR credits would be applied to AEP-Ohio's economic development rider. Specifically, OCC and OEG request that the Commission clarify the Opinion and Order to preclude AEP-Ohio and Ormet from negotiating a discount to the POLR charge as part of Ormet's discounted rate.

AEP-Ohio argues that OCC and OEG erroneously assume that the percentage discount to which Ormet might be entitled applies to all rate components except the POLR rider. AEP-Ohio, on the other hand, contends that all components of the tariff, including all riders, should be discounted by the percentage amount of the discount.

The Commission finds that rehearing should be granted in order to clarify the manner in which POLR charges paid by Ormet should be credited to the economic development rider. AEP-Ohio argues that the amount of the credit should be discounted by the same percentage of the maximum rate discount provided to Ormet. This interpretation is not consistent with the Opinion and Order in this case. The rate discount provided to Ormet has no impact whatsoever on the amount of the credit to be applied to the economic development rider. Instead, AEP-Ohio should credit the full amount of the POLR component of the tariff rate which would otherwise apply, on a per MWh basis.

It is, therefore,

ORDERED, That the application for rehearing filed by IEU-Ohio be denied and that the applications for rehearing filed by OCC and OEG and AEP-Ohio be granted, in part, and denied, in part. It is, further,

ORDERED, That a copy of this Entry on Rehearing be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Alan R. Schriber, Chairman

Paul A. Centolella

Ronda Hartman Fergus

Valerie A. Lemmie

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GAP:ct

Entered in the Journal

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Reneé J. Jenkins
Secretary