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, having considered the evidence presented in this proceeding, transcripts of the hearing, and briefs of the parties, hereby issues its opinion and order in this matter.

APPEARANCES:

Vorys, Sater, Seymour & Pease LLP, by M. Howard Petricoff and Stephen M. Howard, 52 East Gay Street, Columbus, Ohio 43215, and SNR Denton US LLP, by Dan Barnowski, 1301 K Street NW, Suite 600, East Tower, Washington, D.C. 20005, on behalf of Ormet Primary Aluminum Corporation.

Mike DeWine, Ohio Attorney General, by Thomas W. McNamee, Assistant Attorney General, 180 East Broad Street, Columbus, Ohio 43215, on behalf of the staff of the Public Utilities Commission of Ohio.

Steven T. Nourse, American Electric Power Service Corporation, 1 Riverside Plaza, 29th Floor, Columbus, Ohio 43215, and Porter, Wright, Morris & Arthur, LLP, by Andrew C. Emerson, 41 South High Street, Columbus, Ohio 43215, on behalf of Ohio Power Company.

Bruce J. Weston, Ohio Consumers' Counsel, by Maureen R. Grady and Edmund "Tad" Berger, Assistant Consumers' Counsel, 10 West Broad Street, Suite 1800, Columbus, Ohio 43215, on behalf of the residential consumers of Ohio Power Company.

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

McNees, Wallace & Nurick LLC, by Samuel C. Randazzo, Frank P. Darr, Joseph E. Oliker, and Matthew R. Pritchard, 21 East State Street, 17th Floor, Columbus, Ohio 43215, on behalf of Industrial Energy Users-Ohio.

Bricker & Eckler LLP, by J. Thomas Siwo and Maria J. Armstrong, 100 South Third Street, Columbus, Ohio 43215, on behalf of OMA Energy Group.

OPINION:

I. History of the Proceeding

In 2009, the Commission modified and approved the amended application of Ormet Primary Aluminum Corporation (Ormet) for a unique arrangement with Columbus Southern Power Company (CSP) and Ohio Power Company (OP) (jointly, AEP Ohio)[1] for electric service to Ormet's aluminum-producing facility located in Hannibal, Ohio.[2] Under this unique arrangement, the Commission approved rate subsidies for Ormet of up to $308 million through December 31, 2018, including $232 million through 2013. In addition to these subsidies, Ormet has received other financial assistance from the Commission over the years, including the Commission's approval, in 2006, of a stipulation that established a generation rate that was expected to save Ormet at least $56 million over a two-year period.[3]

On October 12, 2012, Ormet filed a motion for expedited approval of payment deferral, pursuant to Section 4905.31, Revised Code, and Rules 4901-1-12(C) and 4901:1-38-05(B), Ohio Administrative Code (O.A.C.). Specifically, Ormet sought approval of a modification to its unique arrangement with AEP Ohio, such that Ormet would be authorized to defer payment of its billed amounts for October and November 2012, which would otherwise be due in November and December 2012, respectively. Ormet proposed to pay the deferred amounts over the 12 months of 2014 and the first five months of 2015 in equal monthly installment payments that are equal to 1/17, or 5.88235 percent, of the cumulative amount of the two bills.

By entry issued on October 17, 2012, the Commission granted Ormet's request for a deferred payment arrangement to the extent set forth in the entry. The Commission also authorized AEP Ohio to recover an additional $20 million from ratepayers in the event Ormet fails to make the deferred payments. The Commission, however, noted its concern regarding the financial risk being incurred by AEP Ohio's ratepayers and

---

1 By entry issued on March 7, 2012, the Commission approved and confirmed the merger of CSP into OP, effective December 31, 2011. *In the Matter of the Application of Ohio Power Company and Columbus Southern Power Company for Authority to Merge and Related Approvals*, Case No. 10-2376-EL-UNC.

2 *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 (July 15, 2009) (2009 Order); Entry on Rehearing (September 15, 2009) (2009 Entry on Rehearing).

3 *In the Matter of the Complaint of Ormet Primary Aluminum Corporation and Ormet Aluminum Mill Products Corporation v. South Central Power Company and Ohio Power Company*, Case No. 05-1057-EL-CSS, Supplemental Opinion and Order (November 8, 2006).

directed that any further relief requested by Ormet should be accompanied by a detailed business plan confirming Ormet's long-term ability to exist without ratepayer support.

On June 14, 2013, Ormet filed a motion to amend its unique arrangement with AEP Ohio and a request for emergency relief, along with a memorandum in support, pursuant to Sections 4905.31 and 4909.16, Revised Code, and Rules 4901-1-12 and 4901:1-38-05, O.A.C. Ormet seeks numerous amendments to the unique arrangement in the form of emergency relief, as well as other significant modifications to the unique arrangement, on a non-emergency basis, that Ormet believes will ensure sustainable, expanded long-term operations at its facility in Hannibal, Ohio. In its motion, Ormet emphasizes that the requested relief is necessary to enable Ormet to emerge from a recent bankruptcy sale as a going concern and to continue its operations in Ohio.

By entry issued on June 27, 2013, the attorney examiner found that, although Ormet's June 14, 2013, filing is posed to the Commission as a motion to amend Ormet's unique arrangement with AEP Ohio, Ormet's filing should be construed as an application for a unique arrangement under Rule 4901:1-38-05(B), O.A.C., given the nature and extent of the modifications requested by Ormet to the existing unique arrangement, and that the 20-day intervention and comment period specified in Rule 4901:1-38-05(F), O.A.C., should apply to affected parties. Accordingly, the attorney examiner determined that motions to intervene, as well as comments and objections from affected parties, should be filed by July 5, 2013.

On July 3, 2013, comments were filed by United Steelworkers District 1 (USW). On July 5, 2013, the Ohio Hospital Association (OHA); AEP Retail Energy Partners LLC d/b/a AEP Energy and AEP Energy, Inc. (jointly, AEP Energy); Industrial Energy Users-Ohio (IEU-Ohio); AEP Ohio; and the Ohio Consumers' Counsel (OCC) filed comments and/or objections.

By entry dated July 11, 2013, the attorney examiner found that Ormet's request for emergency relief pursuant to Section 4909.16, Revised Code, should be denied and that a hearing on this matter should be held, consistent with Rule 4901:1-38-05(B)(3), O.A.C. The entry established a procedural schedule including an evidentiary hearing to commence on August 27, 2013.

On July 15, 2013, Ormet filed an interlocutory appeal of the attorney examiner's July 11, 2013, entry, pursuant to Rule 4901-1-15(B), O.A.C., requesting that the interlocutory appeal be certified to the Commission for consideration. By entry issued on July 25, 2013, the attorney examiner certified Ormet's interlocutory appeal to the Commission pursuant to Rule 4901-1-15(B), O.A.C. On July 31, 2013, the Commission issued an entry finding that the attorney examiner's July 11, 2013, entry should be affirmed and that a hearing on this matter should be held in accordance with the procedural schedule established by the attorney examiner.

On July 31, 2013, Ormet filed a motion for expedited approval of payment deferral, pursuant to Section 4905.31, Revised Code, and Rule 4901:1-38-05(B), O.A.C. Specifically, Ormet sought approval of a modification to its unique arrangement with AEP Ohio, such that Ormet would be authorized to defer payment of its billed amounts for August and September 2013, as well as any other billed amounts due before the Commission issues a decision on Ormet's June 14, 2013, application. By entry issued on August 21, 2013, the Commission granted Ormet's request for a deferred payment arrangement such that Ormet was authorized to defer payment of $5 million for its bill due in August 2013 and, if its annual rate subsidies have been used, up to $5.5 million for its bill due in September 2013.

The hearing in this matter commenced on August 27, 2013, and concluded on August 28, 2013. At the hearing, Ormet offered the testimony of seven witnesses and AEP Ohio offered the testimony of one witness. Briefs were filed on September 9, 2013, by Ormet, AEP Ohio, OCC, and IEU-Ohio. Additionally, numerous letters were received by the Commission from public officials and members of the general public. Although many of the letters were filed in support of Ormet's proposal for an amended unique arrangement with AEP Ohio, others expressed opposition to Ormet's request for additional rate subsidies.

II. Applicable Law

Pursuant to Section 4905.31, Revised Code, the Commission has the authority to approve schedules for electric service upon application of a public utility or to establish reasonable arrangements for electric service upon application of a public utility and/or mercantile customer. The statute provides that "[e]very such schedule or reasonable arrangement shall be under the supervision and regulation of the [C]ommission, and is subject to change, alteration, or modification by the [C]ommission."

Additionally, Rule 4901:1-38-05(B), O.A.C., provides that a mercantile customer of an electric utility may apply to the Commission for a unique arrangement with the electric utility. Under Rule 4901:1-38-05(B)(1), O.A.C., a customer applying for a unique arrangement bears the burden of proof that the proposed arrangement is reasonable and does not violate the provisions of Sections 4905.33 and 4905.35, Revised Code.

III. Discussion

A. Ormet's Current Unique Arrangement

Under the current unique arrangement (AEP Ohio Ex. 1), Ormet agreed to receive from AEP Ohio all of the electric energy necessary to meet Ormet's requirements up to 540 megawatts (MW) through December 31, 2018. Fifty percent of Ormet's usage is initially priced at Schedule GS-4 rates for the CSP rate zone and the other 50 percent is initially priced at Schedule GS-4 rates for the OP rate zone (tariff rate). For calendar years 2010 through 2018,[4] Ormet's rate under the unique arrangement is determined based upon schedules filed each year with the Commission. Each schedule includes an "indexed rate" and a "target price." The indexed rate is 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 London Metal Exchange (LME) price of aluminum. The target price is the projected average price of aluminum for the calendar year as reported on the LME at which Ormet would be able to pay AEP Ohio's tariff rate and still maintain the minimum cash flow necessary to maintain its operations and pay its required legacy costs. When the LME price of aluminum is less than or equal to the target price, Ormet pays the indexed rate. When the LME price of aluminum is greater than the target price, but not more than $300/tonne above the target price, Ormet is required to pay 102 percent of AEP Ohio's tariff rate, or, beginning in 2012, 104 percent of AEP Ohio's tariff rate. When the LME price is greater than $300/tonne above the target price, Ormet is required to pay 105 percent of AEP Ohio's tariff rate, or, beginning in 2012, 108 percent of AEP Ohio's tariff rate. Following the end of each year, a true-up process occurs to reconcile the projected LME prices for the year with the actual LME prices.

The unique arrangement, therefore, is designed to provide Ormet with a discount applied to AEP Ohio's tariff rate based upon factors unique to Ormet, such as cash flow, legacy costs, and the LME price for aluminum. The maximum rate discount afforded Ormet under the unique arrangement is limited as follows:

[4] The unique arrangement also addressed calendar year 2009; however, the terms and conditions, including Ormet's rate for 2009, were considerably different than for calendar years 2010 through 2018 (2009 Order at 4-5).

Year	Maximum Rate Discount
2010	$60 million
2011	$60 million
2012	$54 million
2013	$44 million
2014	$34 million
2015	$24 million
2016	$14 million
2017	$4 million
2018	$0 million
Total	$294 million

The maximum amount of delta revenue[5] that ratepayers are expected to pay in a given year is $54 million. During the term of the unique arrangement, AEP Ohio is authorized to defer, plus carrying costs equal to its long-term cost of debt, the potential differential of up to $6 million per year between the $60 million maximum rate discount for Ormet and the $54 million maximum in delta revenue that ratepayers are expected to pay. Any delta revenue credits attributable to above-tariff payments by Ormet are first applied to reduce or eliminate the deferral and carrying costs before being applied to AEP Ohio's economic development rider (EDR). At the end of the term of the unique arrangement, AEP Ohio is permitted to recover any remaining deferred amounts, including carrying charges, through the EDR. Further, the Commission may terminate the unique arrangement, by order, if Ormet has not begun 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.

Finally, as the primary purpose of the unique arrangement is to enable Ormet to retain jobs, the unique arrangement requires Ormet to maintain an employment level of 650 full-time employees. The maximum rate discount is reduced each month by $10 million for every 50 employees below 650 full-time employees that were employed by Ormet for the previous month.

B. Ormet's Proposed Modifications to the Unique Arrangement

In the June 14, 2013, motion, as well as the direct testimony of Ormet witness Riley, Ormet separates its proposal to modify its existing unique arrangement with AEP Ohio into two portions: emergency relief that is intended to enable Ormet to emerge from bankruptcy as a going concern and non-emergency relief necessary to make Ormet viable

5 Rule 4901:1-38-01(C), O.A.C., defines "delta revenue" as "the deviation resulting from the difference in rate levels between the otherwise applicable rate schedule and the result of any reasonable arrangement approved by the [C]ommission."

on a long-term basis. Ormet explains that, if its emergency relief request is granted by the Commission, Ormet will not only emerge from bankruptcy as a going concern, but will also be able to maintain a reduced level of operations, maintain the payment of property and other local taxes, and preserve the economic multiplier effect that Ormet has on the local economy. If Ormet's non-emergency relief request is also granted, Ormet states that it will be able to construct an on-site gas-fired power plant sufficient to meet its long-term capacity and energy needs. Ormet further states that it will be able to reopen the potlines that have been shut down due to the combination of high power prices and low aluminum prices. Ormet adds that a return to a full six potline operation would increase full-time employment at the Hannibal facility up to 1,000 employees. (Ormet Ex. 5 at 10.)

Ormet's proposed emergency relief consists of the following provisions:

(1) The term of the unique arrangement would be shortened such that it would end on December 31, 2015, rather than on December 31, 2018.

(2) In lieu of paying AEP Ohio's Schedule GS-4 tariff rate (all riders including the fuel adjustment clause (FAC)) minus Ormet's discounts, Ormet would pay a fixed rate per megawatt hour (MWh) for the balance of calendar year 2013 that would result in an average fixed fee of $45.89/MWh for the entire calendar year 2013 plus payment of the phase-in recovery rider (PIRR), retail stability rider (RSR), transmission under-recovery rider (TURR), transmission cost recovery rider (TCRR), enhanced service reliability rider (ESRR), universal service fund (USF) rider, distribution investment rider (DIR), energy efficiency and peak demand reduction rider (EE/PDR), EDR, gridSMART rider, deferred asset recovery rider (DARR), and the tariff distribution fees, excluding the discounts. In order to achieve an average fixed fee of $45.89/MWh for the entire calendar year of 2013, the fixed rate per MWh paid during the second portion of 2013 may be less than $45.89/MWh to offset higher payments earlier in the year before the discounts are applied.

(3) Effective January 1, 2014, Ormet would be permitted to transition to retail choice and purchase up to its full power requirement for four potlines from a competitive retail electric

service (CRES) provider at market rates pursuant to the Commission's rules governing retail power purchases.[6]

(4) Ormet would be permitted to maintain the current monthly average discount of $5.5 million per month in calendar year 2013, including, if necessary, adjustments so that for calendar year 2013 the monthly discounts do not exceed or fall below $66 million for the calendar year. For the period of calendar year 2014, Ormet's monthly discount would be reduced to $4.5 million per month. This provision would essentially accelerate the remaining $76 million in authorized discounts over calendar years 2013 and 2014.

(5) The assignment by Ormet of its interest in the amended unique arrangement to Smelter Acquisition LLC (Smelter) under Section 13.04 of the current unique arrangement would be affirmed by the Commission.

(Ormet Ex. 5 at 7-8.)

Ormet's proposed non-emergency relief consists of the following provisions:

(1) For the first five months of 2015, Ormet would continue to receive a monthly discount of $4.5 million.

(2) Ormet would be permitted to reopen its remaining two potlines, which is anticipated to occur no earlier than July 1, 2014, and not to exceed 160 MW of capacity.[7] Should Ormet elect to reopen one or both of the idled potlines, Ormet would be permitted to purchase up to its full power requirement for the incremental potlines from a CRES provider at market rates. To support the operations of the incremental potlines, Ormet would increase its minimum employment to 1,000 employees once the two incremental potlines are fully restarted. Ormet would receive a shopping credit of $9/MWh through May 31, 2015, on the additional 160 MW of capacity.

---

6 In its brief, Ormet notes that it is willing to purchase power in 2014 and 2015 from AEP Ohio, if AEP Ohio is willing to sell power to Ormet at the current market price of $41 to $43/MWh, including transmission costs and before the application of the monthly economic development credits, on an "all in" fixed basis.

7 Following the filing of Ormet's request for relief and its direct testimony, Ormet closed two additional potlines, such that only two of the six potlines are currently in operation (Tr. I at 30; Tr. II at 347-348).

(3) Ormet would repay the deferred amounts billed to Ormet for October and November 2012, beginning in January 2014 and continuing through December 2015. Payment would be in monthly installments equal to 1/24, or 4.1667 percent, of the cumulative amount of the two deferred invoices.

(4) The target price for aluminum based on the LME that would trigger a premium payment by Ormet would be lowered to the target price of $2,650/metric ton for 2013 and $2,490/metric ton for 2014 and the first five months of 2015, from the current 2013 target price of $2,805/metric ton.

(5) Ormet would submit to the Commission a business plan that demonstrates a sustainable energy price post-2015 from a newly constructed on-site power plant that achieves power prices per MWh that would support the ongoing operation of the Hannibal facility. The plan would be submitted under seal to the Commission no later than 30 days following the filing of the application.

(6) As soon as practical following the filing of the business plan, Ormet would provide the Commission with more detailed information regarding construction of the power plant, including specific milestones and pricing projections that confirm that Ormet's power prices would be sustainable without further incentives.

(7) Due to weather, regulatory, financial, or other factors outside Ormet's control, Ormet recognizes that the proposed power plant may not be in full operation on May 31, 2015. If construction of the power plant extends past June 1, 2015, Ormet would be permitted to purchase up to its full 540 MW requirement from a CRES provider at market rates. To bridge the gap between June 1, 2015, and December 31, 2015, Ormet would receive a shopping credit of $6/MWh. The shopping credit would terminate the earlier of the date on which Ormet's generation plant is placed into full service, or December 31, 2015.

(Ormet Ex. 5 at 8-9.)

In support of its requested relief, Ormet states that the combination of AEP Ohio's rising tariff rates and falling world market aluminum prices caused Ormet to file for bankruptcy on February 25, 2013. Ormet notes that it has aggressively worked to develop and implement a plan to emerge from bankruptcy and to continue its long-term operations by reducing its operating costs by approximately $30 million per year. Ormet adds that the United States Bankruptcy Court for the District of Delaware approved Ormet's asset purchase agreement (APA) with Smelter, a controlled acquisition company of Wayzata Investment Partners, LLC (Wayzata), on June 4, 2013. According to Ormet, however, the closing of the APA and Ormet's emergence from bankruptcy are contingent upon the Commission's approval of affordable power rates through modifications to Ormet's unique arrangement with AEP Ohio, such that the APA can be terminated by Wayzata if the closing has not occurred by August 14, 2013, or the conclusion of any extensions granted. Ormet points out that the continued employment of approximately 1,000 direct employees and thousands of indirect employees, as well as millions in state and local government taxes, will be lost if Ormet does not emerge from the bankruptcy proceedings. (Ormet Ex. 1 at 6-7.)

Ormet notes that the incremental cost of its requested relief is $56.1 million, which would be added to the remaining discounts of $76 million for a total of $132.1 million, whereas an economic loss of over $663 million would be sustained in the event that Ormet ceases its operations (Ormet Ex. 7 at 11). Ormet points out that, on an annual basis at full operation, it purchases goods and services in the region totaling between $15 million and $20 million, maintains 1,000 full-time employees with wages of approximately $56 million, and pays local taxes of approximately $300,000 (Ormet Ex. 1 at 9). Ormet estimates that, if it ceases operations, the total net annual impact in the region would be a loss of 3,117 jobs, $238 million in total employee compensation, and $9 million in tax revenues for state and local governments in Ohio (Ormet Ex. 2 at 4-5).

Ormet further notes that, since the approval of the current unique arrangement, numerous unforeseen energy policy changes have occurred, while, at the same time, LME prices for aluminum have decreased by approximately nine percent (IEU-Ohio Ex. 4) and Ormet's weighted average price of power, which comprises roughly a third of the cost of aluminum, increased by approximately 58 percent (Ormet Ex. 1 at 6; Ormet Ex. 5 at 2) between 2010 and 2013. Although these factors prompted Ormet to file for bankruptcy protection, Ormet argues that the sole remaining issue to be resolved before Ormet emerges from bankruptcy is to obtain a competitive price for power under a modified unique arrangement. Ormet points out that its multiyear business plan demonstrates that its operations will become profitable in late 2014 or early 2015, with the completion of an on-site generation facility, if Ormet's request for relief is granted (Tr. I at 27, 33-34). Ormet asserts that, under the current unique arrangement, it is excluded from participating in the competitive market and that it is unreasonable to continue to require Ormet to purchase power from AEP Ohio, given that AEP Ohio is expected to have fully transitioned to an auction process for the procurement of power by mid-2015. Ormet contends that it should be permitted to respond to AEP Ohio's price increases in the same fashion as other industrial customers that may elect to shop for an alternative provider or generate their own power supply.

Ormet emphasizes that each component of its request for relief must be granted in order for Ormet to emerge from bankruptcy as a going concern. The only alternative, according to Ormet, is liquidation. For that reason, Ormet emphasizes that it is not appropriate to compare the cost of the current unique arrangement to the cost of the proposed unique arrangement, because Ormet cannot emerge from bankruptcy under the terms of the current unique arrangement. Ormet points out that no party to this case argues that the amount of the requested relief is more than what is needed by Ormet to survive. Ormet believes that the record is clear that the question is actually whether the amount requested is sufficient such that, if the relief is granted in full, Ormet will be economically viable through 2015. Given this concern, Ormet cautions that the Commission should avoid seeking to substitute a different approach to bringing Ormet out of bankruptcy. In light of the key role that Ormet plays in the regional economy, the strength of its long-term business plan, and the potential to increase the level of employment to 1,000 employees, Ormet urges the Commission to grant its request without modification.[8]

C. Intervenors' Positions

1. AEP Ohio

As a general matter, AEP Ohio contends that, if the current unique arrangement is modified, the Commission should provide AEP Ohio with full delta revenue recovery, recognize the costs that were incurred in good faith by AEP Ohio under the arrangement, and implement a $61 million termination fee.

Rather than advocate a particular position with respect to Ormet's proposal, AEP Ohio seeks to identify the financial impacts on AEP Ohio and ratepayers associated with several potential relief options. First, with respect to Ormet's proposal, AEP Ohio witness Roush testified that the total cost of the proposal would be at least $237 million, which reflects a $117 million incremental increase from the current unique arrangement (AEP Ohio Ex. 2 at Ex. DMR-2). Next, in terms of the financial impact on ratepayers if Ormet should liquidate, AEP Ohio notes that the delta revenue would cease under the current unique arrangement, resulting in reduced EDR charges ($34 million in 2014). According to AEP Ohio, these savings would be offset by other items that Ormet would no longer pay, such as the PIRR, fixed cost portion of the FAC, EE/PDR, USF, and RSR, with a net impact of $0.46 million per month in 2014 based on the operation of four potlines. (AEP Ohio Ex. 2 at 6.) AEP Ohio adds that, if Ormet goes out of business, AEP Ohio would likely seek a significant increase in the RSR.

---

8 Again, Ormet notes, however, that it is indifferent as to whether it shops for power in 2014 and 2015, or buys power from AEP Ohio at the comparable "all in" market price that it would receive if it did shop.

AEP Ohio offers two other alternatives for the Commission's consideration. AEP Ohio notes that, under its non-shopping alternative, Ormet would not be permitted to shop, but would nevertheless receive the equivalent of the financial outcome that it seeks through a modified discount under the current unique arrangement (AEP Ohio Ex. 2 at 7, Ex. DMR-3). In an effort to make an apples-to-apples comparison to Ormet's proposal of $237 million, AEP Ohio witness Roush values AEP Ohio's non-shopping alternative at $193.7 million, assuming a FAC/auction price of $40/MWh, and $220.4 million, with a FAC/auction price of $45/MWh. Mr. Roush determined that, as the FAC/auction price assumption goes up by $5/MWh increments, an additional $19 million of cost can be added to the cost of AEP Ohio's non-shopping alternative. (Tr. II at 444-446.)

AEP Ohio also puts forth a shopping alternative, but emphasizes that it will only voluntarily accept Ormet's shopping proposal if Ormet is required to pay an appropriate termination fee. AEP Ohio argues that, as an initial matter, the Commission must determine whether Ormet can shop for a CRES provider. According to AEP Ohio, in the earlier phase of this proceeding, the Commission determined,[9] and the Supreme Court of Ohio affirmed,[10] that Ormet would not be permitted to shop during the term of the existing unique arrangement. AEP Ohio contends, therefore, that it would be unlawful and unreasonable to reverse that determination at this point, given that AEP Ohio acted in reliance on that assurance by setting aside the massive amount of energy and capacity that is required to serve Ormet. AEP Ohio adds that Ormet itself has claimed in other Commission proceedings that Ormet cannot shop under the terms of the current unique arrangement (Tr. II at 259). AEP Ohio argues that Ormet is estopped from now making any argument to the contrary. If the Commission nevertheless decides that Ormet should be permitted to shop, AEP Ohio asserts that Ormet should be required to pay a termination fee of $61 million to mitigate the resulting financial harm to AEP Ohio and ratepayers, which is comprised of $18 million to AEP Ohio for lost capacity revenues, $16 million to ratepayers to offset increased capacity deferrals, and $27 million to ratepayers to offset increased fixed, non-energy FAC payments (AEP Ohio Ex. 2 at 8-9, Ex. DMR-4, Ex. DMR-5).

In addition to its potential relief options, AEP Ohio raises several issues that stand as barriers to adoption of Ormet's proposal. First, AEP Ohio argues that Ormet's proposed shopping credits are an unlawful subsidy of a competitive generation service and contrary to Section 4928.02(H), Revised Code. According to AEP Ohio, Ormet's entire bill for distribution service, including nonbypassable charges, is less than $6/MWh and, therefore, Ormet's proposed shopping credits of $9/MWh and $6/MWh in 2014 and 2015, respectively, would result in Ormet being paid by AEP Ohio's other customers an amount greater than Ormet's regulated electric service charges. (AEP Ohio Ex. 2 at 10.)

---

9 2009 Order at 13; 2009 Entry on Rehearing at 8.

10 *In re Ormet Primary Aluminum Corp.*, 129 Ohio St. 3d 9, 949 N.E.2d 991 (2011).

Next, AEP Ohio contends that Ormet's proposal to fix the annual generation price for 2013 at $45.89/MWh, before Ormet's discounts, would require the Commission to engage in unlawful retroactive ratemaking. AEP Ohio notes that even an adjustment to Ormet's going-forward rate would constitute an unlawful retroactive refund.[11] Further, AEP Ohio argues that Ormet's proposal, if adopted, would result in Ormet's default under the current unique arrangement, violate several sections of the arrangement, and trigger AEP Ohio's right to terminate the arrangement and collect a termination payment. AEP Ohio urges the Commission to reject Ormet's position, which, according to AEP Ohio, is that the rights of the parties do not apply and can be retroactively nullified (Tr. II at 298). AEP Ohio points out that the current unique arrangement, however, specifically contemplates future modification by the Commission. AEP Ohio argues that, if the Commission adopts Ormet's view of the unique arrangement, the Commission would retroactively impair AEP Ohio's contract rights in violation of the U.S. and Ohio Constitutions.

Finally, AEP Ohio asserts that Ormet's total usage, and not its usage net of generation, should be used for continued billing of all distribution and nonbypassable charges, if Ormet's plan to operate a power plant goes forward (AEP Ohio Ex. 2 at 9). AEP Ohio argues that Ormet should not be permitted to avoid nonbypassable charges, such as the PIRR, by constructing a power plant, given that Ormet benefited from paying less than the full fuel costs that resulted in the deferrals that are now being collected through the PIRR.

In response to AEP Ohio's concerns, Ormet argues that the Commission has authority pursuant to Section 4905.31, Revised Code, to modify the unique arrangement or to approve a new unique arrangement without AEP Ohio's consent.[12] Ormet adds that the unique arrangement is not a contract and that the Commission has the sole authority to decide which terms can and should be modified or included in a new unique arrangement.[13] For these reasons, Ormet contends that the Commission is not bound by the unique arrangement to require Ormet to pay a termination fee, which Ormet believes would be contrary to the public interest as it would force Ormet out of business. Ormet further contends that AEP Ohio witness Roush materially understates the financial harm that would result from the liquidation of Ormet, because his estimates are based on a four potline operation and do not account for the value of employee compensation and tax payments, or Ormet's contributions to the fixed generation rate and the deferred bill payments that will be made if Ormet continues to operate.

---

11 *In re Columbus S. Power Co.*, 128 Ohio St. 3d 512, 947 N.E.2d 655 (2011).

12 *In re Ormet Primary Aluminum Corp.*, 129 Ohio St. 3d 9, 949 N.E.2d 991 (2011).

13 *In re Ormet Primary Aluminum Corp.*, 129 Ohio St. 3d 9, 949 N.E.2d 991 (2011).

Regarding AEP Ohio's recommended alternative to Ormet's proposal to shop, Ormet responds that it is willing to purchase power in 2014 and 2015 from AEP Ohio, if AEP Ohio is willing to sell power to Ormet at the current market price of $41 to $43/MWh, including transmission costs and before the application of the monthly economic development credits, on an "all in" fixed basis. Ormet notes, however, that Mr. Roush's illustrative prices (AEP Ohio Ex. 2 at Ex. DMR-3) are significantly above the indicative pricing that Ormet believes is available (Ormet Ex. 3 at 7-8) and above what would be required to bring Ormet out of bankruptcy.

As a final matter, Ormet argues that AEP Ohio seeks to prevent Ormet from constructing its proposed generating facility, by recommending that Ormet be required to pay all of AEP Ohio's nonbypassable riders. Ormet urges the Commission to reject AEP Ohio's recommendation, as it is contrary to the Commission's distributive generation rules and the policy to facilitate the state's effectiveness in the global economy found in Section 4928.02(N), Revised Code.

2. OCC

Like AEP Ohio, OCC identifies a number of issues for the Commission's consideration. First, OCC points out that an acceleration of Ormet's discount will impact customers' bills, given that the maximum discount under the current unique arrangement is expected to decrease on an annual basis. If the discount is accelerated, OCC notes that customers will not benefit from the reduction in the EDR rate that would otherwise have occurred and will lose some of the time value of their money. Noting that the incremental cost to customers of Ormet's proposal is somewhere between $56.1 million and $119 million, OCC argues that AEP Ohio unlawfully seeks to recover lost base generation revenue attributable to Ormet's proposal to shop. Next, OCC, citing the testimony of AEP Ohio witness Roush, contends that customers should not be required to pay Ormet so that it can purchase electricity from a CRES supplier, which, according to OCC, would be the result of Ormet's proposed shopping credits (AEP Ohio Ex. 2 at 10).

Further, OCC notes that Ormet's economic impact study, which dates back to 2011, likely overstates the positive effects of Ormet's continued operation in Ohio, because it evaluates the impact on a tri-state region rather than Ohio only, is based on an employment level of 1,030 employees rather than Ormet's current lower staffing level, and fails to account for the negative economic impact of raising the electric rates of AEP Ohio's other customers to fund Ormet's subsidy (Tr. I at 58-59, 67). OCC also notes that, setting aside Ormet's claimed economic development impact on the tri-state region, the cost to customers of Ormet's closure would be less than the cost of Ormet's proposal to amend the unique arrangement (Ormet Ex. 7 at 10), and that Ormet has not demonstrated that its proposal would result in a net benefit for AEP Ohio's other customers. Finally, OCC points out that Ormet's aluminum price projections are a critical, yet uncertain, component of its business plan. Specifically, OCC notes that Ormet acknowledged that, in order to increase production above the current two potlines, sustained LME aluminum prices of somewhere between $2,000 and $2,200/tonne will be required, in addition to the relief sought in this proceeding (Tr. I at 31-32). Although Ormet witness Vazquez predicts LME average prices of $2,294/tonne and $2,400/tonne in 2014 and 2015, respectively (Ormet Ex. 6 at 5), OCC asserts that Mr. Vazquez has consistently overstated his forecasts over the last several years, including 2013 (OCC. Ex. 2-4), and that, in any event, forecasts of market prices for any commodity are subject to significant error.

In addition to the various issues addressed by OCC, OCC offers a number of specific recommendations. First, OCC recommends that half of the incremental cost of Ormet's proposal, including delta revenue, be paid by AEP Ohio with the other half paid by ratepayers. OCC contends that, pursuant to Section 4905.31, Revised Code, the Commission is not required to authorize AEP Ohio to recover all delta revenue resulting from a unique arrangement.[14] OCC emphasizes that, while ratepayers have provided $220 million to fund Ormet's discounts, AEP Ohio has made no contribution toward Ormet. OCC adds that customer benefits under Ormet's proposal would dwindle, as ratepayers would pay $18 million more in capacity deferrals, lose $27 million in fixed fuel cost contribution, pay $56 million more in direct discounts, and bear a $30 million risk if Ormet defaults on its unpaid bills. OCC notes that AEP Ohio would continue to derive some benefit under the modified unique arrangement, given that it would continue to collect capacity costs and nonbypassable charges from Ormet, be able to sell into the market the incremental energy and capacity freed up when Ormet shops, and bear only a $7 million risk if Ormet defaults on its unpaid bills. OCC believes that a 50/50 split is an equitable solution, because both ratepayers and AEP Ohio benefit from economic development initiatives.

As its second recommendation, OCC proposes that, when Ormet shops and later generates its own electricity, AEP Ohio should credit to customers the revenue from market sales made with the capacity previously used to serve Ormet, because ratepayers have paid for the capacity used to serve Ormet over many years. OCC notes that the reimbursement should be limited to the amount contributed by customers since approval of the unique arrangement, plus carrying costs.

Next, OCC recommends that the Commission protect customers by requiring Ormet to fulfill certain commitments. Specifically, OCC argues that Ormet should be required to continue to maintain an employment level of 650 employees and to publicly file reports on its employment level and progress toward constructing and operating the proposed power plant. As further commitments, OCC advises that Ormet should be required, if it becomes a profitable entity at any point, to reimburse customers for the

---

14 *In re Ormet Primary Aluminum Corp.*, 129 Ohio St. 3d 9, 949 N.E.2d 991 (2011).

incremental discounts and to rely on its own resources rather than be granted any additional funding from customers.

Finally, OCC recommends that the Commission impose conditions to protect customers in the event that Ormet ceases its operations. In particular, OCC proposes that no adjustments be permitted to the RSR that would impose further costs on customers. OCC adds that customers should be responsible for no more than $30 million, if Ormet is unable to pay its deferred bills.

Anticipating some of OCC's concerns, Ormet argues that the aluminum price forecasts of Ormet witness Vasquez are reliable. Ormet points out that Mr. Vasquez projects aluminum prices of $2,294/metric ton and $2,400/metric ton for 2014 and 2015, respectively, which are well within the range of pricing identified by Ormet witness Tanchuk as a necessary component of Ormet's economic viability (Tr. I at 25). Ormet points out that, using the industry-accepted method for determining margin of error, Mr. Vasquez generally has a forecast error rate of seven percent, which is one of the best in the industry (Tr. II at 234-238). Additionally, Ormet asserts that the amount of relief granted in this proceeding should not be reduced to account for the fact that some of Ormet's employees do not reside in Ohio. Ormet notes that the Commission previously rejected OCC's reasoning[15] and, in any event, reducing the requested relief based on domicile would result in Ormet's liquidation.

3. IEU-Ohio

IEU-Ohio contends that Ormet's proposed modifications to the unique arrangement would increase the potential delta revenue responsibility of AEP Ohio's other customers. According to IEU-Ohio, the current unique arrangement results in potential delta revenue of $92.5 million for the period of June 2013 through December 2018, whereas Ormet's proposed unique arrangement may impose potential delta revenue of $157.3 million. Aside from this direct impact, IEU-Ohio notes that Ormet's proposal would also affect AEP Ohio's other customers in less direct ways. IEU-Ohio points out that providing Ormet with an additional seven months to pay its bills for November and December 2012 would substantially increase the risk of nonpayment. IEU-Ohio also points out that exempting Ormet from paying AEP Ohio's alternative energy rider would shift the costs of alternative energy compliance to other customers, unless the Commission adjusts AEP Ohio's baseline.

IEU-Ohio argues that Ormet failed to address the adverse impact of increased rates on AEP Ohio's customers, although Ormet witness Coomes acknowledged that there would be adverse consequences (Tr. I at 72-74). IEU-Ohio also emphasizes that the Commission recognized, when it approved the current unique arrangement, that "the

---

15 2009 Order at 9.

ability of ratepayers to fund the recovery of delta revenues is not unlimited."[16] IEU-Ohio points out that the Commission's prior concerns are no less relevant today, in light of the increased rates that AEP Ohio's customers are currently paying. IEU-Ohio recommends that the Commission seek to reduce or eliminate reliance on ratepayer support by leveraging available market-based alternatives. IEU-Ohio argues that there is no provision in the current unique arrangement that prevents Ormet from shopping (AEP Ohio Ex. 1). IEU-Ohio adds that, even if the current unique arrangement implicitly requires Ormet to take its generation service from AEP Ohio, the Commission can modify that requirement in furtherance of its obligation to facilitate reliance on a market-based approach.

Additionally, IEU-Ohio argues that Ormet has not satisfied the Commission's requirement that Ormet provide a viable business plan before further modifications to the unique arrangement are requested. IEU-Ohio points out that, despite the Commission's repeated warnings to Ormet that further relief is contingent upon Ormet's demonstration of financial viability, Ormet has failed to make such a demonstration. IEU-Ohio notes that Ormet has lost $70.78 million since it filed for bankruptcy, even with the substantial discounts afforded under the current unique arrangement and the protections of the bankruptcy court in place (IEU-Ohio Ex. 1 at 8). IEU-Ohio also notes that Ormet's business plan is inconsistent with Ormet's present situation, given that the plan assumes that four of Ormet's potlines are operational, although only two potlines are currently in service for the foreseeable future (Tr. I at 150). According to IEU-Ohio, Ormet's business plan further assumes that Ormet will shop for power beginning in January 2014, although Ormet has not contracted with a CRES provider to obtain generation supply (Tr. I at 143). IEU-Ohio emphasizes that, in the absence of a workable business plan, the Commission has no assurance that any further ratepayer support would prevent Ormet's closure.

In response to AEP Ohio's proposed alternative solution, IEU-Ohio argues that AEP Ohio has not offered the Commission any reason to reject the use of a market-based approach to assist Ormet and reduce the delta revenue burden of AEP Ohio's other customers. Specifically, IEU-Ohio contends that AEP Ohio's claim that it has an exclusive right to serve Ormet is inconsistent with the terms of the unique arrangement, as well as Section 4905.31 and Chapter 4928, Revised Code. IEU-Ohio further contends that AEP Ohio should not be permitted to collect additional delta revenue from its other customers and that AEP Ohio's alternative proposal is not likely to mitigate ratepayers' potential delta revenue burden.

For its part, Ormet argues that it will be a viable entity that is financially sound when it emerges from bankruptcy. Ormet points out that the losses identified by IEU-Ohio (IEU-Ohio Ex. 1) include extraordinary costs that were mostly related to accounting

---

16 2009 Order at 10.

treatment and not the direct result of operations. Ormet reiterates that it has substantially reduced its operating and legacy costs.

D. Conclusion

As an initial matter, the Commission finds that Ormet's history with AEP Ohio is relevant and must be recognized in our resolution of Ormet's request for an amended unique arrangement. As the record reflects, the relationship between Ormet and AEP Ohio is a complicated and lengthy one, evolving from Ormet's status as a customer of AEP Ohio for several decades (Tr. II at 249), to Ormet's successful petition to the Commission to become a part of South Central Power Company's service territory (Tr. II at 249-250), to Ormet's subsequent return to AEP Ohio's service territory (Tr. II at 253), to the Commission's approval of the current unique arrangement, which was proposed by Ormet and requires AEP Ohio to serve as Ormet's exclusive electric supplier through December 31, 2018 (Tr. II at 256-258). Under its latest proposal, Ormet again seeks permission to abrogate its agreement to obtain generation from AEP Ohio and proposes to shop for an alternative supplier. AEP Ohio emphasizes, however, that Ormet previously sought and obtained the Commission's approval to leave AEP Ohio's service territory, on what was expected to be a permanent basis, in order to take advantage of low market prices for electricity,[17] only to later obtain permission to return to AEP Ohio's service territory when market prices increased.[18]

In approving Ormet's return to AEP Ohio's service territory in 2006, the Commission also approved a stipulation that set a generation rate for Ormet below the market and below the tariff rate for like customers at that time, and provided a means for AEP Ohio to recover an agreed to difference, or delta, from its other customers that was anticipated to be at least $56 million over two years.[19] Subsequently, in 2009, the Commission approved Ormet's current unique arrangement with AEP Ohio, which links Ormet's price for generation to the LME price for aluminum. Over a 10-year period, the current unique arrangement provides Ormet with substantial subsidies, as AEP Ohio's other customers have largely assumed the delta revenue of $60 million per year for 2010 and 2011 and $54 million for 2012, with the delta revenue being reduced by $10 million per year thereafter. Additionally, in 2012, the Commission granted Ormet's request for a deferred payment arrangement with respect to its billed amounts of approximately $27 million for October and November 2012, and authorized AEP Ohio to recover

[17] *In the Matter of the Joint Petition of Ohio Power Company and South Central Power Company for Reallocation of Territory*, Case No. 96-1000-EL-PEB, Finding and Order (November 14, 1996).

[18] *In the Matter of the Complaint of Ormet Primary Aluminum Corporation and Ormet Aluminum Mill Products Corporation v. South Central Power Company and Ohio Power Company*, Case No. 05-1057-EL-CSS, Supplemental Opinion and Order (November 8, 2006).

[19] *In the Matter of the Complaint of Ormet Primary Aluminum Corporation and Ormet Aluminum Mill Products Corporation v. South Central Power Company and Ohio Power Company*, Case No. 05-1057-EL-CSS, Supplemental Opinion and Order (November 8, 2006).

$20 million from ratepayers in the event that Ormet fails to repay the deferred payments. As recently as August 21, 2013, the Commission granted additional relief to Ormet, in the form of a second deferred payment arrangement that permits Ormet to defer payment of $5 million for its bill due in August 2013 and, if its annual rate subsidies have been used, up to $5.5 million for its bill due in September 2013. The Commission also authorized AEP Ohio to defer incurred costs not recovered from Ormet's billings for August and September 2013. Overall, since 2009, Ormet has received the benefit of $270 million in extraordinary relief provided by ratepayers and AEP Ohio under Ormet's current unique arrangement and deferred payment arrangements, with additional potential discounts of $76 million authorized for future years, adding up to total economic assistance of $346 million for Ormet:

Year	Ormet's Economic Assistance
2009	$14.5 million
2010	$60 million
2011	$60 million
2012	$81 million
2013	$54.5 million
Total (2009-2013)	$270 million
2014	$34 million
2015	$24 million
2016	$14 million
2017	$4 million
2018	$0 million
Total (2014-2018)	$76 million
Total (2009-2018)	$346 million

At the same time Ormet proposes to depart from AEP Ohio's generation service, again, and to shop for another electric supplier, Ormet also seeks approval to accelerate and contemporaneously increase the extraordinary assistance already provided by AEP Ohio's other customers. This request is made despite the fact that Ormet has received the maximum rate discount afforded each year under the current unique arrangement. Although Ormet has repeatedly expressed a belief that, in the long term, LME prices would recover sufficiently to enable Ormet to operate profitably,[20] Ormet's predictions have not come to fruition, as the LME price for aluminum has never been high enough to invoke the provision that would require Ormet to pay a premium above AEP Ohio's

20 2009 Order at 15.

tariff rates (AEP Ohio Ex. 2 at 4). In fact, given the recent low LME prices, Ormet has needed free electricity since March 2013, in order to sustain its operations and pay its required legacy costs (AEP Ohio Ex. 2 at 4). Because Ormet has utilized the maximum rate discount during each year of the period from 2010 to the present, AEP Ohio and its customers have incurred an unprecedented $218 million to fund Ormet's discount under the current unique arrangement (AEP Ohio Ex. 1; AEP Ohio Ex. 2 at 4).

Without question, Ormet provides significant economic benefits to the surrounding region, and Ormet's substantial contributions to the local economy justified the Commission's approval of the current unique arrangement.[21] At full operations, Ormet purchases goods and services in the region totaling between $15 million and $20 million, maintains 1,000 full-time employees with wages of approximately $56 million, and pays local taxes of approximately $300,000 annually (Ormet Ex. 1 at 9). If Ormet closes, Ormet projects a job loss of 3,117 direct and indirect positions and $238 million in employee compensation, as well as $9 million in lost tax revenues (Ormet Ex. 2 at 4-5). Although the economic impact study completed by Ormet witness Coomes in 2011 (Tr. I at 58) offers an assessment of Ormet's positive impact on the region, it does not account for any adverse effect on AEP Ohio's other customers (Tr. I at 67, 72-74). The economic burden already imposed on AEP Ohio's customers has mounted to well over $200 million in subsidies for Ormet and may exceed $300 million under the terms of the current unique arrangement (AEP Ohio Ex. 1). A typical residential customer currently pays $3.41 per month in OP's rate zone or $2.89 per month in CSP's rate zone to fund economic development arrangements, with nearly 68 percent of customer funding directed to Ormet (OCC Ex. 7). Under Ormet's proposal, the monthly cost to customers is projected to increase, on an overall company basis, by $1.60 per month in 2013, $3.04 per month in 2014, and $1.71 per month in 2015 (AEP Ohio Ex. 2 at Ex. DMR-2).

Ormet emphasizes that its operations have a positive economic impact on the tri-state region of Ohio, West Virginia, and Pennsylvania. Ormet notes that, although 60 percent of its employees are residents of Ohio, the remainder live in either West Virginia or Pennsylvania. (Tr. I at 50, 58-59; Ormet Ex. 2 at 2.) In approving Ormet's current unique arrangement in 2009, the Commission rejected arguments that we should consider only the impact of Ormet's operations on Ohio and disregard any effect on West Virginia or Pennsylvania. Accordingly, the Commission refused to reduce Ormet's discount based on the residence of its employees.[22] In its present proposal seeking further relief from the Commission, Ormet points to its impact on the tri-state region as justification for its request. Ormet witness Tanchuk testified, however, that Ormet has neither sought nor obtained economic assistance from any government entity in either West Virginia or Pennsylvania, as a means to sustain Ormet's operations (Tr. I at 50-51). Instead, Ohio ratepayers, exclusively, are being asked to shoulder further investment in a

---

21 2009 Order at 3.

22 2009 Order at 7, 9.

struggling company, despite having no voice in its operations or management. Additionally, Mr. Tanchuk testified that, if the LME price of aluminum falls somewhere below Ormet's break-even range of $2,000 to $2,200/tonne for a sustained period, Ormet may possibly petition the Commission for further relief (Tr. I at 24-26).

Although Ormet contends that it now seeks no more economic assistance than what is needed, the impact of the requested relief on AEP Ohio's other customers must be considered, and any unique arrangement approved by the Commission must include reasonable protections for the customers that bear the burden of sustaining Ormet through increased rates. The Commission cannot expose ratepayers to unreasonable and unlimited risk. As the Commission stated in the July 31, 2013, entry, we are obligated to carefully consider and weigh the interests of AEP Ohio and all of its ratepayers, and cannot further the concerns of one ratepayer at the expense of the others. We have also acknowledged that the ability of ratepayers to fund the recovery of delta revenues is not unlimited.[23]

Unfortunately, Ormet puts forth only two options for the Commission's consideration in this proceeding. The Commission is asked either to approve the unique arrangement proposed by Ormet, without modification, or to prepare for the liquidation of Ormet. Although Ormet urges the Commission to approve each and every component of its requested relief, we find that the unique arrangement, as proposed, contains insufficient benefits for AEP Ohio's other customers in relation to the costs and risks that they would bear. Ormet's proposed modified unique arrangement would, if approved in its entirety, impose an excessive burden on AEP Ohio's other customers. Although the parties' cost calculations differ, no party disputes that the incremental cost of Ormet's proposal is at least $56.1 million (Ormet Ex. 7 at 11), while AEP Ohio projects an incremental cost of $117 million (AEP Ohio Ex. 2 at Ex. DMR-2). The incremental cost would be added to the remaining discounts of $76 million under the current unique arrangement for a total cost of at least $132.1 million under Ormet's projection (Ormet Ex. 7 at 11). Even assuming that Ormet's lower projection is an accurate cost assessment of the proposed modifications, Ormet's proposal seeks too much from AEP Ohio and its ratepayers that have already expended $218 million to fund Ormet's discount from 2010 through August 2013 (AEP Ohio Ex. 1). As AEP Ohio notes, the discount that Ormet presently seeks for 2013 and 2014 exceeds Ormet's estimated total annual payroll (AEP Ohio Ex. 2 at 4). Ratepayers have essentially been asked to provide still more funding than what is required to staff Ormet's operations, but have been offered little benefit in return. Although Ormet commits to continue to maintain 650 full-time employees, and to increase the level to 1,000 full-time employees if Ormet begins to operate each of its six potlines, Ormet concedes that its commitment to protect employment would end with its discounted rates in 2015, and that it makes no commitment to return all six potlines to operation (Tr. I at 29-30).

---

23 2009 Order at 10.

Accordingly, pursuant to the Commission's authority under Section 4905.31, Revised Code, we find that Ormet's request to modify its unique arrangement with AEP Ohio should be approved only to the extent set forth herein. With respect to pricing, Ormet proposes to pay a fixed rate for the balance of calendar year 2013 that would result in an average fixed rate of $45.89/MWh for the entire calendar year 2013, plus certain riders (PIRR, RSR, TURR, TCRR, ESRR, USF, DIR, EE/PDR, EDR, gridSMART, and DARR), and tariff distribution fees, excluding the discounts (Ormet Ex. 5 at 7). The Commission finds that Ormet's fixed rate proposal should be modified. AEP Ohio should bill Ormet pursuant to the provisions of the current unique arrangement and in accordance with any other modifications approved elsewhere in this opinion and order; however, Ormet's monthly billed rate should not exceed a fixed generation and fuel rate cap of $50.00/MWh, plus all applicable riders (excluding the FAC), as well as applicable distribution charges, excluding the discount, beginning with its bill for October 2013 and continuing through the remainder of calendar year 2014. For calendar years 2015 through 2018, AEP Ohio should bill Ormet in accordance with the terms of the current unique arrangement, as modified elsewhere in this opinion and order. The fixed generation and fuel rate cap is intended to provide Ormet some measure of certainty with respect to its electric bills and protection against the volatility of the FAC. Ormet argues that its bills have increased significantly since 2009, due, in part, to FAC adjustments, and negatively impacted Ormet's competitive position. However, AEP Ohio's other customers have also faced bill increases, and we cannot sacrifice their interests solely to promote Ormet's success in the aluminum market. As we have previously recognized, the primary purpose of the unique arrangement is to retain jobs rather than to boost worldwide aluminum production or to enrich Ormet's investors.[24] A fixed generation and fuel rate cap of $50.00/MWh should bring Ormet's bills more in line with similar large customers, while also providing Ormet some relief from its increased bills. The Commission finds that AEP Ohio should be authorized to recover through the EDR any delta revenue that may result from this amendment to the unique arrangement.

Further, the Commission approves Ormet's proposal to accelerate the remaining maximum rate discount available to Ormet under the current unique arrangement as follows:

---

24 2009 Order at 11.

Year	Maximum Rate Discount
2010	$60 million (exhausted)
2011	$60 million (exhausted)
2012	$54 million (exhausted)
2013	$66 million
2014	$54 million
2015	$0 million
2016	$0 million
2017	$0 million
2018	$0 million
Total	$294 million

The acceleration of the discounts available to Ormet under the current unique arrangement is intended to sustain Ormet during the period leading up to Ormet's projected return to profitability in late 2014 or early 2015 (Tr. I at 27), and enable Ormet to make its deferred payments. Although the maximum amount of delta revenue that ratepayers were expected to pay in a given year under the unique arrangement was previously set at $54 million, we authorize AEP Ohio to collect the full $66 million in 2013 from ratepayers, as the full $66 million would most likely have been collected from ratepayers, in any event, only over a longer period.

Finally, the Commission authorizes Ormet to assign its interest in the amended unique arrangement to Smelter, in accordance with Section 13.04 of the current unique arrangement. Although Ormet proposes to end its employment commitment in 2015 (Tr. I at 29-30), the Commission, in granting further relief to Ormet, expects Ormet to maintain an employment level of 650 full-time employees throughout the term of the unique arrangement ending on December 31, 2018. Further, the target LME price for aluminum that would trigger a premium payment by Ormet should be lowered, as discussed further below.

The unique arrangement approved today shall be effective for services rendered following the filing in this docket of an executed power agreement that 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 require further revisions to the power agreement in order to ensure that the power agreement conforms to the modifications ordered by the Commission.

With respect to the remaining components of Ormet's proposal, the Commission finds that Ormet failed to demonstrate that the proposed terms are reasonable. A key element of Ormet's proposal is its request for permission to shop for an alternative supplier to meet its substantial energy requirements in 2014. Under the terms of the current unique arrangement, however, Ormet agreed that AEP Ohio would be its exclusive supplier for the 10-year term of the arrangement.[25] Following the Commission's approval of Ormet's request to receive service exclusively from AEP Ohio, the Supreme Court of Ohio affirmed that the 2009 Order does not allow Ormet to shop for electric service for the duration of the unique arrangement.[26] In reliance on the 2009 Order and the Court's decision, AEP Ohio has already undertaken the necessary steps to serve Ormet's load with its own resources (AEP Ohio Ex. 2 at 8). Although Ormet now seeks to purchase its full power requirements from a CRES provider beginning on January 1, 2014, the record reflects that Ormet's attempts to identify a potential CRES provider are limited to informal contacts (Tr. I at 47-48) that yielded three energy supply proposals from independent power suppliers that would only sustain Ormet in combination with the requested relief (Ormet Ex. 3 at 9). Ormet did not establish that any CRES provider is actually willing to serve Ormet's significant load requirements at a price that Ormet is able and willing to pay. Additionally, Ormet witness Riley testified that Ormet has no plans to provide any security in the form of a deposit or prepayment to any CRES provider that may agree to serve Ormet (Tr. I at 132), although Ormet witness Fayne acknowledged that some form of credit is typically required by CRES providers (Tr. II at 274).

Because we find that Ormet should adhere to its prior commitment to remain with AEP Ohio as its exclusive supplier, there is no need to modify the term of the unique arrangement, which should continue through December 31, 2018. Although Ormet intends to construct and operate an on-site power plant by 2015, the record reflects that the project is already at risk and behind schedule, and that many of the details, such as the permitting and financing for the project, remain to be decided (Tr. I at 33, 91, 92-96; Tr. II at 268). If Ormet succeeds in its plans to construct and operate the proposed on-site generation facility prior to the expiration of the unique arrangement on December 31, 2018, Ormet may seek the necessary amendments to terminate the unique arrangement, at the point at which it has established a continuous course of construction.

We deny Ormet's request for proposed amendments requiring additional ratepayer funding in the form of an extended monthly discount of $4.5 million for the first five months of 2015, a credit to provide for incremental power purchases should Ormet restore idle potlines to operation, and a credit to cover a potential delay in construction of the proposed power plant. The Commission also denies Ormet's request to amend the payment schedule for the payments deferred in 2012. We find that the relief granted above, which sets a fixed generation and fuel rate cap and accelerates the remaining discounts in 2013 and 2014, strikes an appropriate balance among the interests of Ormet and AEP Ohio's other customers, and should sustain Ormet until its projected

---

25 2009 Order at 13; 2009 Entry on Rehearing at 8.

26 *In re Ormet Primary Aluminum Corp.*, 129 Ohio St. 3d 9, 949 N.E.2d 991 (2011).

return to profitability in late 2014 or early 2015. Ratepayers should not be expected to undertake any further risk or financial responsibility on Ormet's behalf.

Under the current unique arrangement, Ormet voluntarily offered, and the Commission approved, a plan to provide potential delta revenue credits for the benefit of ratepayers through December 31, 2018;[27] however, as noted above, the LME price for aluminum has never been high enough to invoke the provision that would require Ormet to pay a premium above AEP Ohio's tariff rate (AEP Ohio Ex. 2 at 4). Although Ormet witness Tanchuk believes that Ormet's operations will become profitable, without ratepayer support, after the power plant is constructed, Ormet now proposes to terminate, as of December 31, 2015, its commitment to pay a potential premium above AEP Ohio's tariff rate and to end any further obligation to pay back the substantial funding that Ormet has received from AEP Ohio and its ratepayers (Tr. I at 27; Tr. II at 267). In light of the extraordinary relief already granted to Ormet over the years, as well as the additional relief granted today, the Commission finds that Ormet should be required, through the remainder of the term of the unique arrangement ending on December 31, 2018, to reimburse customers for the discounts that it has received. Therefore, the Commission finds that the current unique arrangement should be modified, such that the target LME price of aluminum should be lowered from the current 2013 target price of $2,805/tonne to $2,650/tonne for 2013 and $2,490/tonne for 2014 and the first five months of 2015, as proposed by Ormet. Beginning on June 1, 2015, and continuing through December 31, 2018, when the LME price of aluminum is greater than Ormet's LME break-even price of $2,200/tonne (Tr. I at 24-26), but not more than $300/tonne above the LME break-even price, Ormet should be required to pay 104 percent of AEP Ohio's tariff rate. When the LME price is greater than $300/tonne above Ormet's LME break-even price, Ormet should be required to pay 108 percent of AEP Ohio's tariff rate. Any delta revenue credits attributable to above-tariff payments by Ormet should first be applied to reduce or eliminate any deferred amounts and carrying costs before being applied to the EDR for the benefit of ratepayers. While typically a mercantile customer receiving electric service pursuant to a reasonable arrangement is under no obligation to pay back the delta revenue resulting from the arrangement, the exceptionally generous treatment afforded Ormet under its unique arrangement with AEP Ohio necessitates an enhanced level of fairness to the thousands of ratepayers that are being asked to again carry the load for a company that once more asserts that it has found a formula for long-term success.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

(1) On June 14, 2013, Ormet filed a motion to amend its unique arrangement with AEP Ohio for electric service to Ormet's aluminum-producing facility located in Hannibal, Ohio.

---

27 2009 Order at 12.

(2) By entry issued on June 27, 2013, the attorney examiner found that, although Ormet's June 14, 2013, filing is posed to the Commission as a motion to amend Ormet's unique arrangement with AEP Ohio, Ormet's filing should be construed as an application for a unique arrangement under Rule 4901:1-38-05(B), O.A.C., given the nature and extent of the modifications requested by Ormet to the existing unique arrangement.

(3) Comments regarding Ormet's application were filed by USW, OHA, AEP Energy, IEU-Ohio, AEP Ohio, and OCC.

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

(5) The hearing in this matter commenced on August 27, 2013, and concluded on August 28, 2013.

(6) The application for a unique arrangement filed by Ormet is reasonable as modified by the Commission and should be approved to the extent set forth in this opinion and order.

ORDER:

It is, therefore,

ORDERED, That the application for a unique arrangement filed by Ormet be approved to the extent set forth above. 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 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 recover delta revenue resulting from the approved unique arrangement to the extent set forth above. 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

Todd A. Snitchler, Chairman

Steven D. Lesser

Lynn Slaby

M. Beth Trombold

Asim Z. Haque

SJP/sc

Entered in the Journal
OCT 02 2013

Barcy F. McNeal
Secretary