FILE

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Approval of an Additional Generation Service Rate Increase Pursuant to Their Post-Market Development Period Rate Stabilization Plan.	)	Case No. 07-1132-EL-UNC
In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Approval of an Additional Generation Service Rate Increase Pursuant to Their Post-Market Development Period Rate Stabilization Plan.	)	Case No. 07-1191-EL-UNC
In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Approval of an Additional Generation Service Rate Increase Pursuant to Their Post-Market Development Period Rate Stabilization Plan.	)	Case No. 07-1278-EL-UNC
In the Matter of Application of Columbus Southern Power Company and Ohio Power Company to Update Each Company's Transmission Cost Recovery Rider.	)	Case No. 07-1156-EL-UNC

COLUMBUS SOUTHERN POWER COMPANY'S AND OHIO POWER COMPANY'S MEMORANDUM CONTRA ORMET'S MOTION TO INTERVENE AND APPLICATION FOR REHEARING

INTRODUCTION

On February 29, 2008, Ormet Primary Aluminum Corporation (Ormet) filed a motion to intervene in the above listed cases and an application for rehearing of the Commission's January 30, 2008 Opinion and Order in those cases. The motion to intervene should be denied as untimely. The application for rehearing should be denied as non-compliant with §4903.10, Ohio Revised Code. Even if the application for

rehearing met the requirements of §4903.10, Ohio Revised Code, it should be denied as being without merit. Moreover, if the Commission were to treat marginal loss costs for Ormet as being a generation cost, the 2008 market price filing in Case No. 07-1317-EL-UNC would need to reflect such a decision. This would result in a larger spread between the price paid by Ormet and the appropriate market price, thus adversely impacting the Companies' other customers

The Motion to Intervene Should be Denied

The dockets in which Ormet seeks to intervene were initiated by Columbus Southern Power Company (CSP) and Ohio Power Company (OPCO), collectively referred to as "the Companies", on the following dates:

Case No. 07-1132-EL-UNC	October 24, 2007
Case No. 07-1156-EL-UNC	October 31, 2007
Case No. 07-1191-EL-UNC	November 16, 2007
Case No. 07-1278-EL-UNC	December 19, 2007

The Commission's procedural rules provide that motions to intervene must be filed by at least five days prior to the scheduled date for hearing or any specific deadline established by Commission order. (§4901-1-11 (E), Ohio Admin. Code).

By Entry dated November 30, 2007 in Case 07-1156-EL-UNC, regarding the Companies' application to set their Transmission Cost Recovery Rider ("TCRR") for 2008, the Attorney Examiner set December 10, 2007 as the deadline for filing motions to intervene. In Case No. 07-1132-EL-UNC, the Companies' application to increase their default generation service rates, an Entry was issued on November 2, 2007, setting

November 13, 2007 as the deadline for filing motions to intervene. No comparable entries were filed in Case Nos. 07-1191-EL-UNC or 07-1278-EL-UNC (which also involved the Companies' requests to further increase their generation rates. Consequently, the deadline for filing motions to intervene in these dockets were:

Case No. 07-1132-El-UNC	November 13, 2007
Case No. 07-1156-EL-UNC	December 10, 2007
Case No. 07-1191-EL-UNC[1]	January 17, 2008
Case No. 07-1278-EL-UNC[1]	January 17, 2008

Ormet's untimely motion to intervene should be denied. Ormet contends that its intervention should be granted because it meets the criteria set out in §4901-1-11, Ohio Admin.Code. Whether Ormet would have met the applicable criteria if its motion to intervene had been timely filed no longer is a relevant question. Instead, these criteria must be evaluated based on the reality that the Companies, the Commission's Staff and those customer representatives who acted promptly to protect their interests acted in good faith to settle these cases in a manner that fairly resolved the issues presented by these cases.

Since it is clear that Ormet did not seek intervention in a timely fashion, the first question to address is whether good cause exists for Ormet's tardiness. The Companies contend that Ormet's motion to intervene fails in this respect.

As Ormet states at page 5 of its motion, its charges for electric service are based, in part, on "tariff rates and all applicable riders for transmission and distribution service equivalent to Ohio Power's Schedule GS-4 for 50 percent of Ormet's load and Columbus

[1] January 17, 2008 was the hearing date set for these two cases by Entry dated January 16, 2008.

Southern's Schedule GS-4 for 50 percent of Ormet's load, including all relevant transmission and distribution riders."

The Transmission Cost Recovery Rider (TCRR) is one of the riders applicable for CSP's and OPCO's transmission service under their respective Schedules GS-4. Ormet recognizes this as well when it states, at page 5 of its motion, that it "is subject to changes to the TCRR ...." Given these admissions, the question before the Commission is why Ormet did not timely intervene in the TCRR proceeding.

Anticipating this question, Ormet states that it "never received notice of the instant proceeding sufficient to alert it to the potential effect the case would have on Ormet, nor did it receive copies of any of the pleadings prior to the issuance of the January 30 Opinion and Order." (Motion, p.5). These arguments are not persuasive. The TCRR application itself, which was filed on October 31, 2007, should have been a sufficient basis to alert Ormet to intervene. This is particularly true since the application specifically referred to Case No. 07-1132-EL-UNC and the Companies' request in that case regarding the recent changes by PJM Interconnection which results in the marginal loss costs. The TCRR application highlighted this issue and made very clear that this issue could arise in the TCRR proceeding. (See ¶ 11 of TCRR Application[2]). Nonetheless, Ormet chose to not get involved.

[2] Paragraph 11 of the TCRR Application in Case No. 07-1156-EL-UNC stated, in pertinent part: "The Companies note, however, that on October 24, 2007 they filed an application to increase their generation rates, (Case No. 07-1132-EL-UNC), That application was based, in part, on recent changes by PJM Interconnection which resulted in additional generation-related expenses being incurred by the Companies. Of significance to this filing to adjust the Transmission Cost Recovery Rider, Mr. Roush indicated that . . . "should the Commission view these costs as more appropriately included in the Companies' TCRR, the Companies request that upon such a determination, the Companies would be permitted to adjust the actual over/under-recovery under the TCRR to recognize the costs resulting from FERC's Order since June 1, 2007 and to immediately file to adjust the going forward TCRR rates." The Companies incorporate that request into this docket as well."

Having not intervened in the TCRR proceeding, it is not surprising that Ormet did not receive copies of any of the pleadings prior to issuance of the January 30, 2008 Opinion and Order. It is not normal practice, and certainly there is no requirement, to serve pleadings on persons that choose not to intervene. In any event, if Ormet had any interest in the TCRR application or the application in Case No. 07-1132-EL-UNC, referenced therein, it could have followed those cases on the Commission's Docketing Information System. Having failed to do so, Ormet cannot assert good cause for not intervening in these cases on a timely basis.

Ormet addresses the five criteria set out in §4901-1-11, Ohio Admin. Code, as if its motion to intervene had been timely filed. Ormet's discussion of these criteria, however, must be considered in the context of the late hour at which it comes before the Commission.

1. The Nature of Ormet's interest is insufficient to warrant intervention at this time.

The Companies do not quarrel with the assertion that Ormet has an interest in the TCRR. As a customer, Ormet's interest is evident. Its interest, however, is not enhanced by the amount of taxes it pays or the number of people it employs. Nonetheless, the Companies cannot help but wonder why, if Ormet presents not only its own corporate interest but also a range of interests associated with its continued operation, Ormet did not participate in the TCRR proceeding from the outset. The increase in the 2008 TCRR, without the impact of the Commission-approved settlement, translated to an annual increase to Ormet of about $7.3 million. When Ormet's contentions concerning its interest in the proceeding are viewed in the context of its decision not to intervene in a

timely manner to protect its interest, the Commission should conclude that this first criterion has not been met.

2. Ormet's legal position is insufficient to warrant intervention at this time.

Ormet's legal arguments are set out in its application for rehearing and are addressed in the Companies' response to that application.[3] While the Companies disagree with Ormet's legal analysis, the critical point to consider in the context of this criterion is whether Ormet should have realized from the time the Companies filed their TCRR application that it had concerns with the potential treatment of the marginal loss issue. Even if these concerns were not evident from the application, they should have been evident from the Commission's December 19, 2007 Findings and Order in the TCRR case. In ¶ 4 of that order, the Commission explicitly stated that it would further consider the inclusion of the marginal loss cost in the TCRR in Case No. 07-1132-EL-UNC. If Ormet had legal concerns with that potential treatment it should have intervened in these cases at that time. Having failed to do so, Ormet's legal concerns, as they relate to this second criterion, are not persuasive.

3. Ormet's intervention will unduly prolong and delay this proceeding and unjustly prejudice all existing parties.

The parties to these cases should not be subjected to Ormet unduly prolonging and delaying these proceedings, as would be the inherent effect of granting Ormet's intervention. Had Ormet sought intervention and been granted intervention on a timely basis and then opposed the settlement, the Companies, the Staff and legitimate intervenors would have known that rehearing was a realistic possibility and would have

[3] As explained in that response, Ormet's application for rehearing does not comply with §4903.10, Ohio Revised Code

recognized the potential for additional proceedings. In contrast, however, since all parties to these proceedings supported the settlement, the Companies, the Staff and legitimate intervenors in these dockets have moved on to other matters and have released their witnesses to take on responsibilities in other matters.

4. Ormet's desire to fully develop issues it deems to be important do not warrant intervention at this time.

If Ormet wanted the Commission to consider issues that Ormet believes are critical to "ensuring a just outcome" (Memorandum Supporting Intervention, p.4) it should have presented those issues in a timely fashion. Ormet should not be permitted to sit on the sidelines, waiting to see the outcome of issues it believes are critical to ensuring a just outcome, and then, when dissatisfied with the actual outcome, petition the Commission that it be heard. This fourth criterion has not been met.

5. It is too late for Ormet to argue that its interest was not adequately represented.

If Ormet did not believe that the two groups of industrial intervenors in these cases would adequately represent its interest it should have intervened on a timely basis. It did not choose that obvious path. Having made that choice, Ormet is not entitled to intervene at this late date. This fifth criterion has not been met.

For the reasons discussed above, Ormet's motion to intervene should be denied.

The Application For Rehearing Should Be Denied

Because Ormet has not met the statutory requirements for filing an application for rehearing the Commission should deny Ormet's application for rehearing. Even if the Commission were to consider the specific issues raised by Ormet in its application, rehearing still should be denied.

Section 4903.10, Ohio Revised Code, sets out the requirements for considering a rehearing application filed by a corporation which did not enter an appearance in the proceeding.

> " [I]n any uncontested proceeding or, by leave of the commission first had in any other proceeding, any affected person, firm, or corporation may make an application for rehearing.... Leave to file an application for rehearing shall not be granted to any person, firm, or corporation who did not enter an appearance in the proceeding unless the commission first finds:
>
> (A) The applicant's failure to enter an appearance prior to the entry upon the journal of the commission of the order complained of was due to just cause; and,
>
> (B) The interests of the applicant were not adequately considered in the proceeding". (emphasis added)

Having not first sought leave of the Commission to file its rehearing application, Ormet's application is not properly before the Commission for consideration. The Commission's June 7, 1988 order in In the Matter of the Commission's Investigation into the Disconnection of Local Exchange Service for Failure to Pay Message Toll Charges, (Case No. 85-1930-TP-COI) supports this conclusion. In that case, MCI Telecommunications Corporation (MCI) chose not to participate in the proceeding until it filed its rehearing application. The Commission denied MCI's application stating:

> "... MCI's application for rehearing was not properly made. MCI did not formally seek leave of the Commission to file its application for rehearing, and the Commission does not agree with MCI's apparent position that it has a right to file an application for rehearing without such leave, given its failure to enter an appearance in this docket prior to this point. More

> importantly, MCI has not met either of the requirements of Section 4903.10 Revised Code, for obtaining leave of the Commission to file an application for rehearing. Not only has MCI not demonstrated that its failure to enter an appearance was due to just cause, but it also has failed to show that the Commission did not adequately consider its interests in this case. MCI was clearly on notice that this docket was pending, was well aware of the ramifications of the issue being decided, and yet still chose not to participate until after a Commission decision was handed down. Therefore, the Commission concludes that MCI's application for rehearing was not properly made and must be denied.

Although there have been instances in which the Commission has treated the rehearing application as implicitly seeking leave to file for rehearing, those instances typically have been in dockets where a formal proceeding had not been initiated in which the person could intervene, even though the person had sought intervention status.[4]

Even if Ormet's application for rehearing were treated by the Commission as seeking permission to file for rehearing, that still would result in a non-compliant procedure being pursued by Ormet. According to the statute the "first had" requirement applies to leave of the Commission, not the filing of the request for permission. The records in each of these dockets reflect that the Commission has not granted Ormet leave to apply for rehearing before Ormet's application was filed.

Even if Ormet were to get by the timing requirements set out in §4903.10, Ohio Revised Code, it still has not satisfied the two criteria in divisions (A) and (B) of that

[4] In the Matter of the Application of Cincinnati Bell Telephone Company for Authority to Revise its General Exchange Tariff, P.U.C.O No. 7, Case No. 85-804-TP-ATA, Order Dated June 17, 1986; In the Matter of the Application of Cincinnati Bell Telephone Company to Revise its Exchange Rate Tariff, P.U.C.O No. 2, to Establish New Rates for Optional Measured Service, Case No. 85-1946-TP-ATA, Order Dated September 10, 1986.

section. The Companies have addressed these two criteria in their discussion of why Ormet's motion to intervene should be denied. All Ormet had to do was read the Companies' TCRR application to learn that the rider would be increased and that, depending on the Commission's treatment of the marginal loss issue, might be increased even more. For reasons not clear from Ormet's pleadings, it chose not to intervene in the TCRR case. Had it done so, it would have had a chance to participate in the settlement process. Having failed to do so, neither the Companies, the intervenors, the Staff nor the Commission had any obligation to advise Ormet, or any other non-intervening person, of the ongoing settlement efforts.

Regarding the Commission's consideration of Ormet's interests, other customers served on the Companies' GS-4 tariffs did participate in these dockets. They will pay the same TCRR applicable for transmission service as Ormet will pay. Further, while not addressed by Ormet, those parties achieved a credit of $18 million reflected in the TCRR calculation. Clearly, that credit flows to Ormet as well.[5] Finally, while Ormet repeatedly emphasizes that its generation rate agreement with the Companies reflects "losses to the metering point," this is not different than any other GS-4 customer, or other customers for that matter. Customers are billed based upon usage at the metering point, not loss-adjusted usage. Contrary to Ormet's assertions at page 8 of its Memorandum Supporting Rehearing, the marginal loss costs being recovered through the TCRR are not the same as the "losses to the metering point."

[5] In fact, the $4 million figure Ormet frequently referred to in its pleadings appears to be based on a calculation that only considers the marginal loss costs. It the $18 million credit is considered, the net additional cost Ormet would be about $2.5 million.

If despite Ormet failing to adhere to the requirements of §4903.10, Ohio Revised Code, the Commission chooses to consider Ormet's three alleged errors, rehearing still should be denied.

The Stipulation and Recommendation Approved by the Commission is a Product of Serious Bargaining Among Capable, Knowledgeable Parties

Ormet contends the settlement was not the product of serious bargaining among capable, knowledgeable parties. There is no basis for this assertion. The parties were represented by counsel and consultants who individually and collectively have more years of experience in the types of issues being negotiated than most of them would care to admit. There were several rounds of settlement discussions and the bargaining was most definitely serious.

Ormet's real complaint in this regard is that it was not involved in the settlement discussions. As explained throughout this memorandum contra, Ormet has only itself to blame for its absence at the bargaining table. Ormet's statement that it "had no indication that this shifting of costs from the GCRR to the TCRR was a possibility in this proceeding" (Memorandum Supporting Rehearing, p.12) is an admission that it did not read the Companies' TCRR application. Ormet's lack of attention to this filing which is made on an annual basis is in stark contrast to the efforts made by those who did participate in the process.

The Stipulation and Recommendation is in the Public Interest

The settlement accepted by the Commission was agreed to by large industrial customers, residential customers, the Commission's Staff and the Companies. These parties represent a broad spectrum of the public interest. Their negotiations resulted in a solution that satisfies the public interest.

Ormet's argument is that its interest was not satisfied. It argues that the settlement shifted $4 million in cost recovery to Ormet. This argument is wrong, but even if accurate it would not mean that the public interest was not satisfied by the settlement.

It is important to recognize that the $4 million "shift" to which Ormet refers represents Ormet's willingness to accept the benefits of the settlement, i.e. the $18 million TCRR credit, while it seeks to cast off the impact of the marginal loss issue. The net effect on Ormet of these two features of the settlement is a TCRR increase of about $2.5 million. While this is not an insignificant amount of money it is proportionately the same as the impact on the Companies' GS-4 customer class as a whole.

Ormet's absence from the bargaining table, which resulted from its own choices, does not result in the settlement failing to serve the public interest. In fact, the Companies are confident that if the remedy suggested by Ormet at page 16 of its Memorandum Supporting Rehearing were imposed, the Companies' other customers would object because the amortization of the Ohio Franchise Tax phase-out regulatory liability would occur more rapidly and more completely, resulting in higher costs for all of the Companies' other customers.[6]

The Stipulation and Recommendation Does Not Violate Any Regulatory Principle

The Stipulation and Recommendation does not violate any regulatory principle. As indicated in the Companies' TCRR application, the functional allocation of the marginal loss costs was a new and debatable issue. It is not uncommon for issues such as this to be resolved in a settlement context. Further, the Companies are not double-

[6] As noted above, if Ormet were to prevail on rehearing, the Companies' market price filing in Case No. 07-1317-EL-UNC would need to be amended upward to reflect that result.

recovering their costs. The market price filing for Ormet in 2008 (Case No. 07-1317-EL-UNC) does not include recovery of PJM- related marginal loss costs. While Ormet does not like the agreed-upon resolution of the functional allocation, that does not mean that any regulatory principle has been violated.

For all the reasons discussed above, Ormet's application for rehearing should not be considered but, if it is considered, should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of Columbus Southern Power Company's and Ohio Power Company's Memorandum Contra Ormet's Motion To Intervene And Application For Rehearing, was served by U.S. Mail and electronic mail upon counsel identified below for all parties of record this 10th day of March 2008.

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