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MESSAGE • Enclosed by Facsimile is the following: MEMORANDUM CONTRA MOTION FOR REFUND TO AEP'S CUSTOMERS AND MOTION FOR AEP TO CEASE AND DESIST FUTURE COLLECTIONS FROM CUSTOMERS BY THE OFFICE OF THE OHIO CONSUMERS' COUNSEL, THE OHIO HOSPITAL ASSOCIATION, THE OHIO MANUFACTURERS' ASSOCIATION, THE KROGER CO., AND THE OHIO ENERGY GROUP in: *In the Matter of the Application of Columbus Southern Power Company for Approval of its Electric Security Plan; an Amendment to its Corporate Separation Plan; and the Sale or Transfer of Certain Generation Assets.* Case No. 08-917-EL-SSO and *In the Matter of the Application of Ohio Power Company for Approval of its Electric Security Plan; and an Amendment to its Corporate Separation Plan.* Case No. 08-918-EL-SSO

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**BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO**

**In the Matter of the Application of
Columbus Southern Power Company for
Approval of its Electric Security Plan;
an Amendment to its Corporate
Separation Plan; and the Sale or
Transfer of Certain Generation Assets.**

Case No. 08-917-EL-SSO

**In the Matter of the Application of Ohio
Power Company for Approval of its
Electric Security Plan; and an
Amendment to its Corporate Separation
Plan.**

Case No. 08-918-EL-SSO

**ORMET PRIMARY ALUMINUM CORPORATION'S MEMORANDUM CONTRA
MOTION FOR REFUND TO AEP'S CUSTOMERS AND MOTION FOR AEP TO
CEASE AND DESIST FUTURE COLLECTIONS FROM CUSTOMERS BY THE
OFFICE OF THE OHIO CONSUMERS' COUNSEL, THE OHIO HOSPITAL
ASSOCIATION, THE OHIO MANUFACTURERS' ASSOCIATION, THE KROGER
CO., AND THE OHIO ENERGY GROUP**

On June 5, 2009, the Ohio Consumers' Counsel, the Ohio Hospital Association, the Ohio Manufacturers' Association, the Kroger Co., and the Ohio Energy Group (the "Movants") filed a Motion for Refund and Motion for AEP to Cease and Desist Future Collections from Customers ("Motion"). While Ormet Primary Aluminum Corporation, ("Ormet") takes no position regarding the Movants' assertions regarding AEP's collections of funds from ratepayers, Ormet files this Memorandum Contra to correct multiple misstatements regarding Ormet's electricity rates made in the Motion and in the Movants' June 17, 2009 Reply to AEP's Memorandum Contra Motion for Refund and Motion for AEP to Cease and Desist Future Collections from Customers ("Reply").

In the Motion and in their Memorandum in Support, the Movants state that the Commission never ruled that the Ormet temporary arrangement was reasonable and in the public

interest,¹ but fail to mention that the Commission did approve the contract in its January 7, 2009 Finding and Order in Case Nos. 08-1338-EL-AAM, *et al.* Although rehearing is pending in that case, the rates set in the contract are the approved rates on file, and to the extent that the Movants wish to challenge those rates, the appropriate place to do so is in Case Nos. 08-1338-EL-AAM *et al.*, and not as a collateral attack in this case. Ormet urges the Commission not to make any findings in this case on issues currently being litigated in Case Nos. 08-1338-EL-AAM, *et al.*

The Movants attempt to further muddy the waters in their Reply by claiming that Ormet received a discount under its 2007-2008 contract with AEP Ohio and that it is currently receiving a discount of \$50 million.² Neither assertion is true. From 2000 to 2006, Ormet purchased power from the wholesale market, and was not a retail customer of AEP. In August of 2005, Ormet sought to return to AEP's service territory in Case No. 05-1057-EL-CSS. AEP opposed Ormet's return, and in order to settle that case and gain re-entry into the AEP system, Ormet entered into a Stipulation with AEP and Commission Staff under which Ormet agreed to pay above-tariff rates to AEP Ohio for two years, from January 1, 2007 to December 31, 2008.³ While AEP was receiving delta revenues (defined as the difference between Ormet's above-tariff rate and a "market rate" set by the Commission) under this Stipulation, Ormet was not receiving a discount, but was paying higher rates than other industrial customers of AEP Ohio were paying under AEP Ohio's tariffs.

As the expiration of this contract approached, it became evident that while AEP and Ormet were close to agreement on a replacement agreement, such an agreement would not be in place prior to the expiration date set forth in the contract. To bridge the gap between

¹ Motion at p. 2, Memorandum in Support at p. 5.

² Reply at pp. 2-5.

³ See Stipulation and Recommendation, PUCO Case No. 05-1057-EL-CSS, filed Oct. 20, 2006.

contracts, AEP and Ormet entered into a temporary agreement, filed and approved by the Commission in Case Nos. 08-1338-EL-AAM, that would allow Ormet to pay the AEP Ohio GS-4 Tariff Rate in effect in December 2008, until such time as both a new arrangement (currently being litigated in Case No. 09-119-EL-AEC) and AEP's ESP rates are approved by the Commission. Thus, in 2009, prior to the April 1 effective date of AEP's new ESP rates, Ormet received no discount, but paid the same rates as other customers subject to the AEP Ohio GS-4 rates. While this may have resulted in a loss of revenue to AEP Ohio (as compared to the above-tariff rates Ormet was paying under the 2007-2008 contract), paying the AEP Ohio GS-4 tariff rates for industrial customers does not constitute a "discount" to Ormet. Since April 1, 2009, the only discount Ormet has received has been the difference between the pre-ESP GS-4 tariff rates and the ESP rates that became effective on April 1, which has resulted in a discount of approximately \$4.2 million through the month of May. Thus, the Movants' assertions that Ormet is receiving a \$50 million discount is simply untrue.

Finally, in the Motion, the Movants request that the Commission block any future collections of Ormet delta revenues from customers.⁴ The Movants' request that AEP be forever prohibited from collecting delta revenues related to Ormet overreaches and appears to be an effort to preempt

other Commission proceedings directly involving Ormet, in which most of the Movants are actively participating as Intervenors. The issue of whether AEP Ohio should be permitted to collect 100 percent of the delta revenues generated by the Unique Arrangement Ormet has proposed in Case No. 09-119- EL-AEC is currently being litigated in that case.

⁴ Motion at pp. 2-3.

Ormet urges the Commission not to make a ruling in this proceeding that would inadvertently predetermine the outcome of the delta revenues issue in Case No. 09-119- EL-AEC.

WHEREFORE, Ormet respectfully requests that in issuing its ruling on the Motion, that the Commission not address the issues of (1) the reasonableness of the temporary arrangement between AEP Ohio and Ormet and (2) the ability of AEP Ohio to collect delta revenues under a Unique Arrangement with Ormet. These issues are currently being litigated in Case Nos. 08-1338-EL-AAM, *et al.*, and 09-119-EL-AEC, respectively, and should be addressed in those proceedings.

Respectfully submitted,




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Dated: June 22, 2009

CERTIFICATE OF SERVICE

I hereby certify that a copy of Ormet Primary Aluminum Corporation's Motion to Intervene and Memorandum in Support were served by U.S. Mail upon counsel identified below for all parties of record this 22nd day of June, 2009.



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