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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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PUCO

In the Matter of the Application of)
Columbus Southern Power Company for) Case No. 08-917-EL-SSO
Approval of its Electric Security Plan; an)
Amendment to its Corporate Separation)
Plan; and the Sale or Transfer of Certain)
Generation Assets.)

In the Matter of the Application of Ohio)
Power Company for Approval of its) Case No. 08-918-EL-SSO
Electric Security Plan; and an Amendment)
to its Corporate Separation Plan.)

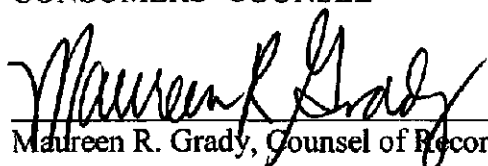
**MOTION TO STRIKE AND
REPLY TO ORMET LATE-FILED MEMORANDUM CONTRA
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL, THE OHIO
HOSPITAL ASSOCIATION, THE OHIO MANUFACTURERS' ASSOCIATION,
THE KROGER CO., AND THE OHIO ENERGY GROUP**

The Office of the Ohio Consumers' Counsel ("OCC"), the Ohio Hospital Association, the Ohio Manufacturers' Association, The Kroger Co., and the Ohio Energy Group (collectively "Movants") hereby submit a reply to the Ormet late-filed Memorandum Contra Movants' Motion for Refund. Movants also move to strike Ormet's late-filed Memorandum Contra for the reasons explained below.

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Respectfully submitted,

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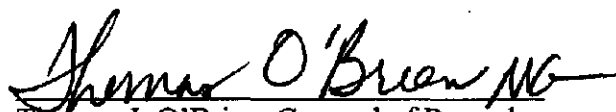
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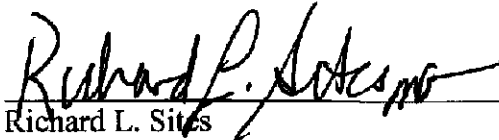
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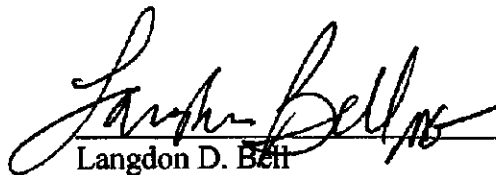
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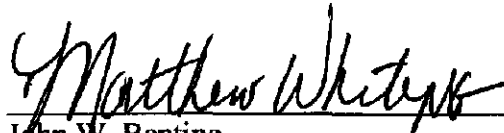
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A handwritten signature in black ink, appearing to read "Mike Kurtz", is written over a horizontal line.

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I. MEMORANDUM IN SUPPORT OF MOTION TO STRIKE

On June 5, 2009, the Movants filed a Motion for Refund and Motion for Columbus Southern Power Company ("CSP") and Ohio Power Company ("OPC") (collectively "AEP" or "Companies") to Cease and Desist Future Collections from Customers ("Motion for Refund"). AEP, consistent with the expedited schedule set forth by the PUCO in its Entry of August 5, 2008¹, filed its Memorandum Contra five business days later, on June 12, 2009. In accordance with the expedited schedule, Movants filed a Reply to AEP's Memorandum Contra on June 17, 2009. Movants should have been able to write a joint reply to both Ormet and AEP. But Ormet did not file its Memorandum Contra until June 22, 2009. This was clearly after the deadline had expired under the August 5, 2008 Entry, and after OCC's reply to AEP was publicly available to Ormet. On June 25, 2009, OCC, one of the Movants, sought a five-day extension of time to respond to the unexpected Memorandum Contra filed by Ormet. On June 25, 2009, Attorney Examiner See advised, by e-mail issued to all parties, that OCC's extension would be granted by an Entry expected on June 30, 2009. On June 29, 2009, one day earlier than promised, an Entry was issued granting OCC's extension.

Movants seek to strike Ormet's entire late-filed Memorandum Contra on a number of grounds. Ormet, unlike Movants and AEP, did not comply with the Entry of August 5, 2008, in which the Attorney Examiner Entry imposed rules that required parties to expeditiously respond to filings on the announced timeline.² The Entry was

¹ According to the Commission Entry, "any memorandum contra shall be required to be filed within five business days after the service of such motion and any reply memorandum within three business days after the service of a memorandum contra." Entry at 3 (Aug. 5, 2008).

²Id.

published and served upon parties to the docket after Ormet had moved to intervene. As an intervenor participating in the ESP case, albeit an inactive one, Ormet was bound by Ohio Admin. Code 4901-1-38(A) to follow the procedural standards set by the Attorney Examiner. Ormet did not do so. Ormet's Memorandum Contra, filed ten days late and after OCC's reply to AEP was publicly available to it, should be stricken.

Moreover, it was incumbent upon Ormet to file a motion for extension and show "good cause" under Ohio Adm. Code 4901-1-13 as to why the Commission should permit it to disregard the procedural schedule, and file its Memorandum Contra ten days later than the PUCO ruled. Not only was Ormet noncompliant with the Examiner's ruling, Ormet ignored Ohio law in the form of Ohio Adm. Code 4901-1-13. Thus, because Ormet failed to show good cause as to why its Memorandum Contra is late, and failed to file a motion for waiver of the PUCO's August 5, 2008 Entry, the Commission should strike Ormet's Memo.

Finally, Ormet, in its Memorandum Contra,³ addresses issues raised in Movants' Reply, in addition to issues raised in the Movants' Motion.⁴ While the Commission's rules permit a timely filed Memorandum Contra to address a Motion, there is no provision for a party, such as Ormet, to file a Memorandum Contra to Movants' Reply. Ohio Adm. Code 4901-1-12 specifically permits Motions to be filed. Under 4901-1-12(B)(1), parties may file a Memorandum Contra the motion. Rule 4901-1-12(B)(2) then permits a party to file a Reply Memorandum. These rules set forth a logical and fair progression for pleadings, given that Movants bear the burden of proof, and consequently

³ See Ohio Admin. Code 4901-1-(B)(1).

⁴ See Ormet's late-filed Memorandum Contra at 2-3, where Ormet claims "The Movants attempt to further muddy the waters in their Reply by claiming...." (June 22, 2009).

are permitted the last word in. But Ormet's filing upends the fundamental fairness underlying 4901-1-12, by permitting Ormet to advantageously wait and ambush Movants. Such a manipulation of the Commission's rules should not be encouraged, and this provides yet another reason to strike Ormet's Memorandum Contra.

II. REPLY TO MEMORANDUM CONTRA

In Ormet's Memorandum Contra, Ormet begins by alleging that Movants should not be permitted to collaterally attack, in the ESP proceeding, the temporary rates approved in Case No. 08-1338-EL-AAM.⁵ Ormet then goes on to dispute that it received a discount under its 2007-2008 contract with AEP.⁶ Disputed by Ormet as well, is the assertion that it is currently receiving a \$50 million discount. Movants are overreaching, claims Ormet, by requesting that AEP be "prohibited forever" from collecting delta revenues,⁷ an argument that Ormet should seemingly have no interest in making, given that it has no real and substantial interest in whether and when the Ormet delta revenues are collected from other customers.

Ormet misunderstands the gist of Movants' pleading. Movants object to the collection of the delta revenues from customers because the PUCO has never ruled upon whether that collection is reasonable and whether it is in the public interest for customers of AEP to pay 100% of the delta revenues created by the temporary rates. Through their pleading in this case, Movants are not challenging the temporary rates approved in Case No. 08-1338-EL-AAM. Movants instead have challenged the temporary rates in the

⁵ Ormet late-filed Memorandum Contra at 2.

⁶ Id at 2-3.

⁷ Id. at 3.

proper case, Case No. 08-1338-EL-AAM. Ormet is mistaken in asserting Movants are engaging in a collateral attack on the temporary rates.

Although Ormet claims that the Movants attempt to muddy the waters in their Reply related to the “discount,” “muddied water” has surrounded the Ormet/AEP transactions from the get-go, without the assistance of Movants. While Movants concede that Ormet was paying above tariff rates during 2007 and 2008, from the customers’ perspective the effect of permitting AEP to collect from other customers the Ormet market rate delta revenues⁸ is no different than if Ormet had been receiving a discount. With respect to Ormet’s \$50 million discount, Ormet seems to disregard the fact that the ESP rates have been approved retroactively so that increased ESP rates are effective at the beginning of the rate plan, January 1, 2009. Ormet has not been paying the newly approved ESP rates since January 1, 2009, but has been paying the much reduced discounted temporary rate, in spite of the fact that all other ESP customers do not have the luxury of such a deal.

While a PUCO ruling that AEP be “forever prohibited”⁹ from collecting from customers the delta revenues related to Ormet would protect customers’ pocketbooks against paying many tens of millions of dollars of subsidies, that is not what Movants have asked in their Motion for Refund. Movants have asked instead that these revenues not be collected in the ESP rates because they have not been authorized in the ESP case, Case No. 08-917-EL-SSO et al., or in the temporary Ormet case, Case No. 08-1338-EL-

⁸Market deltas refers to the difference between tariff rate and an administratively determined “market rate.”

⁹ See Ormet Late-Filed Memorandum Contra at 3 (“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 proceeding...”)

AEC. Movants are well aware that this issue is being litigated in Case No. 09-119-EL-AEC.

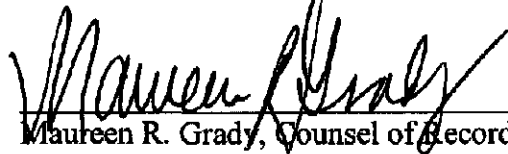
III. CONCLUSION

Movants have filed a Motion for Refund and Motion to Cease and Desist collection of the Ormet delta revenues from AEP customers on the grounds that the Commission has never authorized such a collection, nor did it intend to do so. Additionally, Movants allege that the collection of delta revenues from customers violates the tariff structure set forth in the ESP Order, requiring delta revenues to be collected through an economic development rider. Neither AEP nor Ormet disputes these arguments.

While AEP presents the Commission with arguments trying to explain how delta revenues are not being collected, Ormet argues about the characterization of the delta revenues as “discounts” and tries to turn Movants’ arguments into something they are not. The PUCO should find Ormet’s Memorandum Contra unpersuasive. In particular, due to Ormet’s unexplained inability or unwillingness to follow the procedural schedule in this case and the Ohio Administrative Code for seeking extensions, the Commission should strike Ormet’s Memorandum Contra altogether, as fully explained in this pleading.

Respectfully submitted,

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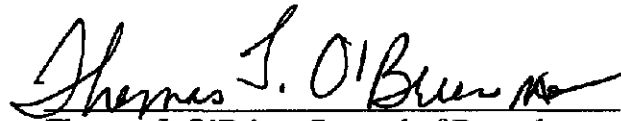
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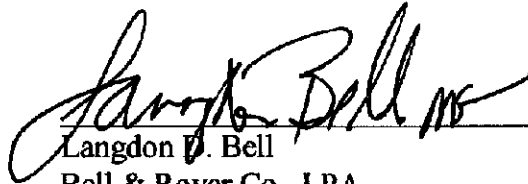
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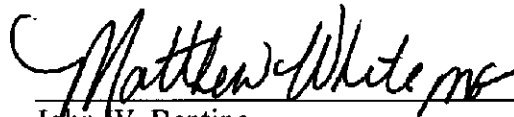
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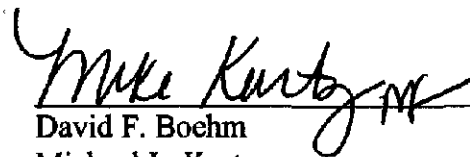
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion and Reply was served by electronic service to the parties identified below (provided electronically to the Attorney Examiners) this 30th day of June 2009.


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