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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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In the Matter of the Application of Columbus)
Southern Power Company and Ohio Power) Case No. 07-1132-EL-UNC
Company for Approval of an Additional)
Generation Service Rate Increase Pursuant to)
Their Post-Market Development Period Rate)
Stabilization Plans)

In the Matter of the Application of Columbus)
Southern Power Company and Ohio Power) Case No. 07-1191-EL-UNC
Company for Approval of an Additional)
Generation Service Rate Increase Pursuant to)
Their Post-Market Development Period Rate)
Stabilization Plans)

In the Matter of the Application of Columbus)
Southern Power Company and Ohio Power) Case No. 07-1278-EL-UNC
Company for Approval of an Additional)
Generation Service Rate Increase Pursuant to)
Their Post-Market Development Period Rate)
Stabilization Plans)

In the Matter of the Application of Columbus)
Southern Power Company and Ohio Power) Case No. 07-1156-EL-UNC
Company to Update Each Company's)
Transmission Cost Recovery Rider)

**INDUSTRIAL ENERGY USERS-OHIO'S MEMORANDUM CONTRA
THE ORMET PRIMARY ALUMINUM CORPORATION'S
MOTION TO INTERVENE AND APPLICATION FOR REHEARING**

Samuel C. Randazzo, Trial Attorney
Lisa G. McAlister
Daniel J. Neilsen
Joseph M. Clark
MCNEES WALLACE & NURICK LLC
21 East State Street, 17th Floor
Columbus, OH 43215-4228
Telephone: (614) 469-8000
Telecopier: (614) 469-4653
sam@mwncmh.com
lmcAlister@mwncmh.com
dneilsen@mwncmh.com
jclark@mwncmh.com

March 10, 2008

Attorneys for Industrial Energy Users-Ohio

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I. INTRODUCTION

On January 30, 2008, the Public Utilities Commission of Ohio ("Commission") issued an Opinion and Order in these contested proceedings after "...considering the application, the testimony, [and] all other evidence of record"¹ The resolution of the

¹ Opinion and Order at 1 (January 30, 2008) (hereinafter referred to as the "*January 30 Order*").

contested issues adopted by the *January 30 Order* was the same resolution that the parties representing a diverse range of interests recommended unanimously in a Stipulation and Recommendation ("Stipulation"). The Stipulation was submitted during the hearing on January 17, 2008.²

On February 29, 2008, Ormet Primary Aluminum Corporation ("Ormet") filed an untimely Motion to Intervene, an untimely Memorandum in Support, a Motion for Admission *Pro Hac Vice* of its counsel in Washington, D.C., and an improper Application for Rehearing.

II. ARGUMENT

A. Ormet has not met the Commission's standards for late intervention or for leave to file an application for rehearing.

Section 4903.221, Revised Code, and Section 4901-1-11, Ohio Administrative Code, establish certain criteria for timely intervention in Commission proceedings. Additionally, Section 4903.221, Revised Code, permits the Commission to allow untimely interventions for "good cause shown." Section 4901-1-11(F), Ohio Administrative Code, states that an untimely intervention request "...will be granted only under extraordinary circumstances."

Ormet does not allege or describe any extraordinary circumstances in its untimely intervention request, and accordingly, Ormet's intervention request cannot be considered or granted by the Commission and Ormet's rehearing request must therefore be rejected. Even if the Commission were to ignore the requirement in its rules and apply a "good cause" standard to Ormet's intervention request, Ormet's

² Transcript for January 17, 2008 Hearing, Joint Exhibit 1.

intervention request cannot be considered or granted by the Commission and Ormet's rehearing request must therefore be rejected.

The only reason that Ormet provides as "good cause" for why the Commission might, in its discretion, grant Ormet's untimely intervention request rests upon an incorrect factual foundation. Ormet's sole reason is tied to its assertion that the Stipulation introduced an issue and potential outcome that were, in effect, new to the proceedings. Ormet goes on to claim that it did not have notice of this potential outcome [recovery of certain costs through the transmission cost recovery rider ("TCRR") mechanism rather than the generation cost recovery mechanism ("GCRR") mechanism] prior to the Stipulation being adopted by the Commission.

The *January 30 Order* describes the history of the Commission's consideration of PJM Interconnection's ("PJM") new method for allocating transmission line losses, approved by the Federal Energy Regulatory Commission ("FERC") in Docket No. EL06-55 on May 1, 2006, and notes that inclusion of this category of costs in the TCRR was one of the options identified by AEP-Ohio.³ The *January 30 Order* further discusses this subject at pages 8 and 9, citing the testimony of AEP-Ohio's witnesses.⁴ It was the Application and the prepared testimony submitted by AEP-Ohio's witnesses, not the Stipulation, that identified the potential use of the TCRR to recover the net cost of marginal losses.⁵ Ormet's assertion that "[p]rior to the issuance of the order approving

³ *January 30 Order* at 5-6.

⁴ *Id.* at 8, 9.

⁵ See Application at 3-4; Direct Testimony of David M. Roush at 8 ["The Companies do not propose to collect these costs through the Companies' Transmission Cost Recovery Riders (TCRR). However, should the Commission view these costs as more appropriately included in the Companies' TCRR ..."].

the 2008 Stipulation in this docket, Ormet had no reason to believe that its interests would be impacted by the proceeding"⁶ is, based on the record evidence, incorrect.

Ormet's price for generation supply is fixed at \$43 per megawatt hour ("MWh") pursuant to the arrangement approved by the Commission in Case No. 05-1057-EL-CSS.⁷ The same arrangement calls for Ormet to pay transmission charges in accordance with the applicable tariffs. The *January 30 Order* does not change Ormet's obligations under its current arrangement. To the extent the *January 30 Order* results in a potential overstatement of the so-called market price that is used to measure the "cost" of Ormet's generation supply and the residual amount of such supply cost that is absorbed by way of a regulatory liability amortization or by other customers as part of AEP-Ohio's discretionary generation price increases (which Ormet does not pay), Ormet has no standing to complain about this overstatement. If there is such an overstatement, it is AEP-Ohio's tariff customers, not Ormet, that are affected by the overstatement. In any event, the Commission need not disturb the *January 30 Order* in these proceedings to address any overstatement of the so-called market price. If a correction is in order, the Commission should take this question up as part of Case No. 07-1317-EL-UNC.

Finally, FERC's adoption of marginal losses sets the stage for electric prices that over-recover the actual cost of line losses thereby necessitating a reconciliation process that may or may not ultimately result in a matching of actual costs and revenues. Like FERC's other pricing conventions, FERC's directive to set rates based on marginal loss

⁶ Memorandum in Support of Ormet Primary Aluminum Corporation's Application for Rehearing at 10.

⁷ *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).

factors adds unnecessary upward pressure to the delivered price of electricity in Ohio and elsewhere. The Industrial Energy Users-Ohio ("IEU-Ohio") urges Ormet to join IEU-Ohio and other customers and customer groups in overturning FERC's unfortunate and unfounded electric price escalating policies and practices.

B. The Commission has no evidentiary basis upon which to base the relief requested by Ormet and is prohibited from taking into evidence the contract and affidavits submitted by Ormet inasmuch as those documents could have been offered at the original hearing.

Section 4903.09, Revised Code, commands that "a complete record of all of the proceedings shall be made, including a transcript of all testimony and of all exhibits, and the commission shall file, with the records of such cases, findings of fact and written opinions setting forth the reasons prompting the decisions arrived at, based upon said findings of fact." Ormet bases its entire argument on the provisions of its contract with AEP and the affidavits it filed with the Application for Rehearing and Motion to Intervene. However, neither the contract nor the affidavits have been properly admitted into the record of this case and it is improper to file them at this juncture. IEU-Ohio opposes the admission of the contract and the affidavits. Further, if the Commission grants rehearing, it must specify the scope and purpose of the additional evidence (if any) that will be taken and is prohibited from taking any evidence that, with reasonable diligence, could have been offered in the original hearing.⁸ Ormet does not seek to introduce any evidence that could not have been procured with reasonable diligence and offered in the original hearing. For these reasons, IEU-Ohio urges the Commission to find that it is legally barred from considering the contract and affidavits and deny Ormet's Application for Rehearing and Motion to Intervene.

⁸ Section 4903.10, Revised Code.

III. CONCLUSION

For the reasons described above, IEU-Ohio urges the Commission to deny Ormet's request for leave to file an Application for Rehearing as well as its Motion to Intervene.

Respectfully submitted,



Samuel C. Randazzo, Trial Attorney
Lisa G. McAlister
Daniel J. Neilsen
Joseph M. Clark
MCNEES WALLACE & NURICK LLC
21 East State Street, 17th Floor
Columbus, Ohio 43215
(614) 469-8000 (T)
(614) 469-4653 (F)
sam@mwncmh.com
lmcAlister@mwncmh.com
dneilsen@mwncmh.com
jclark@mwncmh.com

Attorneys for Industrial Energy Users-Ohio

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Industrial Energy Users-Ohio's Memorandum Contra Ormet Primary Aluminum Corporation's Application for Rehearing and Motion to Intervene* was served upon the following individuals this 10th day of March 2008 via electronic transmission, hand-delivery or first class mail, postage prepaid.



Joseph M. Clark

Marvin I. Resnik
American Electric Power
1 Riverside Plaza, 29th Floor
Columbus, Ohio 43215

Daniel R. Conway
Porter Wright Morris & Arthur LLP
41 South High Street
Columbus OH 43215

Michael R. Smalz, Trial Attorney
Joseph V. Maskovyak
Appalachian People's Coalition
c/o Ohio State Legal Services
Association
555 Buttles Avenue
Columbus, Ohio 43215

David C. Rinebolt
Colleen L. Mooney
Ohio Partners for Affordable Energy
231 West Lima Street
P.O. Box 1793
Findlay, Ohio 45839-1793

Richard L. Sites
General Counsel
Ohio Hospital Association
155 E. Broad Street 15th Floor
Columbus, Ohio 43215-3620

Ann M. Hotz
Jacqueline Lake Roberts
Office of Ohio Consumers' Counsel
10 W. Broad Street, Suite 1800
Columbus, Ohio 43215-3485

David F. Boehm
Michael L. Kurtz
Boehm, Kurtz & Lowry
Ohio Energy Group
36 E. Seventh Street, Suite 1510
Cincinnati, Ohio 45202

Clinton A. Vince
Emma F. Hand
Nicole M. Crum
Sullivan & Worcester LLP
Ormet Primary Aluminum Corp.
1666 K Street, NW, Suite 700
Washington, DC 20006