



Users-Ohio (IEU-Ohio), the Ohio Hospital Association, Appalachian People's Action Coalition, and Ohio Partners for Affordable Energy. The Stipulation states that the signatory parties had resolved all of the issues in the generation cost recovery rider (GCRR) cases (Case Nos. 07-1132-EL-UNC, 07-1191-EL-UNC, and 07-1278-EL-UNC) and the transmission cost recovery rider (TCRR) case (Case No. 07-1156-EL-UNC). Pursuant to the 2008 Stipulation, the parties agreed, *inter alia*, that:

- (a) The net cost of the locational marginal pricing (LMP) losses, which resulted from a change in the method by which the companies' LMP is determined by their regional transmission organization, should be recovered through the TCRRs, rather than through the GCRRs. Therefore, the proposed GCRRs would be adjusted to reflect the removal of the net costs and the riders in the TCRR case would be adjusted to reflect the inclusion of \$78 million in net costs of marginal losses.
  - (b) The TCRRs approved in the TCRR case would also be adjusted to include an \$18 million credit associated with net congestion costs.
- (2) By Opinion and Order issued January 30, 2008, the Commission approved the 2008 Stipulation finding that it satisfied the criteria used to evaluate a stipulation.
  - (3) On February 29, 2008, Ormet Primary Aluminum Corporation (Ormet) filed a request for leave to seek rehearing of the Commission's January 30, 2008, order in these cases, along with its application for rehearing and a motion to intervene in these cases. In addition, Ormet filed a motion for admission *pro hac vice* to admit Clinton A. Vince and Emma F. Hand to practice before the Commission in these proceedings for Ormet. The Commission finds that Ormet's motion for admission *pro hac vice* should be granted.
  - (4) On March 10, 2008, AEP-Ohio and IEU-Ohio filed memoranda contra Ormet's motion to intervene and application for rehearing. On March 17, 2008, Ormet filed a reply to the

memoranda contra its motion to intervene filed by AEP-Ohio and IEU-Ohio. In light of the fact that this is Ormet's first appearance in these cases, before we can even consider the substance of Ormet's rehearing application, the Commission must first determine whether Ormet should be granted leave to intervene and to file an application for rehearing.

- (5) On March 19, 2008, AEP-Ohio filed a motion to strike Ormet's reply asserting that the reply improperly attempted to further support Ormet's request for intervention and application for rehearing rather than address the arguments in the memoranda contra. On March 21, 2008, Ormet filed a memorandum contra AEP-Ohio's motion to strike and on March 25, 2008, AEP-Ohio filed a reply. Upon review of the pleadings, the Commission finds that AEP-Ohio's motion to strike Ormet's March 19, 2008, reply should be denied.
- (6) Section 4903.10, Revised Code, provides that, in contested proceedings:

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 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.
- (7) By way of background, Ormet explains that it entered into a stipulation with AEP-Ohio (2006 Stipulation) which was approved by the Commission. See *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 11, 2006). Ormet explains that, under the 2006 Stipulation, Ormet agreed to pay \$43 per megawatt hour (MWh) for generation service and to pay tariff

rates and all applicable riders for transmission and distribution service.

- (8) With regard to its requests for leave to intervene and to file an application for rehearing, Ormet submits that it has just cause for not entering an appearance in these proceedings. Ormet states that its failure to enter an appearance in these cases was caused by the fact that it had no notice that it would be affected by the 2008 Stipulation. According to Ormet, it had no reason to believe that proceedings regarding generation riders would impact the rates agreed to in its 2006 Stipulation with AEP-Ohio. Under the 2006 Stipulation, Ormet pays AEP-Ohio a fixed price for generation service, but is subject to the transmission and distribution riders. Thus, Ormet avers that it was unaware that its rates would be impacted by a proposed change to the generation rate schedule. Ormet states that it had no reason to believe it would be impacted by the Commission's decision in these proceedings prior to the issuance of the order and, therefore, it could not have intervened in advance of the January 30, 2008, order. In addition, Ormet asserts that its interests were not given adequate consideration in these proceedings. Ormet points out that, given its unique contractual arrangement with AEP-Ohio, Ormet is subject to the TCRR, but not the GCRR. Ormet avers that most AEP-Ohio customers are indifferent to whether costs are recovered through the TCRR or the GCRR. Furthermore, Ormet points out that no other party has a contractual relationship with AEP-Ohio that would permit a double recovery of transmission losses by AEP-Ohio shifting costs from the GCRR to the TCRR. Therefore, Ormet submits that no other party in these proceedings could have adequately represented Ormet's interests. Ormet clarifies that it is not seeking to undo the 2008 Stipulation between the settling parties in these cases. Rather, Ormet is seeking a credit that would offset the improper shift of costs to Ormet, without disturbing the 2008 Stipulation.
- (9) AEP-Ohio opposes Ormet's requests to intervene and to file an application for rehearing stating that Ormet's argument that it did not have sufficient notice that the TCRR case could be affected by the GCRR cases is without merit. AEP-Ohio notes that the last day interested entities could request intervention in these cases was January 17, 2008. Further, AEP-Ohio points out that Ormet acknowledges that it is subject to changes in the

TCRR and, therefore, the filing of the TCRR case on October 31, 2007, and the fact that the TCRR application refers to the LMP loss issue in the GCRR case, provided Ormet with sufficient notice of the issue so that it could have intervened in a timely manner. Furthermore, AEP-Ohio points out that the Commission stated in its December 19, 2007, order in the TCRR case that the Commission would further consider the inclusion of the LMP loss cost in Case No. 07-1132-EL-UNC, which is one of the GCRR cases. AEP-Ohio states that the granting of Ormet's motion to intervene would unduly delay these proceedings and that, if Ormet wanted the Commission to consider its issues and did not believe that the two industrial groups in these cases represented its interests, then Ormet should have intervened in a timely manner. Therefore, AEP-Ohio submits that Ormet's requests to intervene and for leave to file an application for rehearing should be denied.

- (10) IEU-Ohio also opposes Ormet's requests to intervene and for leave to file an application for rehearing stating that Ormet has not alleged any extraordinary circumstances that would warrant granting its untimely requests. In addition, IEU-Ohio states that the Commission does not need to disturb the 2008 Stipulation in order to address Ormet's concerns.
- (11) Upon consideration of Ormet's requests to intervene and to file an application for rehearing, the Commission finds that such requests should be granted. In light of the tight time frames followed in the processing of these cases, the Commission believes it is appropriate to allow Ormet into these proceedings and for the Commission to review Ormet's arguments for rehearing.
- (12) Having determined that Ormet should be permitted to file an application for rehearing, the Commission now turns to the arguments set forth by Ormet. According to Ormet, the Commission's January 30, 2008, order unfairly and unreasonably approved the 2008 Stipulation that resulted in a shifting of \$4 million to Ormet, who was not a party to these proceedings. According to Ormet, the cost shift results from: the recovery of generation costs through a transmission rider; and the double recovery of these costs by AEP-Ohio under both the 2008 Stipulation and the 2006 Stipulation.

- (13) In its memorandum contra Ormet's application for rehearing, AEP-Ohio submits that the 2008 Stipulation meets the criteria required for approval of a stipulation. Furthermore, AEP-Ohio submits that the 2008 Stipulation does not violate any regulatory principles and does not result in double recovery.
- (14) The Commission finds that Ormet's application for rehearing should be granted. We believe that sufficient reason has been set forth by Ormet to warrant further consideration of the matters specified in the application for rehearing.

It is, therefore,

ORDERED, That Ormet's motion for admission *pro hac vice* to admit Clinton A. Vince and Emma F. Hand be granted. It is, further,

ORDERED, That AEP-Ohio's motion to strike Ormet's March 19, 2008, reply be denied. It is, further,

ORDERED, That Ormet's requests to intervene and for leave to file and application for rehearing be granted. It is, further,

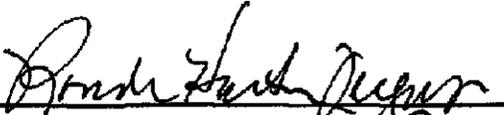
ORDERED, That Ormet's application for rehearing is granted for further consideration of the matters specified in the application for rehearing. It is, further,

ORDERED, That a copy of this entry on rehearing be served upon each party of record and all other interested persons of record in these proceedings.

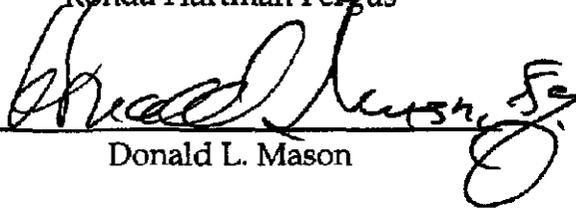
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MAR 26 2008

  
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Renee J. Jenkins  
Secretary