

FILE

BEFORE THE  
PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter Of the Application Of )  
Ormet Primary Aluminum Corporation for )  
Approval of a Unique Arrangement with )  
Ohio Power and Columbus Southern Power )  
Company )

Case No. 09-119-EL-AEC

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COLUMBUS SOUTHERN POWER COMPANY'S  
AND OHIO POWER COMPANY'S  
MEMORANDUM CONTRA OHIO CONSUMERS' COUNSEL'S  
MOTION TO SHORTEN DISCOVERY RESPONSE TIME

On March 13, 2009 the Ohio Consumers' Counsel (OCC) filed a motion to intervene in this proceeding as well as a motion to shorten the time for responding to discovery. While Columbus Southern Power Company and Ohio Power Company (AEP Ohio) do not oppose OCC's intervention, they do oppose, at least at this juncture, any shortening of the time for responding to discovery.

A shortened time for responding to discovery only can be warranted once it is known *if* there will be a hearing and *when* such a hearing will begin. OCC claims that cutting the time for responding to discovery by nearly two-thirds the normal time allotted is the only way to provide adequate time for case preparation. Without knowing whether a hearing will be held and when such a hearing would be scheduled, such a claim is based on pure speculation and lacks support.

Once the Commission determines that a hearing in this matter will be held and sets a date for such a hearing, it would be appropriate to consider OCC's motion regarding the time for discovery responses.

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As part of that consideration, the Commission should recall that at the height of all the Standard Service Offer cases, which OCC repeatedly asserted was its busiest time ever, discovery response times were reduced to ten days. AEP Ohio cannot imagine what circumstances would warrant a seven-day response requirement. While that very limited amount of time recently was imposed in another Commission case, it appears that the Entry in that case was issued virtually contemporaneous with the filing of a brief in opposition to OCC's request in that case.<sup>1</sup>

Finally, OCC's perceived need for such a drastically reduced time for responding to discovery should be viewed in the context of how much time already has elapsed since this case was initiated on February 17, 2009. OCC served its first set of discovery at 4:53 p.m. on March 18, 2009, which happened to be the same day the Companies' ESP order was issued by the Commission. It is unreasonable to ask for a drastically limited schedule for discovery responses while OCC has let a full month pass by before serving any discovery. The impracticality of a 7-day turnaround for discovery responses is demonstrated by OCC's first set of discovery. If OCC's motion had been granted prior to this first set of discovery being served, the Companies' responses would have been due by March 25, 2009, allowing only five business days for preparation of responses. This limited time period would overlap with the Companies' efforts to file tariffs conforming to the Commission's ESP order.<sup>2</sup> The Companies should not be required to respond to OCC's discovery under unreasonable time constraints when OCC took its time to begin the discovery process.

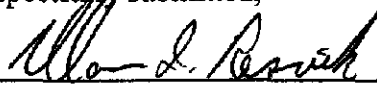
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<sup>1</sup> In the Matter of the Application of National Aeronautics and Space Administration at Glenn Research Center to Establish a Reasonable Arrangement with The Cleveland Electric Illuminating Company and FirstEnergy Corporation for Electric Service, Case No. 09-91-EL-AEC, Entry (March 12, 2009).

<sup>2</sup> Because OCC's motion had not been granted prior to this first set of discovery, the Companies' responses will be governed by the time permitted in §4909-1-19(A), Ohio Admin. Code.

OCC's motion to shorten the discovery response time 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 Ohio Consumers' Counsel's Motion to Shorten Discovery Response Time was served by U.S. Mail upon counsel identified below for all parties of record this 20th day of March, 2009.



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