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April 2, 2012

BY FEDERAL EXPRESS

Case Nos.: 11-4920-EL-RDR
11-4921-EL-RDR

PUCO

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Public Utilities Commission of Ohio
Docketing Division
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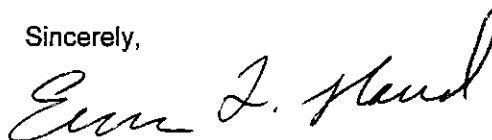
Re: *In the Matter of the Application of Columbus Southern Power Company for Approval of a Mechanism to Recover Deferred Fuel Costs Ordered Under Section 4928.144 Ohio Revised Code. Case Nos. 11-4290-EL-RDR and 11-4921-EL-RDR.*

Dear Sir or Madam:

Enclosed please find for filing an original and twenty (20) copies of the *Comments of Ormet Primary Aluminum Corporation*. The original was filed by fax on April 2, 2012.

Two additional copies are enclosed to be date-stamped and returned to me in the enclosed, self-addressed Federal Express envelope.

Sincerely,



Emma F. Hand
Partner

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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 a Mechanism to)	
Recover Deferred Fuel Costs Ordered)	Case No. 11-4920-EL-RDR
Under Section 4928.144, Ohio Revised)	
Code.)	
In the Matter of the Application of)	
Ohio Power Company for Approval of)	
a Mechanism to Recover Deferred)	Case No. 11-4921-EL-RDR
Fuel Costs Ordered Under Section)	
4928.144, Ohio Revised Code.)	

COMMENTS OF ORMET PRIMARY ALUMINUM CORPORATION

The Commission should not simply rubber-stamp the Phase-In Recovery Rider ("PIRR") that AEP Ohio has proposed in this proceeding. It should carefully examine the proposal in light of the state of the economy and the rate increases already being borne by AEP Ohio customers due to the recent expiration of the rate caps on the Fuel Adjustment Charges ("FAC"). Although the Commission has already approved the charges in the deferred fuel accounts as well as the time period for the recovery of those sums, there still remains substantial opportunity to provide customers with relief when adopting a specific mechanism for the recovery of those costs. Two areas in particular provide an avenue for the Commission to reduce the potentially devastating impact of the PIRR on customers while keeping AEP Ohio financially stable: the proposed carrying charges should be reduced and the balances should be adjusted to reflect the benefit that AEP Ohio receives from accumulated deferred income tax ("ADIT").

AEP Ohio has enjoyed net income of over \$1 billion over the last two calendar years.¹ It also earned a Return on Equity of 12.06 percent in 2011,² a rate higher than any ROE approved for an electric utility in the country in 2011.³ In deferring AEP's recovery of full fuel adjustment clause increases in the last ESP case, PUCO held that AEP's customers could not afford to bear an increase of more than 6-8 percent over the last three years. While economic conditions have not materially improved, AEP nevertheless asks for approval to: (a) recover carrying charges at an extraordinarily high rate, and (b) recover significantly more than the actual effects associated with its deferral of PIRR funds.

Ohioans in general, and Ormet in particular, could not afford an increase of this nature in the last ESP proceeding, and such an increase could prove devastating this year. Applying the updated fuel costs to the reinstated 2011 rates has already resulted in an 8 percent rate increase over the average GS-4 tariff rate that was applicable to Ormet in 2011. Adding the proposed PIRR would add an additional \$10.3 million per year to Ormet's rates, creating a 12 percent increase over the average GS-4 tariff rate applicable to Ormet in 2011.

BACKGROUND

AEP Ohio filed its initial application for approval of a mechanism to recover deferred fuel costs in this proceeding on September 1, 2011. On September 7, 2011, a Stipulation was

¹ See American Electric Power's Annual 10-K Report at p. 189 (Feb. 28, 2012), *available at* <http://www.aep.com/investors/financialfilingsandreports/edgar/filings.aspx?section=OhioPowerFilings>.

² Direct Testimony of William A. Allen in Support of AEP Ohio's Modified Electric Security Plan at 14 (Mar. 30, 2012).

³ See Exhibit A attached, *available at* http://www.fortnightly.com/exclusive.cfm?o_id=70 by selecting "electric" as the utility type with a date range of all months in 2011 and sorting by "ROE Rate Newly Authorized."

filed in the AEP Ohio ESP II case that included a different PIRR⁴ and this proceeding was consolidated into the ESP II case on September 16, 2011, with the procedural schedule in this case suspended until further order of the Commission.⁵ The Commission initially approved that Stipulation on December 14, 2011,⁶ but subsequently rejected the Stipulation, and with it the PIRR, on rehearing on February 23, 2012.⁷ In its February 28, 2012 Compliance Filing re-establishing 2011 rates in light of the rejection of the Stipulation, AEP Ohio again proposed a slightly different PIRR.⁸ The Commission rejected the proposed PIRR, de-consolidated the proceedings and stated that any further action with respect to a proposed PIRR would take place

⁴ Stipulation and Recommendation, *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to § 4928.143, Ohio Rev. Code, in the Form of an Electric Security Plan*, Nos. 11-346-EL-SSO, *et al.* (Sept. 7, 2011).

⁵ Entry, *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to § 4928.143, Ohio Rev. Code, in the Form of an Electric Security Plan*, Nos. 11-346-EL-SSO, *et al.* (Sept. 16, 2011).

⁶ Opinion and Order, *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to § 4928.143, Ohio Rev. Code, in the Form of an Electric Security Plan*, Nos. 11-346-EL-SSO, *et al.* (Dec. 14, 2011).

⁷ Entry on Rehearing, *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to § 4928.143, Ohio Rev. Code, in the Form of an Electric Security Plan*, Nos. 11-346-EL-SSO, *et al.* (Feb. 23, 2012).

⁸ Compliance Filing, *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to § 4928.143, Ohio Rev. Code, in the Form of an Electric Security Plan*, Nos. 11-346-EL-SSO, *et al.* (Feb. 28, 2012).

in this proceeding alone.⁹ On March 14, 2012, the Attorney Examiner in this proceeding found that the cases should now move forward and set a procedural schedule allowing for comments.¹⁰

COMMENTS

The expiration of the caps on the FAC at the end of 2011 has created a significant rate increase which, when combined with the poor state of the economy, has put a significant financial strain on many, if not most, of AEP Ohio's retail customers, including Ormet. Although the Commission has already approved the deferral of the costs to be collected through the PIRR, the recovery mechanism itself has yet to be approved, and the design of the recovery mechanism will have a significant financial impact on customers. Each of the proposed PIRRs that have been put forth in this proceeding to date have a rate impact in the range of \$8-10.3 million per year on Ormet which, coupled with the other rate proposals approved and pending, threaten Ormet's survival.

The Commission can mitigate significantly the impact of this rate increase upon customers while still making AEP Ohio whole for the burden of the deferrals. It need only reduce the carrying charges on the balances and adjust the balances to reflect ADIT.

⁹ Entry, *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to § 4928.143, Ohio Rev. Code, in the Form of an Electric Security Plan*, Nos. 11-346-EL-SSO, *et al.* (Mar. 7, 2012).

¹⁰ Entry, *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to § 4928.143, Ohio Rev. Code, in the Form of an Electric Security Plan*, Nos. 11-346-EL-SSO, *et al.* (Mar. 14, 2012). Ormet notes that in light of the Commission's rejections of the PIRRs proposed in conjunction with the Stipulation and the Compliance filing, it now appears that the PIRR proposal currently under consideration in this proceeding is the original September 1, 2011 proposal, and Ormet has styled these comments as comments regarding that specific proposal. The general principles behind Ormet's comments apply to all three proposals, though the financial impact varies slightly between them. Ormet reserves the right to file additional comments should it subsequently be made clear that one of the other proposals is under consideration in this proceeding.

A. The Carrying Charges on the Deferral Balance Should Reflect AEP Ohio's Long-Term Cost of Debt.

The proposed PIRR also reflects a continuation of the 11.15 percent carrying charges on the deferred costs based on AEP Ohio's weighted average cost of capital ("WACC"). As it considers whether and how to allow AEP Ohio to begin collections of the deferred balances, the Commission should also reconsider the reasonableness of continuing to allow AEP Ohio to collect 11.15 percent in light of the Commission's precedent requiring that carrying costs on a deferral be limited to the utility's long-term cost of debt once amortization of a deferred asset begins.¹¹

Although the Commission approved carrying charges based on the WACC in the ESP I cases, that approval was for the ESP I time period of 2009-2011,¹² and it need not be continued. The Commission has broad discretion under Revised Code Section 4928.144, Revised Code, regarding the creation and duration of a phase-in of a rate increase established pursuant to Sections 4928.141 through 4928.143, Revised Code. Further, as the Ohio Supreme Court has explained, "[a]gencies undoubtedly may change course, provided that the new regulatory course is permissible."¹³ Indeed, under Ohio law:

an agency 'need not demonstrate to a court's satisfaction that the reasons for the new policy are *better* than the reasons for the old one; it suffices that the new policy is

¹¹ Opinion and Order at 24, *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Approval of a New Rider and Revision of an Existing Rider*, No. 10-176-EL-ATA, (May 25, 2011), *see also In re Application of Duke Energy Ohio, Inc. for an Increase in Rates*, No. 07-589-GA-AIR, 2008 WL 2390285, at *5 (Ohio P.U.C. May 28, 2008).

¹² Opinion and Order, *In the Matter of the Application of Columbus Southern Power Company for Approval of an Electric Security Plan; an Amendment to its Corporate Separation Plan; and the Sale or Transfer of Certain Generating Assets*, Nos. 08-917 *et al.* (Mar. 18, 2009).

¹³ *Util. Serv. Partners, Inc. v. Pub. Utils. Comm'n of Ohio*, 921 N.E.2d 1038 at 1043 (Ohio 2009).

permissible under the statute, that there are good reasons for it, and that the agency *believes* it to be better, which the conscious change of course adequately indicates.’¹⁴

There are other permissible and lawful methods of calculating carrying charges at the Commission’s disposal. Circumstances have changed significantly between 2008 and 2012 in a manner that warrants a change of course by the Commission.

According to Commission precedent, carrying costs on a deferral should be limited to the utility’s long-term cost of debt once amortization of a deferred asset begins.¹⁵ Changing to this method of calculating carrying costs would provide relief for customers, and would be consistent with Commission precedent. Such a change would reflect the fact that once the deferral collection has begun, the risk of recovery is significantly lessened, making a lower cost of capital more appropriate.

Moreover, circumstances for customers have changed substantially since the Commission issued its ESP I order in early 2009. AEP Ohio’s customers have now been struggling with an extended economic downturn for three additional years. The expiration of the rate caps on the FAC has already subjected customers to a significant rate increase -- in Ormet’s case an increase

¹⁴ *Id.* (quoting *Fed. Commc’ns Comm’n v. Fox Television Stations, Inc.* 129 S.Ct. 1800, 1811 (2009) (emphasis in original)); see also *In re: Application of Columbus Southern Power Co.*, 947 N.E.2d 655,667 (Ohio 2011) (“It is true that we have instructed the commission to ‘respect its own precedents in its decisions to assure the predictability which is essential in all areas of the law, including administrative law.’ . . . This does not mean that the commission may never revisit a particular decision, only that if it does change course, it must explain why.” See, e.g., *Util. Serv. Partners, Inc. v. Pub. Utils. Comm’n*, 921 N.E.2d 1038 (Ohio 2009); *Office of Consumers’ Counsel v. Pub. Utils. Comm’n*, 475 N.E. 2d. 786 (Ohio 1985)).

¹⁵ Opinion and Order at 24, *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Approval of a New Rider and Revision of an Existing Rider*, No. 10-176-EL-ATA (May 25, 2011), see also *In re Application of Duke Energy Ohio, Inc. for an Increase in Rates*, No. 07-589-GA-AIR, 2008 WL 2390285, at *5 (Ohio P.U.C. May 28, 2008). See also, Opinion and Order at p. 5, *In the Matter of the Application of The Dayton Power and Light Company For Approval of its Electric Security Plan*, Case Nos. 08-1094-EL-SSO, *et al.* issued June 24, 2009 (approving a Stipulation containing carrying charges set at the utility’s cost of debt).

of 8 percent over the average GS-4 tariff rates applicable to Ormet in 2011. Adding the PIRR would result in a rate increase of 12 percent for Ormet and add another \$10.3 million to Ormet's rates per year.

In 2009, when the Commission first approved the deferrals, it noted that the 15 percent cap initially proposed by the Companies in that case was too high given the current economic climate, and instead imposed a cap of 6-8 percent for each year of the ESP. Many of AEP Ohio's customers are even worse off today than they were in 2009, and allowing a much larger rate increase than that permitted in 2009 in this economic environment is even less advisable now than it was then. Indeed, allowing such an increase would have the effect of greatly enriching AEP Ohio, which is already performing exceptionally well, at the expense of its customers, who have been struggling for years.

Finally, the Commission now knows the magnitude of the deferral balance -- a number unknown in 2009 -- and it is very large, \$628,073,325, for the Ohio Power territory as of December 31, 2011. The very high 11.15 percent carrying charge rate on such a high balance will be catastrophic to customers. Accordingly, the Commission should exercise its authority to reduce the carrying charges to AEP Ohio's long-term cost of debt.

B. The Deferral Balances Should be Adjusted to Reflect the Effect of Accumulated Deferred Income Tax.

The Commission should also consider modifying its course on the issue of whether the deferral balance should be adjusted to reflect ADIT. There are permissible alternatives with respect to this issue and changed circumstances provide ample justification for the Commission to change course.

Although the Commission in 2009 found that the carrying charges on the FAC deferrals should be calculated on a gross-of-tax rather than a net-of-tax basis, restricting carrying charges to a net-of-tax basis would be consistent with the Commission's ruling on this issue in the

FirstEnergy standard service offer case.¹⁶ The timing difference between the tax deduction and the book accounting treatment reduces AEP Ohio's federal income tax liability, creating tax savings realized by AEP Ohio related to the deferral balances that should be passed on to customers.

Because of the tax savings, AEP Ohio is not financing 100 percent of the deferral, and the amortization of the deferral balance should be reduced by the effects of the ADIT. Reducing the balance to reflect the savings AEP Ohio has realized through ADIT would still keep AEP Ohio whole with respect to its fuel costs, but would provide significant relief to ratepayers. It would ensure that AEP Ohio recovers the actual effects of the deferral -- and not significantly more. After all, AEP Ohio is already performing exceptionally well, it does not need to recover a windfall over and above the actual effects associated with the deferral, earned off the backs of its struggling customers.

This change is essential since many ratepayers are now facing even more significant and extended hardships than they were in 2009 and are already facing a significant rate increase due to the expiration of the caps on the FAC. The Commission also now has specific deferral balance numbers to consider that were not available to it in 2009. The Commission should take all of these factors into consideration when examining the proposed PIRR.

CONCLUSION

For the reasons set forth above, the Commission should require that the carrying charges applied to the deferral balances be based upon the long-term cost of debt, and should require that the deferral balances be adjusted to reflect the impact of ADIT.

¹⁶ Opinion and Order, *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and the Toledo Edison Company for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code in the Form of an Electric Security Plan*, No. 08-935-EL-SSO (Dec. 19, 2008).

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Emma F. Hand".

Dan Barnowski (PHV-1356-2012)

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***Attorneys for Ormet Primary Aluminum
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April 2, 2012

CERTIFICATE OF SERVICE

I hereby certify that a copy of the *Comments of Ormet Primary Aluminum Corporation* was served by U.S. Mail and email upon counsel identified below for all parties of record this 2nd day of April, 2012.



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EXHIBIT A

UTILITIES ROE SURVEY REPORT

Report (44 Results)						
State	Company	Utility Type	Order Date	Previously Authorized ROE Rate	Newly Authorized ROE Rate	ROE Difference
	Lockhart Power Co.	Electric	8/15/2011	12	12	0.00
	Southern California Edison Co.	Electric	4/14/2011	11.6	11.5	-0.10
	Pacific Gas & Electric Co.	Electric	5/5/2011	11.35	11.35	0.00
	Municipal Light & Power	Electric	8/22/2011		10.93	
	Montana-Dakota Utilities Co.	Electric	6/8/2011		10.75	
	Otter Tail Power Co.	Electric	4/25/2011	10.43	10.74	0.31
	Commonwealth Edison Co.	Electric	5/24/2011	10.3	10.5	0.20
	Southern Indiana Gas & Electric dba Vectren Delivery of Indiana	Electric	4/27/2011	10.4	10.4	0.00
	Interstate Power & Light Co.	Electric	8/12/2011	10.39	10.35	-0.04
	Madison Gas & Electric Co.	Electric	1/12/2011	10.4	10.3	-0.10
	Northern States Power Co.	Electric	7/12/2011		10.3	
	Wisconsin Public Service Corp.	Electric	1/13/2011	10.9	10.3	-0.60
	NorthWestern Energy	Electric	6/28/2011	10.25	10.25	0.00
	Union Electric Co. dba Ameren Missouri	Electric	7/13/2011	10.1	10.2	0.10
	Public Service Co. of Oklahoma	Electric	1/5/2011	10	10.15	0.15
	Texas-New Mexico Power Co.	Electric	1/27/2011	10.25	10.125	-0.13
	CenterPoint Energy	Electric	5/12/2011		10	
	Appalachian Power Co. & Wheeling Power Co. dba American Electric Power	Electric	3/30/2011	10.5	10	-0.50
	Delmarva Power & Light Co.	Electric	8/9/2011	10	10	0.00
	Public Service Co. of New Mexico	Electric	7/28/2011		10	
	Interstate Power & Light Co.	Electric	1/10/2011	10.5	10	-0.50
	KCP&L Greater Missouri Operations Co	Electric	5/4/2011		10	
	Kansas City Power & Light Co.	Electric	4/12/2011		10	
	Southwestern Public Service Co.	Electric	3/25/2011	10.25	10	-0.25
	Oklahoma Gas & Electric Co.	Electric	8/17/2011	10.25	9.95	-0.30
	PacifiCorp dba Rocky Mountain Power	Electric	2/28/2011	10.25	9.8	-0.35
	Baltimore Gas & Electric Co.	Electric	3/9/2011		9.86	
	PacifiCorp dba Pacific Power & Light Co.	Electric	3/25/2011	10.2	9.8	-0.40
	Unitil Energy Systems	Electric	4/26/2011	9.67	9.67	0.00
	Western Massachusetts Electric Co.	Electric	1/31/2011	10	9.6	-0.40
	Central Vermont Public Service Co.	Electric	4/26/2011	9.69	9.45	-0.14
	Ontario Power Generation Inc.	Electric	3/10/2011	8.57	8.43	0.86
	Niagara Mohawk Power Corp.	Electric	1/24/2011		8.3	
	Orange & Rockland Utilities, Inc.	Electric	6/17/2011	9.4	9.2	-0.20
	Fitchburg Gas & Electric Co.	Electric	8/1/2011	10	9.2	-0.80
	Empire District Electric Co.	Electric	6/1/2011	10.8		
	Delmarva Power & Light Co.	Electric	7/8/2011	10		
	Otter Tail Power Co.	Electric	3/14/2011			
	East Kentucky Power Co-op	Electric	1/14/2011			
	Mid-Kansas Electric Co.	Electric	8/30/2011			
	Wellsboro Electric Co.	Electric	1/13/2011			
	Citizens Electric Co.	Electric	1/13/2011			
	Montana-Dakota Utilities Co.	Electric	7/29/2011	10.25		
	Northern States Power Co.	Electric	1/12/2011	10.4		

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