

July 24, 2006

By Messenger Delivery

Ms. Renee J. Jenkins
Director of Administration
Secretary of the Public Utilities Commission of Ohio
180 East Broad Street
Columbus, Ohio 43215

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Re: In the Matter of the Application of Ohio Power Company for Approval of a Special Contract Arrangement with Ormet Primary Aluminum Corporation,
Public Utilities Commission of Ohio, Case No. 96-999-EL-AEC

In the Matter of the Joint Petition of Ohio Power Company and South Central Power Company for Reallocation of Territory, Public Utilities Commission of Ohio,
Case No. 96-1000-EL-PEB

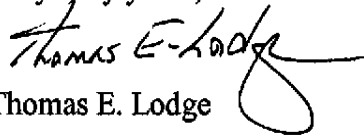
In the Matter of the Complaint of Ormet Primary Aluminum Corporation and Ormet Aluminum Mill Products Corporation v. South Central Power Company and Ohio Power Company, Public Utilities Commission of Ohio, Case No. 05-1057-EL-CSS

Dear Ms. Jenkins:

Enclosed are an original and ten (10) copies of a Memorandum of Ohio's Rural Electric Cooperatives in Opposition to Ohio Power Company's Request for Clarification or, Alternatively, Motion to Join Indispensable Parties, to be filed in connection with the above-referenced matters.

Thank you for your assistance. If you have any question, please feel free to call.

Very truly yours,



Thomas E. Lodge

cc: Gregory A. Price, Attorney Examiner
All Parties of Record, w/encl.
Robert P. Mone, Esq.
Kurt P. Helfrich, Esq.
William R. Case, Esq.
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Enclosures

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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Ohio Power Company for Approval of a Special Contract Arrangement with Ormet Primary Aluminum Corporation.)	Case No. 96-999-EL-AEC
)	
In the Matter of the Joint Petition of Ohio Power Company and South Central Power Company for Reallocation of Territory.)	Case No. 96-1000-EL-PEB
)	
In the Matter of the Complaint of Ormet Primary Aluminum Corporation and Ormet Aluminum Mill Products Corporation,)	
Complainants)	Case No. 05-1057-EL-CSS
v.)	
)	
South Central Power Company and Ohio Power Company,)	
Respondents.)	

MEMORANDUM OF OHIO'S RURAL ELECTRIC COOPERATIVES IN OPPOSITION TO OHIO POWER COMPANY'S REQUEST FOR CLARIFICATION OR, ALTERNATIVELY, MOTION TO JOIN INDISPENSABLE PARTIES

OHIO'S RURAL ELECTRIC COOPERATIVES (other than Respondent South Central Power Company) ("the Cooperatives")¹ collectively submit their Memorandum in Opposition to Ohio Power Company's Request For Clarification Or, Alternatively, Motion To Join Indispensable Parties ("Ohio Power's Motion") filed July 10, 2006 and served upon each of them

¹ The Cooperatives include: Adams Rural Electric Cooperative, Inc.; Buckeye Rural Electric Cooperative, Inc.; Butler Rural Electric Cooperative, Inc.; Carroll Electric Cooperative, Inc.; Consolidated Electric Cooperative, Inc.; Darke Rural Electric Cooperative, Inc.; Firelands Electric Cooperative, Inc.; The Frontier Power Company; Guernsey-Muskingum Electric Cooperative, Inc.; Hancock-Wood Electric Cooperative, Inc.; Holmes-Wayne Electric Cooperative, Inc.; Licking Rural Electrification, Inc.; Logan County Cooperative Power & Light Association, Inc.; Lorain-Medina Rural Electric Cooperative, Inc.; Mid-Ohio Energy Cooperative, Inc.; Midwest Electric, Inc.; Midwest Energy Cooperative; North Central Electric Cooperative, Inc.; North Western Electric Cooperative, Inc.; Paulding-Putnam Electric Cooperative, Inc.; Pioneer Rural Electric Cooperative Inc.; Tricounty Rural Electric Cooperative, Inc.; Union Rural Electric Cooperative, Inc.; and Washington Electric Cooperative, Inc.

thereafter. The Cooperatives submit that joinder of all or any of them would be a waste of their resources and a fruitless exercise for the existing parties. Furthermore, in this Case Ormet Primary Aluminum Corporation and Ormet Aluminum Mill Products Corporation (“Ormet”) has never requested electric service from any supplier other than Ohio Power Company. In addition, given the scope of upcoming proceedings, no electric supplier other than South Central is an indispensable party for purposes of the next phase of the hearing. Finally, HARRISON RURAL ELECTRIFICATION ASSOCIATION, INC. (“Harrison”) is not an “electric supplier” for purposes of the Certified Territories for Electric Suppliers Act. Accordingly, neither the Cooperatives, nor Harrison, should be joined as a party herein.

Argument

For purposes of evaluating Ohio Power’s Motion as respects the Cooperatives, only a few facts need be noted: (1) South Central, already a party to this case, is the largest of the Ohio Cooperatives, with the largest native load and number of members/consumers and the most resources available for service to its members/consumers; (2) conversely, each of the Cooperatives is smaller than South Central (and some are much, much smaller),² and each has fewer resources available for service to its members/consumers; (3) each of the Cooperatives is a party to an all-requirements Amended and Restated Wholesale Power Agreement with Buckeye Power, Inc. that is similar if not identical to South Central’s, and each of the Cooperatives receives service from Buckeye under the same wholesale rate schedules as South Central; (4) none of the Cooperatives owns generation resources to serve the Ormet load; (5) each of the Cooperatives is organized as a nonprofit cooperative, as is South Central; and (6) none of the Cooperatives is willing to serve any portion of Ormet’s proposed 520 MW load.

² See Exhibit A attached hereto for a comparison of the relative size of South Central Power Company vs. the other Cooperatives.

In its Opinion and Order of June 14, 2006, the Commission found that South Central was neither rendering, nor proposing to render, any electric service to Ormet. Specifically, the Commission described the circumstances of South Central as follows:

[...] South Central's total system load is only 455 MW, which is spread over 110,000 customers (Joint Ex. 1 at 9). Any default of payment by Ormet to South Central would have a disastrous financial effect upon South Central. Further, Ormet cites to the testimony of South Central witness Kadakia, who testified that 'it would be against the company's interest and member-consumers' interest to provide more than 20 megawatts" (Tr. at 145). Further, Ormet notes that, if South Central served Ormet's entire 520 MW load, South Central's wholesale supplier, Buckeye Power, would impose a 100 percent ratchet demand charge upon South Central and that South Central would be liable for that ratchet demand charge even if Ormet ceased taking electric service from South Central (Tr. at 179-184).

South Central argues that the purpose of Sections 4933.81 through 4933.90, Revised Code, is to establish exclusive rights to provide electric service within geographic territories. However, South Central states that it has unequivocally waived any such right it may have to serve Ormet. South Central contends that it does not propose to serve Ormet's electric load because to do so would jeopardize the provision of physically adequate and affordable service to South Central's other member-customers. South Central also cites to the testimony of its witness Kadakia for the catastrophic effect that the ratchet demand charges imposed by Buckeye Power on South Central would cause to its member-customers if Ormet defaults (Tr. at 179-183). Therefore, South Central concludes that it would be imprudent and irresponsible for South Central to assume responsibility for Ormet's load. South Central contends that it is not a big enough entity to individually bear the financial risk of a load of the magnitude of Ormet's load and that it never agreed to provide the full requirements of Ormet's load.

Opinion and Order at 10.

Except for South Central's relatively-large system load and membership, all of the foregoing applies to each of the Cooperatives as it does to South Central. Indeed, given the relative size of the other Cooperatives, the potentially catastrophic risks of service to Ormet are amplified exponentially for the other Cooperatives. For this reason, and for all of the other reasons cited by South Central, it would be "imprudent and irresponsible" for any of the Cooperatives to offer service to Ormet, and none of the Cooperatives is willing to do so.

It follows, therefore, that the participation of the Cooperatives in this proceeding would be fruitless. None of the Cooperatives will volunteer to serve Ormet, and the Commission lacks any statutory authority to compel such a result. As with South Central, the Commission lacks plenary jurisdiction over the Cooperatives. Therefore, if the Commission were to “authorize” a Cooperative to serve the Ormet load, it would decline.

Furthermore, in its Complaint and other filings in this Case, Ormet has never requested service from any supplier other than Ohio Power. Therefore, it is inappropriate to join other parties to this proceeding from whom Ormet has not requested, and does not desire, relief.

In addition, Ohio Power’s Motion is premature. As stated in the Commission’s June 14, 2006 Order, the next phase of this proceeding will only decide “whether the failure [of South Central] to propose physically adequate service has been or can be corrected by South Central or can be corrected by South Central under reasonable operating conditions and whether the Commission should authorize another supplier to serve [Ormet] or should order such other remedy authorized by law.”³ The next phase of the hearing will not determine which electric supplier (other than South Central⁴) should be authorized to serve Ormet but only whether an electric supplier other than South Central should be authorized to serve the Ormet load. Once it is determined that South Central cannot serve the Ormet load under reasonable operating conditions, it will then be appropriate to consider which electric suppliers, other than South Central, should be authorized to serve the Ormet load.

Finally, Harrison Rural Electrification Association, Inc. does not serve load in the State of Ohio and does not have certified electric service territory in the State of Ohio and is not,

³ Opinion and Order at 12.

⁴ As described above, it would never be appropriate to consider whether Cooperatives other than South Central should be authorized to serve the Ormet load, since if it is unreasonable for South Central to serve the Ormet load, it will certainly also be unreasonable for any of the Cooperatives to serve the Ormet load.

therefore, an “electric supplier” for purposes of the Certified Territories For Electric Suppliers Act. The Commission has no jurisdiction over Harrison whatsoever, whether plenary or under the Certified Territories for Electric Suppliers Act.

Accordingly, and to spare the resources of the Cooperatives, the Commission, and the other parties to this proceeding, the Commission should refrain from requiring the Cooperatives or Harrison to participate.

Conclusion

For the foregoing reasons, as respects the Cooperatives and Harrison, Ohio Power’s Motion should be overruled.

Respectfully submitted,

OHIO’S RURAL ELECTRIC COOPERATIVES

By: Thomas E. Lodge

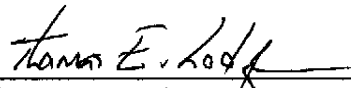
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EXHIBIT A

<u>Name of Cooperative</u>	<u>2005 Peak Load (MW)</u>	<u>2005 Number of Members/Consumers</u>
Adams Rural Electric Cooperative, Inc.	24,198	7,881
Buckeye Rural Electric Cooperative, Inc.	61,874	19,019
Butler Rural Electric Cooperative, Inc.	45,200	10,906
Carroll Electric Cooperative, Inc.	33,015	11,793
Consolidated Electric Cooperative, Inc.	59,011	15,615
Darke Rural Electric Cooperative, Inc.	21,200	5,018
Firelands Electric Cooperative, Inc.	27,738	8,941
The Frontier Power Company	23,453	8,677
Guernsey-Muskingum Electric Cooperative, Inc.	44,091	16,093
Hancock-Wood Electric Cooperative, Inc.	53,166	12,474
Holmes-Wayne Electric Cooperative, Inc.	61,901	16,318
Licking Rural Electrification, Inc.	78,687	23,524
Logan County Cooperative Power and Light Association, Inc.	24,713	4,489
Lorain-Medina Rural Electric Cooperative, Inc.	51,214	15,533
Mid-Ohio Energy Cooperative, Inc.	28,813	8,150
Midwest Electric, Inc.	41,981	10,216
Midwest Energy Cooperative	3,711	1,060
North Central Electric Cooperative, Inc.	32,870	9,668
North Western Electric Cooperative, Inc.	20,110	5,936
Paulding-Putnam Electric Cooperative, Inc.	44,230	9,336
Pioneer Rural Electric Cooperative, Inc.	106,984	16,083
South Central Power Company	454,374	110,033
Tricounty Rural Electric Cooperative, Inc.	14,602	4,352
Union Rural Electric Cooperative, Inc.	94,559	7,637
Washington Electric Cooperative, Inc.	26,130	10,247
Totals	1,477,825	368,999

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing has been served upon the parties listed below by email and ordinary U.S. Mail delivery this 24th day of July, 2006.



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