

IN THE SUPREME COURT OF OHIO

Columbus Southern Power Company and  
Ohio Power Company

Appellants

v.

The Public Utilities Commission of Ohio,

Appellee.

)  
)  
) Case No. 09-2060  
)  
) Appeals from Public  
) Utilities Commission of Ohio  
)  
) Public Utilities Commission of Ohio  
) Case No. 09-119-EL-AEC  
)  
)  
)

ORMET PRIMARY ALUMINUM CORPORATION'S  
MOTION TO INTERVENE AS APPELLEE

Clinton A Vince, Counsel of Record  
Douglas G. Bonner  
Daniel D. Barnowski  
Emma F. Hand  
Keith C. Nusbaum (0082745)  
Sonnenschein Nath & Rosenthal LLP  
1301 K Street NW  
Suite 600, East Tower  
Washington, DC 20005  
Telephone: 202-408-6400  
Facsimile: 202-408-6399  
cvince@sonnenschein.com  
dbonner@sonnenschein.com  
dbarnowski@sonnenschein.com  
chand@sonnenschein.com  
knusbaum@sonnenschein.com

Steven T. Nourse (0046705)  
Counsel of Record  
Marvin I. Resnik (0005695)  
Kevin F. Duffy (0005867)  
American Electric Power Service Corporation  
1 Riverside Plaza, 29<sup>th</sup> Floor  
Columbus, OH 43215-2373  
Telephone (614) 716-1606  
Facsimile: (614) 716-2950  
stnourse@aep.com  
miresnik@aep.com  
kfduffy@aep.com

Counsel for Appellants, Columbus Southern  
Power Company and Ohio Power Company

Counsel for Intervening Appellee,  
Ormet Primary Aluminum Corporation

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Richard Cordray (0038034)  
Attorney General of Ohio  
Duane W. Luckey (0023557)  
Chief, Public Utilities Section  
Thomas G. Lindgren (0039210)  
Assistant Attorney General  
Thomas McNamee (0017352)  
Assistant Attorney General  
180 East Broad Street  
Columbus, OH 43215-3793  
Telephone: (614) 644-8698  
Facsimile: (614) 644-8764  
duane.luckey@puc.state.oh.us  
thomas.lindgren@puc.state.oh.us  
thomas.mcnamee@puc.state.oh.us

Counsel for Appellee  
Public Utilities Commission of Ohio

Maureen Grady (0020847), Counsel of Record  
Janine Migden (0002310)  
Gregory Poulos (0070532)  
Office of the Ohio Consumers' Counsel  
10 W. Broad Street  
Suite 1800  
Columbus, OH 43209  
Telephone: (614) 466-9567  
grady@occ.state.oh.us  
poulos@occ.state.oh.us

Counsel for Intervening Appellee  
Office of the Ohio Consumers' Counsel

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**ORMET PRIMARY ALUMINUM CORPORATION'S  
MOTION TO INTERVENE AS APPELLEE**

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Ormet Primary Aluminum Corporation (“Ormet”), owner and operator of an aluminum smelter in the service territory of Columbus Southern Power Company and Ohio Power Company (collectively “AEP Ohio”), moves to intervene as an Appellee in this proceeding. For the reasons discussed in the following memorandum, (1) Ormet has a direct interest in the matters that are the subject of this appeal; (2) the disposition of this appeal may impair or impede Ormet’s ability to protect that interest; and (3) Ormet’s interest is not adequately represented by existing parties.

**MEMORANDUM IN SUPPORT**

AEP Ohio appeals from an Opinion and Order and an Entry on Rehearing (the “Orders”) in Public Utilities Commission of Ohio (“Commission”) Case No. 09-119-EL-AEC. The Orders involve a power agreement between Ormet and AEP Ohio submitted to the Commission by Ormet (“Power Agreement”). AEP Ohio seeks to overturn certain portions of the Commission’s Orders regarding the Power Agreement, including the instruction from the Commission that AEP Ohio enter into the Power Agreement as modified by the Commission. As the party advocating the adoption of the Power Agreement that AEP Ohio seeks to avoid in this proceeding, Ormet has a direct interest in the subject matter of this appeal.

The Power Agreement that is the subject of this proceeding is critical to Ormet’s ability to continue smelting operations at its Hannibal, Ohio reduction facility. The record establishes that when at full operation, the Hannibal, Ohio reduction facility directly contributes approximately 1000 high-paying jobs to an economically depressed area of Ohio and generates

over 2441 further spin-off jobs in the region dependent upon the operation of Ormet's reduction facility. A reversal of the Commission's Orders has the potential to impair or impede Ormet's ability to operate the plant and to sustain the jobs associated with the plant's operation.

Although Ormet does not oppose the Motion to Intervene as Appellee of the Office of the Ohio Consumers' Counsel ("OCC"), Ormet notes that there is a significant factual misstatement in the OCC's Memorandum in Support of that Motion. The OCC states at page 2 of its Memorandum in Support that "the Ormet discount funded by other customers of AEP Ohio. . . could amount to \$540 million" and that "[i]f AEP Ohio prevails in its appeal, the \$540 million subsidy required of AEP Ohio's customers will increase substantially." This figure is incorrect. The maximum amount other customers would potentially fund, even if AEP Ohio were to prevail and be relieved of the obligation to credit other customers for the Provider of Last Resort ("POLR") charges collected from Ormet, would be approximately \$308.6 million.<sup>1</sup>

The Appellant's interests are directly adverse to Ormet's interests in this appeal and no other Appellee in this proceeding is party to the Power Agreement. As the Applicant in the case below and a party to the contract that AEP Ohio challenges on appeal, Ormet has a direct interest

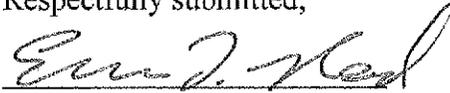
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<sup>1</sup> For calendar year 2009, the discount under the contract is currently estimated by AEP Ohio to be approximately \$14.6 million. See *Application*, PUCO Case No. 09-1095-EL-UNC, filed Nov. 13, 2009 at Schedule Nos. 5 and 5b. Under the cap imposed by the Commission's Orders, the total amount of discount Ormet could receive for years 2010 through 2018 would be \$294 million. See *Opinion and Order*, PUCO Case No. 09-119-EL-AEC, July 15, 2009 at 9-11. This results in a total possible discount to Ormet of approximately \$308.6 million. AEP Ohio must credit other customers for the POLR charges received from Ormet under the Commission's Orders. *Opinion and Order*, at 14. Therefore, if the Commission's order is affirmed, then AEP Ohio's other customers will pay somewhat less than \$308.6 million due to the Power Agreement, rather than the \$540 million alleged by the OCC. Because AEP Ohio's POLR rate is currently only fixed through December 31, 2011, it is impossible to predict exactly how much the POLR charges will amount to through the end of the Power Agreement. The current estimate of POLR charges for 2010 for Ormet is approximately \$7.3 million. See *Application* at Schedule No. 6. Ormet also notes that due to various early termination provisions in the Power Agreement, if Ormet continues to consume the maximum discount available for an extended period of time, the Commission has the ability to modify or terminate the contract as early as April, 2012, so it is unlikely that Ormet will consume the full discount authorized by the Commission. *Opinion and Order*, at 15; *Entry on Rehearing*, PUCO Case No. 09-119-EL-AEC, Sep. 15, 2009 at 5, 8-9.

in the Orders approving the Power Agreement being affirmed. Because the disposition of this action could impair or impede Ormet's ability to protect its interest in the Power Agreement, no other party can adequately represent Ormet's interest in this proceeding.

WHEREFORE, for the foregoing reasons, Ormet requests that the Court grant this motion to intervene.

Respectfully submitted,

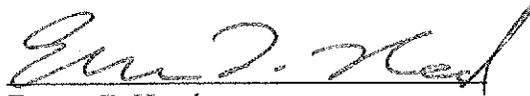


Clinton A Vince, Counsel of Record  
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1301 K Street NW  
Suite 600, East Tower  
Washington, DC 20005  
Telephone: 202-408-6400  
Facsimile: 202-408-6399  
cvince@sonnenschein.com  
dbonner@sonnenschein.com  
dbarnowski@sonnenschein.com  
ehand@sonnenschein.com  
knusbaum@sonnenschein.com

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing Motion to Intervene as Appellee has been served upon the below-named persons via e-mail and regular U.S. Mail Service, postage prepaid, this 20<sup>th</sup> day of November, 2009.



Emma F. Hand  
Attorney for Ormet Primary Aluminum Corporation

**SERVICE LIST**

Steven T. Nourse, Counsel of Record  
Marvin I. Resnik  
Kevin F. Duffy  
American Electric Power Service Corp.  
1 Riverside Plaza, 29<sup>th</sup> Floor  
Columbus, OH 43215-2373  
stnourse@aep.com  
miresnik@aep.com  
kfduffy@aep.com

Richard Cordray, Attorney General of Ohio  
Duane W. Luckey, Chief, Public Utilities Section  
Thomas G. Lindgren, Assistant Attorney General  
Thomas McNamee, Assistant Attorney General  
180 East Broad Street  
Columbus, OH 43215-3793  
duane.luckey@puc.state.oh.us  
thomas.lindgren@puc.state.oh.us  
thomas.mcnamee@puc.state.oh.us

Maureen Grady, Counsel of Record  
Janine Migden  
Gregory Poulos  
Office of the Ohio Consumers' Counsel  
10 W. Broad Street  
Suite 1800  
Columbus, OH 43209  
grady@occ.state.oh.us  
poulos@occ.state.oh.us