

**BOEHM, KURTZ & LOWRY**

ATTORNEYS AT LAW  
36 EAST SEVENTH STREET  
SUITE 1510  
CINCINNATI, OHIO 45202  
TELEPHONE (513) 421-2255  
TELECOPIER (513) 421-2764

RECEIVED

AUG 08 2013

PUBLIC SERVICE  
COMMISSION

**Via Overnight Mail**

August 7, 2013

Mr. Jeff Derouen, Executive Director  
Kentucky Public Service Commission  
211 Sower Boulevard  
Frankfort, Kentucky 40602

**Re: Case No. 2013-00221**

Dear Mr. Derouen:

Please find enclosed the original and ten (10) copies of the MOTION OF KENTUCKY INDUSTRIAL UTILITY CUSTOMERS, INC. TO TAKE ADMINISTRATIVE NOTICE for filing in the above-referenced matter.

By copy of this letter, all parties listed on the Certificate of Service have been served. Please place these documents of file.

Very Truly Yours,



Michael L. Kurtz, Esq.

Kurt J. Boehm, Esq.

Jody Kyler Cohn, Esq.


**BOEHM, KURTZ & LOWRY**

MLKkew  
Attachment

cc: Certificate of Service  
Quang Nyugen, Esq.  
Richard Raff, Esq.

## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served by electronic mail (when available) and by U.S. Mail, unless other noted, this 7<sup>th</sup> day of August, 2013 to the following:

  
\_\_\_\_\_  
Michael L. Kurtz, Esq.  
Kurt J. Boehm, Esq.  
Jody Kyler Cohn, Esq.

Honorable Thomas C Brite  
Attorney At Law  
Brite & Hopkins, PLLC  
83 Ballpark Road  
P.O. Box 309  
Hardinsburg, KENTUCKY 40143

Edward T Depp  
Dinsmore & Shohl, LLP  
101 South Fifth Street, Suite 2500  
Louisville, KENTUCKY 40202

Michael Early  
Century Aluminum  
1300 SW Fifth Avenue, Suite 1750  
Portland, OREGON 97201

Jennifer B Hans  
Dennis G. Howard, II  
Lawrence W. Cook  
Assistant Attorney General's Office  
1024 Capital Center Drive, Ste 200  
Frankfort, KENTUCKY 40601-8204

J. Christopher Hopgood  
Dorsey, King, Gray, Norment & Hopgood  
318 Second Street  
Henderson, KENTUCKY 42420

Bernard F Lovely  
Bowles Rice McDavid Graff & Love LLP Attorneys  
333 West Vine Street, Suite 1700  
Lexington, KENTUCKY 40507-1639

James M Miller  
Tyson Kamuf  
Sullivan, Mountjoy, Stainback & Miller, PSC  
100 St. Ann Street  
P.O. Box 727  
Owensboro, KENTUCKY 42302-0727

G. Kelly Nuckols  
President & CEO  
Jackson Purchase Energy Corporation  
2900 Irvin Cobb Drive  
P. O. Box 4030  
Paducah, KY 42002-4030

DeAnna Speed  
Director Rates and Budgets  
Big Rivers Electric Corporation  
201 Third Street  
Henderson, KY 42419-0024

Gregory J Starheim  
President and CEO  
Kenergy Corp.  
6402 Old Carydon Road  
P. O. Box 18  
Henderson, KY 42419

Robert A. Weishaar, Jr.  
McNees Wallace & Nurick LLC  
777 N. Capitol Street, NE, Suite 401  
Washington, DISTRICT OF COLUMBIA

Melissa D Yates, Attorney  
Denton & Keuler, LLP  
555 Jefferson Street  
P. O. Box 929  
Paducah, KENTUCKY 42002-0929

David Brown  
Stites & Harbison, PLLC  
1800 Providian Center  
400 West Market Street  
Louisville, KENTUCKY 40202

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

AUG 08 2013

In The Matter of: The Joint Application of Kenergy Corp. and  
Big Rivers Electric Corporation for Approval of Contracts and  
For a Declaratory Order

Case No. 2013-00221  
PUBLIC SERVICE  
COMMISSION

---

MOTION OF  
KENTUCKY INDUSTRIAL UTILITY CUSTOMERS, INC.  
TO TAKE ADMINISTRATIVE NOTICE

---

Pursuant to KRS 13B-090(5), Kentucky Industrial Utility Customers, Inc. ("KIUC") hereby moves the Kentucky Public Service Commission to take administrative notice of the August 6, 2013, pre-filed Testimony of Jorge Vazquez regarding projected increases in LME aluminum prices in 2014 and 2015, on behalf of Ormet Primary Aluminum, in the Public Utilities Commission of Ohio, Case No. 09-119-EL-AEC. Mr. Vazquez's Testimony is attached to this Motion.

A review of Mr. Vazquez's Testimony, 1) is relevant to the question of whether the Hawesville smelter is likely to return to profitability in the near future and be in a position to contribute to paying for a portion of Big Rivers Electric Corporation's excess capacity; 2) is appropriate given the Commission's expedited review of the "Contracts"; 3) is consistent with Kentucky law and Commission precedent; and 4) will generally assist the Commission in its consideration of the Contracts in this proceeding. A Memorandum in Support of KIUC's Motion is attached.

## MEMORANDUM IN SUPPORT

**1. The Testimony of Jorge Vazquez in Ohio PUC Case No. 09-119-EL-AEC is Relevant to the Question of Whether the Hawesville Smelter is Likely to Return to Profitability in the Near Future and be in a Position to Contribute to Paying for A Portion Of Big Rivers' Excess Capacity.**

KIUC argued in its Brief,<sup>1</sup> and Century confirmed in its Brief,<sup>2</sup> that the proposed \$61.2 million rate reduction that would result from the approval of the Contracts will bring the Hawesville smelter roughly to the point that it will break even financially given current aluminum prices. KIUC argued that if aluminum prices increase and electricity market prices stay low, the Hawesville smelter will reemerge as a profitable entity.<sup>3</sup> There is some evidence that Century believes that this scenario will play out. KIUC noted:

*“[I]n a recent West Virginia case, Century projected significantly higher future LMEs averaging over the next ten years \$2,450 per ton.<sup>4</sup> In contrast, the current price of aluminum is \$1,776 per ton. If Century is ultimately able to sell aluminum for \$674 per ton more than current prices, Century could make an additional \$164.4 million per year.”<sup>5</sup>*

In its Brief, KIUC recommended that the Commission keep open the possibility of imposing a variable market access charge on Century that could help mitigate the rate impacts on Big Rivers' remaining customers if the Hawesville smelter returns to profitability in the future.

On August 6, 2013, one week after the hearing in this case, Mr. Vazquez, Founder and Managing Director of HARBOR's Aluminum Intelligence Unit, filed testimony in a proceeding before the Ohio Commission that is relevant to the issue of whether the Hawesville smelter is likely to return to profitability in the near future. Ohio PUC Case No. 09-119-EL-AEC concerns Ormet Aluminum's request for discounted electric service from Ohio Power Company. In his Testimony on behalf of Ormet, Mr. Vazquez stated that the “average cash price for aluminum on the LME for the period January through June of 2013 was \$1,896 per metric ton. That represented a 25.5% decrease from calendar year 2012.”<sup>6</sup> Mr. Vazquez states that HARBOR, “expects prices to increase vs today's levels and average \$2,294 per mton (104 cent/lb) in 2014 and \$2,400 per mton (109 cent/lb) in 2015.”<sup>7</sup>

---

<sup>1</sup> KIUC Brief p. 7.

<sup>2</sup> Century Brief p. 14.

<sup>3</sup> KIUC Brief, p. 7.

<sup>4</sup> See *Century Aluminum of West Virginia, Inc. Petition for Consent and Approval of a Special Rate for Purchase of Electricity*, Case No. 12-0613-E-PC, Order (Oct. 4, 2012) (“WV Order”) at 26.

<sup>5</sup> KIUC Brief p. 8.

<sup>6</sup> Testimony of Jorge Vazquez, Ohio PUC, Case No. 09-119-EL-AEC, p. 4.

<sup>7</sup> Testimony of Jorge Vazquez, Ohio PUC, Case No. 09-119-EL-AEC, p. 5.

The Hawesville smelter produces 244,000 metric tons of aluminum per year. If HARBOR's 2014 LME projection is accurate, the Hawesville smelter will earn an additional **\$97,112,000** in 2014, compared to the revenue it earned in the first half of 2013. If HARBOR's 2015 LME projection is accurate, the Hawesville smelter will earn an additional **\$122,976,000** in 2015, compared to the revenue it earned in the first half of 2013. If HARBOUR's aluminum price projections are accurate the Hawesville smelter will be extremely profitable in the near future and will be in a position to make a reasonable contribution toward paying for the excess capacity that was built to serve the Hawesville smelter.

**2. Taking Administrative Notice of Mr. Vazquez's Testimony is Appropriate Given the Commission's Expedited Review of this Case, and is Consistent with Kentucky Law and Commission Precedent.**

The Contracts at issue in this case were submitted to the Commission on June 12, 2013. According to Big Rivers and Kenergy, the Contracts must be approved prior to August 20, 2013 when Century's current electric service agreement terminates. Therefore, Big Rivers and Kenergy sought "expedited review" of the Contracts.<sup>8</sup> KIUC made attempts to carve out additional time for parties to develop the record, proposing in a June 14, 2013 filing that the Commission "*consider approving the proposed transaction prior to August 20, 2013 on an interim basis... [and] then reserve final judgment of this very important and complex transaction until such time that a complete review can be completed.*"<sup>9</sup> However, the Commission determined that this case should proceed on an expedited schedule and in a June 28, 2013 Procedural Order allowed intervenors only three weeks to prepare testimony from the date of that Order.<sup>10</sup> As a result, the intervenors have had a very limited amount of time to conduct discovery and develop testimony in support of their respective positions.

The parties to the Contracts did not provide any evidence regarding Century's current finances or projected finances, or whether the price of aluminum is projected to increase in the near future thus allowing the Hawesville smelter to return to profitability. As explained in KIUC's Brief, neither Big Rivers, nor Kenergy inquired into any of these issues when negotiating the Contracts with Century.<sup>11</sup> In fact the only evidence in this

---

<sup>8</sup> Application p. 12.

<sup>9</sup> Motion of KIUC for an Informal Conference, June 14, 2013.

<sup>10</sup> Order of June 28, 2013.

<sup>11</sup> KIUC Brief pp. 6-7.

proceeding that shows a projection of future aluminum prices was submitted by KIUC,<sup>12</sup> not by Big Rivers or Kenergy. KIUC attempted to shed additional light on this issue, but due to the short amount of time to develop testimony, was not able to engage an expert in aluminum pricing to submit testimony. It is therefore appropriate, and within the Commission's discretion, to take administrative notice of, or otherwise admit, the Testimony of Jorge Vazquez, so that the Commission can achieve a greater understanding of the projected aluminum market prior to issuing its order in this case. The Commission should give this Testimony whatever weight it deems appropriate given that Mr. Vazquez was not subject to cross-examination in this proceeding.

KRS 278.310 states that in the conduct of all hearings before the Commission the Commission shall not be bound by technical rules of evidence. The General Assembly has granted to the Commission wide latitude in the conduct of its hearings to exercise discretion over the conduct of its hearing. The Commission is an expert body that must base its decision on a complex interplay between law, economics and policy. It is not susceptible to being misled by irrelevant and unsubstantiated testimony in the same way that a jury in a criminal trial is likely to be misled. The Commission has relied on this principal to admit witness testimony into the record that were filed in other jurisdictions and who were not subject to cross-examination before the KPSC.

*In the Matter of: An Inquiry into Local Competition, Case No. 355, Order (March 22, 1996), the Commission admitted filings of Kentucky Cable Television Association, which submitted testimony from other jurisdictions and "white papers" prepared by consultants for other parties, over the objection of Cincinnati Bell Telephone Company. The Commission ordered, "that the weight due to materials furnished by parties who are not subject to cross-examination will be given, but those materials shall not be excluded from the record."*

This is a very complex case that will have long lasting repercussions on Big Rivers' ratepayers. Given the fact that Big Rivers and Kenergy regard August 20, 2013 as a hard deadline for Commission approval of the Contracts, the Commission was forced to consider this case on an extremely expedited basis. It is therefore appropriate for the Commission to loosen its already liberal evidentiary standard and take administrative notice of

---

<sup>12</sup> As explained on page 8 of KIUC's Brief, in a recent West Virginia case, Century projected significantly higher future LMEs averaging over the next ten years \$2,450 per ton. In contrast, the current price of aluminum is \$1,776 per ton. See *Century Aluminum of West Virginia, Inc. Petition for Consent and Approval of a Special Rate for Purchase of Electricity*, Case No. 12-0613-E-PC, Order (Oct. 4, 2012) ("WV Order") at 26.

Mr. Vazquez's Testimony. KIUC believes that this Testimony will generally assist the Commission in its consideration of the Contracts and KIUC's recommendations.

WHEREFORE, pursuant to KRS 13B-090(5), KIUC hereby moves the Kentucky Public Service Commission to take administrative notice of the August 6, 2013, pre-filed Testimony of Jorge Vazquez, on behalf of Ormet Primary Aluminum, in the Public Utilities Commission of Ohio, Case No. 09-119-EL-AEC.

Respectfully submitted,



---

Michael L. Kurtz, Esq.

Kurt J. Boehm, Esq.

Jody Kyler Cohn, Esq.

**BOEHM, KURTZ & LOWRY**

36 East Seventh Street, Suite 1510

Cincinnati, Ohio 45202

Ph: (513) 421-2255 Fax: (513) 421-2764

E-Mail: [mkurtz@BKLawfirm.com](mailto:mkurtz@BKLawfirm.com)

[kboehm@BKLawfirm.com](mailto:kboehm@BKLawfirm.com)

[jkylercohn@BKLawfirm.com](mailto:jkylercohn@BKLawfirm.com)

**COUNSEL FOR KENTUCKY INDUSTRIAL  
UTILITY CUSTOMERS, INC.**

August 7, 2013

**ATTACHMENT**



**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 Company                                )**    **Case No. 09-119-EL-AEC**

**TESTIMONY OF JORGE VAZQUEZ**

- 1    **Q1.    PLEASE STATE YOUR NAME, PROFESSION AND BUSINESS AFFILIATION.**
- 2    A1.    My name is Jorge Vazquez. I am Founder and Managing Director of HARBOR's  
3            Aluminum Intelligence Unit, which specializes and focuses since 1995 on studying the  
4            global aluminum value chain, generating industry intelligence, market insight, outlook,  
5            and consulting to over 250 clients around the globe.
- 6    **Q2.    PLEASE STATE YOUR EDUCATIONAL BACKGROUND AND WORK  
7            EXPERIENCE AS AN ALUMINUM MARKET ANALYSIT?**
- 8    A2.    I hold a Bachelor's degree in Economics from Monterrey's Tec and post graduate studies  
9            in Business and Economics from the New Cambridge Institute. I have been involved in  
10           studying the aluminum value chain since 1995. My company has clients all over the  
11           world and serves the market's leaders in each of the different sub-industries of the  
12           aluminum supply chain.. I am an advisor to the most important aluminum market players  
13           of the world and sought after as an expert witness in aluminum industry legal disputes  
14           and arbitration cases around the globe.
- 15   **Q3.    PLEASE DESCRIBE THE WORK THAT HARBOR ALUMINUM  
16           INTELLIGENCE UNIT PERFORMS.**

1 A3. HARBOR systematically generates, collects, filters, categorizes and analyzes vast  
2 amounts of aluminum's industry strategic data points and market intelligence using its  
3 extensive and exclusive network of industry contacts and access to key industry statistical  
4 agencies. HARBOR then takes its industry and market intelligence to serve its clients via  
5 five business units: a) Industry and market intelligence and outlook reports, b) industry  
6 consulting, c) the Annual Aluminum Outlook Summit (the biggest and most prestigious  
7 industry conference in the Americas), d) Legal disputes and arbitration cases (as industry  
8 expert), and e) Industry networking services (helping link key industry players to do  
9 business). Our clients include aluminum's raw materials producers (bauxite alumina and  
10 carbon), primary aluminum producers, traders, scrap dealers, financial institutions, hedge  
11 funds, aluminum manufacturers, end users (beverage, autos, aerospace, construction,  
12 consumer durables, electrical, etc), recyclers, government agencies among others. Our  
13 experts provide focused, comprehensive and detailed aluminum industry intelligence and  
14 outlook. Our clients get a balanced approach based on our analysis of raw materials,  
15 scrap availability, detailed aluminum output expansions and curtailments, cast house  
16 products demand, semi aluminum products demand by country and region, visible and  
17 invisible inventories and financial flows. HARBOR's headquarters are located in Austin,  
18 Texas.

19 **Q4. ON WHOSE BEHALF DO YOU APPEAR TODAY?**

20 A4. I was requested by Ormet Primary Aluminum to provide an unbiased view of forecasted  
21 aluminum prices out for several years, as well as describe the current and recent past  
22 price for the aluminum in the worldwide market.

1 **Q5. PLEASE PROVIDE A GENERAL DESCRIPTION OF THE ALUMINUM**  
2 **MARKET?**

3 A5. The aluminum market today is worldwide in scope with a base price often based on the  
4 price set at the London Metal Exchange (LME) plus a premium of varying amounts  
5 depending on the geographic location of the delivery point. The outlook for future  
6 aluminum demand is positive even under a pessimistic scenario. The global economy is  
7 getting more intensive in aluminum with the strongest penetration taking place in the  
8 transportation sector and with strong usage growth in the emerging world. Two main  
9 regions should deliver the bulk of the aluminum demand growth: Asia and the Americas.  
10 Demand for aluminum for the decade of 2011-2020 is forecasted by HARBOR to  
11 increase on average by 5.8% percent annually during this period. If that is accurate it will  
12 be one of the highest demand growth rates in the history of the industry . However, LME  
13 aluminum prices stand today at one of the lowest levels ever in real terms and at the  
14 lowest ever given were we stand in the cycle. HARBOR believes that the downside for  
15 aluminum prices is limited from here in both, nominal and real terms, even under a  
16 downside scenario. The price outlook is consistent with higher prices in both, nominal  
17 and real terms, for almost all the rest of the decade, although prices should trade mainly  
18 between the low and mid range of past cycles.

19 **Q6. WHAT IS DRIVING THE RECORD INCREASE IN DEMAND YOU ARE**  
20 **FORECASTING AND HOW WILL THAT DEMAND BE SUPPLIED?**

21 A6. The driving factors behind aluminum's demand positive outlook are: a) working age  
22 population income growth in the Developing World (mainly Asia, the Americas, and the  
23 Middle East), b) urbanization and industrialization in Asia, c) low but growing levels of

1 aluminum consumption per capita in the Emerging World, d) pent up demand in North  
2 America, e) and aluminum growing penetration in important industrial sectors like  
3 transportation. These growing aluminum needs are expected to be largely met by  
4 aluminum greenfield expansions mainly in Northwest China, the Middle East, India, and  
5 in a lower extend Russia and Southeast Asia. If we assume that these expansions hit the  
6 market as expected in time and size, that every existing smelter in the world has capacity  
7 creep of 0.5% every year, and that no capacity curtailments nor production disruptions  
8 occur; HARBOR sees the global aluminum industry having a fairly balanced market in  
9 nominal terms but at least a slight downward trend in global aluminum inventories in  
10 terms of weeks of consumption (from 15.4 weeks in 2012 to 12.7 weeks in 2019) which  
11 is one of the main drivers of aluminum prices (falling inventories in terms of weeks of  
12 consumption, tend to pressure up aluminum prices). If indeed production curtailments  
13 or/and disruptions take place or expansions are delayed (which often happen, even more  
14 in contexts of poor industry profitability); the aluminum market could easily experience a  
15 nominal deficit and a sharper decline in global aluminum inventories in terms of weeks of  
16 consumption than that expected.

17 **Q7. WHAT IS THE CURRENT PRICE OF ALUMINIUM?**

18 A7. The average cash price for aluminum on the LME for the period January through June of  
19 2013 was \$1,896 per metric ton. That represented a 25.5% decrease from calendar year  
20 2012.

21 **Q8. WHAT IS HARBOR'S PROJECTED AVERAGE ANNUAL LME PRICE FOR**  
22 **2014 AND 2015?**

1 A8. HARBOR expects prices to increase vs today's levels and average \$2,294 per mton (104  
2 cent/lb) in 2014 and \$2,400 per mton (109 cent/lb) in 2015.

3 Q9. **DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?**

4 A9. Yes, it does.

**CERTIFICATE OF SERVICE**

The undersigned certifies that a copy of the foregoing document has been served upon the persons below via electronic mail this 6th day of August, 2013.



---

M. Howard Petricoff

Thomas.McNamee@puc.state.oh.us  
stnourse@aep.com  
myurick@taftlaw.com  
mwhite@taftlaw.com  
dboehm@bkllawfirm.com  
mkurtz@bkllawfirm.com  
grady@occ.state.oh.us  
cvince@sonnenschein.com  
chand@sonnenschein.com  
dbonner@sonnenschein.com  
dbarnowski@sonnenschein.com  
sam@mwncmh.com  
tiswo@bricker.com  
Gregory.price@puc.state.oh.us

**This foregoing document was electronically filed with the Public Utilities**

**Commission of Ohio Docketing Information System on**

**8/6/2013 5:28:19 PM**

**in**

**Case No(s). 09-0119-EL-AEC**

**Summary: Testimony Testimony of Jorge Vazquez electronically filed by M HOWARD  
PETRICOFF on behalf of Ormet Primary Aluminum Corporation**