

ORIGINAL

IN THE SUPREME COURT OF OHIO

In the Matter of the Application)
) Supreme Court Case No. 09-2060
 Of Ormet Primary Aluminum)
 Corporation For Approval of a Unique)
 Arrangement with Ohio Power)
 Company and Columbus)
 Southern Power Company.)
) Appeal from the Public Utilities
) Commission of Ohio
) Case No. 09-119-EL-AEC
 (*Columbus Southern Power Company*)
And Ohio Power Company)
)
) v.)
The Public Utilities Commission of)
Ohio)

BRIEF
 SUBMITTED ON BEHALF OF APPELLEE,
 THE PUBLIC UTILITIES COMMISSION OF OHIO

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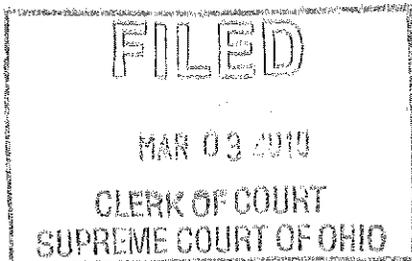
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BRIEF
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INTRODUCTION

The Public Utilities Commission of Ohio (Commission) must facilitate the state's effectiveness in the global economy. R.C. 4905.02(N). It has done so by providing a reduced electricity price for the Ormet Primary Aluminum Corporation (ORMET), a large energy user in the energy intensive, internationally competitive aluminum smelting business. A recent change in R.C. 4905.31 permits a customer to ask the Commission for special treatment under a "reasonable arrangement" (hereinafter "unique arrangement")¹. Previously only a utility could make such a request. ORMET made such a filing and the

¹ The statute speaks in terms of a "reasonable arrangement". The application submitted to the Commission below used the term "unique arrangement" instead. In its orders, the Commission reflected the applicant's terminology. This brief will continue this use of "unique arrangement" for sake of clarity. The terms are equivalent.

Commission approved a unique arrangement for ORMET, lowering its electricity costs and hopefully allowing it to survive.

Unilaterally lowering a customer's electricity bill can impose costs and, although it was not obligated to do so, the Commission ordered that the costs associated with the reduced rates for ORMET be paid by other customers. This order makes AEP-Ohio (Appellant) whole.

Appellant is not satisfied. Appellant wants to be more than whole. Appellant wants to be paid for a risk not born. It wants to be paid for a risk that ORMET will buy its power from another supplier. There is no such risk and nothing to be paid for. Appellant wants something for nothing. The Commission rightly said "no" and it should be affirmed.

STATEMENT OF THE FACTS AND CASE

ORMET smelts aluminum, an extremely energy-intensive process. Electricity is more than a third of the cost of producing aluminum. The aluminum industry is internationally competitive and ORMET has faced severe difficulties, only restarting its operation in 2007 after emerging from bankruptcy. It is a key employer in its region, employing over nine hundred people directly and creating 2,400 additional jobs in the region. *In the Matter of the Application of Ormet Primary Aluminum Corporation for Approval of a Unique Arrangement with Ohio Power Company and Columbus Southern Power Company*, PUCO Case No. 09-119-EL-AEC, Opinion and Order (July 15, 2009)

(hereinafter “Opinion and Order”) at 3, Appellant’s Appendix at 36. It pays millions of dollars in taxes. *Id.*

After emerging from bankruptcy, ORMET was only able to re-start its operations because of a “unique arrangement” between it and Appellant which was approved by the Commission pursuant to R.C. 4905.31 and resulted in lower prices for electricity supplied to ORMET. This unique arrangement lapsed as of December 31, 2008 and ORMET and Appellant were unable to reach mutually agreeable terms for a replacement.

To continue its supply of electricity, ORMET filed a proposal with the Commission pursuant to R.C. 4905.31 asking the Commission to order a new unique arrangement with Appellant. Several parties were granted intervention in the case, including Appellant, and four days of hearing on this proposal were held at the Commission’s offices. Based on the record presented, the Commission modified the terms of the ORMET proposal, approved that modification, and directed the parties to memorialize that order through a contract.

Appellant objected to ORMET’s proposal and the modifications made by the Commission and timely initiated this appeal.

PROPOSITION OF LAW I

A consumer may unilaterally apply to the Commission for approval of a unique arrangement with its electric utility and the agreement of the electric utility is not required. Ohio Revised Code Section 4905.31.

Revised Code Section 4905.31 is the mechanism by which a specific consumer may obtain service under different rates, terms or conditions than would otherwise be

applicable through the regular rates chargeable to other consumers. It is the means through which an exception to the usual statutory limitations barring both special rates, under Revised Code Section 4905.33, and charging other than scheduled rates, under Revised Code Section 4905.32, can be obtained. The approval of the Commission must be obtained and the utility schedules must be filed. For ninety seven years only the utility could ask the Commission to do this. In 2008 the General Assembly changed the statute to allow mercantile consumers, not just utilities, to ask for unique treatment. Although this is perfectly clear on the face of R.C. 4905.31, an historic discussion of the section follows for the sake of completeness.

HISTORY

What is now R.C. 4905.31 has very old roots. It appears in the original Utilities Act which first established utilities regulation in Ohio and created the Public Service Commission of Ohio (whose name was later changed to the Public Utilities Commission of Ohio). Its original form hardly changed over the years. As first adopted it provided:

Nothing in this act shall be taken to prohibit a public utility from entering into any reasonable arrangement with its customers, consumers, or employee for the division or distribution of its surplus profits or providing for a sliding scale of charges or providing for a minimum charge for service to be rendered, unless such minimum charge is made or prohibited by the terms of the franchise, grant or ordinance under which such public utility is operated, a classification of service based upon the quantity used, the time when used, the purpose for which used, the duration of use, and any other financial device that may be practicable or advantageous to the parties interested. No such arrangement, sliding scale, minimum charge, classification or device shall be lawful

unless the same shall be filed with and approved by the commission. Every such public utility is required to conform its schedule of rates, tolls and charges to such arrangement, sliding scale, classification or other device. Every such arrangement, sliding scale, minimum charge, classification or device shall be under the supervision and regulation of the commission, and subject to change, alteration or modification by the commission.

102 Laws of Ohio 549, Section 19, codified as Section 614-17 Ohio General Code (1911)

Appellee's Appendix at 8. This language matches, with minor changes in format and phrasing, to the statute as it was immediately before 2008.

Prior to the passage of SB 221 in 2008, the introductory section of O.R.C. 4905.31 provided:

Except as provided in section 4933.29 of the Revised Code, Chapters 4901., 4903., 4905., 4907., 4909., 4921., and 4923 of the Revised Code do not prohibit a public utility from filing a schedule or entering into any reasonable arrangement with another public utility or with its customers, consumers, or employees providing for ...

Further, the law provided that:

No such arrangement, sliding scale, minimum charge, classification, variable rate, or device is lawful unless it is filed with and approved by the commission.

Having obtained the approval of the Commission:

Every such public utility is required to conform its schedules of rates, tolls, and charges to such arrangement, sliding scale, classification, or other device, and where variable rates are provided for in any such schedule or arrangement, the cost data or factors upon which such rates are based and fixed shall be filed with the commission in such form and at such times as the commission directs.

Thus the statutory process before SB 3 was quite clear. The utility proposed an arrangement, the Commission considered it, and the utility filed schedules to reflect whatever the Commission ordered. This was the way that the section operated for decades. Then things changed.

SB 221 amended the introductory language of O.R.C. 4905.31 to allow mercantile customers to present proposed arrangements to the Commission for its consideration. The changes are (with legislative notations maintained for clarity):

~~Except as provided in section 4933.29 of the Revised Code, Chapters 4901., 4903., 4905., 4907., 4909., 4921., and 4923., 4927., 4928., and 4929. of the Revised Code do not prohibit a public utility from filing a schedule or establishing or entering into any reasonable arrangement with another public utility or with one or more of its customers, consumers, or employees, and do not prohibit a mercantile customer of an electric distribution utility as those terms are defined in section 4928.01 of the Revised Code or a group of those customers from establishing a reasonable arrangement with that utility or another public utility electric light company, providing for...~~

Ohio Revised Code Section 4905.31. Thus, it is apparent that the General Assembly meant to give the mercantile customers the same ability that the utility formerly had under O.R.C. 4905.31, the unilateral ability to make an application² for the Commission's consideration.

² It is recognized that the Commission directs the creation of a contract to memorialize the unique arrangement after approval. The point here is that there need be no *a priori* agreement.

Appellant argues that the phrase “reasonable arrangement with that utility” requires the agreement of both sides. It does not. Filings under this section have always been unilateral. Appellant’s own filings with the Commission have always been unilateral.³ Under the pre-SB 221 version of ORC 4905.31 only the utility could file and it filed unilaterally. SB 221 changed this so that customers could file as well. An examination of the statute makes this clear. It provides:

No such schedule or arrangement is lawful unless it is filed with and approved by the commission **pursuant to an application that is submitted by the public utility or the mercantile customer** or group of mercantile customers of an electric distribution utility and is posted on the commission’s docketing information system and is accessible through the internet.

Ohio Revised Code Section 4905.31(emphasis added). If the General Assembly had meant that there had to be agreement between the utility and the customer, it would have required a joint application. It didn’t. In fact it did the contrary. The statute quite clearly refers to the application being filed by either “...the public utility or the mercantile customer...”

Appellant⁴ even used the pre-SB 221 version of the statute to try to cancel contracts without the approval of the counter-parties. See, *City of Canton v. Pub. Util. Comm’n.*(1980) 63 Ohio St. 2d 76, 77, for a discussion of PUCO case no. 75-161-EL-

³ See, 01-1473-EL-AEC, 07-860-EL-AEC, 00-858-EL-AEC, and 00-855-EL-AEC.

⁴ Although Appellant currently uses one name, it actually consists of two affiliates, Ohio Power and Columbus Southern Power, both regulated by the Commission. There is no reason to differentiate between them for purposes of this appeal.

SLF where this occurred. This application was strongly opposed by the counter-parties to the contracts and was not done with their approval. While Appellant's request was denied by the Commission, it was for a failure of proof not because of any lack of authority to proceed. Clearly agreement is not required. It was not required of the utility before the 2008 amendment and the 2008 amendment put the mercantile customer in the utility's position. Therefore the mercantile customer is not required to obtain agreement before filing with the Commission under R.C. 4905.31.

R.C. 4905.31 Authorizes Unique arrangements

Appellant's error arises from confusing "unique arrangement" with "contract". Appellant believes that this section deals only with contracts, specifically bilateral contracts. It says that you cannot have a bilateral contract without agreement of the signatories. Whether or not Appellant is right about contracts, the section does not deal with *contracts*. In fact, the term is not used in the statute. The statute deals with unique arrangements, a much broader term. The use of the term is not accidental. While a contract is one sort of arrangement, there are many arrangements that are not contracts. Although the section has generally been applied in situations where a bilateral contract was proposed, there is no such limitation in it. There is no basis on which to believe that a "unique arrangement" requires mutual assent. Indeed, agreement is meaningless because unique arrangements are subject to "...change, alteration, or modification by the Commission" at any time which means the Commission could order a different arrangement than had been agreed.

A much better way to think of the “unique arrangement” under R.C. 4905.31 is, not that it is a contract, but rather that it is a tariff applicable to only one customer. Unique arrangements have to be approved by the Commission, included within the other tariffs of the utility, and are subject to continuing oversight and unilateral alteration by the Commission. All of these are features of a tariff not a bilateral contract.⁵

The Utility Does Not Have a Veto

The statute provides that an applicant may propose “any other financial device that may be practicable or advantageous to the parties interested.” Ohio Revised Code Section 4905.31(E). Appellant would read this provision to mean that the proposal must be advantageous to *it*. This is merely another way to argue that the utility’s consent to a unique arrangement must be obtained but this has already been shown to be incorrect. Further the language of the statute says nothing of the sort. It refers not to the customer, not to the utility, but rather to “the parties interested.” This phrasing is not accidental. The parties interested in these arrangements are quite broad. Certainly in an economic development sense everyone in Ohio has an interest in these arrangements. The Commission is directed by the General Assembly to “facilitate the state’s effectiveness in the global economy.” Ohio Revised Code Section 4928.02(N). That is the driving force behind allowing these arrangements at all. The other customers who may have to pay for the cost of the arrangement have an interest. That is why Ohio Consumers’ Counsel and

⁵ Unique arrangements are normally memorialized, as was done in the case below, in a form denominated as a contract. This is done as an expedient. There is no such legal requirement.

Ohio Energy Group were granted intervention in the case below. No one has a veto. The discretion is left to the Commission to determine what should be approved.

Under the statute a unique arrangement is not even required to be “advantageous”. The requirement is that the unique arrangement be “practicable or advantageous”. Either will do. Thus even if Appellant were correct and the unique arrangement was not advantageous to Appellant⁶, it would matter not one whit. The unique arrangement is certainly practicable. It is functioning today.

Summary

The plain reading of R.C. 4905.31 as it exists currently shows that a customer can unilaterally apply for a unique arrangement. The agreement of the utility is not required. Just as the utility’s agreement to a tariff which would apply to a class of customers is not needed, its agreement is not needed for a tariff which applies to one customer. It is for the Commission to determine whether the customer’s proposal should be approved, modified, or rejected. That is what happened in the case below. A customer proposed, the Commission considered, but then modified, the proposal. This is what the statute contemplates. This is what happened. The Commission should be affirmed.

⁶ As Appellant is being fully paid for providing its service, the Commission would certainly view the unique arrangement as advantageous. While it would certainly be *more* advantageous to Appellant to be paid the POLR charges as well, for who would not want to be paid for work not done and risks not taken, full payment must be an advantage.

PROPOSITION OF LAW II

There is no requirement that revenues not charged to the customer involved in a unique arrangement be collected from other ratepayers. R.C. 4905.31.

An economic development arrangement, like the one approved in the case below, typically includes a reduction in the rate charged to the customer involved below the rate level which would otherwise have applied to that customer. That is the point of the transaction, to support the development or, as in this case, allow the continuation, of the customer's business through lower rates for electricity. The question then arises, what, if anything, is to be done about the rates not charged? Despite Appellant's arguments to the contrary, R.C. 4905.31 does not *require* the Commission to do anything regarding the portion of the otherwise applicable rates which would not be charged. The statute is clear. In the list of things that the Commission can approve, the section lists:

Any other financial device that may be practicable or advantageous to the parties interested. In the case of a schedule or arrangement concerning a public utility electric light company, such other financial device may include a device to recover costs incurred in conjunction with any economic development and job retention program of the utility within its certified territory, including recovery of revenue foregone as a result of any such program; any development and implementation of peak demand reduction and energy efficiency programs under section 4928.66 of the Revised Code; any acquisition and deployment of advanced metering, including the costs of any meters prematurely retired as a result of the advanced metering implementation; and compliance with any government mandate.

R.C. 4905.31(E)(emphasis added). Thus it is perfectly clear that the Commission can, as part of its order under R.C. 4905.31 approving a unique arrangement, create a mechanism

to collect costs of that unique arrangement including revenue foregone.⁷ The point of the discussion here is that there is no obligation under R.C. 4905.31 that the Commission do anything regarding the rates not collected from the customer served under the unique arrangement. The authorization in subsection (E) is permissive. It says “may include”, not “must include”. Thus it would have been statutorily valid for the Commission to have approved a unique arrangement for ORMET without having made any provision allowing Appellant to collect any amount from other customers to pay Appellant for lowering the rates for ORMET.

Appellant mistakenly believes that it is entitled to receive specific amounts from all customers, reasoning that money it doesn’t get from one customer it must get from another. This is not now, and never was, the law. As discussed above, R.C. 4905.31 requires no adjustment at all. The reason for this is that the protection for the utility is global, not customer-specific. There has never been a requirement that the utility be paid any particular amount from any specific customer.

What the utility is entitled to is the overall opportunity to earn a reasonable return on its investment used in providing the service to customers. This has been discussed by the Court in many cases. *Dayton Power and Light v. Pub. Util. Comm’n.* (1983) 4 Ohio St. 3d 91; *Ohio Edison v. Pub. Util. Comm’n.* (1992) 63 Ohio St. 3d 555; *Toledo Edison v. Pub. Util. Comm’n.* (1984) 12 Ohio St. 3d 143. Appellant has not argued, and could

⁷ In fact, of course, the Commission did exactly this in the case below. It provided a mechanism under which Appellant will recover all of its costs under this unique arrangement. The crux of the dispute in this case is that Appellant and the Commission measure this cost differently.

not argue, that this Constitutional test has not been met. Indeed there is no indication whatever that the highly profitable Appellant is not earning a reasonable return on its regulated operations.

Because neither R.C. 4905.31 nor the Constitutional ban on confiscation requires that the utility receive any specific amount on behalf of ORMET, Appellant has no legal basis on which to complain about the Commission order.

Appellant is Fully Compensated

Despite the lack of a legal requirement that it do so, the Commission did approve a mechanism which allows Appellant to fully recover the costs of the unique arrangement with ORMET. The entire differential between what ORMET pays Appellant and what the rate that would otherwise have been applicable to a customer of the size of ORMET but for the unique arrangement will be collected from other customers, except the relatively small POLR component of the rate.

The reason for the exception is that the POLR component of the rate which would otherwise have been charged to a customer with the usage of ORMET⁸ is not a **cost** of providing service to ORMET.⁹ R.C. 4905.31(E) only allows a mechanism to recover **costs** of the unique arrangements.

⁸ It is rather unrealistic to discuss a rate that otherwise would have been charged to ORMET. In the absence of the unique arrangement, ORMET would have closed and there would have been no ORMET to pay anything. In a very practical sense there could be no “lost revenues” associated with the ORMET unique arrangement.

⁹ Indeed, it is not a cost at all.

The POLR component of Appellant's rates exists to compensate for the possibility that a standard service customer will leave the standard service and buy power from another supplier, termed "migration risk". *In the Matter of the Application of Columbus Southern Power Company for Approval of an Electric Security Plan*, PUCO Case No. 08-917-EL-SSO, Opinion and Order (March 18, 2009) at 38-40, Appellant's Appendix at 151-153. ORMET, as a matter of fact, is not on Appellant's standard service offer. *In the Matter of the Application of Ormet Primary Aluminum Corporation for Approval of a Unique Arrangement with Ohio Power Company and Columbus Southern Power Company*, PUCO Case No. 09-119-EL-AEC, Entry on Rehearing (September 15, 2009) (hereinafter "Entry on Rehearing") at 11, Appellant's Appendix at 87. Not being on the standard service offer, ORMET can not leave the Appellant's standard service offer to buy power from another supplier. ORMET cannot even leave the unique arrangement to buy power from another supplier, it has given up this ability. *Id.* As it is an impossibility for ORMET to leave to shop elsewhere, it cannot return from that shopping. As a factual matter, Appellant will, as regards its service to ORMET, not bear the risk for which the POLR charge was established. *Id.* The POLR charge in the existing rates is imposed to compensate for the risks that a customer will leave the utility's standard service to shop elsewhere. ORMET, however: (1) does not now receive standard offer service; (2) will not leave standard offer service; and (3) will not purchase electricity from another supplier during the period of the current rate plan. There is, therefore, no POLR risk. In

the absence of a POLR risk, there is nothing to compensate Appellant for. That is what the Commission's order recognizes and it should be affirmed.

Offsets

Appellant argues that what the Commission has ordered is an offset of the lost revenue and when the General Assembly meant to allow offsets of revenue recoveries, it did so explicitly. R.C. 4905.31 includes no language authorizing an offset, so, in Appellant's view, the Commission could not refuse to allow the collection of the POLR charge.

Appellant's reading of R.C. 4905.31 cannot be supported. As noted previously, the section does not require lost revenues be recovered at all. To read the section as "lost revenues need not be recovered but, if they are, they must be recovered regardless of any change in circumstance" makes no sense. Recovery of anything under the section is dependent on that item being a "cost". Entry on Rehearing at 11, Appellant's Appendix at 87. If other customers are going to have to pay for something, that something must be real. It must be a cost. As discussed extensively below, there are no POLR costs associated with ORMET as a result of the unique arrangement. There is, therefore, nothing for the other customers to pay for, no cost to be collected. If this is an offset, it is permitted by the statute.

ORMET Will Not Shop Before the End of the Current Rate Plan

There can be no uncertainty. ORMET will not buy electricity from a supplier other than the Appellant for at least the period of time that Appellant's current rate plan exists, that is, until December 31, 2011. Entry on Rehearing Para. 11, pp. 7-9, Appellant's Appendix at 83-85. That is the Commission's order. The POLR charge that is a part of the current rate plan compensates Appellant for the risk that a standard service customer will leave the standard service and buy electricity from another supplier. *In the Matter of the Application of Columbus Southern Power Company for Approval of an Electric Security Plan*, PUCO Case No. 08-917-EL-SSO, Opinion and Order (March 18, 2009) at 38-40, Appellant's Appendix at 151-153. Because ORMET cannot leave Appellant's service, that is, they must buy from Appellant, ORMET cannot return to the standard service offer. The risk, for which the POLR charge was intended to compensate, does not exist as regards ORMET. Applying the charge as regards ORMET would have been, therefore, improper and the Commission did not apply the charge. Appellant's arguments to the contrary notwithstanding, the conclusion is correct and inescapable.

Appellant argues that the Commission could change the terms of the unique arrangement in the future, which could result in termination and shopping. There will be no change in this unique arrangement during the period of time that the current rate plan is in effect. Entry on Rehearing at 8-9, Appellant's Appendix at 84-85. So, even if Appellant were correct (and it is not), no change to the unique arrangement is possible

during the period when the POLR charge is in effect. Even if there were some change in the future beyond the period of time during which the POLR charge exists, no change would occur until there had been notice, an opportunity for hearing, a new Commission order, and a new possibility of appeal by any party that is disgruntled by that new Commission decision. Entry on Rehearing at 8, Appellant's Appendix at 84.

Appellant points out that its service territory has been altered twice, once to allow ORMET to be served by a different utility (a rural co-operative) before the restructuring of the regulation of the electric industry in 1999, and a second time to allow ORMET to return to the distribution service territory of Appellant. The effect of the first transfer was that ORMET obtained power from the rural electric co-operative into whose service territory it had moved rather than from the Appellant. In more recent years, the second transfer moved the territory in which the ORMET facility operates back into the now distribution-only¹⁰ service territory of Appellant. After this second transfer, Appellant supplied power under a unique arrangement which has subsequently lapsed and been replaced by the unique arrangement established in the orders now on appeal. Appellant

¹⁰ The electric restructuring bill in 1999 changed the nature of exclusive electric service territories in the interim between these transfers. Before 1999, electric service territories were exclusive for bundled service, that is, a customer had to buy distribution, transmission, and generation service from the host utility and no one else. After 1999, customers were permitted to buy generation service from other suppliers but distribution and transmission remained the exclusive province of the host utility.

uses this history to argue that ORMET effectively shopped¹¹ for another supplier in the past (by the agreed change of service territory) and returned to service from the Appellant, so it might do it again.

None of this history has any bearing on the situation currently before the Court. Both of these transfers occurred with the agreement of ORMET and the Appellant. Entry on Rehearing at 9, Appellant's Appendix at 85. That these entities have been able to reach different kinds of agreements at different times tells us nothing about what will happen over the term of the existing rate plan. What does tell us about what will happen over the term of the exiting plan is the Commission's order and that is quite clear that ORMET will buy its power from Appellant and no one else. Entry on Rehearing at 8, Appellant's Appendix at 84.

Appellant describes several scenarios in which the unique arrangement might terminate before its full term has run. ORMET could default, that is, simply not pay its bill. ORMET could close, in which case there would be no bill to pay. Neither of these scenarios has any bearing on appropriateness of the POLR charge. As has been noted several times before, the POLR charge is to compensate Appellant for the risk that a customer will buy electricity from another supplier. *In the Matter of the Application of Columbus Southern Power Company for Approval of an Electric Security Plan*, PUCO Case No. 08-917-EL-SSO, Opinion and Order (March 18, 2009) at 38-40, Appellant's

¹¹ The term "effectively shop" is used because shopping for an alternative supplier in the current way that phrase is used in the electric industry would not have been legal prior to the 1999 restructuring bill.

Appendix at 151-153. The risks Appellant identifies are risks that ORMET will collapse. That is a scenario in which ORMET will not buy electricity from anyone and the POLR charge is not intended to compensate for that possibility.

The only other scenario presented is the possibility that ORMET would close and then re-open its facilities more than 24 months later. That is, of course, calendrically impossible during the period when the POLR charge exists. As of this writing, the existing plan has only 22 months left. The POLR charge under the rate plan compensates for the risk of return *during the plan*¹². Thus, this example is irrelevant as well.

Rates After the End of the Current Plan Are Unknown

While the term of the unique arrangement approved below is ten years, the Commission only determined the recovery of the difference between the amount paid by ORMET under the unique arrangement and the standard service offer for the period that the current standard service offer will exist, that is, until December 31, 2011. Entry on Rehearing at 8, Appellant's Appendix at 84. The reason that the Commission only looked to the first three years of the current plan is quite obvious. Those are the only data that exist.

It is impossible to know today what Appellant's rates will be on January 1, 2012. At that time, the current rate plan will have ended by its own terms. What will replace it is not known. It could be a second electric security plan approved by the Commission

¹² It could not compensate for risks outside the plan term. There is no means to assess what those risks would be.

under R.C. 4928.143(C)(1). It could be a modified version of the current plan if there is a rejection of the Commission's order approving a second electric security plan under 4928.143(C)(2). It could be a blended rate consisting of an auction result in part and changes to the current electric security plan in part under R.C. 4928.142(D). There is simply no way to know today.

Because the structure of those future rates cannot be known today, it is impossible to know which, if any, of the unknown and unknowable charges should be paid by other customers. As this Court is well aware from the variety of appeals that it has seen from the rate plans approved by the Commission in the past, these sorts of structures are very complicated and individual for the specific utilities. It can't even be known if there would be a POLR charge to be discussed. Entry on Rehearing paragraph 11, page 8, Appellant's Appendix at 84. The POLR charge at issue in this case will assuredly be gone at that time. *Id.* The regulatory treatment of the differential between what ORMET pays in the future and whatever some future standard service offer might be, if there is a differential, must wait until that difference can be defined. Indeed, it may be possible that the entirety of the differential would be recoverable from other customers, eliminating Appellant's concern.¹³

This does not place the Appellant in a "catch-22" position. It does not need to wait ten years for a determination to be made. As part of the next rate plan (however it is

¹³ This potential might well create an appeal from another party of course, but at least there would be a real controversy to discuss.

established) or in a separate proceeding, it will be necessary to determine the future treatment of whatever differential might exist under that future plan. This controversy must wait until the Commission makes actual determinations based on the situation as it exists when the current plan ends. There is no practical alternative.

A Unique Arrangement by Definition is Different Than Standard Rates

Appellant argues that the Commission's order approving the ORMET unique arrangement violates the Commission order which established the standard service offer. Rates for customers other than ORMET are set under the standard service offer. That an order establishing a unique arrangement is different than the otherwise applicable rates is not surprising. That is the point of the unique arrangement, the source of its uniqueness.

Appellant notes that in establishing the standard service offer which is included in the Appellant's current rate plan, the Commission identified specific amounts of "revenue requirement" sought to be recovered through the POLR charge also established in that order. Appellant reasons that because the POLR charge will not be collected for the ORMET load, the revenue requirement set in the standard service offer order will not be collected. Appellant sees this as a conflict which must be resolved in its favor. Appellant is wrong.

The amount to be collected through the POLR charge did not arise arbitrarily. It was the result of an analysis of the overall risk of customers going to another supplier, the migration risk. This risk was represented by a specific amount of money, which the Commission termed the revenue requirement associated with the POLR. *In the Matter of*

the Application of Columbus Southern Power Company for Approval of an Electric Security Plan, PUCO Case No. 08-917-EL-SSO, Opinion and Order (March 18, 2009) at 38-40, Appellant's Appendix at 151-153. This amount was then spread across the body of customers so that each customer would pay an amount reflecting its proportionate share of the risk.

This is where the Appellant's confusion arises. It is entitled not to a specific amount of money but rather to be compensated for a specific amount of risk. The Commission order establishing the POLR charge was based on an analysis of all customers. The order approving the unique arrangement changed the factual situation. Because of the Commission order, the migration risk associated with ORMET dropped to zero. As has been said many times, ORMET cannot buy electricity from another supplier. It can not migrate. The amount of total risk to which Appellant is exposed has changed as a result of the order approving the unique arrangement. Migration risk no longer exists. The POLR charge is explicitly created to recompense Appellant for this risk and, as a result of the order below, it no longer exists as regards ORMET. That is why there is no conflict as regards the POLR charge between the order which established the POLR charge and the order approving the unique arrangement. In the first order, the Commission intended to recompense the Appellant for its migration risk. As a result of the second order, the total amount of migration risk faced by the Appellant has been reduced, and the Appellant is still fully recompensed for the reduced level of risk borne.

Adjusting a decision for a change in circumstance is appropriate and that is what the Commission did.

Summary

R.C. 4905.31 does not require any recovery of monetary differentials between unique arrangements approved under that section and any other rate treatment. Although it was not required to do so, the Commission did authorize the differential between the amounts paid by ORMET and the rates which would have been charged to a customer of ORMET's size should be collected from other customers, with one exception. The POLR charge which would be paid by other customers should not be recovered. This POLR charge was created to repay Appellant for a specified risk which, as a result of the unique arrangement, simply no longer exists as regards ORMET. Appellant is fully compensated for this new, lower level of risk and has no basis on which to object.

PROPOSITION OF LAW III

It is the policy of this state to do the following throughout this state: ... (B) Ensure the availability of unbundled and comparable retail electric service that provides consumers with the supplier, price, terms, conditions, and quality options they elect to meet their respective needs; (C) ensure the diversity of electricity supplies and suppliers, by giving consumers effective choices over the selection of those supplies and suppliers...Ohio Revised Code Section 4928.02(B), (C).

The General Assembly has been very clear in its directives to the Commission regarding electric restructuring. It has provided an extensive list of its policy requirements in Revised Code Section 4928.02. These policy directives are mandatory.

Elyria Foundry v. Pub. Util. Comm'n. (2007) 114 Ohio St. 3d 305. The policy directives of concern here are the second and third on the list, specifically:

It is the policy of this state to do the following throughout this state : ... (B) Ensure the availability of unbundled and comparable retail electric service that provides consumers with the supplier, price, terms, conditions, and quality options they elect to meet their respective needs; (C) ensure the diversity of electricity supplies and suppliers, by giving consumers effective choices over the selection of those supplies and suppliers...

Ohio Revised Code Sections 4928.02(B), (C). Fulfilling this obligation was the Commission's duty in the case below and the Commission did so.

There is no need to guess the supplier, price, terms, conditions, and quality options the consumer in this case, ORMET, has elected to meet its needs. ORMET has told us. Opinion and Order at 3, Appellant's Appendix at 36. Indeed that is the purpose of the application in the case below. One of the terms sought was that the complementary obligations of AEP to supply and ORMET to purchase would continue for 10 years. Tr. I at 37-8, Tr. IV at 484. ORMET will not shop for another supplier during the period of the arrangement. Opinion and Order at 13, Appellant's Appendix at 46. This is ORMET's unilateral choice. Entry on Rehearing at 13, Appellant's Appendix at 89. Approving this is giving the consumer exactly what it wants as to the supplier and the terms of service. This complies quite literally with the statutory policy.

Appellant argues that this violates some state policy in favor of competition. In Appellant's view "competition" apparently means buying power from someone other than the utility. This is entirely wrong-headed.

The policy of the state is not directed to forcing customers away from utility service. The policy is to provide consumers with choices, and the tools needed to exercise those choices, not to dictate how those choices will be exercised. In addition to Revised Code Sections 4928.02(B) and (C) already discussed, the Commission is to help to provide consumers with information about the transmission and distribution systems to promote effective consumer choice. Revised Code Section 4928.02(E). It is to assure openness of the distribution system so that consumers have the choice of providing their own generation. Revised Code Section 4928.02(F). The entire thrust of the policy directives is toward letting the consumer choose.

Many of the choices available for consumers come from new participants, the competitive retail electric service suppliers. Additionally two choices for consumers are created by statute, specifically the standard service offer¹⁴ pursuant to Revised Code Section 4928.141 and the new unique arrangement pursuant to Revised Code Section 4905.31. This consumer, ORMET, has made its choice. Entry on Rehearing at 13, Appellant's Appendix at 89. This is in keeping with the policy of the state.

¹⁴ The standard service offer itself can be provisioned in two ways, either an electric security plan, or a market rate offer but the distinction is not important for the current discussion.

It might be argued that ORMET should be denied its unilateral choice because its choice not to buy from another supplier harms the competitive environment in Ohio. There is no evidence in the record to support this. Entry on Rehearing at 12-13, Appellant's Appendix at 88-89.

Appellant argues that the term of ORMET's choice of service, ten years, is too long. That such an arrangement ties up too large an amount of electricity demand for too long. There is simply no basis for these objections. Any binding arrangement ties up electricity demand for its term. That is the function of the arrangement. That this consumer believes it needs supply assurance for a long period is hardly surprising given the extremely energy intensive nature of aluminum refining. The Commission found that there is no evidence in this record to indicate that tying ORMET's demand to the Appellant will have any effect on other customers. Entry on Rehearing at 12-13, Appellant's Appendix at 88-89.

Because allowing the consumer to have its choice does not harm other consumers and clearly advances the literal words of the express policy of the state by making the consumer's choice of supply and supplier effective and providing the consumer with the terms and conditions it elected, the Commission's order is reasonable and should be affirmed.

CONCLUSION

The General Assembly meant to broaden the options available to electric customers by allowing large industrial users to petition the Commission to establish

arrangements for electric service unique to that customer. The General Assembly did this by amending R.C. 4905.31, which previously had only allowed the utility to make filings, to permit a customer to seek this sort of relief from the Commission unilaterally. Appellant argues that the change in the law changed nothing, but its arguments do not reflect the words of the amendment. In the case below, a large and financially troubled customer ORMET made this sort of filing.

ORMET asked the Commission to approve a long term arrangement under which ORMET would exclusively buy power from Appellant for ten years with the price set under a complex formula relating to the market price of aluminum. The Commission did approve a ten year agreement but ordered a different pricing mechanism for the power sold. Although it did not have to do so, the Commission ordered that the amounts not chargeable to ORMET would be recovered from other customers except for the POLR charge because, by virtue of the unique arrangement, there is no longer a POLR risk associated with ORMET.

Appellant argues that the POLR charge should also be paid by other customers. Its arguments are unavailing. Its statutory reading is incorrect. The order does not conflict with either statute or prior orders of the Commission. The statute only allows other customers to pay for the costs associated with unique arrangements and there is no POLR cost associated with the ORMET unique arrangement. Customers cannot be forced to pay something for nothing.

Finally Appellant argues that a customer cannot waive its ability to buy electricity from someone other than the utility. The law is entirely to the contrary. The Commission is to facilitate consumers in obtaining electricity from whom they want and under terms that they want. That is exactly what the Commission did.

Having fulfilled its obligations under the law, the Commission's orders should be affirmed.

Respectfully submitted,

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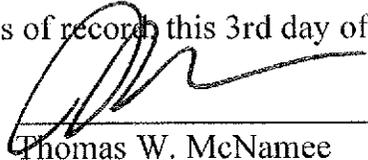


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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Brief of Appellee, submitted on behalf of Appellee, the Public Utilities Commission of Ohio, was served by regular U.S. mail, postage prepaid upon the following parties of record this 3rd day of March, 2010.



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APPENDIX

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4928.02 State policy.

It is the policy of this state to do the following throughout this state :

- (A) Ensure the availability to consumers of adequate, reliable, safe, efficient, nondiscriminatory, and reasonably priced retail electric service;
- (B) Ensure the availability of unbundled and comparable retail electric service that provides consumers with the supplier, price, terms, conditions, and quality options they elect to meet their respective needs;
- (C) Ensure diversity of electricity supplies and suppliers, by giving consumers effective choices over the selection of those supplies and suppliers and by encouraging the development of distributed and small generation facilities;
- (D) Encourage innovation and market access for cost-effective supply- and demand-side retail electric service including, but not limited to, demand-side management, time-differentiated pricing, and implementation of advanced metering infrastructure;
- (E) Encourage cost-effective and efficient access to information regarding the operation of the transmission and distribution systems of electric utilities in order to promote both effective customer choice of retail electric service and the development of performance standards and targets for service quality for all consumers, including annual achievement reports written in plain language;
- (F) Ensure that an electric utility's transmission and distribution systems are available to a customer-generator or owner of distributed generation, so that the customer-generator or owner can market and deliver the electricity it produces;
- (G) Recognize the continuing emergence of competitive electricity markets through the development and implementation of flexible regulatory treatment;
- (H) Ensure effective competition in the provision of retail electric service by avoiding anticompetitive subsidies flowing from a noncompetitive retail electric service to a competitive retail electric service or to a product or service other than retail electric service, and vice versa, including by prohibiting the recovery of any generation-related costs through distribution or transmission rates;
- (I) Ensure retail electric service consumers protection against unreasonable sales practices, market deficiencies, and market power;
- (J) Provide coherent, transparent means of giving appropriate incentives to technologies that can adapt successfully to potential environmental mandates;

(K) Encourage implementation of distributed generation across customer classes through regular review and updating of administrative rules governing critical issues such as, but not limited to, interconnection standards, standby charges, and net metering;

(L) Protect at-risk populations, including, but not limited to, when considering the implementation of any new advanced energy or renewable energy resource;

(M) Encourage the education of small business owners in this state regarding the use of, and encourage the use of, energy efficiency programs and alternative energy resources in their businesses;

(N) Facilitate the state's effectiveness in the global economy. In carrying out this policy, the commission shall consider rules as they apply to the costs of electric distribution infrastructure, including, but not limited to, line extensions, for the purpose of development in this state.

4905.02 Public utility defined.

As used in this chapter, "public utility" includes every corporation, company, copartnership, person, or association, their lessees, trustees, or receivers, defined in section 4905.03 of the Revised Code, including all public utilities that operate their utilities not for profit, except the following:

(A) Electric light companies that operate their utilities not for profit;

(B) Public utilities, other than telephone companies, that are owned and operated exclusively by and solely for the utilities' customers, including any consumer or group of consumers purchasing, delivering, storing, or transporting, or seeking to purchase, deliver, store, or transport, natural gas exclusively by and solely for the consumer's or consumers' own intended use as the end user or end users and not for profit;

(C) Public utilities that are owned or operated by any municipal corporation;

(D) Railroads as defined in sections 4907.02 and 4907.03 of the Revised Code.

4905.32 Schedule rate collected.

No public utility shall charge, demand, exact, receive, or collect a different rate, rental, toll, or charge for any service rendered, or to be rendered, than that applicable to such service as specified in its schedule filed with the public utilities commission which is in

effect at the time. No public utility shall refund or remit directly or indirectly, any rate, rental, toll, or charge so specified, or any part thereof, or extend to any person, firm, or corporation, any rule, regulation, privilege, or facility except such as are specified in such schedule and regularly and uniformly extended to all persons, firms, and corporations under like circumstances for like, or substantially similar, service.

4928.142 Standard generation service offer price - competitive bidding.

(D) The first application filed under this section by an electric distribution utility that, as of July 31, 2008, directly owns, in whole or in part, operating electric generating facilities that had been used and useful in this state shall require that a portion of that utility's standard service offer load for the first five years of the market rate offer be competitively bid under division (A) of this section as follows: ten per cent of the load in year one, not more than twenty per cent in year two, thirty per cent in year three, forty per cent in year four, and fifty per cent in year five. Consistent with those percentages, the commission shall determine the actual percentages for each year of years one through five. The standard service offer price for retail electric generation service under this first application shall be a proportionate blend of the bid price and the generation service price for the remaining standard service offer load, which latter price shall be equal to the electric distribution utility's most recent standard service offer price, adjusted upward or downward as the commission determines reasonable, relative to the jurisdictional portion of any known and measurable changes from the level of any one or more of the following costs as reflected in that most recent standard service offer price:

- (1) The electric distribution utility's prudently incurred cost of fuel used to produce electricity;
- (2) Its prudently incurred purchased power costs;
- (3) Its prudently incurred costs of satisfying the supply and demand portfolio requirements of this state, including, but not limited to, renewable energy resource and energy efficiency requirements;
- (4) Its costs prudently incurred to comply with environmental laws and regulations, with consideration of the derating of any facility associated with those costs. In making any adjustment to the most recent standard service offer price on the basis of costs described in division (D) of this section, the commission shall include the benefits that may become available to the electric distribution utility as a result of or in connection with the costs included in the adjustment, including, but not limited to, the utility's receipt of emissions credits or its receipt of tax benefits or of other benefits, and, accordingly, the commission

may impose such conditions on the adjustment to ensure that any such benefits are properly aligned with the associated cost responsibility. The commission shall also determine how such adjustments will affect the electric distribution utility's return on common equity that may be achieved by those adjustments. The commission shall not apply its consideration of the return on common equity to reduce any adjustments authorized under this division unless the adjustments will cause the electric distribution utility to earn a return on common equity that is significantly in excess of the return on common equity that is earned by publicly traded companies, including utilities, that face comparable business and financial risk, with such adjustments for capital structure as may be appropriate. The burden of proof for demonstrating that significantly excessive earnings will not occur shall be on the electric distribution utility. Additionally, the commission may adjust the electric distribution utility's most recent standard service offer price by such just and reasonable amount that the commission determines necessary to address any emergency that threatens the utility's financial integrity or to ensure that the resulting revenue available to the utility for providing the standard service offer is not so inadequate as to result, directly or indirectly, in a taking of property without compensation pursuant to Section 19 of Article I, Ohio Constitution. The electric distribution utility has the burden of demonstrating that any adjustment to its most recent standard service offer price is proper in accordance with this division.

4905.31 Reasonable arrangements allowed - variable rate.

Chapters 4901., 4903., 4905., 4907., 4909., 4921., 4923., 4927., 4928., and 4929. of the Revised Code do not prohibit a public utility from filing a schedule or establishing or entering into any reasonable arrangement with another public utility or with one or more of its customers, consumers, or employees, and do not prohibit a mercantile customer of an electric distribution utility as those terms are defined in section 4928.01 of the Revised Code or a group of those customers from establishing a reasonable arrangement with that utility or another public utility electric light company, providing for any of the following:

- (A) The division or distribution of its surplus profits;
- (B) A sliding scale of charges, including variations in rates based upon stipulated variations in cost as provided in the schedule or arrangement.
- (C) A minimum charge for service to be rendered unless such minimum charge is made or prohibited by the terms of the franchise, grant, or ordinance under which such public utility is operated;

(D) A classification of service based upon the quantity used, the time when used, the purpose for which used, the duration of use, and any other reasonable consideration;

(E) Any other financial device that may be practicable or advantageous to the parties interested. In the case of a schedule or arrangement concerning a public utility electric light company, such other financial device may include a device to recover costs incurred in conjunction with any economic development and job retention program of the utility within its certified territory, including recovery of revenue foregone as a result of any such program; any development and implementation of peak demand reduction and energy efficiency programs under section 4928.66 of the Revised Code; any acquisition and deployment of advanced metering, including the costs of any meters prematurely retired as a result of the advanced metering implementation; and compliance with any government mandate. No such schedule or arrangement is lawful unless it is filed with and approved by the commission pursuant to an application that is submitted by the public utility or the mercantile customer or group of mercantile customers of an electric distribution utility and is posted on the commission's docketing information system and is accessible through the internet. Every such public utility is required to conform its schedules of rates, tolls, and charges to such arrangement, sliding scale, classification, or other device, and where variable rates are provided for in any such schedule or arrangement, the cost data or factors upon which such rates are based and fixed shall be filed with the commission in such form and at such times as the commission directs. Every such schedule or reasonable arrangement shall be under the supervision and regulation of the commission, and is subject to change, alteration, or modification by the commission.

4905.33 Rebates, special rates, and free service prohibited.

(A) No public utility shall directly or indirectly, or by any special rate, rebate, drawback, or other device or method, charge, demand, collect, or receive from any person, firm, or corporation a greater or lesser compensation for any services rendered, or to be rendered, except as provided in Chapters 4901., 4903., 4905., 4907., 4909., 4921., and 4923. of the Revised Code, than it charges, demands, collects, or receives from any other person, firm, or corporation for doing a like and contemporaneous service under substantially the same circumstances and conditions.

(B) No public utility shall furnish free service or service for less than actual cost for the purpose of destroying competition.

4928.141 Distribution utility to provide standard service offer.

(A) Beginning January 1, 2009, an electric distribution utility shall provide consumers, on a comparable and nondiscriminatory basis within its certified territory, a standard service offer of all competitive retail electric services necessary to maintain essential electric service to consumers, including a firm supply of electric generation service. To that end, the electric distribution utility shall apply to the public utilities commission to establish the standard service offer in accordance with section 4928.142 or 4928.143 of the Revised Code and, at its discretion, may apply simultaneously under both sections, except that the utility's first standard service offer application at minimum shall include a filing under section 4928.143 of the Revised Code. Only a standard service offer authorized in accordance with section 4928.142 or 4928.143 of the Revised Code, shall serve as the utility's standard service offer for the purpose of compliance with this section; and that standard service offer shall serve as the utility's default standard service offer for the purpose of section 4928.14 of the Revised Code. Notwithstanding the foregoing provision, the rate plan of an electric distribution utility shall continue for the purpose of the utility's compliance with this division until a standard service offer is first authorized under section 4928.142 or 4928.143 of the Revised Code, and, as applicable, pursuant to division (D) of section 4928.143 of the Revised Code, any rate plan that extends beyond December 31, 2008, shall continue to be in effect for the subject electric distribution utility for the duration of the plan's term. A standard service offer under section 4928.142 or 4928.143 of the Revised Code shall exclude any previously authorized allowances for transition costs, with such exclusion being effective on and after the date that the allowance is scheduled to end under the utility's rate plan.

(B) The commission shall set the time for hearing of a filing under section 4928.142 or 4928.143 of the Revised Code, send written notice of the hearing to the electric distribution utility, and publish notice in a newspaper of general circulation in each county in the utility's certified territory. The commission shall adopt rules regarding filings under those sections.

4928.143 Application for approval of electric security plan - testing.

(C)(1) The burden of proof in the proceeding shall be on the electric distribution utility. The commission shall issue an order under this division for an initial application under this section not later than one hundred fifty days after the application's filing date and, for any subsequent application by the utility under this section, not later than two hundred seventy-five days after the application's filing date. Subject to division (D) of this section, the commission by order shall approve or modify and approve an application filed under division (A) of this section if it finds that the electric security plan so

approved, including its pricing and all other terms and conditions, including any deferrals and any future recovery of deferrals, is more favorable in the aggregate as compared to the expected results that would otherwise apply under section 4928.142 of the Revised Code. Additionally, if the commission so approves an application that contains a surcharge under division (B)(2)(b) or (c) of this section, the commission shall ensure that the benefits derived for any purpose for which the surcharge is established are reserved and made available to those that bear the surcharge. Otherwise, the commission by order shall disapprove the application.

(2)(a) If the commission modifies and approves an application under division (C)(1) of this section, the electric distribution utility may withdraw the application, thereby terminating it, and may file a new standard service offer under this section or a standard service offer under section 4928.142 of the Revised Code.

Unreasonable charge prohibited. charge for such service is prohibited and declared to be unlawful.

Section 614-13. SECTION 15. Every public utility shall furnish and provide with respect to its business such instrumentalities and facilities as shall be adequate and in all respects just and reasonable. All charges made or demanded for any service rendered, or to be rendered, shall be just and reasonable, and not more than allowed by law or by order of the commission. Every unjust or unreasonable charge made or demanded for any service, or in connection therewith, or in excess of that allowed by law or by order of the commission, is prohibited and declared to be unlawful.

Section 614-14. Rebates, special rates, free services, etc., prohibited. SECTION 16. No public utility shall directly or indirectly, or by any special rate, rebate, drawback or other device or method, charge, demand, collect or receive from any person, firm, or corporation, a greater or less compensation for any services rendered, or to be rendered, except as provided in this act, than it charges, demands, collects, or receives from any other person, firm, or corporation for doing a like and contemporaneous service under the same, or substantially the same circumstances and conditions. Nor shall free service or service for less than actual cost be furnished for the purpose of destroying competition, and such free service and every such charge is prohibited and declared unlawful.

Section 614-15. Undue advantage. SECTION 17. No public utility shall make or give any undue or unreasonable preference or advantage to any person, firm, corporation, or locality, or subject the same to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

Section 614-16. Printed schedules of rates must be filed. SECTION 18. Every public utility shall print and file with the commission, within ninety days after this act takes effect, schedules, showing all rates, joint rates, rentals, tolls, classifications and charges for service of each and every kind by it rendered or furnished, which were in effect at the time this act takes effect and the length of time the same has been in force, and all rules and regulations in any manner affecting the same. Such schedules shall be plainly printed and kept open to public inspection. The commission shall have power to prescribe the form of every such schedule, and may, from time to time, prescribe, by order, changes in the form thereof. The commission may establish rules and regulations for keeping such schedule open to public inspection, and may, from time to time, modify the same. A copy of such schedules or so much thereof as the commission shall deem necessary for the use and information of the public, shall be printed in plain type and kept on file or posted in such places and in such manner as the commission may order.

Section 614-17. Reasonable arrangements allowed. SECTION 19. Nothing in this act shall be taken to prohibit a public utility from entering into any reasonable arrangement with its customers, consumers or employes for the division or distribution of its surplus profits or providing for a sliding scale of charges or providing for a

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Section 614-13.

Section 614-19.

Section 614-20.

minimum charge for service to be rendered, unless such minimum charge is made or prohibited by the terms of the franchise, grant or ordinance under which such public utility is operated, a classification of service based upon the quantity used, the time when used, the purpose for which used, the duration of use, and any other reasonable consideration, or providing any other financial device that may be practicable or advantageous to the parties interested. No such arrangement, sliding scale, minimum charge, classification or device shall be lawful unless the same shall be filed with and approved by the commission. Every such public utility is required to conform its schedules of rates, tolls and charges to such arrangement, sliding scale, classification or other device. Every such arrangement, sliding scale, minimum charge, classification or device shall be under the supervision and regulation of the commission, and subject to change, alteration or modification by the commission.

Approval.

Section 614-18. SECTION 20. No public utility shall charge, demand, exact, receive or collect a different rate, rental, toll or charge for any service rendered, or to be rendered, than that applicable to such service as specified in its schedule filed with the commission and in effect at the time. Nor shall any public utility refund or remit directly or indirectly, any rate, rental, toll or charge so specified, or any part thereof, nor extend to any person, firm or corporation, any rule, regulation, privilege or facility except such as are specified in such schedule and regularly and uniformly extended to all persons, firms and corporations under like circumstances for the like, or substantially similar, service.

Schedule rate collected.

Refunder or remitter not allowed.

Section 614-19. SECTION 21. The furnishing by any public utility of any product or service, at the rates, and upon the terms and conditions provided for in any existing contract, executed prior to the passage of this act, shall not be construed as constituting a discrimination, or undue or unreasonable preference, or advantage within the meaning specified.

Prior contract.

Provided, however, that when any such contract or contracts are or become terminable by notice, the commission shall have power, in its discretion, to direct by order, that such contract or contracts shall be terminated as and when directed by such order.

Section 614-20. SECTION 22. Unless otherwise ordered by the commission, no change shall be made in any rate, joint rate, toll, classification, charge or rental, in force at the time this act takes effect, or as shown upon the schedules which shall have been filed by a public utility in compliance with the requirements of this act, or by order of the commission, except after thirty days' notice to the commission, which notice shall plainly state the changes proposed to be made in the schedule then in force, and the time when the change, rate, charge, toll, classification or rental shall go into effect; and all proposed changes shall be plainly indicated upon existing schedules, or by filing new schedules thirty days

Change of rates. 30 days' notice.