

ORIGINAL

IN THE SUPREME COURT OF OHIO

Columbus Southern Power Company	:	Case No. 10-0723
	:	
Appellant,	:	
	:	Appeal from Public
v.	:	Utilities Commission of Ohio
	:	
The Public Utilities Commission of Ohio,	:	Public Utilities
	:	Commission of Ohio
Appellee.	:	Case No. 09-516-EL-AEC

**NOTICE OF APPEAL OF
COLUMBUS SOUTHERN POWER COMPANY**

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 SUPREME COURT OF OHIO

**NOTICE OF APPEAL OF
APPELLANT COLUMBUS SOUTHERN POWER COMPANY**

Appellant, Columbus Southern Power Company (“CSP” or “Appellant”), hereby gives notice of its appeal, pursuant to R.C. 4903.11 and 4903.13, and Supreme Court Rule of Practice II, Section 3(B), to the Supreme Court of Ohio and Appellee, the Public Utilities Commission of Ohio (“Commission”), from an Opinion and Order entered on October 15, 2009 (Attachment A), a December 11, 2009 Entry on Rehearing granting CSP’s (and other parties’) rehearing applications so that the Commission could further consider the issues raised on rehearing (Attachment B), and an Entry on Rehearing entered on March 24, 2010 (Attachment C), in PUCO Case No. 09-516-EL-AEC. That case involved an application filed by Eramet Marietta, Inc. (Eramet) to establish a reasonable arrangement with CSP for electric service to Eramet’s facility in Marietta, Ohio.

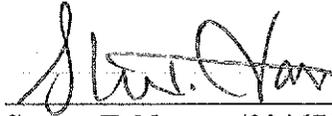
In its March 24, 2010 Entry on Rehearing, the Commission granted rehearing regarding an issue raised on rehearing by an intervenor in the proceeding below. CSP actively opposed that intervenor’s rehearing request and the Commission’s granting of that rehearing request harmed CSP’s interests. The assignments of error listed below as (a)-(h) were raised in Appellants’ Application for Rehearing filed in accordance with R.C. 4903.10. The assignment of error listed below as (i) arises from the Commission’s granting rehearing on the issue raised on rehearing by the intervenor.

The Commission's Opinion and Order and Entries on Rehearing are unlawful and unreasonable in multiple respects.

- (a) The Commission's finding that Eramet cannot shop through the period ending with the expiration of CSP's ESP is contrary to the evidence in the record and to the public policy codified in Ohio law.
- (b) Basing the determination of whether Eramet can shop under the terms of a ten-year contract on only three of those ten years is unreasonable and unlawful.
- (c) Basing the determination of whether Eramet can shop under the terms of a ten-year contract on the period time for which CSP's current POLR charge has been authorized is unreasonable and unlawful.
- (d) Finding that there is not a risk that Eramet will be permitted, at some point during the term of the unique arrangement, to shop for competitive generation and then return to generation service under CSP's standard service offer is unreasonable and unlawful.
- (e) Requiring CSP to reduce its recovery of delta revenues (i.e., revenue foregone) resulting from the contract with Eramet is unreasonable and unlawful.
- (f) Requiring CSP to credit any POLR charges paid by Eramet under the CSP/Eramet contract to CSP's economic development rider is unreasonable and unlawful.
- (g) Requiring CSP to enter into a contract with Eramet, which conforms to the Commission's order, is unreasonable and unlawful.
- (h) Requiring CSP to enter into a contract, which results in a reduction in CSP's revenues, and not permitting CSP to recover the full amount of that reduction, is unreasonable and unlawful.
- (i) Finding that CSP should credit the full amount of the POLR component of the tariff rate that would otherwise apply on a per MWh basis to CSP's Economic Development Rider, is unreasonable and unlawful.

WHEREFORE, Appellant respectfully submits that Appellee's October 15, 2009 Opinion and Order, and March 24, 2010 Entry on Rehearing are unlawful, unjust, and unreasonable and should be reversed. Commission Case No. 09-516-EL-AEC should be remanded to the Commission with instructions to correct the errors complained of herein.

Respectfully submitted,



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ATTACHMENT A

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application for)
Establishment of a Reasonable Arrangement)
Between Eramet Marietta, Inc. and) Case No. 09-516-EL-AEC
Columbus Southern Power Company.)

OPINION AND ORDER

The Commission, considering the above-entitled application, hereby issues its opinion and order in this matter.

APPEARANCES:

McNees, Wallace & Nurick, LLC, by Samuel C. Randazzo, Lisa G. McAlister and Thomas L. Froehle, 21 East State Street, Columbus, Ohio 43215, on behalf of Eramet Marietta, Inc.

Richard Cordray, Ohio Attorney General, by Duane W. Luckey, Section Chief, and Werner Margard and Thomas McNamee, Assistant Attorneys General, 180 East Broad Street, Columbus, Ohio 43215, on behalf of the staff of the Public Utilities Commission of Ohio.

Marvin I. Resnik and Steven T. Nourse, American Electric Power Service Corporation, 1 Riverside Plaza, 29th Floor, Columbus, Ohio 43215, on behalf of Columbus Southern Power Company.

Janine L. Migden-Ostrander, Ohio Consumers' Counsel, by Gregory J. Poulos, and Maureen R. Grady, Assistant Consumers' Counsel, the Office of the Ohio Consumers' Counsel, 10 West Broad Street, Columbus, Ohio 43215, on behalf of the residential consumers of Columbus Southern Power Company and Ohio Power Company.

Boehm, Kurtz & Lowry, by David F. Boehm, 36 East Seventh Street, Suite 1510, Cincinnati, Ohio 45202, on behalf of Ohio Energy Group.

OPINION:

I. History of the Proceeding

On June 19, 2009, Eramet Marietta, Inc. (Eramet) filed an application pursuant to Section 4905.31, Revised Code, to establish a reasonable arrangement with Columbus Southern Power Company (CSP) for electric service to its manganese alloy-producing

facility in Marietta, Ohio. In its application, Eramet requests that the Commission establish a reasonable arrangement for electric service with Columbus Southern Power Company (CSP) that will allow Eramet to secure a reliable supply of electricity with a reasonable, predictable price over a term that will allow the investment of approximately \$40 million in capital investments to upgrade the Marietta facility.

CSP, Ohio Energy Group (OEG), and the Office of the Ohio Consumers' Counsel (OCC) each timely filed comments regarding Eramet's application.

Motions to intervene were also filed by CSP, OEG, and OCC. Those motions were granted by the attorney examiner by entry issued July 16, 2009.

Based upon the comments, the attorney examiner set this matter for hearing, which commenced on August 4, 2009, and concluded on August 14, 2009. At the hearing, Eramet presented three witnesses, OCC presented one witness, CSP presented one witness, and Commission staff (Staff) presented one witness. During the course of the hearing, on August 5, 2009, Eramet and Staff filed a Joint Stipulation and Recommendation (Joint Ex. 1, or Stipulation), which addresses several of the issues and concerns related to Eramet's Application. Briefs were filed on August 24, 2009, by Eramet, CSP, Staff, and jointly, by OEG and OCC. Reply briefs were filed on September 8, 2009.

II. Discussion and Conclusions

In support of the reasonable arrangement, as set forth in the Stipulation, Eramet argues that the reasonable arrangement is an important part of the plan it must present to Eramet S.A., its parent company, to secure internal approvals necessary to implement its investment plan. Eramet's investment plan contemplates investing approximately \$40 million in capital investments to upgrade its Marietta facility. (Joint Ex. 1 at 1). Eramet argues that it will not secure the required approvals from Eramet S.A. absent a reasonable arrangement that is responsive to its electricity costs and predictability needs. (Eramet Brief at 2-3). In response to these concerns, the Stipulation proposes a rate \$.04224 per kilowatt hour from the effective date of the reasonable arrangement until December 31, 2011. From January 1, 2012, through December 31, 2018, the Stipulation proposes that Eramet's rate will be calculated as a percentage discount off the applicable tariff rate, with the percentage discount descending each year, until it reaches zero January 1, 2019.

Eramet contends that successful capital investment is required to enable Eramet's ongoing operation in southeastern Ohio and allow for operation and environmental performance improvements at its facilities. Eramet also contends that the reasonable arrangement, as set forth in the Stipulation, will place it in a position to focus its energies on planning for long-term investments at the Marietta facility that will facilitate its competitiveness in the global economy, in furtherance of Ohio's policy in Section 4928.02,

Revised Code. (Id. at 2). With these long-term investments, Eramet's total capital investment in its Marietta facility will approach \$100 million.

OCC and OEG contend that the reasonable arrangement, as set forth in the Stipulation, fails to benefit ratepayers and the public interest because it does not set a hard ceiling on the subsidy residential consumers could be asked to pay, does not address how the discounts made available to Eramet will be funded, and permits Eramet to receive discounted electricity rates before it has obtained corporate approval of its capital investments.

CSP argues that the Stipulation, should not be approved by the Commission, as CSP has not agreed to it. CSP also contends that the Stipulation does not, and should not, provide for an exclusive supplier relationship between itself and Eramet, and if the reasonable arrangement is approved, CSP is legally entitled to full recovery of revenue foregone as a result of the reasonable arrangement, without any offset.

The Commission finds that Eramet's application for a reasonable arrangement, as set forth in the Stipulation, should be approved, subject to the modifications set forth below.

Terms of the Reasonable Arrangement

As set forth in the Stipulation, the term of the reasonable arrangement will be ten years. Eramet retains the ability to seek to reopen and modify the rates and conditions of the reasonable arrangement in conjunction with its effort to secure corporate approvals required to make a total capital investment of approximately \$100 million in its Marietta facility.

CSP will supply and deliver to Eramet electric service of the same quality as that which CSP is obligated to provide Eramet under CSP's tariff. CSP must provide Eramet with electricity according to its full requirements. Eramet, in turn, must consume and purchase electricity from CSP to the same extent as it would otherwise if Eramet was served by CSP at tariff rates.

The price for electricity supplied and delivered to Eramet under the terms of the reasonable arrangement includes all generation, transmission, and distribution charges, plus any surcharges, riders, or other adders, as applied to a base level of usage. During the term of the arrangement, the base usage is not to exceed 38,000,000 kWh per month, at a maximum demand level of 65 MVA, unless CSP is informed in writing that one of the following events is going to occur: the North Side facility will be resuming operations; Eramet will be resuming operations of its existing three furnaces; or operations of both the North Side facility and its three existing furnaces will be resumed. In those three situations, the base usage quantity will be set at 46,000,000 kWh per month with a maximum demand

level of 78 MVA; 48,000,000 kWh per month with a maximum demand level of 81 MVA; or 56,000,000 kWh per month with a maximum demand level of 95 MVA, respectively.

The base usage, all-in price for service rendered by CSP from the effective date of the agreement through December 31, 2011, will be \$.04224 per kWh, exclusive of any charges for Ohio's kWh tax, provided that CSP's minimum monthly bill during the period is equal to 60 percent of Eramet's highest monthly kVA usage in the six-month period preceding each monthly bill. For service rendered by CSP in excess of such base usage for the term through December 31, 2011, the price is to be determined in accordance with the tariff rate otherwise applicable, using Eramet's actual demand and energy consumption figures.

For service rendered from January 1, 2012, through December 31, 2012, the price applied to CSP's service to Eramet will be computed pursuant to the otherwise applicable tariff schedule, using Eramet's actual monthly demand and usage, with such adjustments to the tariff rate as are required to result in a monthly bill that is 20 percent less than the monthly bill would be pursuant to the tariff.

For service rendered from January 1, 2013, through December 31, 2018, the price applied to CSP's service to Eramet shall be computed pursuant to the otherwise applicable tariff schedule, using Eramet's actual monthly demand and usage, with adjustments to the tariff rate to result in a monthly bill that is: 18 percent less in 2013; 16 percent less in 2014; 14 percent less in 2015; 12 percent less in 2016; 8 percent less in 2017; 4 percent less in 2018; and 0 percent less in 2019.

As set forth in the Stipulation, during the initial pricing period ending December 31, 2011, Eramet must make a capital investment of at least \$20 million in its current Ohio manufacturing operations. Thereafter, and before December 31, 2014, Eramet must make an additional capital investment of \$20 million in its current Ohio manufacturing operations, for a total investment over the combined periods of at least \$40,000,000. Eramet must also maintain a minimum average annual employment of 200 people during the term of the reasonable arrangement. The Stipulation requires Eramet to provide the Commission with annual documentation of its compliance with these commitments. The Commission also retains the ability, for good cause shown, to amend, modify, or terminate the reasonable arrangement or its schedule if Eramet's performance relative to the commitments it has made is not substantially aligned with such commitments.

In addition, Eramet commits, under the Stipulation, to work in good faith with CSP to determine how and to what extent Eramet's customer-sited capabilities might be committed to CSP for integration into its portfolio for purposes of complying with Ohio's portfolio requirements.

With respect to the above terms, the intervenors in this proceeding have raised a number of arguments specifically related to the following issues: (1) delta revenue recovery and POLR charges; (2) customer-sited capabilities and demand response programs; and (3) the approvability of the proposed reasonable arrangement. We will discuss each of these arguments in turn.

(1) Delta Revenue Recovery and POLR Charges

OCC and OEG argue that the reasonable arrangement fails to benefit ratepayers and the public interest because it fails to set a hard cap or ceiling on the subsidy customers could be required to pay. OCC and OEG contend that two provisions in the Stipulation, when taken together, negate any purported ceiling on delta revenues that customers could be required to pay CSP to fund the discount to Eramet. OCC and OEG assert that these provisions allow Eramet to increase base usage without first seeking approval to do so, and further allow Eramet to seek to reopen and modify the rates and conditions of the arrangement, so long as the reopening is related to its efforts to secure the corporate approvals required to make a potential total investment of \$100 million in the facility.

OCC and OEG contend that Eramet's ability under the Stipulation to set new base usage levels at any point during the term of the agreement may lead to increased delta revenues, which CSP customers could be required to fund. Under calculations performed by OCC witness Ibrahim, customers could ultimately fund delta revenues as great as \$57.7 million. (OCC Ex. 9B at 9). OCC and OEG argue that this result is unreasonable, as Eramet has firmly committed to finance capital expenditures of only \$40 million. In light of Eramet's commitments, OCC and OEG recommend that a hard dollar cap on delta revenue should be set at the lesser of \$40 million or 100% of the actual capital improvements agreed to in the Stipulation.

Additionally, OCC and OEG argue that the provisions of the Stipulation that allow Eramet to seek to reopen and modify the rates and conditions of the agreement will increase delta revenues. OCC and OEG point to Staff witness Fortney's testimony, in which he indicated that it is likely that delta revenues will rise under any of the scenarios resulting from the potential reopening of the arrangement. (Tr. III at 489-492).

CSP argues that the provisions of the Stipulation allowing Eramet to seek to reopen and modify the rates and conditions of the agreement indicate that the arrangement is not an "exclusive supplier" arrangement. CSP witness Baker testified, however, that even if it was an exclusive supplier arrangement, exclusive supplier provisions are "contrary to the basic premise of SB 3 and SB 221," in that they hinder the development of competitive electric generation markets for retail customers in Ohio. (CSP Ex. 1 at 4-5). CSP contends that the reasonable arrangement at issue should be implemented in a manner that best

preserves customer choice, instead of one that creates an exclusive supplier relationship between Eramet and CSP.

In the same vein, CSP contends that it is legally entitled to full recovery of any revenue forgone due to the reasonable arrangement, without any offset. CSP argues that its delta revenue recovery should include recovery of provider of last resort (POLR) charges. CSP contends that there should be no POLR revenue offset to its full delta revenue recovery, despite the Commission's decision in *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*, Case No. 09-119-EL-AEC (July 15, 2009).

CSP argues that because no exclusive supplier relationship exists between itself and Eramet, there is a risk that, during the term of the reasonable arrangement, Eramet will switch to a Competitive Retail Electric Service (CRES) provider if market prices are lower than the contract prices under the reasonable arrangement. CSP notes that both the Commission and Eramet are permitted to reopen the agreement during the term of the contract and order or request modifications, further increasing the risk that Eramet will switch to a CRES provider during the term of the arrangement. Thus, CSP contends that it incurs a POLR risk, and that it should not have to credit any POLR charges paid by Eramet to the delta revenue recovered from other customers.

CSP further argues that the terms of the Stipulation allowing both the Commission and Eramet to reopen the agreement during the term of the contract and order or request modifications, combined with the Stipulation's provision regarding the level of firm/full requirements service has the effect of Eramet receiving SSO service based on a different pricing method. Given that the reasonable arrangement in essence places Eramet on a discounted SSO tariff rate, CSP argues that offsetting any recovery of delta revenue by the POLR revenue would squarely conflict with the Commission's decision in CSP's ESP case, which rejected the proposal of customers to avoid POLR charges by promising not to shop. Accordingly, CSP posits that Eramet should not be able to avoid POLR charges under the proposed arrangement by merely promising it will not shop for the term of the arrangement, and that CSP should not be required to offset its delta revenue recovery by any POLR revenue it recovers from Eramet.

Conversely, OCC and OEG assert that, under the terms of the Stipulation, CSP is the exclusive electric supplier to Eramet. (OCC/OEG Brief at 18). Both OCC and OEG dispute CSP's assertion that the ability of both Eramet and the Commission to modify the arrangement at any time provides an opportunity for Eramet to shop for a different supplier. (OCC/OEG Brief at 13). OCC and OEG state that there is no risk to CSP that Eramet will shop for competitive generation and then return to CSP's POLR service while the contract is in effect. (Id.). As a result, OCC witness Ibrahim recommended that the Commission exclude any POLR charges from the amount of delta revenues authorized to be

recovered by CSP. (OCC Ex. 9 at 32-35). OCC and OEG contend that the mechanism of crediting CSP's customers for Eramet's POLR payment is consistent with the Commission's determination in *Ormet*, and note that Staff recommends that *Ormet* be used as a source of "guidelines for which future applications for reasonable arrangements are reviewed." (OCC/OEG Brief at 18; Staff Ex. 1 at 2).

The Stipulation does not speak to delta revenue recovery or any offsets. Additionally, neither Eramet nor Staff have advanced any specific argument regarding the POLR adjustment question. In fact, Staff indicated in its brief that it has no position on the matter. (Staff Brief at 6).

Based upon the evidence in the record, the Commission finds that that Eramet knowingly decided that it would not shop for electric service in exchange for securing a long-term power contract with CSP. Eramet witness Bjorklund testified that with the ten-year discounted power contract with CSP, Eramet will not need to shop. (Tr. I at 104). The Stipulation further memorializes Eramet's decision not to shop in order to secure the power discounts necessary for corporate approval of capital expenditures in the Marietta facility by detailing that access to and successful deployment of capital by Eramet SA at the Marietta facility are predicated, in part, on Eramet's ability to secure a reliable supply of electricity pursuant to terms and conditions that will provide it with a reasonable and predictable price over a permissible term. (Joint Ex. 1 at 1).

The period during which Eramet cannot shop, as contemplated by the Stipulation, is the duration of the reasonable arrangement. However, as noted in the September 15, 2009 *Ormet* Entry on Rehearing, it is not necessary to reach the question of whether Eramet can shop "beyond the duration of the current ESP because no determination has been made whether future standard services offers will include a comparable POLR charge." (Entry on Rehearing at 8 (September 15, 2009)). Under the reasonable arrangement, CSP will supply power to Eramet for the period beginning with the effective date of the agreement, and lasting through December 31, 2018. For the period lasting through the duration of the current ESP, however, we find that CSP will not be subject to POLR risk (i.e., the risk that Eramet may shop and subsequently seek to return to CSP's standard service offer) and, therefore, CSP should not be compensated for bearing this risk. Although CSP argues that there is a risk of Eramet shopping and then returning to CSP's standard service offer because the reasonable arrangement remains under the Commission's continuing jurisdiction and because Eramet retains the ability to modify the arrangement, any modification to the reasonable arrangement not explicitly set forth in the Stipulation would take place only after notice and an opportunity to be heard for any party affected by such modification, which would also require our approval.

CSP further argues that the Commission lacks authority to preclude CSP from recovering all revenue foregone as a result of the reasonable arrangement and that the

failure to permit CSP to recover all revenue foregone conflicts with CSP's approved ESP. CSP contends that the plain language of Section 4905.31, Revised Code, provides the Commission with no statutory authority to offset the recovery of the revenue foregone by any expense the Commission believes will not be incurred by the electric utility due to the reasonable arrangement.

Despite CSP's arguments, the plain language of Section 4905.31, Revised Code, does not require the Commission to approve the full recovery of all delta revenue resulting from a reasonable arrangement. Section 4905.31, Revised Code, states that a reasonable arrangement "may include a device to recover costs incurred in conjunction with any economic development and job retention program . . . including recovery of revenue foregone." Much as we determined in *Ormet*, we find that the use of "may" in this section indicates that approval of the recovery of delta revenues is discretionary, not mandatory. (*Ormet*, Entry on Rehearing at 10-11). If the General Assembly had intended to require the recovery of delta revenues, it would have used "shall" or "must" rather than "may." Moreover, Section 4905.31, Revised Code, states that "[e]very . . . reasonable arrangement shall be under the supervision and regulation of the commission, and is subject to change, alteration, or modification by the commission." This provision imbues the Commission with broad authority to change, alter, or modify proposed reasonable arrangements and includes no prohibition on exercising that authority with respect to the recovery of delta revenues. Thus, the Commission finds that, according to the plain language of the statute, as well as our prior decisions, the recovery of delta revenues is a matter for the Commission's discretion.

CSP also contends that the non-payment of POLR charges is contrary to the Commission's order approving CSP's ESP. CSP alleges that the Commission determined in the ESP proceeding that all customers would pay the POLR charge for the entire time they are served under CSP's SSO and that customers would avoid POLR charges during the period they are actually served by a CRES provider if they agreed to return at a market price. Further, CSP contends that the Commission cannot distinguish its decision in the ESP proceeding from this case because the same POLR risk that formed the basis for the POLR charge adopted in the ESP proceeding is present with Eramet.

OCC and OEG argue that Section 4905.31, Revised Code, does not preclude the Commission from requiring that the POLR charge for Eramet be credited to the economic development rider to offset the recovery of delta revenues created by reasonable arrangements. OCC and OEG claim that the POLR provisions of CSP's ESP do not apply to Eramet, as Eramet is not receiving service under CSP's SSO.

Section 4905.31, Revised Code, allows for the recovery of "costs incurred." We have determined that there is no risk that Eramet will shop for a competitive supplier during CSP's current approved ESP. If there is no risk of Eramet shopping and returning to

standard offer service during CSP's ESP, CSP will incur no costs for providing POLR service that can be recovered under Section 4905.31, Revised Code. Accordingly, the Commission finds that CSP should credit any POLR charges paid by Eramet to its economic development rider in order to reduce the amount of delta revenues recovered from other ratepayers.

Further, as we noted in *Ormet*, the Commission finds that CSP's reliance upon our orders approving its ESP to be misplaced. Under the reasonable arrangement, Eramet will not be receiving service under CSP's SSO, but rather, Eramet will be receiving service under a reasonable arrangement. Although CSP posits that this is a distinction without a difference, the Commission has opined that the service under a reasonable arrangement is authorized by Section 4905.31, Revised Code, whereas service under the SSO is authorized by Section 4928.141, Revised Code. Thus by its very nature, service under a unique arrangement provides for service under different prices, terms, and conditions than service under the SSO. (*Ormet*, Entry on Rehearing at 11). For the reasons discussed above, we find that providing service to Eramet does not present the same POLR risk as providing service to customers on the SSO. Accordingly, CSP must credit any POLR charges paid by Eramet to its economic development rider.

(2) Customer-Sited Capabilities and Demand Response Programs

In both its application and the Stipulation, Eramet refers to its commitment to work with CSP to determine how and to what extent Eramet's customer-sited capabilities might be committed to CSP for assistance in meeting its statutory energy efficiency requirements. Eramet witness Flygar testified that Eramet is contemplating several customer-sited energy efficiency projects that it is willing to consider committing to CSP to help CSP to meet its portfolio requirements, including projects involving recycling of silicomanganese fines during the casting process; installing high-efficiency lighting; installing plant substation capacitor upgrades that will improve power factor; and converting the administration building from steam to high efficiency heating. (Eramet Ex. 3A at 12). CSP contends that no weight should be assigned by the Commission to the possible future commitments by Eramet of its to-be-built customer-sited capabilities.

In the Stipulation, Eramet and Staff note that Eramet has already registered and is committed to participate in PJM's Reliability Pricing Model - Interruptible Load for Reliability (ILR) Program for PJM's 2009-2010 planning year. As such, Staff and Eramet recommend that the Commission authorize Eramet to continue its participation in PJM demand response programs, without penalty, for the 2009-2010 planning year. CSP argues that a customer already receiving a discount from CSP, as Eramet will be if the reasonable arrangement is approved, should make its demand response capabilities available for commitment to CSP in order to help reduce the peak demand reduction compliance costs borne by all customers. As an extension of this argument, CSP argues that Eramet should

commit its demand response capabilities to CSP in exchange for receiving its service discount subsidy from other customers. (CSP Ex. 1 at 11-12; CSP Post-hearing Brief at 29).

The Commission urges Eramet to commit, to the fullest extent possible, its customer sited-capabilities to CSP for integration into CSP's portfolio. Accordingly, Eramet and CSP shall work in good faith to determine how and to what extent Eramet's customer-sited capabilities, as referenced by Eramet witness Flygar, can be committed to CSP. With regard to Eramet's participation in PJM's ILR Program, Eramet is authorized to continue its participation in PJM demand response programs for the 2009-2010 planning year. Thereafter, however, Eramet must make its demand response capabilities available to CSP in order to reduce peak demand reduction compliance costs.

(3) Approvability of the Reasonable Arrangement

Pursuant to Rule 4901:1-38-05(B)(1), O.A.C., a mercantile customer that files for Commission approval of a unique arrangement bears the burden of proof that the proposed arrangement is reasonable and does not violate Sections 4905.33 and 4905.35, Revised Code. Further, Rule 4901:1-38-05(C), O.A.C., requires a showing that a unique arrangement furthers the policy of the state of Ohio set forth in Section 4928.02, Revised Code.

The Commission applies a three-part test when evaluating the reasonableness of settlements: whether the settlement is a product of serious bargaining among capable, knowledgeable parties; whether the settlement, as a package, benefits ratepayers and the public interest; and whether the settlement package violates any important regulatory principles or practices. See *Consumers' Counsel v. Public Utilities Commission* (1992), 64 Ohio St.3d 123, 126.

Eramet argues that it is one of the largest industrial employers in Washington County, with an impact on the state and local economy through active employees, retiree benefits, vendor payments, and state and local taxes of at least \$120 million in 2008. (Eramet Ex. 7 at 3-4). Based upon a number of letters filed in the docket in this case, it appears that strong local support exists for Eramet's proposed reasonable arrangement. Additionally, no party contested testimony introduced at the hearing that it is in the public interest and good for the state of Ohio for Eramet to continue and even increase operations at its Marietta plant. (Tr. IV at 554-555).

As noted above, OCC recommended that the Commission impose a specific dollar cap on the delta revenues of the lesser of \$40 million or 100 percent of the actual capital improvements to which Eramet committed in the Stipulation. Staff witness Fortney testified, however, that the structure of the Stipulation, which bases Eramet's discount for electric service on a descending percentage off the applicable tariff rate, year by year, effectively imposes a ceiling or cap on delta revenues. However, he conceded that the

Stipulation does not include an absolute dollar ceiling on the amount of delta revenues that are created by the reasonable arrangement. (Tr. III at 428).

OCC also recommended that the Commission require written notice that Eramet has received all of the necessary corporate approvals from Eramet SA to proceed with the proposed capital expenditures before the Commission applies the discounted rates sought in the reasonable arrangement. Eramet witness Bjorklund testified that Eramet's ability to secure the parental approvals required to obtain capital to implement its investment plan depends on Eramet's ability to get predictable electricity prices at a reasonable level over a period of time that is judged to be sufficient to rationalize the capital investment. (Eramet Ex. 2A at 2). As such, Eramet stated that it will not obtain the parental approvals necessary to make a substantial capital investment in its Marietta facility without a long-term power arrangement.

CSP argues that a reasonable arrangement proposed by an electric utility's mercantile customer, such as Eramet, cannot be approved under Section 4905.31, Revised Code, unless the electric utility agrees to be bound by the arrangement. CSP, therefore, contends that because it has not given its approval to Eramet's proposed reasonable arrangement, the Commission cannot approve it. However, as noted in *Ormet*, in Am. Sub. Senate Bill 221, the General Assembly expressly authorized mercantile customers to file applications with the Commission for reasonable arrangements. If the General Assembly had intended on retaining the requirement that an electric utility agree to a proposed reasonable arrangement, there would have been no need for the General Assembly to amend Section 4905.31, Revised Code, to authorize the filing of an application by a mercantile customer. (*Ormet*, Entry on Rehearing at 17).

Eramet witness Flygar testified that the proposed reasonable arrangement would facilitate the policy of the state by ensuring the availability of adequate, reliable, safe, efficient, nondiscriminatory, and reasonably priced retail electric service, and ensuring the availability of retail electric service that provides Eramet with the supplier, price, terms, conditions, and quality options it believes will meet its needs. (Eramet Ex. 3A at 10). Additionally, Eramet witness Flygar testified that because Eramet is the sole domestic producer of medium and low carbon ferromanganese, ensuring that Eramet can continue to produce those products facilitates the state's effectiveness in the global economy. (Id. at 6).

Staff testified that all of the parties involved in this proceeding engaged in settlement discussions, and that the parties further agreed to the process by which the Stipulation was submitted for the Commission's consideration. (Staff Ex. 2 at 3-4; Tr. IV at 6-7). The parties to the settlement, or their representatives, regularly participate in rate proceedings before the Commission and are knowledgeable in regulatory matters, the rate structure of CSP, and the operations of Eramet. (Staff Ex. 2 at 3).

Additionally, as discussed above, Eramet's commitments, outlined by the application and modified by the Stipulation, benefit ratepayers and are in the public interest. Eramet commits to retain a minimum of 200 employees and to maintain operations at its Marietta facility for the term of the agreement. (Joint Ex. 1 at 8). It has also committed to make significant capital investments in its Marietta facility. (Id.).

We find that the Stipulation appears to be the product of serious bargaining among capable, knowledgeable parties. (Staff Ex. 2 at 3). The record also reflects that the Stipulation, as a package, advances the public interest, in that it addresses the concerns of OCC, OEG, and CSP, and provides significant benefits to ratepayers, including ensuring job retention and, potentially encouraging new employment through potential for growth. The Stipulation also contributes to the regional economy through significant local and state tax dollars and employment and other business opportunities resulting from the viable operation of the facility. (Id. at 5; Joint Ex. 1 at 5; Eramet Ex. 7 at 3-4). Additionally, as discussed above at length, the Stipulation does not violate any important regulatory principle or practice. Accordingly, we find that the Stipulation, as modified herein, should be approved.

(4) Implementation of the Reasonable Arrangement

In order for the arrangement to be implemented in a reasonable timeframe, the Commission finds that Eramet and CSP should be required to meet and provide within 14 days of the effective date of this Opinion and Order a contract incorporating the terms of the Stipulation. The final contract should be filed in this docket; however, the parties may seek to protect any proprietary, confidential, or trade secret information, as necessary. Such contract, and the reasonable arrangement, shall become effective for services rendered on and after the date the contract is filed with the Commission. As set forth in the Stipulation, the Commission retains the ability to, at any time and after notice and an opportunity to be heard, consider and make modifications to Eramet's reasonable arrangement in the event that we determine that Eramet has not satisfied its commitments under the reasonable arrangement, that reasonable progress with regard to the effort to secure corporate approvals to make a total capital investment of \$100 million has not occurred, or for good cause shown.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

- (1) On June 19, 2009, Eramet filed an application pursuant to Section 4905.31, Revised Code, to establish a reasonable arrangement with CSP for electric service to its manganese alloy-producing facility in Marietta, Ohio.
- (2) Comments regarding Eramet's application were filed by OCC, OEG, and CSP.

- (3) Based upon the comments submitted, the attorney examiner set this matter for hearing before the Commission.
- (4) The hearing in this matter commenced on August 4, 2009, and concluded on August 14, 2009.
- (5) On August 5, 2009, Eramet and Staff filed a joint stipulation and recommendation in support of the reasonable arrangement.
- (6) The joint stipulation and recommendation is reasonable and should be approved as modified by the Commission.

ORDER:

It is, therefore,

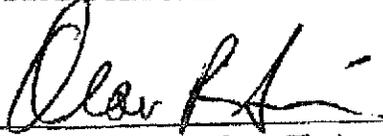
ORDERED, That the joint stipulation and recommendation filed by Eramet and Staff be approved as modified by the Commission. It is, further,

ORDERED, That Eramet and CSP file an executed power agreement in this docket that conforms to the provisions ordered by the Commission within 14 days of the effective date of this order. It is, further,

ORDERED, That the approved reasonable arrangement be effective for services rendered following the filing in this docket of an executed power contract. It is, further,

ORDERED, That a copy of this Opinion and Order be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

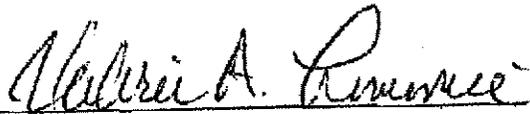


Alan R. Schriber, Chairman

Paul A. Centolella



Ronda Hartman Fergus



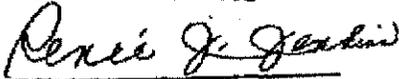
Valerie A. Lemmie

Cheryl L. Roberto

RLH:ct

Entered in the Journal

OCT 15 2009



Renee J. Jenkins
Secretary

ATTACHMENT B

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application for)
Establishment of a Reasonable Arrangement)
Between Eramet Marietta, Inc. and) Case No. 09-516-EL-AEC
Columbus Southern Power Company.)

ENTRY ON REHEARING

The Commission finds:

- (1) On June 19, 2009, Eramet Marietta, Inc. (Eramet) filed an application pursuant to Section 4905.31, Revised Code, to establish a reasonable arrangement with Columbus Southern Power Company (CSP) for electric service to its manganese alloy-producing facility in Marietta, Ohio (Application). In its application, Eramet requests that the Commission establish a reasonable arrangement for electric service with CSP that will permit Eramet to secure a reliable supply of electricity with a reasonable, predictable price over a term that will allow for the investment of approximately \$40 million in capital investments to upgrade the Marietta facility.
- (2) A hearing on the matter commenced on August 4, 2009. During the course of the hearing, on August 5, 2009, Eramet and Staff filed a Joint Stipulation and Recommendation (Stipulation), which addressed several of the issues and concerns related to Eramet's Application.
- (3) On October 15, 2009, the Commission issued its Opinion and Order, approving the Stipulation, with modifications.
- (4) Section 4903.10, Revised Code, states that any party to a Commission proceeding may apply for rehearing with respect to any matters determined by the Commission within 30 days of the entry of the order upon the Commission's journal.
- (5) On November 13, 2009, CSP filed an application for rehearing, alleging that the Opinion and Order was unreasonable and unlawful on the following grounds:

- (a) The Commission's finding that Eramet cannot shop through the period ending with the expiration of CSP's Electric Security Plan (ESP) is contrary to the evidence in the record and to the public policy codified in Ohio law.
 - (b) Basing the determination of whether Eramet can shop under the terms of a ten-year contract on only three of those ten years is unreasonable and unlawful.
 - (c) Basing the determination of whether Eramet can shop under the terms of a ten-year contract on the period of time for which CSP's current provider of last resort (POLR) charge has been authorized is unreasonable and unlawful.
 - (d) Finding that there is not a risk that Eramet will be permitted, at some point during the term of the unique arrangement, to shop for competitive generation and then return to generation service under CSP's standard service offer is unreasonable and unlawful.
 - (e) Requiring CSP to reduce its recovery of delta revenues (i.e., revenue foregone) as a result of the contract with Eramet is unreasonable and unlawful.
 - (f) Requiring CSP to credit any POLR charges paid by Eramet under the CSP/Eramet contract to CSP's economic development rider is unreasonable and unlawful.
 - (g) Requiring CSP to enter into a contract with Eramet, which conforms to the Commission's order, is unreasonable and unlawful.
 - (h) Requiring CSP to enter into a contract, which results in a reduction in CSP's revenues, and not permitting CSP to recover the full amount of that reduction, is unreasonable and unlawful.
- (6) Moreover, on November 16, 2009, the Office of the Ohio Consumers' Counsel (OCC) and the Ohio Energy Group (OEG) jointly filed an application for rehearing, alleging that the Opinion and Order was unreasonable and unlawful on the following grounds:

- (a) The Commission erred in failing to adopt the regulatory principle established in the *Ormet* case, specifying how CSP will apply the credit for the full amount of POLR charges that will reduce what customers will have to pay for Eramet's unique arrangement.
- (b) The Commission erred by failing to adopt the regulatory principle established in the *Ormet* case, specifying that CSP and Eramet shall not be permitted to reduce the delta revenue credit, for example, by negotiating a discount to the POLR charge, that is intended by the Commission to reduce what customers will have to pay for Eramet's unique arrangement.
- (c) The two-party Stipulation does not benefit the public and is not in the public interest because it does not set a hard cap or ceiling on the subsidy that customers could be asked to pay.
 - (i) The Commission's failure to establish a hard cap on the delta revenues is a violation of the precedent set in *Ormet* that a reasonable arrangement should set a maximum amount of delta revenues which the ratepayers should be expected to pay. Thus, the two-party Stipulation fails to meet the third prong of the Commission's stipulation criteria.
 - (ii) The Commission's failure to establish a hard cap on the delta revenues also resulted in the two-party Stipulation failing to meet the second prong of the stipulation criteria - that this Stipulation benefits ratepayers and is in the public interest.
- (d) The Commission erred by failing to meet the requirements of Section 4903.09, Revised Code, to set forth reasons prompting its decision, based upon findings of fact, with regard to the arguments of OCC and OEG on a hard cap or ceiling.
- (e) The two-party Stipulation does not benefit the public and is not in the public interest because it requires customers to

fund electric rate discounts to Eramet before Eramet has obtained corporate approval for the capital investment, which is the basis for granting Eramet the discounts.

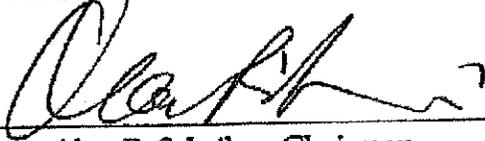
- (f) The Commission erred in concluding that the two-party Stipulation meets the first prong of the stipulation criteria. Because the two-party Stipulation does not reflect any diverse interests, it must fail.
- (7) Further, on November 16, 2009, Eramet filed a motion for rehearing, requesting that the Commission grant rehearing for the purpose of confirming that it approved the Stipulation, including, without modification, the provision in which Eramet committed to work in good faith with CSP to determine how and to what extent Eramet's customer-sited capabilities might be committed to CSP for integration into its portfolio for purposes of complying with Ohio's portfolio requirements.
- (8) On November 23, 2009, Eramet filed a memorandum contra the applications for rehearing of CSP, OCC, and OEG. On the same day, OCC and OEG jointly filed a memorandum contra CSP's application for rehearing. Additionally, on November 25, 2009, CSP filed memoranda contra Eramet's application for rehearing and the application for rehearing filed by OCC and OEG.
- (9) The Commission grants the applications for rehearing filed by CSP, OCC and OEG, and Eramet. We believe that sufficient reason has been set forth by the parties seeking rehearing to warrant further consideration of the matters specified in the applications for rehearing.

It is, therefore,

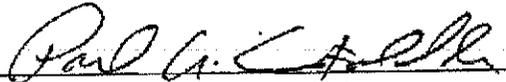
ORDERED, That the applications for rehearing filed by CSP, OCC and OEG, and Eramet be granted. It is, further,

ORDERED, That a copy of this Entry on Rehearing be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

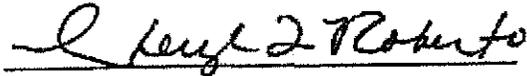


Alan R. Schriber, Chairman



Paul A. Centolella

Ronda Hartman Fergus



Cheryl L. Roberto

Valerie A. Lemmie

RLH:ct

Entered in the Journal

DEC 11 2009



Renee J. Jenkins
Secretary

ATTACHMENT C

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application for)
Establishment of a Reasonable)
Arrangement Between Eramet Marietta,) Case No. 09-516-EL-AEC
Inc. and Columbus Southern Power)
Company.)

ENTRY ON REHEARING

The Commission finds:

- (1) On June 19, 2009, Eramet Marietta, Inc. (Eramet) filed an application (Application) pursuant to Section 4905.31, Revised Code, to establish a reasonable arrangement with Columbus Southern Power Company (CSP) for electric service to its manganese alloy-producing facility in Marietta, Ohio. In its Application, Eramet requests that the Commission establish a reasonable arrangement for electric service with CSP that will permit Eramet to secure a reliable supply of electricity with a reasonable, predictable price over a term that will allow for the investment of approximately \$40 million in capital investments to upgrade the Marietta facility.
- (2) A hearing on the matter commenced on August 4, 2009. During the course of the hearing, on August 5, 2009, Eramet and Staff filed a Joint Stipulation and Recommendation (Stipulation), which addressed several of the issues and concerns related to Eramet's Application.
- (3) On October 15, 2009, the Commission issued its Opinion and Order (Order), approving the Stipulation, with modifications.
- (4) Section 4903.10, Revised Code, states that any party to a Commission proceeding may apply for rehearing with respect to any matters determined by the Commission within 30 days of the entry of the order upon the Commission's journal.
- (5) On November 13, 2009, CSP filed an application for rehearing, alleging that the Opinion and Order was unreasonable and unlawful based on eight assignments of error. Moreover, on November 16, 2009, the Office of the Ohio Consumers' Counsel (OCC) and the Ohio Energy Group (OEG) jointly filed an

application for rehearing, setting forth six assignments of error. Eramet also filed an application for rehearing on November 16, 2009.

- (6) On November 23, 2009, Eramet filed a memorandum contra the applications for rehearing of CSP and OCC and OEG. On the same day, OCC and OEG jointly filed a memorandum contra CSP's application for rehearing. Additionally, on November 25, 2009, CSP filed memorandum contra Eramet's application for rehearing and the application for rehearing filed by OCC and OEG.
- (7) In its first assignment of error, CSP argues that the Commission's finding that Eramet cannot shop through the period ending with the expiration of CSP's electric security plan (ESP) is contrary to the evidence in the record and public policy, as codified in Ohio law. CSP also argues in its second assignment of error that basing the determination of whether Eramet can shop under the terms of a ten-year contract on only three of those ten years is unreasonable and unlawful. Further, CSP contends in its third assignment of error that basing the determination of whether Eramet can shop under the terms of a ten-year contract on the limited period of time for which CSP's current provider of last resort (POLR) charge has been authorized is unreasonable and unlawful.
- (8) In their memorandum contra CSP's application for rehearing, OCC and OEG argue that CSP has not shown that the Commission's finding that Eramet cannot shop through the end of the ESP is against the weight of the evidence or unsupported by the record. Further, OCC and OEG argue that permitting Eramet to choose exclusive service from CSP does not violate any public policy of the state, but rather furthers state policies of facilitating reasonable rates and customer choice. OCC and OEG additionally argue that the Commission's focus on the first three years of the reasonable arrangement is appropriate because that is the only period during which CSP's POLR rates are currently in effect.
- (9) As an initial matter, the Commission finds that its decision of whether Eramet can shop to the period ending with the expiration of CSP's ESP is reasonable and appropriate. CSP's argument in support of its second and third assignments of error disregards the circumstances surrounding the arrangement. CSP's ESP, and thus, its authority to assess POLR charges to its standard service offer (SSO) customers, expires on December 31, 2011. The Commission

narrowly focused upon the first 26 months of the contract, or the term of the current ESP, specifically because no determination has been made as to whether future SSOs will include POLR charges. Because no determination regarding POLR charges in future ESPs has been made, at this point, the Commission would be forced to speculate in order to determine whether Eramet has the right to shop after the expiration of the current ESP. CSP's second and third assignments of error should be denied.

- (10) With regard to record support for the Commission's determination that Eramet cannot shop for the term of its current ESP, CSP references Eramet witness Bjorklund, who testified that, with the discounted rates proposed in the ESP, "Eramet will not need to shop" to argue that his testimony did not amount to a renunciation of Eramet's right to shop, as construed by the Commission. (Tr. I at 104.) CSP also notes that the Commission relied upon a statement in the Stipulation that Eramet sought "a reliable supply of electricity pursuant to terms and conditions that will provide it with a reasonable and predictable price over a permissible term." (Joint Ex. 1 at 1.) CSP argues, however, that, similar to witness Bjorklund's testimony, this statement does not support the Commission's conclusion that Eramet cannot shop for the term of the ESP. CSP additionally argues that Eramet's desire for a reliable supply of electricity pursuant to terms and conditions that provide a reasonable and predictable price over a permissible term may not be something that can be satisfied strictly by CSP.

Despite CSP's argument that it is not the only competitive retail electric service provider that can provide Eramet with service, Eramet specifically chose CSP as its electric service provider for its reasonable arrangement application. This choice further evidences Eramet's desire not to shop. The Commission believes that the evidence in the record, including witness Bjorklund's statement that Eramet will not need to shop under the reasonable arrangement, and Eramet's stated goal in seeking the reasonable arrangement, as advanced in the Stipulation, strongly supports the conclusion that Eramet should not be allowed to shop for the term of CSP's current ESP.

- (11) CSP further argues that approval of the Stipulation is contrary to Ohio's public policy to promote competitive markets for electric generation service. CSP notes that the basic premise of Am. Sub. S.B. 3 (SB 3) and Am. Sub. S.B. 221 (SB 221) is the development of

competitive electric generation markets for retail customers in Ohio. CSP argues that a contract by which one of CSP's largest customers commits not to pursue competitive options for an extended period of time serves to stifle the development of a competitive retail electric generation market, in contravention of the goals of SB 3 and SB 221. In support of its argument, CSP cites the following provision:

"[W]here there is a strong public policy against a particular practice, a contract or clause inimical to that policy will likely be declared unconscionable and unenforceable unless the policy is clearly outweighed by some legitimate interest in favor of the individual benefited by the provision." 8 Williston on Contracts (4th Ed. 1998) 43, Section 18:7.

While CSP advances this non-binding tenet in support of its position, the Commission finds that the concept of customer choice functions as a "legitimate interest," as outlined in the above passage, that outweighs the public policy considerations upon which CSP focuses. OCC and OEG argue in their memorandum contra that competition, in and of itself, is not the end-all purpose of SB 221. Along this line of reasoning, one of the policies of the state, as set forth in Section 4928.02(A), Revised Code, is to "[e]nsure the availability to consumers of adequate, reliable, safe, efficient, non-discriminatory, and reasonably priced retail electric service." Here, Eramet has chosen to take service from CSP pursuant to the reasonable arrangement in order to secure reliable electric service at a reasonable, predictable price. Accordingly, rehearing on CSP's first assignment of error is not merited, and should be denied.

- (12) In its fourth assignment of error, CSP argues that finding that there is not a risk that Eramet will be permitted, at some point during the term of the reasonable arrangement, to shop for competitive generation and then return to generation service under CSP's SSO, is unreasonable and unlawful. CSP contends that, because the Commission retains jurisdiction over the reasonable arrangement, and can change, alter, or modify the arrangement, there is a risk of Eramet shopping and then returning to POLR service from CSP. In their memorandum contra, OCC and OEG note that the likelihood of the Commission altering the contract and allowing Eramet to

shop, causing POLR expenses to be incurred by CSP, as CSP submits, is extremely unlikely.

- (13) The Commission finds that CSP has not raised any new arguments under this assignment of error. Our continued jurisdiction over the matter does not create a risk of shopping that necessitates a POLR charge, as CSP suggests. Therefore, rehearing should be denied on CSP's fourth assignment of error.
- (14) In its fifth and sixth assignments of error, CSP contends that the Commission's decision requiring it to reduce its recovery of delta revenues resulting from the contract with Eramet and to credit any POLR charges paid by Eramet to CSP's economic development rider (EDR) is unreasonable and unlawful. CSP argues that the plain language of Section 4905.31, Revised Code, does not authorize the Commission to offset the revenue of recovery foregone by any expenses the Commission believes will not be incurred by the electric utility due to the unique arrangement. CSP additionally argues that the Commission's continued application of its *Ormet* precedent on POLR credits could result in every mercantile customer avoiding paying the POLR charge by agreeing to make their electric utility their exclusive supplier. OCC and OEG respond that Section 4095.31, Revised Code, is unambiguous, and provides the Commission with the discretion to approve or disapprove a device within a special arrangement seeking to recover revenue foregone under an economic development program. OCC and OEG further argue that the POLR offset ordered by the Commission is not contrary to CSP's ESP order, and that modifications of the ESP were contemplated for economic development arrangements such as Eramet's reasonable arrangement.
- (15) The Commission notes that CSP repeats in its application for rehearing the arguments it presented on this topic in its hearing briefs. Consequently, we find that CSP has not raised any new arguments under this assignment of error. We reiterate the analysis set forth in our Order, wherein we conclude that "the recovery of delta revenues is a matter for the Commission's discretion," and that because CSP will incur no costs for providing POLR service that can be recovered under Section 4905.31, Revised Code, "CSP should credit any POLR charges paid by Eramet to its economic development rider in order to reduce the amount of delta

revenues recovered from other ratepayers." Order at 8-9. Rehearing should be denied on these assignments of error.

- (16) In its seventh and eighth assignments of error, CSP argues that requiring it to enter into a contract with Eramet that conforms to the Commission's order and results in a reduction in CSP's revenues is unreasonable and unlawful. CSP contends that the Commission's order is based on two improper conclusions of law: (1) that the Commission can deny recovery of revenues foregone under an arrangement made pursuant to Section 4905.31, Revised Code; and (2) that the Commission can require an electric utility to enter into a special arrangement with a customer, even if the utility objects to the contract. In its memorandum contra CSP's application for rehearing, Eramet responds that the General Assembly would not have amended Section 4905.31, Revised Code, to authorize the filing of an application for a reasonable arrangement by a mercantile customer, if the General Assembly intended on retaining the requirement that an electric utility agree to a proposed reasonable arrangement.
- (17) The arguments CSP advances in support of these assignments of error simply repeat the arguments it made in its hearing briefs. The Commission has already rejected these arguments. As we noted in *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*, Case No. 09-119-EL-AEC, Opinion and Order at 11 (July 15, 2009); Entry on Rehearing at 17 (September 15, 2009) (*Ormet*): if the General Assembly had intended on retaining the requirement that an electric utility agree to a proposed reasonable arrangement, "there would have been no need * * * to amend Section 4905.31, Revised Code, to authorize the filing of an application by a mercantile customer." We find that rehearing should be denied on CSP's seventh and eighth assignments of error.
- (18) Turning to OCC and OEG's joint application for rehearing, in their first assignment of error, OCC and OEG argue that the Commission failed to specify how CSP will apply the credit for the full amount of POLR charges that will reduce what all customers will have to pay for the reasonable arrangement through the economic development rider (EDR). In their second assignment of error, OCC and OEG likewise argue that the Commission erred by failing to specify that CSP and Eramet shall not be permitted to reduce the

delta revenue credit that is intended to reduce the amount all customers will have to pay for the reasonable arrangement through the EDR. OCC and OEG request that the Commission clarify its Order and adopt the precedent set forth in *Ormet* by precluding CSP and Eramet from negotiating a discount to the POLR charge as part of Eramet's discounted rate under the reasonable arrangement. In its memorandum contra, CSP recognizes that the Commission addressed this issue in the *Ormet* Entry on Rehearing, but requests that the Commission reconsider its *Ormet* precedent.

- (19) The Commission finds that rehearing should be granted on these two assignments of error in order to clarify the manner in which POLR charges paid by Eramet should be credited to the EDR. Despite CSP's request that the Commission reconsider its *Ormet* precedent on this issue, we find that it is sound precedent that is directly on point. Therefore, consistent with our decision in *Ormet*, we find that CSP should credit the full amount of the POLR component of the tariff rate that would otherwise apply, on a per MWh basis, to the EDR. Additionally, Eramet and CSP shall not take action to reduce the delta revenue credit arising from the reasonable arrangement, such that the amount all customers will have to pay for the reasonable arrangement will increase.
- (20) In their third assignment of error, OCC and OEG contend that the Stipulation does not benefit the public and is not in the public interest because it does not set a hard cap or ceiling on the subsidy that all customers could be asked to pay. OCC and OEG also argue that the Commission's failure to establish a hard cap on delta revenues violates the regulatory precedent set forth in *Ormet*, which stated that a reasonable arrangement should set a maximum amount of delta revenues that the ratepayers should be expected to pay. In their fourth assignment of error, OCC and OEG argue that the Commission erred by failing to meet the requirements of Section 4903.09, Revised Code, to set forth reasons prompting its decision, based upon findings of fact, with regard to the arguments of OCC and OEG on a hard cap or ceiling. Eramet responds that OCC and OEG have failed to demonstrate that the Stipulation is not in the public interest or violates any important regulatory principle by not including a hard cap on delta revenue. Eramet further contends that although OCC and OEG assert that the Commission failed to comply with the regulatory principle of setting a maximum amount of delta revenues that may be

recovered, as advanced in *Ormet*, OCC and OEG do not explain how the regulatory principle was violated.

- (21) OCC and OEG advance the same argument they presented at hearing and in their briefs with regard to the absence of a hard cap on delta revenues in support of their third assignment of error. They raise no new arguments. As such, we find that rehearing on their third assignment of error should be denied.
- (22) With regard to OCC and OEG's fourth assignment of error, the Commission noted in the Order that Staff witness Fortney testified that "the structure of the stipulation, which bases Eramet's discount for electric service on a descending percentage off the applicable tariff rate, year by year, effectively imposes a ceiling or cap on delta revenues." Order at 10. Notwithstanding our reliance on that language, we will grant rehearing to clarify that, although the Stipulation does not explicitly include an absolute dollar ceiling on the amount of delta revenues created by the reasonable arrangement, the Stipulation is structured in such a manner as to safely cap delta revenues at reasonable levels. Therefore, we find that the regulatory principle regarding delta revenue limitations set forth in *Ormet* has not been violated.
- (23) In their fifth assignment of error, OCC and OEG argue that the Stipulation is not in the public interest because it requires customers to fund an electric rate discount to Eramet before Eramet has obtained corporate approval for its capital investments, which are the basis for granting Eramet the discount. OCC and OEG argue that allowing the discounts pursuant to the reasonable arrangement only upon Eramet's corporate commitment to the investment would provide a safeguard that Eramet will fulfill its capital investment commitment. Eramet asserts that OCC and OEG have failed to demonstrate that the Commission's decision not to require corporate approvals prior to approving the reasonable arrangement is unreasonable or unlawful. Further, Eramet contends that if the Commission were to impose a requirement that Eramet obtain corporate approval for its capital investment prior to the effectiveness of the reasonable arrangement, the arrangement would be rendered incapable of being used for its intended purpose.
- (24) As we opined in the Order, Eramet's ability to secure the parental approvals required to obtain capital to implement its investment

plan depends on Eramet's ability "to get predictable electricity prices at a reasonable level over a period of time that is judged to be sufficient to rationalize the capital investment." Order at 11. OCC and OEG merely reiterate the arguments they made at the hearing and in their briefs in support of this issue. As such, the Commission finds that rehearing on OCC and OEG's fifth assignment of error should be denied.

- (25) In their sixth assignment of error, OCC and OEG contend that the Commission erred in concluding that the Stipulation reflects diverse interests. In support of their argument, OCC and OEG contend that the only interests in the proceeding that were diverse were the interests of customers and the interests of CSP, neither of which signed the Stipulation. Eramet explained that all parties were invited to and participated in extensive settlement negotiations. Eramet further contends that the Supreme Court of Ohio has never held that stipulations approved by the Commission must be supported by all parties or all customer classes in order to reflect diverse interests.
- (26) The Commission finds that OCC and OEG have again replicated the arguments they made at the hearing and in their briefs in support of their sixth assignment of error. Because no new arguments have been raised, we find that rehearing on OCC and OEG's sixth assignment of error should be denied.
- (27) Turning to Eramet's application for rehearing, Eramet requests that the Commission grant rehearing for the purpose of confirming that it approved the Stipulation, including, without modification, the provision in which Eramet committed to work in good faith with CSP to determine how and to what extent Eramet's customer-sited capabilities might be committed to CSP to assist in meeting CSP's statutory energy efficiency requirements. In connection with its customer-sited capabilities, Eramet specifically references its willingness to participate in a CSP demand response program that would provide Eramet with an opportunity equal to the opportunities available under the PJM demand response programs in which it has participated in the past.
- (28) On page ten of our Order, the Commission states the following with regard to Eramet's commitment of its customer-sited capabilities to CSP:

The Commission urges Eramet to commit, to the fullest extent possible, its customer sited-capabilities to CSP for integration into CSP's portfolio. Accordingly, Eramet and CSP shall work in good faith to determine how and to what extent Eramet's customer-sited capabilities, as referenced by Eramet witness Flygar, can be committed to CSP. With regard to Eramet's participation in PJM's [Interruptible Load for Reliability] Program, Eramet is authorized to continue its participation in PJM demand response programs for the 2009-2010 planning year. Thereafter, however, Eramet must make its demand response capabilities available to CSP in order to reduce peak demand reduction compliance costs.

- (29) Our Order encouraged Eramet to commit its customer-sited capabilities to CSP, and urged CSP and Eramet to work in good faith in order to determine how to facilitate such a circumstance. The Order additionally directed Eramet to make its demand response capabilities available to CSP in order to reduce peak-demand reduction compliance costs after the PJM 2009-2010 planning year.
- (30) On December 10, 2009, subsequent to the issuance of our Order, Rule 4901:1-39-05, O.A.C., was adopted. Rule 4901:1-39-05(E)(2), O.A.C., states:
- (E) An electric utility may satisfy its peak-demand reduction benchmarks through a combination of energy efficiency and peak-demand response programs implemented by electric utilities and/or programs implemented on mercantile customer sites where the mercantile program is committed to the electric utility.
- (2) For demand response programs, an electric utility may count demand reductions towards satisfying some or all of the peak-demand reduction benchmarks by demonstrating that either the electric utility has reduced its actual peak demand, or has the capability to

reduce its peak demand and such capability is created under either of the following circumstances:

- (a) A peak-demand reduction program meets the requirements to be counted as a capacity resource under the tariff of a regional transmission organization approved by the Federal Energy Regulatory Commission.
 - (b) A peak-demand reduction program equivalent to a regional transmission organization program, which has been approved by [the Commission].
- (31) Rule 4901:1-39-05(G), O.A.C., additionally provides that a mercantile customer may file, either individually or jointly with an electric utility, an application to commit the customer's demand reduction, demand response, or energy efficiency programs for integration with the electric utility's demand reduction, demand response, and energy efficiency programs, pursuant to Section 4928.66(A)(2)(d), Revised Code. Rule 4901:1-39-05(G), O.A.C., also identifies five requirements that each such application must fulfill.
- (32) On February 12, 2010, Eramet filed an individual application, pursuant to Rule 4901:1-39-05, O.A.C., to commit its peak-demand reduction capabilities to CSP, through Eramet's participation in the FERC-approved PJM Reliability Pricing Model - Interruptible Load for Reliability (PJM-ILR) program. Eramet asserts that it filed the application in order to comply with our Order, and to allow CSP to integrate Eramet's demand reduction with any of its other demand reduction initiatives, and, therefore, count Eramet's participation in the PJM-ILR toward CSP's compliance with yearly statutory demand reduction targets, as required by Section 4928.66(A)(2), Revised Code. See *In the Matter of the Application of Eramet Marietta, Inc. to Incorporate Customer's Peak Demand Reduction Capabilities into*

Columbus Southern Power Company's Demand Reduction Program, Case No. 10-188-EL-EEC, Application at 4 (February 12, 2010).

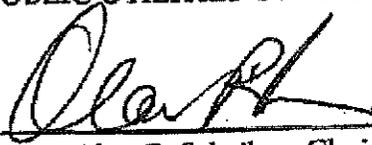
- (33) The Commission finds that rehearing should be granted pursuant to Eramet's request, in order to clarify that Eramet's commitment to CSP of its demand response capabilities rendered through participation in the PJM-ILR program satisfies our requirement that Eramet make its demand response capabilities available to CSP in order to reduce CSP's peak demand reduction compliance costs and is consistent with Rule 4901:1-39-05(E)(2)(a). Accordingly, we grant Eramet's request for rehearing. While we recognize that AEP-Ohio recently filed, on March 19, 2010, in Case Nos. 10-343-EL-ATA and 10-344-EL-ATA, an application to amend its emergency curtailment service riders and establish a second demand response program, we find that it is not necessary to reach a decision at this time regarding the reasonableness of that application in order for us to determine, in this case, that Eramet's reasonable arrangement and commitment to integrate are consistent with our Order and our rules.

It is, therefore,

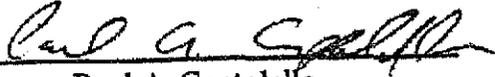
ORDERED, That the application for rehearing filed by Eramet be granted, that the application for rehearing filed by CSP be denied, and that the application for rehearing filed by OCC and OEG be granted, in part, and denied, in part. It is, further,

ORDERED, That a copy of this Entry on Rehearing be served upon all parties of record.

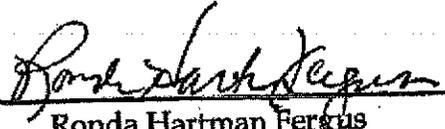
THE PUBLIC UTILITIES COMMISSION OF OHIO



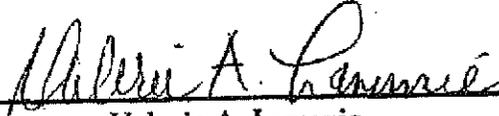
Alan R. Schriber, Chairman



Paul A. Centolella



Ronda Hartman Fergus



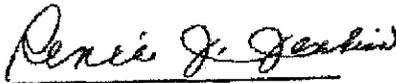
Valerie A. Lemmie

Cheryl L. Roberto

RLH/dah

Entered in the Journal

MAR 24 2010



Renee J. Jenkins
Secretary

PROOF OF SERVICE

I certify that Columbus Southern Power Company's Notice of Appeal was served by First-Class U.S. Mail upon counsel for all parties to the proceeding before the Public Utilities Commission of Ohio identified below and pursuant to Section 4903.13 of the Ohio Revised Code, this 26th day of April, 2010.



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CERTIFICATE OF FILING

I hereby certify that, in accordance with Supreme Court Rule of Practice XIV, Section 2 (C)(2), Columbus Southern Power Company's Notice of Appeal has been filed with the docketing division of the Public Utilities Commission of Ohio and with the Chairman of the Public Utilities Commission of Ohio by leaving a copy at the office of the Chairman in Columbus, Ohio, in accordance with Rules 4901-1-02 (A) and 4901-1-36 of the Ohio Administrative Code, on April 26th, 2010.

A handwritten signature in black ink, appearing to read "S. T. Nourse", written over a horizontal line.

Steven T. Nourse
Counsel for Appellant,
Columbus Southern Power Company