

ORIGINAL

IN THE SUPREME COURT OF OHIO

10-0722

In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company to Adjust Their Economic Development Cost Recovery Rider Rates : Case No. 2010-_____

: Appeal from the Public Utilities Commission of Ohio

: Public Utilities Commission of Ohio

: Case No. 09-1095-EL-RDR

NOTICE OF APPEAL OF
 APPELLANT INDUSTRIAL ENERGY USERS-OHIO

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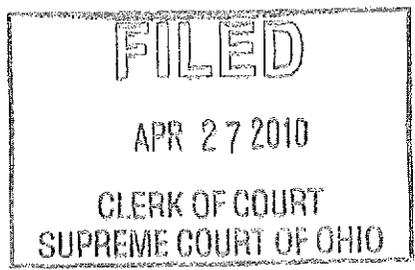
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NOTICE OF APPEAL OF
APPELLANT INDUSTRIAL ENERGY USERS-OHIO

Appellant, Industrial Energy Users-Ohio (“IEU-Ohio” or “Appellant”), hereby gives its notice of appeal, pursuant to R.C. 4903.11, R.C. 4903.13, and Supreme Court Rule of Practice 2, to the Supreme Court of Ohio and Appellee, from a January 7, 2010 Finding and Order (Attachment A), a March 3, 2010 Entry on Rehearing (Attachment B), and a March 24, 2010 Entry on Rehearing (Attachment C) of the Public Utilities Commission of Ohio (“Commission or PUCO”) in Case No. 09-1095-EL-RDR.

Appellant was and is a party of record in PUCO Case No. 09-1095-EL-RDR and timely filed its Application for Rehearing of Appellee's January 7, 2010 Finding and Order in accordance with R.C. 4903.10. Appellant's Application for Rehearing was denied with respect to the issues on appeal herein by the Appellee's Entry on Rehearing dated March 24, 2010.

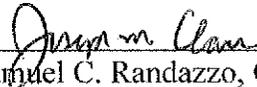
The Appellee's Finding and Order and March 24, 2010 Entry on Rehearing approving the Application of Columbus Southern Power Company (“CSP”) and Ohio Power Company (“OP”) (collectively referred to as the “Companies” or “AEP-Ohio”) is unlawful and unreasonable in multiple respects. Specifically, the Appellee's Finding and Order and March 24, 2010 Entry on Rehearing are unlawful and unreasonable in the following respects:

- A. The Finding and Order and March 24, 2010 Entry on Rehearing are unlawful and unreasonable inasmuch as the Commission has no subject matter jurisdiction over PUCO Case No 09-1095-EL-RDR. The Commission lost jurisdiction over AEP-Ohio's electric security plan (“ESP”) and all proceedings stemming from the ESP when the Commission failed to issue an order within 150 days of the filing of AEP-Ohio's ESP Application.
- B. The Finding and Order and March 24, 2010 Entry on Rehearing are unlawful and unreasonable inasmuch as the Commission continues to permit AEP-Ohio to take the benefits of the higher rates contained in the ESP while AEP-Ohio simultaneously still reserves the right to withdraw and terminate its ESP.

- C. The Finding and Order and March 24, 2010 Entry on Rehearing are unlawful and unreasonable inasmuch as the brand new exception for the economic development rider (“EDR”) from the maximum percentage increases permitted in the ESP violates the Commission’s precedent and unreasonably increases customers’ rates.
- D. The Finding and Order and March 24, 2010 Entry on Rehearing are unreasonable inasmuch they permit AEP-Ohio to calculate the carrying costs on deferred EDR delta revenues as the weighted average cost of long-term debt without any evaluation of possible lesser cost alternatives.

WHEREFORE, Appellant respectfully submits that Appellee's January 7, 2010 Finding and Order and March 24, 2010 Entry on Rehearing are unlawful, unjust, and unreasonable and should be reversed. The case should be remanded to Appellee with instructions to correct the errors complained of herein.

Respectfully Submitted,

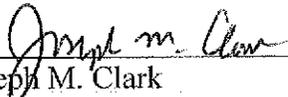


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CERTIFICATE OF SERVICE

I hereby certify that a copy of this *Notice of Appeal of Appellant Industrial Energy Users-Ohio* was sent by ordinary U.S. mail, postage prepaid, or hand-delivered to all parties to the proceeding before the Public Utilities Commission of Ohio, listed below, and pursuant to Section 4903.13 of the Ohio Revised Code on April 27, 2010.



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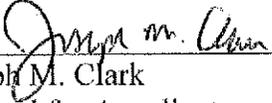
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**ON BEHALF OF THE PUBLIC UTILITIES
COMMISSION OF OHIO**

CERTIFICATE OF FILING

I hereby certify that a *Notice of Appeal of Appellant Industrial Energy Users-Ohio* has been filed with the docketing division of the Public Utilities Commission of Ohio in accordance with Rules 4901-1-02(A) and 4901-1-36 of the Ohio Administrative Code, on April 27, 2010.



Joseph M. Clark
Counsel for Appellant,
Industrial Energy Users-Ohio

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of)
 Columbus Southern Power Company and)
 Ohio Power Company to Adjust Their) Case No. 09-1095-EL-RDR
 Economic Development Cost Recovery)
 Rider Rates.)

FINDING AND ORDER

The Commission finds:

- (1) On November 13, 2009, Columbus Southern Power Company (CSP) and Ohio Power Company (OP) (collectively, AEP-Ohio) filed an application (Application) to adjust their respective economic development cost rider (EDR) rates to collect estimated deferred delta revenues and carrying costs associated with a unique arrangement with Ormet Primary Aluminum Corporation (Ormet), which was approved 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 (July 15, 2009) and Entry on Rehearing (September 15, 2009) (09-119), and a reasonable arrangement with Eramet Marietta, Inc. (Eramet), which was approved in *In the Matter of the Application for Establishment of a Reasonable Arrangement between Eramet Marietta, Inc. and Columbus Southern Power Company*, Case No. 09-516-EL-AEC, Opinion and Order (October 15, 2009) (09-516).
- (2) In its Application, AEP-Ohio proposes that its EDR rates, to be applied to its customers' distribution charges, should be set at 13.18314 percent for CSP and 9.37456 percent for OP, effective with bills rendered in the first billing cycle of January 2010. Recognizing, however, the Commission's requirement in 09-119, as well as 09-516, that AEP-Ohio credit any POLR charges paid by Ormet or Eramet as offsets to its EDR rates, AEP-Ohio alternatively proposes EDR rates of 10.52701 percent for CSP and 8.33091 for OP, which include POLR credits. AEP-Ohio's Application also proposes to set EDR rates on a levelized basis, to recover over 12 months the projected under-recoveries associated with the Eramet contract, beginning from the effective date of the contract through December 31, 2010, and

the Ormet unique arrangement, from its effective date through December 31, 2010. AEP-Ohio contends that it is proposing the levelized approach to EDR rates so that customers will avoid experiencing the large swings in EDR rates every six months that would otherwise be attributable to the pricing structure of the Ormet unique arrangement.

- (3) On November 19, 2009, the Ohio Energy Group (OEG) filed a motion to intervene, asserting that it has a real and substantial interest in the proceeding, and that the Commission's disposition of the proceeding may impair or impede OEG's ability to protect that interest.
- (4) On November 25, 2009, Ormet filed a motion to intervene, asserting that it has an interest in the instant proceeding, as it is a party to one of the unique arrangements at issue, and this proceeding has the potential of affecting that arrangement. With its motion to intervene, Ormet also filed a motion to permit Clifton A. Vince, Douglas G. Bonner, Daniel D. Barnowski, and Emma F. Hand, counsel for Ormet, to practice before the Commission pro hac vice in this proceeding.
- (5) On November 25, 2009, the Industrial Energy Users-Ohio (IEU-Ohio) filed a motion to intervene and, as more fully explained below, a motion to set the matter for hearing. In its motion to intervene, IEU-Ohio asserts that AEP-Ohio's Application may result in increases to the rates charged to IEU-Ohio members for electric service, and impact the quality of service that IEU-Ohio members receive from AEP-Ohio.
- (6) On November 30, 2009, the Office of the Ohio Consumers' Counsel (OCC) filed a motion to intervene, arguing that it is the advocate for the residential utility customers of AEP-Ohio who may be affected by the EDR rates proposed by AEP-Ohio, and that its interest is different than that of any other party to the proceeding.
- (7) The Commission finds that OEG, Ormet, IEU-Ohio, and OCC have set forth reasonable grounds for intervention. Accordingly, their motions to intervene should be granted. Additionally, the Commission finds that Ormet's motion for admission pro hac vice, requesting that Clifton A. Vince,

Douglas G. Bonner, Daniel D. Barnowski, and Emma F. Hand be permitted to practice before the Commission in this matter, is reasonable and should be granted.

- (8) In support of its motion to set the matter for hearing, IEU-Ohio cites Rule 4901:1-38-08, Ohio Administrative Code (O.A.C.), which states that if it appears to the Commission that the proposals in the Application may be unjust and unreasonable, the Commission must set the matter for hearing. IEU-Ohio argues that the following issues make AEP-Ohio's Application appear to be unjust and unreasonable:

- (a) When Ormet sought to return to service from AEP, AEP argued that since it had not planned to provide service to Ormet, it was losing the opportunity to sell its generation at market-based rates, and that it should be compensated for its lost opportunity costs. However, in this Application, AEP has proposed to calculate the delta revenue associated with providing service to Ormet as the difference between the price Ormet pays under the Commission approved reasonable arrangement and the otherwise applicable tariff rate, rather than basing delta revenues on its current lost opportunity costs. AEP's flip flop in position is a heads I win, tails you lose proposition for AEP's other customers. AEP has failed to demonstrate why any change in the methodology to calculate delta revenue associated with the Ormet contract is warranted.
- (b) Section 4905.31(E), Revised Code, specifically states that the public utility may recover costs incurred in conjunction with any economic development and job retention program. Both Ormet and Eramet filed "unique arrangements" and not "economic development arrangements" under the Commission's rules. Thus, AEP has failed to demonstrate it is appropriate to recover delta

revenue associated with these reasonable arrangements, particularly under the rider it proposes to use.

- (c) In calculating the carrying costs, AEP proposes to use the weighted average costs of each company's respective long-term debt. AEP has failed to demonstrate why any carrying charges should not be based on short-term debt, given that the recovery period is not greater than twelve months.
- (d) AEP's application is also procedurally deficient. Rule 4901:1-38-08, O.A.C., requires utilities seeking recovery of reasonable arrangement delta revenue to file the projected impact of the proposed rider on all customers, by customer class, which AEP did not do.

IEU-Ohio Motion to Set Matter for Hearing at 4-5.

- (9) On December 3, 2009, Ormet filed comments on AEP-Ohio's Application, asserting that AEP-Ohio must produce further information before the Commission can make a decision regarding its Application with respect to calendar year 2010. Ormet explains that under the Commission-approved unique arrangement in 09-119, the delta revenues AEP-Ohio is entitled to collect are based upon the difference between the tariff rates for Ormet and the rate resulting from the unique arrangement. Ormet contends that AEP-Ohio has offered no explanation or justification for the proposed 2010 tariff rate, that the rate assumed in the Application has not been submitted to the Commission for approval, and that it appears to be higher than the rate increase permitted in *In the Matter of the Application of Columbus Southern Power Company for Approval of an Electric Security Plan; an Amendment to its Corporate Separation Plan; and the Sale or Transfer of Certain Generating Assets*, Case No. 08-917-EL-SSO; and *In the Matter of the Application of Ohio Power Company for Approval of an Electric Security Plan; and an Amendment to its Corporate Separation Plan*, Case No. 08-918-EL-SSO, Opinion and Order (March 18, 2009); Entry Nunc Pro Tunc (March 30, 2009); First Entry on Rehearing (July 23, 2009);

Finding and Order (July 29, 2009); Second Entry on Rehearing (November 4, 2009) (ESP proceedings). Accordingly, Ormet requests that the Commission set the matter for hearing, or, in the alternative, explain the basis for AEP-Ohio's proposed 2010 tariff rate prior to approving the Application.

- (10) OCC and OEG also filed comments on December 3, 2009, in which they argue that AEP-Ohio failed to support its applications with the appropriate information, that any provider of last resort (POLR) charges paid to AEP-Ohio under its contracts with Ormet and Eramet should be credited to the economic development rider (EDR), and that AEP-Ohio unreasonably requests to accrue carrying costs on any under-recovery of delta revenues caused by levelized rates, but failed to request a mechanism for protecting customers from an accrual of carrying costs on over-recovery. In their comments, OCC and OEG also posit that AEP-Ohio's EDR should be audited every six months to verify that AEP-Ohio, Ormet, and Eramet have met and maintained compliance with Commission-ordered conditions. OCC and OEG advocate for Commission rejection of AEP-Ohio's Application, or in the alternative, a determination that the Application may be unjust and unreasonable, and that a hearing is necessary.
- (11) On December 9, 2009, AEP-Ohio replied and submitted supplemental information, which provided the projected impact of the proposed EDR rider on all CSP and OP customers, by customer class.
- (12) Commission Staff (Staff) reviewed AEP-Ohio's application and supplemental information, and issued its recommendation on December 10, 2009. Staff recommended that the Commission approve AEP-Ohio's Application, using the proposed EDR rates that include POLR credits, as filed on December 9, 2010. Staff noted that it is Staff's understanding that AEP-Ohio is requesting to accrue carrying costs on any under-recovery of delta revenues caused by the levelized EDR rates. In connection with this request, Staff recommended that the Commission require a symmetrical credit to carrying costs in the event of over-recovery caused by the levelized rate structure.

- (13) On December 11, 2009, IEU-Ohio filed a motion to consolidate Case Nos. 09-872-EL-FAC, 09-873-EL-FAC, 09-1906-EL-ATA, 09-1095-EL-FAC, and 09-1095-EL-UNC, arguing that the interconnected nature of the proposals addressed by the cases demands that the Commission resolve the cases by means of one proceeding. IEU-Ohio also contends that, although AEP-Ohio implicitly argues otherwise, adjustments to AEP-Ohio's EDR riders are not exempt from the limitations imposed on rate increases in the ESP proceedings.
- (14) On December 14, 2009, AEP-Ohio filed a memorandum contra IEU-Ohio's motion to consolidate, stating that cost increases associated with new government mandates, such as AEP-Ohio's delta revenue costs, are not included under the rate increase limitations set forth in the ESP.
- (15) On December 15, 2009, IEU-Ohio filed a reply to AEP-Ohio's memorandum contra, contending that the Commission did not adopt, in the ESP proceedings, AEP-Ohio's argument that cost increases associated with new government mandates fall outside the rate increase limitations.
- (16) On December 22, 2009, Ormet also filed a reply to AEP-Ohio's memorandum contra, arguing that the EDR should be subject to the Commission-mandated limitations on AEP-Ohio's rate increases.
- (17) As an initial matter, IEU-Ohio contends that AEP-Ohio has failed to demonstrate that it is appropriate for it to recover delta revenue associated with the Ormet unique arrangement and the Eramet reasonable arrangement. In support of its argument, IEU-Ohio cites Section 4905.31(E), Revised Code, which provides that a public utility electric light company may recover costs incurred in conjunction with any economic development and job retention program. IEU-Ohio contends that because Ormet's unique arrangement and Eramet's reasonable arrangement were not filed specifically as economic development arrangements under the Commission's rules, it is inappropriate for AEP-Ohio to recover delta revenue associated with the respective arrangements.

- (18) Despite IEU-Ohio's argument, the Commission finds that AEP-Ohio is authorized to recover delta revenue related to the Ormet unique arrangement and the Eramet reasonable arrangement. Section 4905.31, Revised Code, permits recovery of foregone revenue by the electric utility incurred in conjunction with economic development and job retention programs. Both the Ormet unique arrangement and the Eramet reasonable arrangement advance, as underlying goals, either economic growth or job retention. Chapter 4901:1-38, O.A.C., titled "Arrangements," implements Section 4905.31, Revised Code. Chapter 4901:1-38, O.A.C., encompasses all types of arrangements, including economic development arrangements, energy efficiency arrangements, and unique arrangements. Rule 4901:1-38-02, O.A.C., details that the purpose of Chapter 4901:1-38, O.A.C., in part, is to facilitate Ohio's effectiveness in the global economy, to promote job growth and retention in the state, and to ensure the availability of reasonably priced electric service. Each of these factors was a goal of the Ormet and Eramet arrangements. Further, Rule 4901:1-38-06, O.A.C., which permits revenue recovery pertaining to agreements, provides that "each electric utility that is serving customers pursuant to approved reasonable arrangements may apply for a rider for the recovery of certain costs associated with its delta revenue for serving those customers pursuant to reasonable arrangements[.]" The rule provides an opportunity to seek recovery of delta revenues resulting from arrangements. It does not limit the recovery of revenue to a narrow type of arrangement, as IEU-Ohio suggests. Moreover, 09-119 and 09-516 specifically contemplated such filings by AEP-Ohio, seeking recovery of the approved revenue foregone as a result of arrangements. See 09-119 Opinion and Order at 6-10; 09-516 Opinion and Order at 8, 9.
- (19) In its Application, AEP-Ohio proposes to recover expected unrecovered costs based on the estimated delta revenues created by the Ormet and Eramet arrangements during 2010. The estimated delta revenues AEP-Ohio sets forth in its Application are calculated as the difference between the proposed 2010 tariff rates and the Commission-approved prices under the Ormet unique arrangement and the Eramet reasonable arrangement. IEU-Ohio argues that AEP-Ohio has

not demonstrated why its proposed change in the method of calculating delta revenue is warranted.

- (20) Rule 4901-38-01(C), O.A.C., which defines delta revenue, states that "[d]elta revenue" means the deviation resulting from the difference in rate levels between the otherwise applicable rate schedule and the result of any reasonable arrangement approved by the [C]ommission." The method by which AEP-Ohio proposes to calculate delta revenue in this Application directly follows the definition set forth in the rule, as well as the Commission's orders in 09-119 and 09-516. The Commission believes this is the proper method for calculating delta revenue, and that AEP-Ohio is warranted in its use of this method.
- (21) In its comments, Ornet expresses concern that AEP-Ohio's proposed 2010 tariff rate has not been submitted to the Commission for approval. Likewise, OCC and OEG express concern over assumptions they allege AEP-Ohio has made in its delta revenue calculations. Moreover, Ornet expresses concerns that the proposed 2010 tariff rate AEP-Ohio used in its Application appears to be higher than the rate increase permitted under the ESP proceedings, which is 6 percent for CSP and 7 percent for OP for 2010. Since filing its Application in this case, AEP-Ohio filed an application to modify its standard service offer rates in Case No. 09-1906-EL-ATA. The proposed 2010 tariff rate AEP-Ohio used to calculate delta revenue for purposes of its EDR rates is the same rate submitted to the Commission for approval in Case No. 09-1906-EL-ATA in 2010. On December 10, 2010, Staff filed its review and recommendation in Case No. 09-1906-EL-ATA, indicating that it finds that the rates proposed in the applications provide for increases no greater than those authorized by the Commission in the ESP proceedings. In accordance with this review and our decision issued simultaneously with this order in Case Nos. 09-872-EL-FAC, 09-873-EL-FAC, and 09-1906-EL-ATA, the Commission finds that the parties' arguments that the proposed 2010 tariff rates utilized by AEP-Ohio in its delta revenue calculations are unjustified is without merit.
- (22) IEU-Ohio, OCC, and OEG have also expressed concerns that AEP-Ohio's Application is procedurally deficient, in that it initially did not file the projected impact of the EDR rider on all

customers, by customer class. As noted above, however, on December 9, 2009, AEP-Ohio filed supplemental information that provided the projected impact of the EDR rider. With this information in the docket, it appears that the Application provides a clear picture for the Commission's evaluation of the EDR rates proposed.

- (23) In its Application, AEP-Ohio proposes to recover the 2009 deferred unrecovered costs, or delta revenues, resulting from the Ormet and Eramet reasonable arrangements, as well as the carrying costs at the weighted average cost of CSP's and OP's respective long-term debt. AEP-Ohio's estimated recovery for 2009 is based on the following: estimates provided by Ormet of its production level and associated MWh of consumption for the period beginning with the effective date of the unique arrangement through the end of 2009; and a projection for Eramet's electricity consumption from the effective date of its contract, pursuant to the reasonable arrangement, through the end of 2009. AEP-Ohio also proposes to continue accruing carrying costs on the combined Ormet and Eramet balance of unrecovered deferred costs until the deferral and related carrying costs are fully recovered.
- (24) IEU-Ohio asserts, in its motion to set the matter for hearing, that AEP-Ohio has failed to demonstrate why any carrying charges should not be based on the average cost of each company's short-term debt. However, under the semiannual reconciliation process prescribed for EDR rates under Rule 4901:1-38-08, O.A.C., the use of each company's average cost of long-term debt is a more appropriate mechanism for calculating carrying charges than short-term debt, and, therefore, should be utilized.
- (25) The Commission finds AEP-Ohio's proposal to recover the 2009 deferred unrecovered costs resulting from the Ormet and Eramet arrangements, as well as the carrying costs at the weighted average cost of CSP's and OP's respective long-term debt, which are 5.73 percent for CSP, and 5.71 percent for OP, to be reasonable. The Commission additionally finds that, on a going-forward basis, AEP-Ohio shall utilize the interest rates from its latest-approved filing for the calculation of carrying costs.

- (26) As noted above, IEU-Ohio and Ormet contend that the EDR should be subject to the Commission-mandated limitations on AEP-Ohio's rate increases. AEP-Ohio contends that because the cost increases associated with the EDR constitute government mandates, they are not included in the rate increase limitations imposed in the ESP. IEU-Ohio contends that the Commission did not adopt AEP-Ohio's new government mandate exception to its rate increase limitations. IEU-Ohio also argues that the Commission specifically listed those mechanisms that are exempt from the applicable rate increase limitations in the BSP first entry on rehearing, and the EDR was not among those listed.
- (27) While the Commission enumerated a few of the riders and other mechanisms that are exempt from the ESP rate increase limitations in the first entry on rehearing, the list was not, as IEU-Ohio suggests, exhaustive. Although the rider was named and established in the ESP, we believe that the statute, as well as our rules, permit recovery of the delta revenues created by reasonable arrangements. As explained in 09-119 and 09-516 and herein, the reasonable arrangements approved further the policy of this state, and are consistent with Sections 4905.31 and 4928.02, Revised Code, and Chapter 4901:1-38, O.A.C. Accordingly, we find that the EDR is not subject to the limitations on AEP-Ohio's rate increases set forth in the ESP. Finding otherwise would result in considerable deferrals being created, including carrying costs, which would be passed on to customers.
- (28) Although we find that the EDR is not subject to the limitations on rate increases set forth in the ESP, we are not persuaded by, and decline to adopt, AEP-Ohio's argument that the cost increases associated with the EDR constitute government mandates. As IEU-Ohio notes in its memorandum contra, to interpret any Commission order pertaining to rates with which an electric utility does not agree as a new government mandate, not subject to rate increase limitations, overextends the meaning of the phrase.
- (29) The Commission finds that AEP-Ohio's proposal to utilize EDR rates of 10.52701 percent for CSP and 8.33091 percent for OP, which include POLR credits, is reasonable. Likewise, the

Commission finds that the levelized approach proposed by AEP-Ohio for the collection of EDR costs is a just and reasonable means of collection, as it will operate to avoid the extreme swings in EDR costs linked to the structure of the Ormet unique arrangement.

- (30) As detailed by AEP-Ohio in its Application, the structure of the Ormet contract frontloads Ormet's price discount over the first eight months of each year. Based upon its use of the levelized rate approach to temper swings in EDR costs for its customers, AEP-Ohio anticipates the under-recovery of EDR costs during the first eight months of each year. In light of this situation, AEP-Ohio proposes to accrue carrying costs, at the weighted average costs of CSP's and OP's respective long-term debt, caused by the levelized rates. OCC and OEG object that while AEP-Ohio requests to accrue carrying costs on the under-recovery of delta revenues due to levelized rates, it does not request a symmetrical mechanism for protecting consumers in the event of the over-recovery of delta revenues. Staff agrees with the position of OCC and OEG on the issue.
- (31) The Commission finds that AEP-Ohio's request to accrue carrying costs on the under-recovery of delta revenues due to levelized rates is reasonable and should be permitted. However, to the extent that OCC, OEG, and Staff assert that in the event of over-recovery of delta revenues, customers should be afforded symmetrical treatment to that afforded to AEP-Ohio in the event of an under-recovery, we find their argument persuasive. Therefore, if the over-recovery of delta revenues occurs, AEP-Ohio shall credit customers with the value of the equivalent carrying costs, calculated according to the weighted average costs of long term debt, 5.73 percent for CSP, and 5.71 percent for OP.
- (32) As noted above, Rule 4901-38-08, O.A.C., prescribes that the EDR shall be updated and reconciled semiannually. Additionally, all data submitted in support of any rider update is subject to Commission review and audit. Pursuant to this provision, as well as Staff's recommendation, the Commission finds that the EDR should be updated and reconciled, by application to the Commission, semiannually. By this process, the estimated delta revenues will be trued to actual delta

revenues, and any over- or under-recovery will be reconciled. The semiannual adjustments to the EDR rates of CSP and OP will be effective with the first billing cycle of April and October in each year. AEP-Ohio is cautioned, therefore, to submit its applications in a timely fashion, such that the Commission will have sufficient time to review the filings and perform due diligence with regard to its review of the proposed rates.

- (33) Upon review of the extensive pleadings and comments filed by numerous parties, the Commission finds that AEP-Ohio's Application to adjust its EDR rates, as supplemented on December 9, 2009, and as modified herein, does not appear to be unjust or unreasonable, and should be approved as modified herein. Therefore, the Commission finds that it is unnecessary to hold a hearing in this matter, and, thus, the requests for hearing advanced by several parties should be denied. The Commission additionally authorizes AEP-Ohio to implement its adjusted EDR rates of 10.52701 percent for CSP and 8.33091 percent for OP, effective with bills rendered in the first billing cycle of January 2010.
- (34) Finally, the Commission finds that the case herein, which was originally docketed as Case No. 09-1095-EL-UNC, is more appropriately docketed with the new RDR case code, as it specifically addresses economic development riders. Accordingly, now and hereafter, Case No. 09-1095-EL-UNC should be designated as Case No. 09-1095-EL-RDR.

It is, therefore,

ORDERED, That the motions of OEG, Ormet, IEU-Ohio, and OCC to intervene be granted. It is, further,

ORDERED, That Ormet's motion to admit Clifton A. Vince, Douglas G. Bonner, Daniel D. Barnowski, and Emma F. Hand to practice pro hac vice before the Commission in this proceeding be granted. It is, further,

ORDERED, That AEP-Ohio's Application to adjust its EDR rates, as supplemented on December 9, 2009, be approved as modified herein. It is, further,

ORDERED, That AEP-Ohio implement its adjusted EDR rates of 10.52701 percent for CSP and 8.33091 percent for OP, effective with bills rendered in the first billing cycle of January 2010. It is, further,

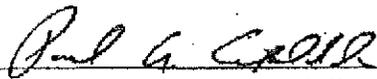
ORDERED, That the requests for a hearing be denied. It is, further,

ORDERED, That a copy of this entry be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO



Alan R. Schriber, Chairman



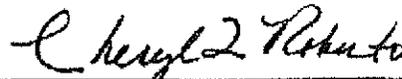
Paul A. Centolella



Ronda Hartman Fergus



Valerie A. Lemmie



Cheryl L. Roberto

RLH:ct

Entered in the Journal

JAN 07 2010



Renee J. Jenkins
Secretary

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Fuel Adjustment)
 Clauses for Columbus Southern Power) Case No. 09-872-EL-FAC
 Company and Ohio Power Company.) Case No. 09-873-EL-FAC

In the Matter of the Application of)
 Columbus Southern Power Company and)
 Ohio Power Company to Adjust Their) Case No. 09-1095-EL-RDR
 Economic Development Cost Recovery)
 Rider Rates.)

In the Matter of the Application of Ohio)
 Power Company and Ohio Power) Case No. 09-1906-EL-ATA
 Company to Modify Their Standard Service)
 Offer Rates.)

ENTRY ON REHEARING

The Commission finds:

- (1) On November 13, 2009, Columbus Southern Power Company (CSP) and Ohio Power Company (OP) (collectively, AEP-Ohio or the Companies) filed an application in Case No. 09-1095-EL-RDR (09-1095) to adjust their respective economic development cost rider (EDR) rates to collect estimated deferred delta revenues and carrying costs associated with a unique arrangement with Ormet Primary Aluminum Corporation (Ormet), which was approved 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 (July 15, 2009) and Entry on Rehearing (September 15, 2009) (09-119), and a reasonable arrangement with Eramet Marietta, Inc. (Eramet), which was approved in *In the Matter of the Application for Establishment of a Reasonable Arrangement between Eramet Marietta, Inc. and Columbus Southern Power Company*, Case No. 09-516-EL-AEC, Opinion and Order (October 15, 2009) (09-516).
- (2) Ohio Energy Group (OEG), Industrial Energy Users-Ohio (IEU-Ohio), the Office of Ohio Consumers' Counsel (OCC) and Ormet filed for and were granted intervention in 09-1095.

- (3) By Order issued January 7, 2010, the Commission concluded, among other things, that AEP-Ohio's proposal to utilize EDR rates of 10.52701 percent for CSP and 8.33091 percent for OP, which included provider of last resort credits, was reasonable.
- (4) On September 29, 2009, consistent with the Commission's order in Case Nos. 09-917-EL-SSO and 09-918-EL-SSO (ESP), AEP-Ohio filed its initial quarterly fuel adjustment clause (FAC) filing in Case Nos. 09-872-EL-FAC and 09-873-EL-FAC (09-872). On December 1, 2009, the Companies submitted their quarterly FAC filings to adjust the FAC rates for the first quarter of 2010. The quarterly filing proposed revised FAC rates, effective beginning with the January 2010 billing cycle, to reflect the percentage increases authorized in the Companies' ESP.
- (5) On December 3, 2009, the Companies filed a related application in Case No. 09-1906-EL-ATA (09-1906) to decrease the 2010 rates for each company's Enhanced Service Reliability Rider and CSP's gridSMART Rider in order to collect the revenues associated with the rates authorized by the Commission for 2010. The tariff schedules attached to the 09-1906 filing included generation rates which, in conjunction with the FAC rates filed on December 1, 2009, in 09-872, limited the amount that the Companies are authorized to collect to the 2010 rate increases established by the ESP order.
- (6) OCC, IEU-Ohio, and Ormet filed for and were granted intervention in 09-872 and 09-1906.
- (7) By Order issued January 7, 2010, the Commission concluded, among other things, that the Companies' proposed tariff filings in 09-872 and 09-1906, should be approved, with modifications. The Commission additionally ordered that the revised tariffs be effective with bills rendered beginning the first billing cycle of 2010.
- (8) Pursuant to Section 4903.10, Revised Code, any party who has entered an appearance in 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.
- (9) On February 5, 2010, AEP-Ohio filed an application for rehearing of the Commission's January 7, 2010, Order in 09-

1095. On February 5, 2010, IEU-Ohio filed an application for hearing in 09-872, 09-1906, and 09-1095.¹ Memorandum contra the applications for rehearing regarding 09-1095 were filed by AEP-Ohio, IEU-Ohio, and jointly by OCC and OEG on February 16, 2010. AEP-Ohio filed a memorandum contra IEU-Ohio's application for rehearing of 09-872 and 09-1906 on February 16, 2010.

- (10) The Commission grants the applications for rehearing filed by IEU-Ohio and AEP-Ohio in 09-1095, as well as the application for rehearing filed by IEU-Ohio in 09-872 and 09-1906. 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 IEU-Ohio and AEP-Ohio be granted for further consideration of the matters specified in the applications for rehearing.
It is, further,

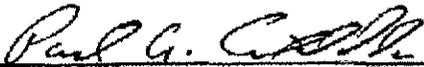
¹ In addition to the applications for rehearing IEU-Ohio filed in 09-1095, 09-872 et al., and 09-1906, it also filed concurrent applications for rehearing in Case Nos. 08-917-EL-SSO, 08-918-EL-SSO, and 09-1094-EL-FAC. Because no Commission orders in these cases were issued in the 30-day period preceding the filing of IEU-Ohio's applications for rehearing, they were improperly filed. The Commission has, therefore, excluded them from consideration herein.

ORDERED, That a copy of this entry on rehearing be served upon all parties and other interested persons of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO



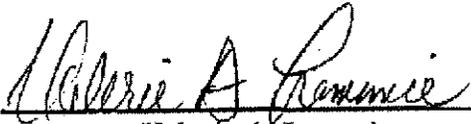
Alan R. Schriber, Chairman



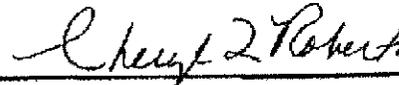
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Cheryl L. Roberto

RLH/GNS/vrm

Entered in the Journal

MAR 03 2010



Renee J. Jenkins
Secretary

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Fuel Adjustment)
 Clauses for Columbus Southern Power) Case No. 09-872-EL-FAC
 Company and Ohio Power Company.) Case No. 09-873-EL-FAC

In the Matter of the Application of)
 Columbus Southern Power Company and)
 Ohio Power Company to Adjust Their) Case No. 09-1095-EL-RDR
 Economic Development Cost Recovery)
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In the Matter of the Application of)
 Columbus Southern Power Company and) Case No. 09-1906-EL-ATA
 Ohio Power Company to Modify Their)
 Standard Service Offer Rates.)

ENTRY ON REHEARING

The Commission finds:

- (1) On November 13, 2009, Columbus Southern Power Company (CSP) and Ohio Power Company (OP) (collectively, AEP-Ohio or the Companies) filed an application in Case No. 09-1095-EL-RDR (09-1095) to adjust their respective economic development cost rider (EDR) rates to collect estimated deferred delta revenues and carrying costs associated with a unique arrangement with Ormet Primary Aluminum Corporation (Ormet), which was approved 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 (July 15, 2009) and Entry on Rehearing (September 15, 2009) (09-119), and a reasonable arrangement with Eramet Marietta, Inc. (Eramet), which was approved in *In the Matter of the Application for Establishment of a Reasonable Arrangement between Eramet Marietta, Inc. and Columbus Southern Power Company*, Case No. 09-516-EL-AEC, Opinion and Order (October 15, 2009) (09-516).
- (2) The Ohio Energy Group (OEG), Industrial Energy Users-Ohio (IEU-Ohio), the Office of the Ohio Consumers' Counsel (OCC), and Ormet filed for and were granted intervention in 09-1095.

- (3) By Order issued January 7, 2010, the Commission concluded, among other things, that AEP-Ohio's proposal to utilize economic development rider (EDR) rates of 10.52701 percent for CSP and 8.33091 percent for OP, which included provider of last resort (POLR) credits, was reasonable.
- (4) On September 29, 2009, consistent with the Commission's order in Case Nos. 09-917-EL-SSO and 09-918-EL-SSO (ESP proceedings), AEP-Ohio filed its initial quarterly fuel adjustment clause (FAC) filing in Case Nos. 09-872-EL-FAC and 09-873-EL-FAC (09-872). On December 1, 2009, the Companies submitted their quarterly FAC filings to adjust the FAC rates for the first quarter of 2010. The quarterly filing proposed revised FAC rates, effective beginning with the January 2010 billing cycle, to reflect the percentage increases authorized in the Companies' ESP proceedings.
- (5) On December 3, 2009, the Companies filed a related application in Case No. 09-1906-EL-ATA (09-1906) to decrease the 2010 rates for each company's Enhanced Service Reliability Rider and CSP's gridSMART Rider in order to collect the revenues associated with the rates authorized by the Commission for 2010. The tariff schedules attached to the 09-1906 filing included generation rates which, in conjunction with the FAC rates filed on December 1, 2009, in 09-872, limited the amount that the Companies are authorized to collect to the 2010 rate increases established by the ESP order.
- (6) OCC, IEU-Ohio, and Ormet filed for and were granted intervention in 09-872 and 09-1906.
- (7) By Order issued January 7, 2010, the Commission concluded, among other things, that the Companies' proposed tariff filings in 09-872 and 09-1906 should be approved, with modifications. The Commission additionally ordered that the revised tariffs be effective with bills rendered beginning the first billing cycle of 2010.
- (8) On February 5, 2010, AEP-Ohio filed an application for rehearing of the Commission's January 7, 2010, Order in 09-1095. On February 5, 2010, IEU-Ohio filed an application for

rehearing in 09-872, 09-1906, and 09-1095.¹ Memoranda contra the applications for rehearing regarding 09-1095 were filed by AEP-Ohio, IEU-Ohio, and jointly by OCC and OEG on February 16, 2010. AEP-Ohio filed a memorandum contra IEU-Ohio's application for rehearing of 09-872 and 09-1906 on February 16, 2010.

- (9) In its first assignment of error in 09-1095, AEP-Ohio contends that the Commission's finding that the Companies had proposed EDR rates that reflected the Commission-ordered POLR credit is in error, and therefore, is unlawful and unreasonable. AEP-Ohio argues that its proposal was clearly for implementation of the EDR rates that did not reflect the POLR credit.
- (10) The Commission finds that rehearing on this assignment of error should be granted solely to clarify that AEP-Ohio did not specifically propose EDR rates that include a POLR credit to be implemented by the Commission. As AEP-Ohio explains in its application for rehearing, the Commission's prior decisions ordered it to enter into a service agreement with Ormet, and ordered CSP to enter into a service agreement with Eramet. AEP-Ohio's application calculated the delta revenue, excluding POLR credits, resulting from the Ormet and Eramet contracts, and proposed EDR rates, which did not include the POLR credit, of 13.18314 percent for CSP and 9.37456 percent for OP.

AEP-Ohio's application further, however, indicated the following with regard to EDR calculations:

In order to preserve their position that the Commission cannot require a POLR credit offset to the EDR rate, the Companies' proposed EDR rates do not reflect such a credit. * * *

Recognizing, however, that the Commission would likely require that the POLR credit be

¹ In addition to the applications for rehearing IEU-Ohio filed in 09-1095, 09-872, and 09-1906, it also filed concurrent applications for rehearing in Case Nos. 08-917-EL-SSO, 08-918-EL-SSO, and 09-1094-EL-FAC. Because no Commission orders in these cases were issued in the 30-day period preceding the filing of IEU-Ohio's applications for rehearing, they were improperly filed. The Commission has, therefore, excluded them from consideration herein.

reflected in this application, the Companies also provide EDR rates which include POLR credits[.]

The Commission wishes to clarify that, while AEP-Ohio's application did not request EDR rates that included a POLR credit, the EDR rates of 10.52701 percent for CSP and 8.33091 for OP, which do include a POLR credit, were provided therein alternatively, in anticipation of the Commission's decision on the EDR issue, and adopted accordingly.

- (11) In its second assignment of error in 09-1095, AEP-Ohio contends that the Commission's decision to reject the proposed EDR rates, which did not include POLR credits, was unlawful and unreasonable because those EDR rates would provide for full recovery of revenues foregone under the contracts with Ormet and Eramet, as permitted by Section 4905.31, Revised Code. OCC and OEG responded that providing POLR credits to customers is consistent with law, reason, and the Commission's previous decisions in 09-119 and 09-516. Therefore, OCC and OEG argue, rehearing on AEP-Ohio's second assignment of error should be denied. IEU-Ohio argues that the Companies' second assignment of error was raised and rejected in both 09-119 and 09-516, and therefore, rehearing on the issue should be denied.
- (12) The Commission finds that the argument AEP-Ohio advances in support of its second assignment of error merely repeats the arguments it made in its hearing briefs. AEP-Ohio has raised no new arguments on this issue in its application for rehearing. Accordingly, we find that rehearing on its second assignment of error should be denied.
- (13) In its third and fourth assignments of error in 09-1095, AEP-Ohio argues that the Commission's decision to reject its proposed EDR rates, which did not include POLR credits, was unlawful and unreasonable, because its decision was based on the 09-119 and 09-516 decisions, which were unlawful and unreasonable. AEP-Ohio's arguments in support of these assignments of error direct the Commission to review AEP-Ohio's arguments in its memoranda in support of rehearing in 09-119 and 09-516, and treat those arguments as fully incorporated into the application for rehearing in 09-1095.

OCC and OEG respond that the Commission's decisions in 09-119 and 09-516 were lawful and reasonable, and therefore, rehearing on AEP-Ohio's third and fourth assignments of error should be denied. In support of their position, OCC and OEG adopt the arguments set forth in their memoranda contra in 09-119 and 09-516, and incorporate those arguments into their memoranda contra AEP-Ohio's application for rehearing in 09-1095. IEU-Ohio asserts that assignments of error three and four of AEP-Ohio's application for rehearing should be denied because they simply restate and incorporate by reference AEP-Ohio's arguments advanced in its applications for rehearing in 09-119 and 09-516.

- (14) The Commission finds that rehearing should be denied on AEP-Ohio's third and fourth assignments of error. As indicated by AEP-Ohio, its arguments in favor of these assignments of error are simply incorporated from the arguments it has made in 09-119 and 09-516. AEP-Ohio also made the same arguments it asserts here in its hearing briefs. As AEP-Ohio has raised no new substantive arguments for the Commission's consideration, its application for rehearing on assignments of error three and four should be denied.
- (15) Turning to IEU-Ohio's application for rehearing, in its first assignment of error, IEU-Ohio argues that the findings and orders in 09-1095, 09-872, and 09-1906 are unlawful and unreasonable inasmuch as the Commission has no subject matter jurisdiction over 09-1095, 09-872, or 09-1906. IEU-Ohio contends that the Commission lost jurisdiction over the ESP proceedings and all proceedings stemming from the ESP proceedings when it failed to issue an order within 150 days of the filing of AEP-Ohio's ESP application. AEP-Ohio responds that while IEU-Ohio may challenge the decisions in 09-1095, 09-872, and 09-1906 as somehow being unreasonable and unlawful, it cannot do so through its argument that the Commission lost jurisdiction in the ESP proceedings.
- (16) The Commission finds that rehearing on this assignment of error should be denied. As AEP-Ohio indicates, IEU-Ohio unsuccessfully raised this issue in its Writ of Prohibition action (Case No. 2009-1907) before the Supreme Court of Ohio. The Commission finds that IEU-Ohio's attempt to raise this argument in the context of the current proceeding is an

improper attempt to relitigate the Supreme Court of Ohio's decision on this issue. Accordingly, IEU-Ohio's first assignment of error should be denied.

- (17) In its second assignment of error, IEU-Ohio claims that the findings and order in 09-1095, 09-872, and 09-1906 are unlawful and unreasonable, inasmuch as the Commission continues to permit AEP-Ohio to take the benefits of the higher rates contained in the ESP, while AEP-Ohio still reserves the right to withdraw and terminate its ESP. AEP-Ohio argues that IEU-Ohio's second assignment of error amounts to an attempt to relitigate the ESP proceedings and/or improperly expand the list of issues it can pursue on appeal to challenge the Commission's ESP decision.
- (18) The Commission finds that rehearing on IEU-Ohio's second assignment of error should be denied. IEU-Ohio raised this issue in its August 17, 2009, Application for Rehearing in the ESP proceedings. The Commission denied IEU-Ohio's argument in its November 4, 2009, Second Entry on Rehearing, on the basis that the issue was not ripe for review, given that AEP-Ohio had not withdrawn its ESP. Similarly, the Commission finds that the issue under consideration in IEU-Ohio's second assignment of error is not presently ripe for review, as AEP-Ohio has not withdrawn its ESP. As such, IEU-Ohio's second assignment of error should be denied.
- (19) In its third assignment of error, IEU-Ohio contends that the Commission's finding and order in 09-1095 is unlawful and unreasonable, inasmuch as the exception for the EDR from the maximum percentage increases authorized in the ESP violates the Commission's precedent and unreasonably increases customers' rates. IEU-Ohio argues that the Commission failed to indicate in the course of the ESP proceedings that riders or other charges, apart from those enumerated by the Commission, could be excluded from the maximum revenue increase limitations approved in the ESP. IEU-Ohio contends that the Commission's decision to exclude the EDR from the maximum percentage increases authorized in the ESP is unreasonable, as it imposes rate increases on customers at a precarious time for Ohio's economy. AEP-Ohio argues, in its memorandum contra, that if, as IEU-Ohio argues, the EDR were inside the rate increase cap set forth in the ESP

proceedings, the FAC deferrals and associated carrying charges would increase, resulting in increased costs for customers.

- (20) We find that rehearing on IEU-Ohio's third assignment of error should be denied. As we explained in 09-1095, the list of riders and other mechanisms presented in the ESP proceedings as exempt from the rate increase limitations was not exhaustive. IEU-Ohio's contention that the EDR is outside the cap because it was not listed amongst those riders and other mechanisms specifically excluded in the ESP proceedings raises no new issues, as IEU-Ohio presented the same argument in its hearing brief, as well as in separate proceedings. Accordingly, IEU-Ohio's third assignment of error should be denied.
- (21) In its fourth assignment of error, IEU-Ohio asserts that the 09-1095 finding and order is unlawful and unreasonable inasmuch as it permits AEP-Ohio to calculate the carrying costs on deferred EDR delta revenues at the weighted average cost of long-term debt without any evaluation of possible lesser-cost alternatives. IEU-Ohio contends that the Commission unreasonably accepted AEP-Ohio's proposal to use the average cost of CSP and OP's long-term debt to calculate carrying costs associated with EDR delta revenues without any inquiry as to whether a different debt rate would be more appropriate. AEP-Ohio argues that the regulatory treatment of carrying costs proposed by IEU-Ohio is simplistic and should be rejected, in that it believes that the selection of a carrying charge rate should be driven predominantly by what results in the lowest cost to customers, rather than by what is the most appropriate rate.
- (22) The Commission finds that IEU-Ohio's fourth assignment of error is without merit. Despite IEU-Ohio's assertions that the Commission made no inquiry into its proposal to utilize a short-term debt rate, we specifically addressed and rejected its proposal, finding that the use of long-term debt is a more appropriate mechanism for calculating carrying charges. Additionally, the grounds IEU-Ohio advances in support of its argument have already been raised in its hearing brief in 09-1095. IEU-Ohio has raised no new arguments with regard to this issue. Its fourth assignment of error should, therefore, be denied.

- (23) In its fifth assignment of error, IEU-Ohio argues that approval of the recovery of delta revenues associated with the interim Ormet agreement through the FAC as part of 09-872 and 09-1906 was unreasonably premature, inasmuch as the Commission has not yet issued an order in 09-1094-EL-FAC (09-1094). IEU-Ohio contends that it is unreasonable to collect delta revenues from customers through the FAC that have not yet been found to be just and reasonable. AEP-Ohio asserts that, as shown in 09-872, CSP can be characterized as recovering only a portion of the Ormet interim agreement deferrals, as only a portion of the reconciliation adjustment is reflected in the current FAC rate. OP is not presently recovering any of the Ormet interim agreement deferrals. AEP-Ohio claims that to the extent CSP's recovery of its reconciliation adjustment component includes Ormet interim agreement deferrals, those amounts can be reconciled with the decision in 09-1094 and passed back to customers through the FAC.
- (24) The Commission finds that IEU-Ohio's fifth assignment of error should be denied. Despite IEU-Ohio's arguments regarding premature recovery, in the circumstances hereunder, we find that recovery of the deferrals at issue is an incidental result of AEP-Ohio's rates, as established by the ESP proceedings. We note that any deferrals associated with the Ormet interim agreement that are recovered will be subject to a true-up following resolution of 09-1094 and any other cases affecting recovery under the Ormet interim agreement. In view of these circumstances, IEU-Ohio's fifth assignment of error should be denied.

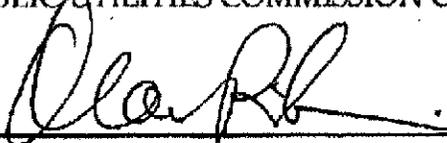
It is, therefore,

ORDERED, That AEP-Ohio's application for rehearing be granted in part, and denied in part. It is, further,

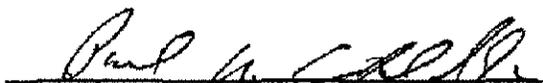
ORDERED, That IEU-Ohio's application for rehearing be denied. It is, further,

ORDERED, That a copy of this entry on rehearing be served upon all parties and other interested persons of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO



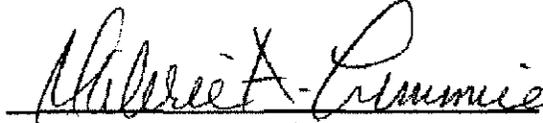
Alan R. Schriber, Chairman



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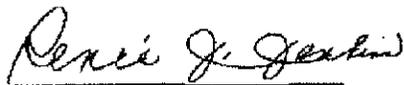


Cheryl L. Roberto

RLH/GNS/sc

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MAR 24 2010



Renee J. Jenkins
Secretary