

IN THE SUPREME COURT OF OHIO

Columbus Southern Power Company,)	Supreme Court Case No. 2010-0723
)	
Appellant,)	Appeal from the
)	Public Utilities Commission of Ohio
v.)	
)	Case No. 09-516-EL-AEC
The Public Utilities Commission of Ohio,)	
)	
Appellee.)	

**MERIT BRIEF OF INTERVENING APPELLEE,
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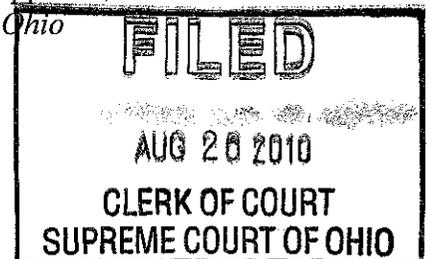
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INTRODUCTION

Amended Substitute Senate Bill 221 (“SB 221”) created an opportunity for mercantile customers¹ to establish a reasonable arrangement with an electric distribution utility (“EDU”) for a service relationship that deviates from the otherwise applicable standard service offer (“SSO”) tariff.² Such a mercantile customer proposal is not lawful unless it is filed with and approved by the Public Utilities Commission of Ohio (“Commission” or “PUCO”) pursuant to an application that is submitted by a mercantile customer or group of mercantile customers.³ Upon approval of a mercantile customer-proposed reasonable arrangement, the EDU is required to conform its schedules of rates, tolls, and charges to such arrangement.⁴ Moreover, every such reasonable arrangement continues to be under the supervision and regulation of the Commission, and is subject to change, alteration, or modification by the Commission.⁵

Eramet Marietta, Inc. (“Eramet”) proposed such a reasonable arrangement⁶ and submitted a Stipulation and Recommendation (“Stipulation”) with the Staff of the Commission (“Staff”) to resolve the issues related to Eramet’s proposal.⁷ The Commission approved the Stipulation⁸ and

¹ “Mercantile customer” means a commercial or industrial customer if the electricity consumed is for nonresidential use and the customer consumes more than seven hundred thousand kilowatt hours per year or is part of a national account involving multiple facilities in one or more states. R.C. 4928.01(A)(19) (Appellant’s Appendix at 2).

² R.C. 4905.31 (Appellant’s Appendix at 1).

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *In the Matter of the Application for Establishment of a Reasonable Arrangement Between Eramet Marietta, Inc. and Columbus Southern Power Company*, PUCO Case No. 09-516-EL-AEC, Application (June 19, 2009) (“*Eramet Case*”).

⁷ *Eramet Case*, Joint Exhibit 1 (August 5, 2009) (Appellant’s Supplement at 69).
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Columbus Southern Power Company (“CSP”) filed a Contract for Electric Service with Eramet to effectuate the terms of the Stipulation.⁹

On appeal, CSP does not contest the evidence showing that the Stipulation is a product of serious bargaining among capable, knowledgeable parties. Generally, CSP does not contest the reasonableness of the compromise that is presented, as a package, in the Stipulation and does not contest that the settlement, as a package, benefits ratepayers and the public interest. Instead, CSP raises two narrow issues. CSP argues that the General Assembly intended to give Ohio EDUs an absolute veto power over the Commission when it approves a mercantile customer-proposed reasonable arrangement pursuant to R.C. 4905.31, like the one at issue in this case.¹⁰ Additionally, CSP argues that the Commission erred in requiring CSP to “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”¹¹ because CSP asserts that the Commission does not have discretion to grant or deny recovery of revenue foregone.¹² CSP is incorrect as a matter of law and reasonableness. For the reasons discussed below, the Court should affirm the decision of the Commission.

STATEMENT OF FACTS

For over a half a century, Eramet’s Ohio plant has produced manganese ferroalloys that are essential in the steelmaking process, hardeners used in the aluminum industry, and high

⁸ *Eramet Case*, Opinion and Order (October 15, 2009) (Appellant’s Appendix at 31).

⁹ *Eramet Case*, Contract for Electric Service (October 20, 2009) (Appellant’s Supplement at 59).

¹⁰ Appellant Brief of Columbus Southern Power Company at 12 (hereinafter “CSP Merit Brief”).

¹¹ *Eramet Case*, Opinion and Order at 9 (October 15, 2009) (Appellant’s Appendix at 39).

¹² CSP Merit Brief at 12-13.

purity chromium alloys used in the specialty steel and superalloys industries.¹³ Today, Eramet is one of the largest industrial employers in Washington County with a significant impact on the State and local economy through active employees, retiree benefits, vendor payments and State and local taxes.¹⁴ No party disputes that Eramet is a vital piece of the local economy. Eramet is a CSP customer and a large consumer of electricity. Electricity is approximately 25% of Eramet's production cost.¹⁵

Prior to becoming a CSP customer, Eramet was served by the Monongahela Power Company ("MonPower") pursuant to a special arrangement that ended on August 31, 2004. Since the end of its special arrangement with MonPower, between September 2004 and December 31, 2008, Eramet's average electric price increased dramatically by 85% or some \$14,000,000 per year.¹⁶ Then, Eramet became a customer of CSP and, as a result of CSP's electric security plan ("ESP") case in 2009,¹⁷ Eramet's rates increased an additional 16% and

¹³ *Eramet Case*, Eramet Ex. 3A, Direct Testimony of Robert L. Flygar at 3 (Appellant's Supplement at 112). Eramet now exclusively produces manganese ferroalloys.

¹⁴ *Eramet Case*, Eramet Ex. 7, Direct Testimony of John Willoughby at 3-4 (July 29, 2009).

¹⁵ *Eramet Case*, Eramet Ex. 3A, Direct Testimony of Robert L. Flygar at 9 (Appellant's Supplement at 118).

¹⁶ Part of this increase was the result of MonPower's efforts to impose "market-based" pricing on its Ohio customers in and around Marietta. Eramet stood with its local community to resist MonPower's efforts to devastate the local economy and worked through the Industrial Energy Users-Ohio ("IEU-Ohio") and with the PUCO and other officials to help fashion practical solutions to the "MonPower Problem." After extensive litigation in multiple venues, MonPower filed an application for Commission approval to transfer its service territory to AEP-Ohio. While the resulting rates were lower than the estimates of permitting MonPower to charge market rates for generation, the transfer still resulted in an increase of approximately 28% to Eramet. *Eramet Case*, Eramet Ex. 3A, Direct Testimony of Robert L. Flygar at 7-8 (Appellant's Supplement at 116-117).

¹⁷ *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* {C31781: }

were projected to increase an additional 6% per year in 2010 and 2011.¹⁸ In other words, for the period 2004 through 2011, Eramet projected that it would see increases in its electricity prices of over 100%.

Given the steep rate increases, Eramet sought alternatives to alleviate some of the impact on their business and turned to a modified statutory provision regarding reasonable arrangements to achieve this goal.

A reasonable arrangement is essentially a customized service arrangement for a mercantile customer or group of mercantile customers that, with the approval of the Commission, allows the EDU to deviate from the requirements of the otherwise applicable standard tariff provided by the EDU. With the enactment of SB 221, R.C. 4905.31 was modified to give customers, as opposed to only EDUs, the opportunity to propose a reasonable arrangement with an EDU for approval by the Commission. R.C. 4905.31 permits the prices, terms and conditions of the EDU's service to be enabled through a "reasonable arrangement" provided that the arrangement is filed with and approved by the Commission.¹⁹

Transfer of Certain Generating Assets, PUCO Case Nos. 08-917-EL-SSO, *et al.*, Opinion and Order (March 18, 2009) (hereinafter "*AEP ESP Case*").

¹⁸ *Eramet Case*, Eramet Ex. 3A, Direct Testimony of Robert L. Flygar at 8 (Appellant's Supplement at 117).

¹⁹ R.C. 4905.31 permits a mercantile customer to establish a reasonable arrangement with an EDU providing for any of the following:

- (A) The division or distribution of its surplus profits;
- (B) A sliding scale of charges, including variations in rates based upon stipulated variations in cost as provided in the schedule or arrangement;
- (C) A minimum charge for service to be rendered unless such minimum charge is made or prohibited by the terms of the franchise, grant, or ordinance under which such public utility is operated;
- (D) A classification of service based upon the quantity used, the time when used, the purpose for which used, the duration of use, and any other reasonable consideration;

On June 19, 2009, Eramet unilaterally filed an application (“Application”) with the PUCO seeking approval of a reasonable arrangement pursuant to Section 4905.31, Revised Code, as modified by SB 221, and Rule 4901:1-38-05, Ohio Administrative Code. Through its Application, Eramet sought Commission approval of an arrangement to help Eramet rationalize the capital investments that must be undertaken to secure and sustain the operation of Eramet’s plant in Southeast Ohio and to enable it to compete both with other companies in the manganese division under Eramet’s parent company umbrella and globally. The reasonable arrangement is a full requirements contract that provides Eramet, under defined circumstances, generation service priced at a different rate than would otherwise apply under CSP’s applicable tariffs. In general terms, the structure of the contract provides Eramet with a lower price for electricity and the predictability over a term that is long enough to help Eramet rationalize the capital investments required to sustain the operations in Ohio.

On August 5, 2009, the Stipulation signed by Eramet and Staff was filed. In exchange for the proposed reasonable arrangement for long-term electricity supply, the Stipulation requires Eramet to meet performance commitments including \$40 million in capital investments over the first six years, commitments to improve environmental performance and energy efficiency, and the retention of 200 employees.²⁰ On October 15, 2009, the Commission approved the Stipulation and Eramet is currently operating under the reasonable arrangement.²¹

(E) Any other financial device that may be practicable or advantageous to the parties interested.

²⁰ *Eramet Case*, Joint Exhibit 1 at 8 (Appellant’s Supplement at 76).

²¹ *Eramet Case*, Opinion and Order (October 15, 2009) (Appellant’s Appendix at 31).

The difference between what Eramet would pay under the otherwise applicable SSO tariff and what Eramet pays under the reasonable arrangement is commonly referred to as delta revenue.²² R.C. 4905.31(E) states, in pertinent part, that reasonable arrangements “may include a device to recover costs incurred in conjunction with any economic development and job retention program of the utility within its certified territory, including recovery of revenue foregone as a result of any such program....” The same section also states that every reasonable arrangement “shall be under the supervision and regulation of the commission, and is subject to change, alteration, or modification by the commission.”

Under the Commission-approved reasonable arrangement, other CSP customers pay CSP for the delta revenue. In the approved reasonable arrangement, the PUCO required CSP to credit any provider of last resort (“POLR”) charges paid by Eramet to CSP’s economic development rider (the delta revenue recovery mechanism) in order to reduce the recovery of delta revenue from other ratepayers inasmuch as the Commission determined that CSP does not have any risk that Eramet will shop for generation supply and then return to CSP as the default service provider.²³

The Commission’s decisions regarding its authority to modify and approve a reasonable arrangement are grounded in Ohio law and are reasonable. CSP has failed to demonstrate otherwise. Accordingly, the Court should affirm the Commission’s decision.

²² The Commission recently adopted a definition of “delta revenue” in Rule 4901:1-38-01, Ohio Administrative Code, as “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 commission.” (Eramet’s Appendix at 1).

²³ *Eramet Case*, Opinion and Order at 8-9 (October 15, 2009) (Appellant’s Appendix at 38-39).

STANDARD OF REVIEW

The PUCO and this Court apply 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.²⁴

Additionally, R.C. 4903.13 states that “[a] final order made by the public utilities commission shall be reversed, vacated, or modified by the supreme court on appeal, if, upon consideration of the record, such court is of the opinion that such order was unlawful or unreasonable.” With regard to the Commission’s determinations regarding questions of fact, the Court has held that it “will not reverse or modify a [commission] decision as to questions of fact where the record contains sufficient probative evidence to show that the determination is not manifestly against the weight of the evidence and is not so clearly unsupported by the record as to show misapprehension, mistake, or willful disregard of duty.”²⁵ The appellant “bears the burden of demonstrating that the commission’s decision is against the manifest weight of the evidence or is clearly unsupported by the record.”²⁶ As to matters of law, the Court has “complete and independent power of review of all questions of law” in appeals from the Commission.²⁷

²⁴ *Consumers' Counsel v. Pub. Util. Comm.* (1992), 64 Ohio St.3d 123, 126, 592 N.E.2d 1370. See, also, *AK Steel Corp. v. Pub. Util. Comm.* (2002), 95 Ohio St.3d 81, 82-83, 765 N.E.2d 862.

²⁵ *The Cincinnati Gas & Elec. Co. v. Pub. Util. Comm.*, 86 Ohio St.3d 53, 58, 711 N.E.2d 670 (1999).

²⁶ *Constellation NewEnergy v. Pub. Util. Comm.*, 104 Ohio St.3d 530, 2004-Ohio-6767, at ¶50.

²⁷ *Ohio Edison Co. v. Pub. Util. Comm.*, 78 Ohio St.3d 466, 469, 678 N.E.2d 922 (1977).
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As demonstrated below, the Commission's Orders in this proceeding are lawful and reasonable.

ARGUMENT

PROPOSITION OF LAW I:

The Commission has statutory authority to approve a reasonable arrangement filed without the support or consent of the electric distribution utility.

CSP is correct that prior to the enactment of SB 221, R.C. 4905.31 allowed only a "public utility" to file a schedule or enter into "any reasonable arrangement" with another public utility or with "its customers, consumers or employees" providing for certain enumerated outcomes, including variable rates and different classifications of service.²⁸ The statute also provided that no "such arrangement" or "schedule" is lawful until it was filed with and approved by the Commission and that the public utility was required to conform its rates to the arrangement upon Commission approval.²⁹ CSP is also correct that SB 221 amended R.C. 4905.31 to permit mercantile customers to seek approval of a reasonable arrangement or schedule where only the EDUs were permitted to do so before.³⁰

However and even though the meaning of R.C. 4905.31 is not ambiguous, CSP spends a significant portion of its Merit Brief to concoct a statutory interpretation that would have this Court conclude that no reasonable arrangement or schedule can be enabled without the EDU's consent and acceptance.³¹ In other words, CSP urges this Court to find that CSP has an absolute veto over the authority delegated to the Commission by R.C. 4905.31 to enable a reasonable

²⁸ CSP Merit Brief at 41.

²⁹ R.C. 4905.31 (Appellant's Appendix at 1).

³⁰ CSP Merit Brief at 41.

³¹ *Id.* at 41-48.
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arrangement or schedule that is filed by a mercantile customer or group of such customers. The Commission has already rejected CSP's invitation to modify SB 221 multiple times.³² The relief CSP seeks on appeal is unlawful and it does not take an exercise in statutory interpretation to conclude as much.

SB 221 explicitly expanded the persons eligible to submit such an arrangement or schedule for the Commission's consideration and approval by adding mercantile customers to the category of entities that are entitled to submit a proposed reasonable arrangement to the Commission for its consideration and approval. Specifically, as a result of SB 221, R.C. 4905.31(E) now states:

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

Tellingly, despite expanding the scope of persons eligible to submit a proposed reasonable arrangement or schedule to the Commission, the General Assembly did not modify the requirement that upon Commission approval of such a reasonable arrangement, "[e]very such public utility is required to conform its schedules of rates, tolls, and charges to such arrangement, sliding scale, classification, or other device, and where variable rates are provided for in any such schedule or arrangement, the cost data or factors upon which such rates are based and fixed shall be filed with the commission in such form and at such times as the commission directs."³³ There is no new language that says, "***upon the agreement of the public utility with the Commission-***

³² See, for example, *In the Matter of the Application of Ormet Primary Aluminum Corporation for Approval of a Unique Arrangement with Ohio Power Company and Columbus Southern Power Company*, PUCO Case No. 09-119-EL-AEC, Entry on Rehearing at 17-18 (September 15, 2009).

³³ R.C. 4905.31(E) (Appellant's Appendix at 2).
{C31781: }

approved reasonable arrangement, the public utility is required to conform its rates to the arrangement.” The General Assembly could have included such a requirement and it did provide, effectively that is, an EDU with a regulator-disabling veto where the Commission modifies (acting under R.C. 4928.143) a proposed electric security plan. But, the General Assembly did not delegate authority to CSP or any other EDU the right to trump a Commission determination rendered pursuant to R.C. 4905.31.

The clear and plain language in R.C. 4905.31 states that: (1) either an electric utility, mercantile customer or group of mercantile customers may submit a proposed reasonable arrangement or schedule to the Commission for the Commission’s consideration and approval; (2) the proposed reasonable arrangement may become lawful and effective only upon Commission approval; and, (3) the utility must then conform its rates to the Commission-approved reasonable arrangement.

Finally, in addition to being contrary to R.C. 4905.31, CSP’s proposition of law is contrary to other provisions of Chapter 49 of the Ohio Revised Code. Every public utility has an obligation to furnish necessary and adequate service and facilities to the public. All charges made or demanded by a public utility for any service rendered must be just and reasonable and not more than the charges allowed by law or order of the Commission. A public utility is specifically prohibited from charging or demanding any unjust or unreasonable charge or a charge in excess of the charge authorized by the Commission.³⁴ Before a public utility can bill and collect charges for the services it provides, it must have the required regulatory approvals to impose such rates and charges and it must publish the rates and charges in a schedule that is on

³⁴ See R.C. Sections 4905.22 and 4909.17 (Eramet’s Appendix at 3, 5, respectively).

file with the Commission.³⁵ Only the Ohio Supreme Court has the power to review, suspend or delay any order made by the Commission.³⁶ Thus, CSP's request that the Commission rewrite R.C. 4905.31 to equip CSP with an absolute veto over the Commission's authority to determine, in accordance with the law, the rates and charges that a utility must use for billing purposes is also in direct conflict with the clear and plain requirements of other Sections of the Revised Code. Accordingly, this Court should affirm the Commission's decision.

PROPOSITION OF LAW II:

The Commission's decision to approve the reasonable arrangement is just, reasonable and not affected by who ultimately contributes towards the delta revenue recovery.

Quite simply, CSP is contesting the Commission's decision in this case because it was prohibited from recovering what CSP deems to be 100 percent of its POLR "costs." However, the Commission's holding that there are no POLR costs for CSP to recover is lawful and reasonable and CSP has not presented any evidence or convincing arguments that the Commission's decision is against the manifest weight of evidence. Moreover, regardless of what this Court decides with regard to who ultimately contributes to the recovery of delta revenue, the reasonableness of the compromise that is presented, as a package, in the Stipulation is unaffected and the Commission's decision to approve the Stipulation should be upheld.

A. The Commission has statutory authority to address requests for delta revenue recovery.

CSP's assumed right to collect all delta revenue associated with Eramet's reasonable arrangement is not found in R.C. 4905.31 or any Commission precedent. It is, once again, based upon CSP's tortured and contrived statutory interpretation.

³⁵ R.C. 4905.30 (Eramet's Appendix at 4).

³⁶ R.C. 4903.12 (Eramet's Appendix at 2).

Quite simply, R.C. 4905.31 grants the Commission discretion to consider and address issues related to requests to recover delta revenue. Specifically, R.C. 4905.31(E) states that a schedule or arrangement concerning a public utility “*may* include a device to recover costs incurred in conjunction with any economic development and job retention program of the utility within its certified territory, including recovery of revenue forgone as a result of any such program.” (Emphasis added). As the Commission previously found, the word “may” in R.C. 4905.31 indicates that the collection of delta revenue by a public utility is a matter for the Commission’s discretion.³⁷

This Court should affirm the Commission’s straight-forward, reasonable and lawful ruling regarding its discretion to award the collection of delta revenue.

B. Given the Commission’s authority to address requests to recover delta revenue, whether there is an exclusive supplier agreement is irrelevant. Nonetheless, the record demonstrates that there is an exclusive supplier agreement.

CSP argues that “the exclusive supplier characterization is not supported by Eramet’s testimony in the record, is found nowhere in the actual service contract adopted below, and incorporates an unlawful policy that conflicts with the fundamental tenets of Ohio’s electric restructuring law.”³⁸ Because the Commission has discretion to address issues related to requests to recover delta revenue, CSP’s argument about whether there is an exclusive supplier agreement is irrelevant. However, even if it was relevant, the record demonstrates that CSP is incorrect.

The Stipulation specifically states, “CSP shall supply and deliver electricity in such amount as may be sufficient to meet Eramet’s full requirements and Eramet shall consume and purchase such delivered supply to the same extent as would otherwise be the case if Eramet were

³⁷ *Eramet Case*, Opinion and Order at 8 (October 15, 2009) (Appellant’s Appendix at 38).

³⁸ CSP Merit Brief at 29.
{C31781: }

served by CSP under the otherwise applicable tariff and did not obtain supply from a competitive retail electric service supplier.”³⁹ Similarly, the “Contract for Electric Service” CSP signed with Eramet states:

Pursuant to this Contract, unless otherwise agreed by Company and Customer pursuant to Section 5 of this Contract, **Company shall supply and deliver to Customer electric service having the same quality of service that Company is obligated to provide to Customer under Company's GS-4 rate schedule and successors thereto. Company shall supply and deliver electricity in such amount as may be sufficient to meet Customer's full requirements at the Customer's Facility for its direct use at the Customer's Facility at 16705 State Route 7, Marietta, Ohio. Customer shall consume and purchase such delivered supply to the same extent as would otherwise be the case if Customer were served by Company under the otherwise applicable tariff.**⁴⁰ (Emphasis added.)

Thus, the record makes clear that the arrangement and contract between Eramet and CSP is an exclusive supplier agreement.

CSP also claims that because Eramet’s Chief Executive Officer (“Mr. Bjorklund”) did not respond on cross examination that Eramet does not have the right to shop for electric supply service during the term of the exclusive supply agreement that Eramet may shop, thereby giving rise to a POLR risk. Specifically, CSP claims that it “would have been easy for Mr. Bjorklund to testify that Eramet would not have the right to shop throughout the term of the contract if that were what Eramet was agreeing to. But he did not say that.”⁴¹

As CSP is well aware, witnesses may only answer the questions asked of them. CSP never asked Mr. Bjorklund or any of the other two Eramet witnesses whether Eramet was agreeing not to shop for the term of the reasonable arrangement. Rather, CSP asked hypothetical

³⁹ *Eramet Case*, Joint Exhibit 1 at 4-5 (Appellant’s Supplement at 76).

⁴⁰ *Eramet Case*, Contract for Electric Service at 1-2 (October 28, 2009) (Appellant’s Supplement at 60).

⁴¹ CSP Merit Brief at 30.

questions about whether it is good to have the flexibility to shop.⁴² The fact that Eramet's witnesses did not respond to a question never asked is irrelevant. Moreover, the Stipulation and the Contract for Electric Service speak for themselves.

CSP also argues that the fact that neither the Stipulation nor the Stipulating parties (Staff and Eramet) address the delta revenue recovery or any offsets means that "the Stipulation could not have intended to address whether Eramet had forfeited its right to shop as a term of the Stipulation."⁴³ CSP is confusing two separate and distinct issues – exclusive supplier agreements and delta revenue recovery. Even so, Eramet did take a position on delta revenue recovery.

Eramet argued that R.C. 4905.31 grants the Commission discretion to consider and address issues related to requests to recover delta revenue and that the Commission must make the policy, legal, and factual calls to determine whether the proposed reasonable arrangement appropriately balances the costs and benefits, including CSP's recovery of revenue foregone.⁴⁴ Eramet urged the Commission to address this subject and the treatment of delta revenue.⁴⁵

The Commission did address the issue within its discretion and CSP has failed to demonstrate that the Commission's decision was unlawful or unreasonable. Accordingly, this Court should uphold the Commission's decision on the delta revenue recovery.

⁴² For example, CSP asked, "When it comes to the business decision of purchasing power, is it your view that you would prefer to have the flexibility to shop in the market so that if market prices were below the reasonable arrangement that you're asking the Commission to approve, that you would be able to take advantage of those lower market prices?" and "if a lower market price were available during the term of the special arrangement, you would be content not to switch to that lower price." *Eramet Case*, Tr. Vol. I at 104 (Appellant's Supplement at 49).

⁴³ CSP Merit Brief at 30-31.

⁴⁴ *Eramet Case*, Reply Brief of Eramet Marietta, Inc. at 15-16 (September 8, 2009).

⁴⁵ *Id.*
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Even in the unlikely event that this Court finds that the Commission's decision to require CSP to credit any POLR charges paid by Eramet to CSP's economic development rider in order to reduce the amount of delta revenue recovered from other ratepayers was in error, it does not affect the reasonableness or lawfulness of the Commission's approval of the Stipulation in this case. Accordingly, this Court should uphold the Commission's decision approving the Stipulation.

CONCLUSION

The Commission has correctly applied the law and its discretion to modify and approve reasonable arrangements proposed by mercantile customers and Eramet specifically. Therefore, the Commission's orders challenged by CSP on appeal should be affirmed in all respects.

Respectfully Submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of this *Merit Brief of Intervening Appellee Eramet Marietta, Inc.* was sent by ordinary U.S. mail, postage prepaid, to the parties listed below this 26th day of August 2010.



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IN THE SUPREME COURT OF OHIO

Columbus Southern Power Company)	Supreme Court Case No. 2010-0723
)	
Appellant,)	Appeal from the
)	Public Utilities Commission of Ohio
v.)	
)	PUCO Case No. 09-516-EL-AEC
The Public Utilities Commission of Ohio)	
)	
Appellee.)	

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4901:1-38-01 Definitions.

(A) "Affidavit" means a written declaration made under oath before a notary public or other authorized officer.

(B) "Commission" means the public utilities commission of Ohio.

(C) "Delta 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 commission.

(D) "Electric utility" shall have the meaning set forth in division (A)(11) of section 4928.01 of the Revised Code.

(E) "Energy efficiency production facilities" means any customer that manufactures or assembles products that promote the more efficient use of energy (i.e., increase the ratio of energy end use services (i.e., heat, light, and drive power) derived from a device or process to energy inputs necessary to derive such end use services as compared with other devices or processes that are commonly installed to derive the same energy use services); or, any customer that manufactures, assembles or distributes products that are used in the production of clean, renewable energy.

(F) "Mercantile customer" shall have the meaning set forth in division (A)(19) of section 4928.01 of the Revised Code.

(G) "Nonfirm electric service" means electric service provided pursuant to a schedule filed under section 4905.30 or 4928.141 of the Revised Code, or pursuant to an arrangement under section 4905.31 of the Revised Code, which schedule or arrangement includes conditions that may require the customer to curtail or interrupt electric usage during nonemergency circumstances upon notification by the electric utility.

(H) "Staff" means the staff of the commission or its authorized representative.

Effective: 04/02/2009

R.C. 119.032 review dates: 09/30/2013

Promulgated Under: 111.15

Statutory Authority: 4905.04, 4905.06

Rule Amplifies: 4905.31, 4928.02

4903.12 Jurisdiction.

No court other than the supreme court shall have power to review, suspend, or delay any order made by the public utilities commission, or enjoin, restrain, or interfere with the commission or any public utilities commissioner in the performance of official duties. A writ of mandamus shall not be issued against the commission or any commissioner by any court other than the supreme court.

Effective Date: 10-01-1953

4905.22 Service and facilities required - unreasonable charge prohibited.

Every public utility shall furnish necessary and adequate service and facilities, and every public utility shall furnish and provide with respect to its business such instrumentalities and facilities, as are adequate and in all respects just and reasonable. All charges made or demanded for any service rendered, or to be rendered, shall be just, reasonable, and not more than the charges allowed by law or by order of the public utilities commission, and no unjust or unreasonable charge shall be made or demanded for, or in connection with, any service, or in excess of that allowed by law or by order of the commission.

Effective Date: 10-01-1953

4905.30 Printed schedules of rates must be filed.

Every public utility shall print and file with the public utilities commission schedules showing all rates, joint rates, rentals, tolls, classifications, and charges for service of every kind furnished by it, and all rules and regulations affecting them. Such schedules shall be plainly printed and kept open to public inspection. The commission may prescribe the form of every such schedule, and may prescribe, by order, changes in the form of such schedules. The commission may establish and modify rules and regulations for keeping such schedules open to public inspection. A copy of such schedules, or so much thereof as the commission deems necessary for the use and information of the public, shall be printed in plain type and kept on file or posted in such places and in such manner as the commission orders.

Effective Date: 10-01-1953

4909.17 Approval required for change in rate.

No rate, joint rate, toll, classification, charge, or rental, no change in any rate, joint rate, toll, classification, charge, or rental, and no regulation or practice affecting any rate, joint rate, toll, classification, charge, or rental of a public utility shall become effective until the public utilities commission, by order, determines it to be just and reasonable, except as provided in this section and sections 4909.18 and 4909.19 of the Revised Code. Such sections do not apply to any rate, joint rate, toll, classification, charge, or rental, or any regulation or practice affecting the same, of railroads, street and electric railways, motor transportation companies, telegraph companies, and pipe line companies. Any change of any rate, joint rate, toll, classification, charge, or rental, or any regulation or practice affecting the same, of telegraph companies, may be made in the same manner as such changes may be made by railroad companies. All laws respecting such changes by railroad companies apply to such changes by telegraph companies.

Effective Date: 10-01-1953