

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)
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



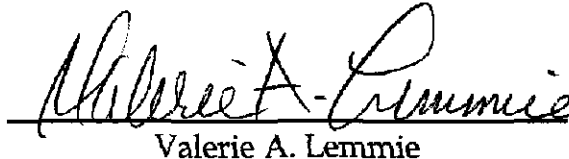
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