

**FILE**

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

14  
RECEIVED-DOCKETING DIV  
2011 MAR -2 PM 4:10  
PUCO

In the Matter of the Application of )  
Columbus Southern Power Company and ) Case No. 11-705-EL-RDR  
Ohio Power Company to Adjust Their )  
Economic Development Cost Recovery )  
Rider Rates. )

---

**MOTION TO INTERVENE,  
MEMORANDUM IN SUPPORT  
AND COMMENTS  
BY  
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

---

**JANINE L. MIGDEN-OSTRANDER  
CONSUMERS' COUNSEL**

Michael E. Idzkowski, Counsel of Record  
Assistant Consumers' Counsel

**Office of the Ohio Consumers' Counsel**  
10 West Broad Street, Suite 1800  
Columbus, Ohio 43215-3485  
Telephone: (614) 466-8574  
[idzkowski@occ.state.oh.us](mailto:idzkowski@occ.state.oh.us)

This is to certify that the images appearing are an  
accurate and complete reproduction of a case file  
document delivered in the regular course of business.  
Technician ACJ Date Processed 3/2/11

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of	)	
Columbus Southern Power Company and	)	Case No. 11-705-EL-RDR
Ohio Power Company to Adjust Their	)	
Economic Development Cost Recovery	)	
Rider Rates.	)	

---

**MOTION TO INTERVENE,  
MEMORANDUM IN SUPPORT  
AND COMMENTS  
BY  
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

---

The Office of the Ohio Consumers' Counsel ("OCC") moves to intervene in this case<sup>1</sup> on behalf of 1.2 million residential utility customers of Columbus Southern Power Company and Ohio Power Company ("collectively, "AEP Ohio" or "the Companies," and individually, "CSP" and "OP"), where the Companies seek approval to adjust the rates of their Economic Development Cost Recovery Riders ("EDR")<sup>2</sup> originally established in the Companies' Electric Security Plan proceeding, Public Utilities Commission of Ohio ("PUCO" or "Commission") Case Nos. 08-917-EL-SSO and 08-918-EL-SSO, and previously updated in PUCO Case Nos. 09-1095-EL-RDR, 10-154-EL-RDR, and 10-1072-EL-RDR. In this case, AEP Ohio seeks to collect from residential and other customers, by way of the EDR, the difference between the discount rates being paid to AEP Ohio by Ormet Primary Aluminum Corporation ("Ormet") and Eramet Marietta Inc. ("Eramet") and the otherwise applicable tariff rates Ormet and Eramet would pay, absent the discounts (plus

---

<sup>1</sup> See R.C. Chapter 4911, R.C. 4903.221 and Ohio Adm. Code 4901-1-11.

<sup>2</sup> Application at 3.

carrying costs). AEP Ohio's discounts to these two mercantile customers and their related carrying costs were established in the *Ormet* unique arrangement case<sup>3</sup> and the *Eramet* unique arrangement case.<sup>4</sup>

OCC is the statutory representative, under R.C. Chapter 4911, of AEP Ohio's 1.2 million residential customers. Under Ohio Adm. Code 4901:1-38-05(F), affected parties may file a motion to intervene and file comments and objections to a unique arrangement application within twenty days of the filing of the application.

The reasons the Commission should grant OCC's Motion to Intervene are further set forth in the attached Memorandum in Support.

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER  
CONSUMERS' COUNSEL



Michael E. Idzkowski, Counsel of Record  
Assistant Consumers' Counsel

**Office of the Ohio Consumers' Counsel**  
10 West Broad Street, Suite 1800  
Columbus, Ohio 43215-3485  
Telephone: (614) 466-8574  
[idzkowski@occ.state.oh.us](mailto:idzkowski@occ.state.oh.us)

---

<sup>3</sup> *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).

<sup>4</sup> *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).

## TABLE OF CONTENTS

	PAGE
I. INTERVENTION.....	1
II. COMMENTS.....	4
A. AEP Ohio Bears The Burden Of Demonstrating That Its Application Is Reasonable And Lawful. ....	4
B. The Commission Should Again Order That POLR Charges Be Applied As A Partial Offset To The Customer-Paid Subsidies Of The Ormet and Eramet Discounts.....	5
C. The Commission Must Determine That AEP Ohio's Application Complies With Ohio Adm. Code 4901:1-38-08(A)(4).....	7
D. Redacted Information Necessary to The Commission's Analysis of the Application Must Be Provided To the Commission and Interested Parties Such As OCC.....	8
III. CONCLUSION.....	8

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of	)	
Columbus Southern Power Company and	)	Case No. 11-705-EL-RDR
Ohio Power Company to Adjust Their	)	
Economic Development Cost Recovery	)	
Rider Rates	)	

---

**MEMORANDUM IN SUPPORT AND COMMENTS**

---

**I. INTERVENTION**

In their application, the Companies propose to adjust their EDR rates<sup>5</sup> approved in a previous and related proceeding (PUCO Case No. 10-1072-EL-RDR). The EDR was originally established in the Companies' ESP proceeding.<sup>6</sup> Through the EDR, AEP Ohio seeks to collect from residential and other customers the difference between the discount rates being paid to AEP Ohio by two mercantile customers, Ormet and Eramet, and the otherwise applicable tariff rates Ormet and Eramet would pay, absent the discounts, plus carrying costs. AEP Ohio's discounts to these two mercantile customers and their related carrying costs were established in the *Ormet* unique arrangement case<sup>7</sup> and the *Eramet* unique arrangement case.<sup>8</sup>

---

<sup>5</sup> Application at 3.

<sup>6</sup> PUCO Case Nos. 08-917-EL-SSO and 08-918-EL-SSO, previously updated in PUCO Case Nos. 09-1095-EL-RDR, 10-154-EL-RDR, and 10-1072-EL-RDR.

<sup>7</sup> *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).

<sup>8</sup> *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).

OCC has authority under law to represent the interests of all the approximately 1.2 million residential utility customers of AEP Ohio, pursuant to R.C. Chapter 4911. R.C. 4903.221 provides, in part, that any person “who may be adversely affected” by a PUCO proceeding is entitled to seek intervention in that proceeding. The interests of Ohio’s residential customers may be “adversely affected” by this case, especially if the customers were unrepresented in a proceeding where the economic rider that AEP Ohio seeks to have approved could result in unreasonable costs upon customers, including residential customers. Thus, this element of the intervention standard in R.C. 4903.221 is satisfied.

R.C. 4903.221(B) requires the Commission to consider the following criteria in ruling on motions to intervene:

- (1) The nature and extent of the prospective intervenor’s interest;
- (2) The legal position advanced by the prospective intervenor and its probable relation to the merits of the case;
- (3) Whether the intervention by the prospective intervenor will unduly prolong or delay the proceeding; and
- (4) Whether the prospective intervenor will significantly contribute to the full development and equitable resolution of the factual issues.

First, the nature and extent of OCC’s interest is representing the residential customers of AEP Ohio in this case where AEP Ohio seeks to charge customers for revenues related to the electricity discounts given to certain mercantile customers. This interest is different than that of any other party and especially different than that of Ormet, Eramet, and AEP Ohio, whose advocacy includes their own financial interests.

Second, OCC's advocacy for residential customers will include, as appropriate, advocating for any necessary changes, alterations, or modifications to AEP Ohio's proposal (under Ohio Adm. Code 4901:1-38-05(B)(4)), thereby advancing the position that the proposal must produce rates that are no more than what is reasonable and lawful under Ohio law, for service that is adequate under Ohio law. OCC's position is therefore directly related to the merits of this case that is pending before the PUCO, the authority with regulatory control of public utilities' rates and service quality in Ohio.

Third, OCC's intervention will not unduly prolong or delay the proceedings. OCC, with its longstanding expertise and experience in PUCO proceedings, will duly allow for the efficient processing of the case with consideration of the public interest.

Fourth, OCC's intervention will significantly contribute to the full development and equitable resolution of the factual issues presented by the Companies' proposal. OCC will obtain and develop information that the PUCO should consider for equitably and lawfully deciding the case in the public interest.

OCC also satisfies the intervention criteria in the Ohio Administrative Code (which are subordinate to the criteria that OCC satisfies in the Ohio Revised Code). To intervene, a party should have a "real and substantial interest" according to Ohio Adm. Code 4901-1-11(A)(2). As the advocate for residential utility customers, OCC has a very real and substantial interest in this case where the outcome could increase rates for residential customers.

In addition, OCC meets the criteria of Ohio Adm. Code 4901-1-11(B)(1)-(4). These criteria mirror the statutory criteria in R.C. 4903.221(B) that OCC already has addressed and that OCC satisfies.

Ohio Adm. Code 4901-1-11(B)(5) states that the Commission shall consider the “extent to which the person’s interest is represented by existing parties.” While OCC does not concede the lawfulness of this criterion, OCC satisfies this criterion in that it uniquely has been designated as the state representative of the interests of Ohio’s residential utility customers. That interest is different from, and not represented by, any other entity in Ohio.

Moreover, the Supreme Court of Ohio confirmed OCC’s right to intervene in PUCO proceedings, in ruling on an appeal in which OCC claimed the PUCO erred by denying its intervention. The Court found that the PUCO abused its discretion in denying OCC’s intervention and that OCC should have been granted intervention.<sup>9</sup>

OCC meets the criteria set forth in R.C. 4903.221, Ohio Adm. Code 4901-1-11, and the precedent established by the Supreme Court of Ohio for intervention. On behalf of Ohio residential customers, the Commission should grant OCC’s Motion to Intervene.

## **II. COMMENTS**

### **A. AEP Ohio Bears The Burden Of Demonstrating That Its Application Is Reasonable And Lawful.**

Under the laws that govern PUCO proceedings, AEP Ohio bears the burden of proving to the PUCO that its application to adjust its economic development riders associated with the Ormet and Eramet unique arrangements should be approved. R.C. 4909.18 provides that, in the circumstance where a proposal “may be unjust or unreasonable, the commission shall set the matter for hearing” and “the burden of proof to show that the proposals in the application are just and reasonable shall be upon the

---

<sup>9</sup> See *Ohio Consumers’ Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶¶13-20 (2006).



public utility.” Similarly, Ohio Adm. Code 4901:1-38-08(B)(1) provides that where an application for a revenue recovery rider may be unjust and unreasonable, the Commission shall set the matter for hearing and the burden to show that the revenue recovery rider proposal is just and reasonable shall be on the electric utility.<sup>10</sup> . Thus, OCC bears no burden of proof in this case. Accordingly, AEP Ohio’s application must provide sufficient information for the Commission to determine that AEP Ohio has met its burden of proof.

**B. The Commission Should Again Order That POLR Charges Be Applied As A Partial Offset To The Customer-Paid Subsidies Of The Ormet and Eramet Discounts.**

In each of the previous update cases related to AEP Ohio’s EDR in which AEP Ohio has sought the collection of its so-called delta revenues resulting from the discounts received by Ormet and Eramet, the Commission has consistently and appropriately ordered that the Provider of Last Resort (“POLR”) charges paid by Ormet and Eramet be applied as a partial offset to the subsidies paid by AEP Ohio’s other customers that enable the discounts. By paying for these subsidies, AEP Ohio’s customers are shouldering the entire burden of the discounts. At the same time, AEP Ohio’s customers are keeping AEP Ohio whole by preserving for AEP Ohio these large mercantile customers, as well as the profits from the sales to these large customers -- all at no cost to AEP Ohio.

Consistent with its own past practice, AEP Ohio has once again proposed that it be authorized to collect the POLR charges paid by Ormet and Eramet as revenue, in addition to the actual delta revenue produced by the discounts. But recognizing that the Commission may again require the POLR credits, AEP Ohio has provided two sets of

---

<sup>10</sup> See Ohio Adm. Code 4901:1-38-08(B)(1).

EDR rates in their application, one set that includes the POLR offset and one set that excludes it.

Although OCC has no reason in this case to expect a change in the Commission's position regarding the POLR offset to the subsidy paid by AEP Ohio's customers, OCC restates its support for this position, and reiterates that such a position is consistent with R.C. 4905.31 as found in the Commission's prior orders.<sup>11</sup> In addition, OCC stresses that the offset of POLR charges accomplishes the important objectives of (1) reducing the rate increase to AEP Ohio's captive customers who must pay the delta revenues associated with these projects and (2) preventing the Companies from obtaining windfall revenues since POLR services are not being provided to Ormet and Eramet.

Customers need to be protected from the impact of electric rate increases taking the form of reasonable arrangements. The Commission must recognize that customers' overall rates are affected by each reasonable arrangement that the Commission approves. Therefore, the need to reduce customers' obligations in each reasonable arrangement case, where possible, is crucial. Otherwise, the cumulative impact of requiring customers to subsidize multiple economic development rates may undermine the state policy of ensuring that reasonably priced electric service is available to consumers.<sup>12</sup>

---

<sup>11</sup> *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). *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).

<sup>12</sup> See R.C. 4928.02(A).

**C. The Commission Must Determine That AEP Ohio's Application Complies With Ohio Adm. Code 4901:1-38-08(A)(4).**

To be approved by the Commission, the proposed riders to recover delta revenues must comply with Ohio Administrative Code, and in particular, 4901:1-38-08(A)(4). Ohio Adm. Code 4901:1-38-08(A)(4) states:

(A) 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 in accordance with the following:

\* \* \*

(4) The amount of the revenue recovery rider shall be spread to all customers in proportion to the current revenue distribution between and among classes, subject to change, alteration, or modification by the commission. The electric utility shall file the projected impact of the proposed rider on all customers, by customer class.

Under Ohio Adm. Code 4901:1-38-08(A)(4), the riders are to be spread to all customers in proportion to their revenue distribution between and among classes. As filed, the riders are based on a fixed percentage of the customers' base distribution charges that does not vary with customer class.<sup>13</sup> In addition to the customers' base distribution charges, riders must take into consideration the proportionate share of each customer class in other revenue components encompassed in the utilities revenue (e.g., generation charges, etc.).

OCC is seeking to determine whether AEP Ohio's application complies with Ohio Adm. Code 4901:1-38-08(A)(4), but OCC needs more time to perform the necessary analysis. Likewise, the Commission should perform this analysis. The Commission

---

<sup>13</sup> The Application at 4 and 5.

must not approve the application unless it determines that the proposed tariff structure, as filed, ensures that all customer classes, including residential, are paying their fair and just share of the delta revenue.

**D. Redacted Information Necessary to The Commission's Analysis of the Application Must Be Provided To the Commission and Interested Parties Such As OCC.**

A further concern of OCC is the fact that portions of AEP Ohio's application are redacted. This information pertains to the estimated and actual amounts of the delta revenues for both Eramet and Ormet, as outlined in Schedules No. 4 and 5. Without the information that has been redacted, OCC cannot be ensured that the application is arithmetically accurate, and that the delta revenue totals to be collected are fair, just and reasonable. While this information may become available upon obtaining a protective agreement among the parties, the information remains at this time unavailable to OCC.

Concurrently, Ohio Adm. Code 4901:1-38-08(C) prescribes a period of only 20 days for interested parties to submit comments. As a result, OCC is submitting these Comments without this information. However, additional time to obtain this information and to conduct the analysis discussed above should be provided all interested parties. Accordingly, OCC reserves the right to supplement these Comments once it has the information redacted from the application.

**III. CONCLUSION**

For the reasons set forth above, OCC requests that the Commission approve OCC's Motion to Intervene, continue the Commission's past practice of applying POLR charges as an offset to the subsidy paid by AEP Ohio's customers, and allow OCC the

additional time necessary to have the opportunity review the presently redacted information in the application.

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER  
CONSUMERS' COUNSEL

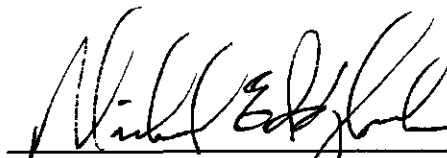
A handwritten signature in black ink, appearing to read "Michael E. Idzkowski", written over a horizontal line.

Michael E. Idzkowski, Counsel of Record  
Assistant Consumers' Counsel

**Office of the Ohio Consumers' Counsel**  
10 West Broad Street, Suite 1800  
Columbus, Ohio 43215-3485  
Telephone: (614) 466-8574  
[idzkowski@occ.state.oh.us](mailto:idzkowski@occ.state.oh.us)

### **CERTIFICATE OF SERVICE**

I hereby certify that a copy of this *Motion to Intervene, Memorandum In Support and Comments* was served on the persons stated below via regular U.S. Mail Service, postage prepaid, this 2nd day of March, 2011.



Michael E. Idzkowski  
Assistant Consumers' Counsel

### **SERVICE LIST**

William L. Wright  
Attorney General's Office  
Public Utilities Commission of Ohio  
180 E. Broad St., 6<sup>th</sup> Fl.  
Columbus, OH 43215  
[William.wright@puc.state.oh.us](mailto:William.wright@puc.state.oh.us)

Steven T. Nourse  
AEP Service Corporation  
1 Riverside Plaza, 29th Floor  
Columbus, OH 43215  
[stnourse@aep.com](mailto:stnourse@aep.com)

Samuel C. Randazzo  
Frank P. Darr  
Joseph E. Olikier  
McNees Wallace & Nurick LLC  
21 East State Street, 17th Floor  
Columbus, OH 43215-4228  
[sam@mwncmh.com](mailto:sam@mwncmh.com)  
[fdarr@mwncmh.com](mailto:fdarr@mwncmh.com)  
[joliker@mwncmh.com](mailto:joliker@mwncmh.com)

Attorneys for Eramet Marietta, Inc.