

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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

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PROCEEDINGS

Before Bryce McKenney, Attorney Examiner, held
at the offices of the Public Utilities
Commission of Ohio, 180 East Broad Street,
Hearing Room 11-C, Columbus, Ohio, on Friday,
September 25, 2015, at 10:00 A.M.

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APPEARANCES:

McNees Wallace & Nurick LLC
By Mr. Scott E. Elisar
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Columbus, Ohio 43215-4228

On behalf of Eramet Marietta Inc.

Porter Wright Morris & Arthur LLP
By Ms. Christen M. Blend
41 South High Street
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Columbus, Ohio 43215-3200

On behalf of Ohio Power Company.

Ms. Maureen R. Grady
Assistant Consumers' Counsel
10 West Broad Street, Suite 1800
and
Bricker & Eckler
By Mr. Dane Stinson
100 South Third Street
Columbus, Ohio 43215

On behalf of the Office of
the Ohio Consumers' Counsel.

Mr. Werner L. Margard
Assistant Attorney General
180 East Broad Street, 11th Floor
Columbus, Ohio 43215

On behalf of the Staff of the
Public Utilities Commission
of Ohio.

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Friday Morning,
September 25, 2015.
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ATTORNEY EXAMINER: The Public
Utilities Commission of Ohio calls for hearing
at this time and place Case No. 09-516-EL-AEC
being in the matter of the Application for
Approval of an Amendment to Contract for
Electric Service between Ohio Power Company and
Eramet Marietta, Inc.

My name is Bryce McKenney, I am the
Attorney Examiner assigned by the Commission to
hear this case.

At this time I will take
the appearances of the parties, beginning with
Eramet.

MR. ELISAR: Thank you, your Honor.
Scott Elisar on behalf of Eramet Marietta Inc.
with McNees Wallace & Nurick. 21 East State
Street, 17th Floor, Columbus, Ohio 43215.

ATTORNEY EXAMINER: Thank you.

MS. BLEND: Good morning, your
Honor. On behalf of Ohio Power Company, Christen
M. Blend, Porter Wright Morris & Arthur, 41
South High Street, 29th Floor, Columbus, Ohio

1 43215.

2 ATTORNEY EXAMINER: Thanks, Ms.

3 Blend.

4 MR. MARGARD: On behalf of the Staff
5 of the Public Utilities Commission of Ohio, Mike
6 DeWine, Ohio Attorney General, William Wright,
7 Section Chief, Public Utilities Section, by
8 Assistant Attorneys General Warner Margard and
9 Thomas McNamee, 180 East Broad Street, 6th
10 Floor, Columbus, Ohio.

11 ATTORNEY EXAMINER: Thank you, Mr.
12 Margard. OCC.

13 MR. STINSON: Yes, you Honor. Bruce
14 Weston, Ohio Consumers' Counsel, and Maureen
15 Grady, Assistant Consumers' Counsel, 10 West
16 Broad Street, Suite 1800, Columbus, Ohio 43215,
17 and the firm of Bricker & Eckler, LLP by Dane
18 Stinson, 100 South Third Street, Columbus, Ohio
19 43215.

20 ATTORNEY EXAMINER: Thank you, Mr.
21 Stinson. It's my understanding that a
22 Stipulation and Recommendation has been filed in
23 this case. The Stipulation and Recommendation
24 is signed between the staff and Eramet, is that
25 correct, Mr. Elisar?

1 MR. ELISAR: That's correct, your
2 Honor.

3 ATTORNEY EXAMINER: Thank you. Are
4 you prepared to call your first witness?

5 MR. ELISAR: Yes, we are, your
6 Honor. I would like to call Kevin Murray to the
7 stand.

8 (WITNESS SWORN)

9 - - -

10 KEVIN MURRAY

11 called as a witness, being first duly sworn,
12 testified as follows:

13 DIRECT EXAMINATION

14 By Mr. Elisar:

15 Q. For the record please state your
16 name, title and business address.

17 A. My name is Kevin Murray, that's
18 K-E-V-I-N M-U-R-R-A-Y. My business address is
19 McNees Wallace & Nurick, 21 East State Street,
20 Columbus, Ohio 43215. And I am employed by
21 McNees as a Technical Specialist.

22 Q. And, Mr. Murray, could you share
23 with us, please, your background and how many
24 years you have been involved in this business?

25 A. I received a degree in engineering

1 in college, Bachelor of Science in Engineering.
2 Since 1991 I have been involved primarily in
3 energy and utility related matters.

4 Initially working for what is now
5 Timken Steel Corporation, managing both their
6 electricity and natural gas portfolio. And
7 since 1994 I have been employed by McNees or a
8 predecessor law firm as an on-staff engineer.

9 So I help the attorneys navigate
10 more technical aspects of the energy and utility
11 world.

12 I also currently serve as Chairman
13 of Midwest -- Midcontinent ISO Advisory
14 Committee. I have been involved with that
15 organization since 1998 helping to design and
16 implement regional electricity markets.

17 Q. Thank you. And, Mr. Murray,
18 finally, have you testified in proceedings
19 before at the PUCO?

20 A. Yes.

21 Q. And if so how many times?

22 A. I don't have an exact count. I am
23 thinking probably about 10 or 12 times.

24 Q. Thank you. And for the record on
25 whose behalf are you testifying today?

1 A. I am testifying on behalf of Eramet
2 Marietta.

3 Q. And what is the purpose of your
4 testimony?

5 A. My testimony is to support the
6 reasonableness of the Joint Stipulation and
7 Recommendation that has been submitted in this
8 proceeding.

9 MR. ELISAR: Thank you. Your Honor,
10 at this time I would like to have marked as
11 Exhibit 1 the Joint Stipulation and
12 Recommendation of the parties in this matter.

13 ATTORNEY EXAMINER: It will be
14 marked Eramet Exhibit 1.

15 (EXHIBIT MARKED FOR PURPOSES OF
16 IDENTIFICATION)

17 MR. ELISAR: And may I approach
18 the witness, your Honor?

19 ATTORNEY EXAMINER: You may.

20 MR. ELISAR: Thank you.

21 Q. Mr. Murray, could you please
22 identify Exhibit 1?

23 A. Exhibit 1 is the Joint Stipulation
24 and Recommendation that was executed between or
25 on behalf of Eramet Marietta Inc. and the Staff

1 of the Public Utilities Commission of Ohio, and
2 submitted in this docket on September 21st,
3 2015.

4 Q. And, Mr. Murray, could you please
5 share with us the terms of that agreement that
6 are contained within that Joint Stipulation and
7 Recommendation?

8 A. Yes. The stipulation and
9 recommendation is relatively straightforward.
10 Eramet is presently served under a reasonable
11 arrangement that was previously approved by the
12 Commission. The specifics in that reasonable
13 arrangement are confidential in many respects,
14 but in general terms it provides for a declining
15 discount off the otherwise applicable tariff
16 price that fades out or wanes over the remaining
17 terms of the reasonable arrangement.

18 The stipulation and modification
19 would, if approved by the Commission, continue
20 the reasonable arrangement, but modify that
21 reasonable arrangement to allow Eramet to
22 competitively source their generation supply.

23 Presently Eramet receives their
24 generation supply under the otherwise applicable
25 standard service offer. Expectation is that by

1 allowing them to competitively source their
2 generation service through a competitive
3 supplier will lower Eramet's otherwise
4 applicable total price, but also reduce the
5 otherwise applicable delta revenue that is
6 associated with the reasonable arrangement.

7 Q. Thank you. And, Mr. Murray, what
8 are the advantages and benefits of the
9 stipulation to Eramet?

10 A. Eramet is faced with a need to
11 comply with an environmental regulation that has
12 been promulgated by the U.S. Environmental
13 Protection Agency. That rule is going to
14 require Eramet to install air pollution control
15 equipment at its facilities at an estimated cost
16 of \$25 million.

17 There is really no productivity or
18 manufacturing gain associated with the \$25
19 million, so it's pretty much a sunk cost to try
20 to keep the facility in operation.

21 And what they have been trying to do
22 is get to a more advantageous electricity price
23 because electrically is a significant portion of
24 their variable manufacturing cost, and in order
25 to rationalize making the capital investment to

1 keep the facility in operation.

2 Q. And, Mr. Murray, in your opinion was
3 the agreement the result of serious negotiation
4 amongst knowledgeable parties?

5 A. Yes. The discussions associated
6 with this reasonable arrangement are ongoing and
7 originally go back to informal discussions with
8 the Commission staff almost a year ago. So,
9 there has been considerable back and forth. And
10 if you look at the terms of the stipulation and
11 recommendation they are significantly different
12 from what Eramet initially proposed in its
13 application to modify the reasonable
14 arrangement.

15 Q. And, Mr. Murray, are there any
16 benefits to ratepayers and the public interest
17 contained within this stipulation and
18 recommendation?

19 A. Absolutely. As I mentioned
20 previously, the reasonable arrangement would
21 allow Eramet to competitively source its
22 generation supply. That is expected to lower
23 the overall price of electricity, and as a
24 consequence reduce the delta revenue that would
25 otherwise be associated with the reasonable

1 arrangement.

2 Q. And, Mr. Murray, in your opinion
3 does the agreement violate any regulatory
4 principles or practices?

5 A. No, it does not.

6 Q. And then finally, Mr. Murray, have
7 you read the prefiled testimony put on by the
8 Office of Consumers' Counsel?

9 A. I have just a few minutes ago.

10 Q. Great. And in that prefiled
11 testimony the OCC requests a cap on the overall
12 delta revenue associated with this project.
13 Could you comment on that?

14 MR. STINSON: I am going to object
15 at this point, Your Honor. These proceedings
16 are a little bit different in that Mr. Murray
17 has not filed any prefiled testimony or direct
18 testimony. What we are proceeding into now is
19 testimony to rebut what Mr. Haugh has filed on
20 behalf of OCC.

21 I don't really have any objection to
22 proceeding thereafter Mr. Haugh's testimony, but
23 it may be procedurally we should separate the
24 two at this point.

25 ATTORNEY EXAMINER: Mr. Elisar.

1 MR. ELISAR: Your Honor, all I would
2 say is it's well in your purview to waive the
3 ability of Mr. Murray to file testimony. Mr.
4 Murray is here as an expert. We just received
5 the testimony from the OCC.

6 I think on behalf of Eramet Marietta
7 Inc. Mr. Murray's opinion would be warranted in
8 this proceeding for the decisionmakers.

9 ATTORNEY EXAMINER: I agree with Mr.
10 Elisar. I understand that Mr. Murray's
11 testimony was not prefiled, but your witness'
12 testify was prefiled about 20 minutes before we
13 began.

14 So, I am going to give him some
15 leeway to allow him to address the cap.

16 MR. STINSON: My objection was just
17 merely procedural.

18 ATTORNEY EXAMINER: Procedural? At
19 this time I will allow Mr. Murray to address
20 the caps. Your objection is overruled.

21 MR. ELISAR: Thank you, your Honor.

22 THE WITNESS: Could I have the
23 question reread so it's clear?

24 (Question read)

25 A. Yes. It's my understanding based

1 upon discussions with Mr. Elisar in that OCC's
2 request to place a cap on delta revenue has been
3 shared with Eramet. And at this particular
4 point in time I don't believe, in fact I know,
5 there has been no official reaction to that
6 request simply because it was shared late
7 yesterday.

8 Having said that, if you look at the
9 application that was filed originally in this
10 case, Eramet's request was to modify the
11 reasonable arrangement such that they received a
12 certain delivered price of electricity. They
13 have compromised on that request as a result of
14 the negotiations with the Commission staff, and
15 staff's willingness to be flexible, but not
16 agreed to a cap.

17 As a result of all of that, relative
18 to the initial application in this case, Eramet
19 is placed in the situation where it is facing a
20 higher degree of risk, higher degree of
21 uncertainty, a higher degree of meeting other
22 factors to proceed with justifying the capital
23 expenditure that I have talked about previously
24 in my testimony.

25 If the Commission were to adopt a

1 \$10 million cap on delta revenue, when there is
2 no cap that presently exists under the current
3 reasonable arrangement, so keep that in mind, it
4 would simply add another degree of uncertainty
5 to the list of variables that Eramet is trying
6 to juggle to rationalize the capital investment.

7 So while I understand and certainly
8 appreciate the motivation behind a requested cap
9 on delta revenue, I think that if the Commission
10 were to do that it simply adds another degree of
11 uncertainty about whether or not Eramet will
12 actually proceed with the investment needed to
13 keep the facility in operation.

14 MR. ELISAR: Thank you. Your Honor,
15 at this time the witness is available for any
16 other questions.

17 ATTORNEY EXAMINER:
18 Cross-examination?

19 MR. STINSON: No questions, your
20 Honor.

21 ATTORNEY EXAMINER: Anything from AEP
22 or Staff?

23 MR. MARGARD: No, thank you.

24 MS. BLEND: No questions, your
25 Honor.

1 ATTORNEY EXAMINER: All right. Mr.
2 Murray, just a couple quick questions.

3 EXAMINATION

4 By the Attorney Examiner:

5 Q. You had testified that the
6 settlement is a product of serious bargaining
7 among capable and knowledgeable parties; is that
8 correct?

9 A. Yes, it is.

10 Q. Do you know that the parties
11 considered the effects on residential customers
12 when it came to this stipulation?

13 A. Certainly in regards to the delta
14 revenue. At various points in the negotiations
15 the --

16 Q. Without getting into confidential
17 discussions of the stipulation, please.

18 A. Understood. Yes. At various points
19 in the discussions, relative estimates of delta
20 revenue that would reflect from various options
21 to resolve the case were considered. Ultimately
22 the structure that was produced which allows
23 Eramet to shop is a product of a decision that
24 reflects an expectation that that will result in
25 reduced delta revenues and the benefit of that

1 will flow to all customer classes, including
2 residential customer classes.

3 ATTORNEY EXAMINER: Thank you. I
4 have no further questions. Mr. Murray, you may
5 step down. Mr. Elisar.

6 MR. ELISAR: Yes, your Honor. At
7 this time we rest our case and move to have
8 admitted into evidence Exhibit 1.

9 ATTORNEY EXAMINER: Objection to the
10 admission of the Eramet Exhibit 1?

11 It will be so admitted.

12 (EXHIBIT ADMITTED INTO EVIDENCE)

13 MR. ELISAR: Thank you.

14 ATTORNEY EXAMINER: OCC.

15 MR. STINSON: Thank you, your Honor.
16 At this time we would like to call Michael
17 Haugh.

18 (WITNESS SWORN)

19 - - -

20 MICHAEL HAUGH

21 called as a witness, being first duly sworn,
22 testified as follows:

23 DIRECT EXAMINATION

24 By Mr. Stinson:

25 Q. Would you please state your full

1 name and business address for the record,
2 please?

3 A. Sure. Michael Haugh. Address, the
4 Office of the Ohio Consumers' Counsel, 10 West
5 Broad Street, Suite 1800, Columbus, Ohio 42315.

6 Q. And I have placed before you what
7 has been marked as OCC Exhibit No. 1. Could you
8 identify that for me, please?

9 A. That is my direct prefiled testimony
10 in this case.

11 Q. And was that prepared by you or
12 under your direct supervision?

13 A. It was.

14 Q. Do you have any changes, additions
15 or deletions to that testimony today?

16 A. No.

17 Q. If I were to ask you those same
18 questions would your answers remain the same?

19 A. They would.

20 MR. STINSON: Thank you. I tender
21 Mr. Haugh for cross-examination, and move for
22 the admission of OCC Exhibit No. 1, subject to
23 that examination.

24 ATTORNEY EXAMINER: Mr. Stinson, I
25 will rule on the admission once we have finished

1 cross. Any cross-examination?

2 MR. ELISAR: No questions, your
3 Honor.

4 MS. BLEND: No questions, your
5 Honor.

6 ATTORNEY EXAMINER: From Staff?

7 MR. MARGARD: No questions, your
8 Honor. Thank you.

9 ATTORNEY EXAMINER: Mr. Haugh, I
10 have to ask you a question.

11 EXAMINATION

12 By the Attorney Examiner:

13 Q. You say in your testimony "The
14 adaptation of the cap would move the stipulation
15 closer to meeting the Commission's three-part
16 test of the evaluation of the reasonableness of
17 the stipulation." Is that correct?

18 A. Yes.

19 Q. Are you saying that the stipulation
20 as it currently exists does not meet the
21 Commission's three-part test?

22 A. At this time the stipulation in my
23 opinion does not -- I feel that the minor
24 modifications that I requested would get it to
25 that point where it would meet the three-prong

1 test.

2 ATTORNEY EXAMINER: Thank you, Mr.
3 Haugh. You may step down.

4 Any objection to the admission of
5 Mr. Haugh's direct testimony?

6 MR. ELISAR: No objection.

7 MS. BLEND: No objection.

8 ATTORNEY EXAMINER: So admitted.

9 (EXHIBIT HEREBY ADMITTED INTO
10 EVIDENCE)

11 ATTORNEY EXAMINER: Anything
12 further?

13 MR. STINSON: Nothing, your Honor.

14 MR. ELISAR: Nothing, your Honor.

15 ATTORNEY EXAMINER: Staff?

16 MR. MARGARD: No, your Honor.

17 ATTORNEY EXAMINER: Thank you,
18 everyone. At this time we are adjourned. Let's
19 go off the record.

20 DISCUSSION OFF THE RECORD)

21 ATTORNEY EXAMINER: We have to go
22 back on the record. Mr. Stinson, it's my
23 understanding that you have a request to make on
24 the record?

25 MR. STINSON: Yes, your Honor. OCC

1 would request that your Honor set a briefing
2 schedule in this matter.

3 ATTORNEY EXAMINER: Objection to the
4 request for a briefing schedule from any of the
5 parties?

6 MR. ELISAR: Your Honor, we would
7 just ask that it be expedited given the
8 commercial interest here of our client.

9 ATTORNEY EXAMINER: Let's go off the
10 record.

11 (DISCUSSION OFF THE RECORD)

12 ATTORNEY EXAMINER: Mr. Stinson, is
13 there a date that you propose to have briefs
14 due?

15 MR. STINSON: Yes, your Honor. We
16 would propose at this point that the initial
17 brief be filed on Friday, October 9th, and that
18 the parties have the opportunity to submit a
19 reply brief on the following Wednesday, October
20 14th.

21 ATTORNEY EXAMINER: Mr. Elisar,
22 objection to that?

23 MR. ELISAR: Well, your Honor, the
24 only objection that I would raise is concerning
25 again the time frame associated with this

1 proceeding. This has been before the Commission
2 since January of 2015, and we are somewhat
3 concerned relative to the lag and potential
4 impact on commercial investment decisions.

5 ATTORNEY EXAMINER: Thank you, Mr.
6 Elisar. I think Mr. Stinson's request is
7 reasonable. We will do briefs due October 9th,
8 reply briefs due the following Wednesday.

9 The Commission will be mindful of
10 the expedited nature of this proceeding and move
11 quickly as we have already done in scheduling a
12 hearing very quickly.

13 Anything further before we adjourn
14 this proceeding? Mr. Stinson?

15 MR. STINSON: Nothing further, your
16 Honor.

17 ATTORNEY EXAMINER: Mr. Elisar.

18 MR. ELISAR: Nothing further.

19 ATTORNEY EXAMINER: Let's go off the
20 record. We are adjourned.

21 (At 10:35 A.M. the hearing was
22 concluded)

23 - - -

CERTIFICATE

I do hereby certify that the foregoing
is a true and correct transcript of the
proceedings taken by me in this matter on
September 25, 2015, and carefully compared with
my original stenographic notes.

Michael O. Spencer,
Registered Professional
Reporter.

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This foregoing document was electronically filed with the Public Utilities

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in

Case No(s). 09-0516-EL-AEC

Summary: Transcript in the matter of Eramet Marietta, Inc. and Columbus Southern Power Company hearing held on 09/25/15. electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Spencer, Michael O. Mr.