

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

**COMMENTS
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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I. INTRODUCTION

The Office of the Ohio Consumers' Counsel ("OCC"), on behalf of approximately 665,000 Columbus Southern Power ("CSP") residential utility consumers, files its comments in the above-captioned case where Eramet Marietta Inc. ("Eramet" or "the Company") is seeking electricity rates with significant discounts that would be paid by other customers, including residential customers. Eramet is a large general service customer of CSP that is charged according to CSP's GS-4 tariff schedule. OCC moved to intervene on June 26, 2009.

On June 19, 2009, Eramet filed an application ("Application") for a "Unique Arrangement" pursuant to R.C. 4905.31 and Ohio Adm. Code 4901:1-38-05.¹ Eramet proposes a three-phase, ten-year arrangement. Under the terms of the Application, Eramet requests an "all-in" rate of \$.04224/kWh (exclusive of a self-assessed kWh tax) for power for 2009 through 2011, described as phase one.² The "all-in" rate proposed by

¹ See Application at 2.

² See Id. at 3.

Eramet is a one part rate that shall not include any demand charges, which currently comprise approximately 25% of Eramet's bill. In return, Eramet commits to investing \$20 million in capital investments into its current Ohio manufacturing operations during this three-year timeframe.³ Over 50% of this purported investment would be financed by CSP customers who would be subsidizing Eramet by reimbursing CSP for the electricity discount given to Eramet. This discount, calculated by comparing the proposed Eramet rate to CSP's newly approved ESP GS-4 tariff rates, would be approximately \$3.5 million per year for 2009 through 2011, for a total of \$10.5 million in subsidies.

Phase two of Eramet's plan is also three years in length, beginning in 2012 and running through 2014.⁴ The second-phase electric rate reflects the "all-in" rate of \$.04224 per kWh escalated by 3.5% per year.⁵ Eramet's proposed 3.5% annual rate escalation is fixed and is independent of any increases to Eramet's applicable CSP rate (Schedule GS-4). For instance, when the tariff rate for GS-4 customers in CSP's jurisdiction is determined for 2012 through 2014, other GS-4 customers would pay whatever tariff rates are approved by the PUCO, but Eramet proposes that its rate increase should be limited. Instead Eramet would pay its own proposed rate, escalated by an unsubstantiated and fixed 3.5%. The difference in the approved tariff rate for GS-4 customers in the CSP jurisdiction and Eramet's rate (the delta revenues), however, would be collected by CSP from its other customers. Thus, in the next ten-year time period,

³ See Id.

⁴ See Id.

⁵ See Id.

each time CSP raises its tariff rates by more than 3.5%, customers would pay increasingly higher subsidies to CSP to cover the Eramet discount.

In return for the reduced rates, Eramet commits to an additional investment of \$20 million over the three-year period of 2012, 2013 and 2014.⁶ Again, phase two will cost CSP's customers at least an additional \$3.5 million annually, assuming that AEP's tariffed GS-4 rates will only increase by 3.5% per annum. Thus, over this three-year period, customers would continue to be involuntary investors in Eramet by way of financing over 50% of Eramet's capital investments.

Phase three of Eramet's plan is four years in length and requests discounted rates starting with the phase two base price plus escalations in 2014 and continuing with an additional 3.5% increase each year through 2018.⁷ Interestingly, Eramet makes no investment commitments as part of phase three. Instead, Eramet seeks the right to request further concessions from the Commission during this phase to invest an additional \$100 million in capital improvements.⁸ Phase three will continue to cost CSP's customers, at minimum, \$3.5 million per annum, and likely more if CSP's GS-4 tariff rates are increased by more than 3.5% per year in that time frame.

Finally, Eramet requests that the Commission find the Application to be just and reasonable and approve the arrangement between CSP and Eramet according to the general terms described in the Application.⁹ Eramet does not mention all of the

⁶ See Id.

⁷ See Id.

⁸ See Id.

⁹ See Id. at 5.

“general” terms it seeks; however, the Company does identify eight terms and conditions for “illustration” purposes only.¹⁰

OCC’s comments address the fact that Eramet’s proposed electricity rates, that would be applicable for the ten-year term of the contract, are unreasonable for a number of reasons. First, the concept that CSP customers should be required to effectively pay for half of Eramet’s capital investments for its operations is unreasonable. While the investors of Eramet have willingly taken risks on the profitability of Eramet, ratepayers have not and should not become involuntary investors in Eramet’s operations. Supporting economic development in the State of Ohio is one thing -- taking on the obligation to effectively fund “capital improvements,” untied to job retention and economic development, is another. Approving this proposal could open the floodgates to perhaps dozens of additional applicants who see the unique arrangement as a means to secure additional capital funding for their businesses without specific commitments for Ohio jobs and economic development. For these reason, OCC opposes charging customers of CSP increased rates to subsidize Eramet’s capital improvements.

The 665,000 residential electric customers of CSP are among the customers who would be required to subsidize, in whole or part, the discount given to Eramet. These customers are the ones whose rates would be increased -- to an unknown extent because the subsidized discount will increase on annual basis by a factor equal to the GS-4 tariff rate increases minus the proposed fixed 3.5% rate. Hence, subsidization of Eramet by

¹⁰ See Id. at 4.

customers would grow increasingly over the next ten years, over and above 3.5% per year.

II. APPLICABLE LAW

Senate Bill 221 permits reasonable arrangements based on unique circumstances, if the arrangement is filed with and approved by the PUCO. Eramet bears the burden of proving that its Application should be approved.¹¹ OCC bears no burden of proof in this case. Eramet must establish that the proposal is reasonable and does not violate the provisions of R.C. 4905.31, 4905.33 and 4905.35. Moreover, such arrangements are to be under the supervision and regulation of the Commission and subject to “change, alteration, or modification” by the Commission.¹²

The PUCO recently adopted rules specifically addressing Reasonable Arrangements.¹³ Eramet’s Application appears to be a request for a “unique” arrangement¹⁴ and thus is governed by Ohio Adm. Code 4901:1-38-05 of the PUCO’s adopted rules. Under subsection (B)(1) of that provision, Eramet has the burden of

¹¹ 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 public utility.” As part of the Commission’s recently adopted rules for Unique Arrangements: “A mercantile customer, or a group of mercantile customers, of an electric utility may apply to the commission for a unique arrangement with the electric utility. Each customer applying for a unique arrangement **bears the burden of proof that the proposed arrangement is reasonable and does not violate the provisions of sections 4905.33 and 4905.35 of the Revised Code, and shall submit to the commission and the electric utility verifiable information** detailing the rationale for the arrangement.” Ohio Adm. Code 4901:1-38-05(B)(1) (emphasis added).

¹² R.C. 4905.31(E).

¹³ See Ohio Adm. Code Chapter 4901:1-38.

¹⁴ See Id. at 5.

proving that the “proposed arrangement is reasonable.” The rules further provide that Eramet must provide verifiable information detailing the rationale for the arrangement.¹⁵

Under the rules, if it appears to the Commission that the application is unjust or unreasonable, the Commission may order a hearing.¹⁶ In this case, a hearing is necessary and appropriate because Eramet proposes an arrangement that may be unjust and unreasonable and because it would caused increased rates to other CSP customers because they are underwriting Eramet’s capital improvements by subsidizing tens of millions of dollars in Eramet’s power costs. Moreover, Eramet has failed to provide the PUCO with verifiable information detailing the rationale for the discount, completely disregarding the Commission’s rules requiring such information. Left open under the application are very significant issues which customers have a vested interest in -- how much of a discount will be subsidized, how long should the discount last, what portion of the discount should be borne by customers versus the electric utility, and should there be a cap on the subsidy for this unique arrangement.

¹⁵ See Ohio Adm. Code 4901:1-38-05(B)(1).

¹⁶ See Ohio Adm. Code 4901:1-38-05(B)(3). (The language in the rule says the Commission “may” order a hearing, however, Eramet’s request is a request for a rate increase and as addressed in Footnote 11 above, R.C. 4909.18 requires a hearing if there is a determination by the Commission that the rate increase may be unjust or unreasonable).

III. COMMENTS

A. The Commission Should Determine That A Hearing Is Necessary To Review Eramet's Application Because Eramet Failed To Present Verifiable Information Detailing The Rationale For The Arrangement In The Application.

On May 1, 2008, Governor Strickland signed R.C. 4928.31 into law as part of Amended Senate Bill 221.¹⁷ The Governor stated that one of the important principles that these laws were based upon was “transparency and accountability.”¹⁸ Eramet's Application does not comply with the Governor's principles of “transparency and accountability.” Eramet should not be permitted to receive blanket approval of its arrangement while failing to permit appropriate review of pertinent aspects of its Application..

Ohio law has established a strong presumption of public disclosure and Eramet should not be permitted to reap the benefits of discounted rates while avoiding open and public review of its arrangement. Under Eramet's filing, little if any “verifiable data”-- data that is required under Ohio Adm. Code 4901:1-38-05(B)(1) -- is presented. Eramet's Application fails to identify specific details to support the claim that the Company is in a “unique” situation compared to any other industrial customer in Ohio, justifying the reasonableness or rationale of its proposal. In accordance with the Commission's unique arrangement rules, Eramet is required to establish verifiable information detailing the rationale for this arrangement. While Eramet does allege it will

¹⁷ See Governor Strickland's Press Release, *Governor Signs Historic Energy Legislation*, May 1, 2008. (attached)

¹⁸ See *Id.*

be paying a 16% increase in power costs in 2009,¹⁹ it fails to show how such an increase is unique to it and no other GS-4 customer. It cannot make that showing because other similarly situated GS-4 customers will also experience such an increase. Hence, the economic impact of AEP's ESP electric rate increases is not unique to Eramet.

The PUCO Staff opposed similar involuntary investment in the recent Ormet case. As noted by the Staff, the Commission should not force CSP customers in economic development arrangements to become involuntary investors:²⁰

It is unclear to Staff why fundamental business risks should be transferred from those who voluntarily took them on in hopes of profit to those who never agreed to anything. A customer's utility bill should be her utility bill, not some sort of forced investment portfolio.²¹

Eramet's Application also fails to identify a specific need for the subsidy and a benefit to CSP's customers. Eramet's Application does not establish any benefit to CSP customers. There are no claims of jobs being created or retained through this arrangement. Nor are there claims that Eramet will promote energy efficiencies or meet specific environmental performance standards under the unique arrangement.

In addition to establishing a "need" for a subsidy, Eramet must also establish how its situation is unique from any other industrial energy user in Ohio, thereby establishing a right to the preference or advantage sought under the arrangement.²² It can be

¹⁹ See Application at 2.

²⁰ See *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, Brief of the Staff of the Public Utilities Commission of Ohio (July 1, 2009) at 2.

²¹ Id.

²² Under R.C. 4905.35, a utility may not make or give undue or unreasonable preference to corporations such as Eramet.

presumed that other industrial customers in Ohio would consider making capital improvements to their operations if someone else had to pay the majority of the cost of such investments. Eramet has failed to demonstrate how the circumstances of its request to make CSP customers involuntary investors can be distinguished from any other GS-4 customer in Ohio, and the Application should thus be denied.

B. The Commission Should Set A Reasonable Discovery Period To Allow Parties Time to Review Eramet's Application.

The parties to the case, and the public, have a right to review and challenge information (or the lack thereof) that purports to substantiate Eramet's request for a unique arrangement that could require customers of CSP to subsidize Eramet's operations in the amount of \$35 million or higher over ten-years. Information on the amount of the discount and the plans to use the money from the discount, which would impact other customers' rates, should be disclosed to interested parties, including the OCC.

As part of the review process, parties to the case should be provided ample time to review the \$35 million or higher, ten-year proposal through the discovery process. Eramet opposed OCC's request for an expedited discovery process²³ and the Commission agreed with Eramet.²⁴ As of this date, Eramet has stated it is unavailable to provide formal or "informal" responses to OCC's first set of discovery until approximately 20 days after the first set was sent -- the response time permitted by Ohio Adm. Code 4901:1-19(A).

²³ See Memorandum Contra Ohio Consumers' Counsel motion to shorten discovery response time of Eramet Marietta, Inc. (June 29, 2009).

²⁴ See Entry (July 2, 2009).

OCC's discovery requests were directed at obtaining specific information from Eramet regarding the type of capital investments that will be carried out if the special arrangement is approved and background information to explain why Eramet expects other customers to pay for its capital improvements. Under the PUCO's ruling, OCC is not entitled to responses to its first set of discovery until July 16 – a set of discovery that was sent a mere one-week after the Application was filed. The result is that, contrary to R.C. 4903.082, discovery responses were not available for writing these comments. OCC requests a reasonable discovery period that takes into consideration the PUCO's affirmation of the 20-day response period for discovery. Otherwise, OCC will be denied the opportunity to fully prepare its case.

C. The Commission Should Determine that Eramet's request for the proposed "all-in" rate is unreasonable.

Approving the "all-in" rate as proposed by Eramet would create increasing and unspecified delta revenues each year as the disparity between the Commission's approved electric rate for Eramet and the rate for similarly situated customers grows. Eramet proposes that over the next ten years, every year that CSP raises its tariff rates by more than the 3.5%, the increase in the delta revenues -- and costs to other CSP customers -- will increase. Under such an approach the subsidies to Eramet will likely increase over the ten year period, instead of decreasing. OCC believes that the subsidy given to Eramet should be phased out over the term of the arrangement, in order to encourage Eramet to become self-sufficient. Eramet's proposal creates unspecified subsidies each year with a moving target for the rate increases that is not known until tariff rates are established for the same time frame. Such rate increases to CSP customers

over the ten-year time period will be on top of any other rate increases the customers will be saddled with.

CSP's customers, including but not limited to Eramet, must already make hard choices about how to combat higher electricity rates. As hundreds of thousands of CSP customers consider how to deal with higher electricity costs, the Commission should take all steps possible to avoid additional "surprise" increases -- in the form of subsidized discounts for customers, under the guise of economic development. Ohio Representative Timothy DeGeeter recently filed a letter in the AEP ESP docket on behalf of a company that employs 49 people that is struggling to deal with CSP's announced 7% increase, let alone the actual 13% increase that it has been charged.²⁵ The company in question, Energizer Battery Manufacturer, like Eramet, is located in Marietta.

I am the Electrical Engineer for the Energizer Battery Manufacturer facility located in Marietta, Ohio.... Due to the current economic situation, we have been looking for ways to decrease costs in order to keep our facility afloat.

The PUCO's [decision to approve a 7% increase in 2009 prices in] AEP's electric security plan case hit us hard during these rough times. This 7% increase is unusually high even during stable times, but during this economic situation it is even more grueling. The press release prompted me to compare our electric bill for the month of April with our electric bill from the month of March and we have an increase of 13%! **This causes our company great concern and we now feel that we do not have any predictability when it comes to our electricity bill increase....**

²⁵ See *In the Matter of the Application of Columbus Southern Power Company for Approval of its Electric Security Plan; an Amendment to its Corporate Separation Plan; and the Sale or Transfer of Certain Generation Assets*. Case No. 08-917-EL-SSO, Letter from Rep. T. DeGeeter asking the Commission to address the questions from his constituent in the attached letter (June 29, 2009) at page 1 of the constituent letter. (attached)

Here at Energizer we have taken as many actions as possible to prevent the loss of jobs and if we continue to see increases like this we may not be able to provide these jobs for people that depend so much on them during these hard times in our area.²⁶

Eramet's proposed "all-in" rate would only add to the lack of predictability by leaving future increases to rates unsettled until tariff rates are set and Eramet's 3.5% increase is added to those rates.

Additionally, an "all in" rate is contrary to the approved structure of CSP's tariffs, specifically the applicable GS-4 rate, which provides specific charges for demand and energy, in addition to riders designed to recover discrete costs, some of which are non-bypassable. By approving a black box rate, the Commission is permitting Eramet to get around paying demand charges, and non-bypassable riders that all other similarly situated customers must pay. With no reasonable justification for such special treatment, the Commission should decline to offer such a benefit to Eramet.

Finally, the all-in rate is a black box approach which can undermine energy efficiency efforts. Eramet's proposed "all-in" rate fails to make the Company accountable for its electricity consumption. The proposed "all-in" rate does not send a price signal for the "demand" component of consumption (demand charges). These charges give electricity users an incentive to: a) shift their consumption away from the peak hours. The "all-in" rate will allow Eramet to pay the same kWh price whether it is metered on peak demand of 68.2 MW (as the case in January 2009), or 103 MW (which is its contracted capacity with CSP). An "all-in" rate that does not change to reflect the impact of demand creates an incentive to be neither efficient nor accountable.

²⁶ Id. (Emphasis added).

IV. CONCLUSION

Eramet has failed to sustain its burden of proving through verifiable information that the Application is just and reasonable. It has failed to provide the necessary supporting documentation to demonstrate that a unique arrangement structured as a discounted "all-in" rate is just and reasonable at this time. Finally, Eramet has not identified any reason why Ohio's residential customers who are struggling to deal with the tough economic times should pay for part of Eramet's capital improvements, let alone over 50% of those improvements. At a time when many Ohioans have to make hard choices about which bills to pay with the little money they have, adding more costs onto their utility bills to subsidize discounts of this type is unreasonable.

In addition, because Eramet failed to file a detailed, verifiable Application the Commission should conclude that the Application is unjust and unreasonable. The Commission should set the matter and there should be ordered a reasonable amount of time to complete discovery (including depositions) and that time period should not close until after testimony is due. Further, Eramet should be required to supplement its Application to provide verifiable information as required under Ohio Adm. Code 4901:1-38-05(B)(1). As stated, there should be the opportunity for discovery guaranteed by R.C. 4903.082, and that opportunity includes a reasonable amount of time to complete discovery (taking into consideration a 20-day turnaround time, unless the Commission shortens the response period) with regard to any supplementation of the Application.

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER
CONSUMERS' COUNSEL

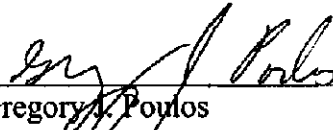


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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Comments has been served upon the below-named persons via regular U.S. Mail Service, postage prepaid, this 9th day of July, 2009.



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Assistant Consumers' Counsel

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Columbus, Ohio – Governor Ted Strickland today signed into law Senate Bill 221, a landmark energy reform bill that will ensure predictability of affordable energy prices and serve as a catalyst to enhance energy industries in Ohio, bringing new jobs while protecting existing jobs.

Strickland made the following comments today before signing SB 221 in the Ohio Statehouse Atrium.

"One year ago today I spoke to the Toledo Chamber of Commerce and outlined a set of principles to guide our efforts in transforming our electric structure in the State of Ohio.

These principles were focused on:

- Transparency and accountability
- Making sure customers have equal footing with utilities
- Energy efficiency
- A strong renewable and advanced energy portfolio
- Modernizing Ohio's electric infrastructure
- The need to reduce green house gas emissions
- Establishing a stable balance between the protections of regulation and the opportunities of competitive markets.

Today I am proud to say that with the help of legislative leaders in both parties we have kept our word to Ohioans on these important and guiding principles.

This bill, Senate Bill 221, will ensure predictability of affordable energy prices and maintain state controls necessary to protect Ohio jobs and businesses.

We will safeguard Ohio families by empowering consumers and modernizing Ohio's energy infrastructure.

And we will attract the jobs of the future through an advanced energy portfolio standard—and today's action by Ohio means that a majority of states now agree that these technologies represent the future of energy in the United States.

This requirement means that 25% of the energy sold in Ohio must come from advanced and renewable energy technologies—from clean coal to wind turbines—by 2025.

This could not have been accomplished without the hard work of many of you here today as well as citizens across the state—and I want to thank you for your tireless efforts to get us to this point and remind you that you will continue to play a vital role as we work to implement this plan.

Staff at the Public Utilities Commission, and its commissioners, deserve an enormous amount of gratitude for the work they have already begun and will continue to do as we see these legislative objectives through to the finish line.

I am proud to be here today with Ohio's legislative leadership. We can all be proud of this bill."

FILE**Hunter, Doniella**

From: ContactThePUCO@puc.state.oh.us
Sent: Tuesday, July 07, 2009 4:19 PM
To: Docketing
Subject: Docketing
Attachments: TDEG070709PG 4014252.pdf

Public Utilities Commission of Ohio
Investigation and Audit Division

Memorandum

Date: 7/7/2009

Re: Timothy Degeeter
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Columbus, OH 43215

Docketing Case No.: 08-917-EL-SSO

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Timothy J. DeGeeter
State Representative, 15th House District

*Committees: Public Utilities- Chair, Criminal Justice, Economic Development,
Faith-Based Initiatives, Rules & Reference*

June 29, 2009

Jade Davis
Legislative Liaison
Public Utilities Commission of Ohio
180 E. Broad St.
Columbus, OH 43215

Dear Jade,

Please find enclosed a letter from the Electrical Engineer for the Energizer Battery Manufacturing facility in Marietta with questions regarding the PUCO's decision on AEP's electric security plan.

I have made him aware that the House Public Utilities Committee did not send out the press release he refers to in his letter and indicated that I would forward his letter to the appropriate party.

If you have not already, I would greatly appreciate if you could address the questions Mr. Thomas presented in his letter.

Thank you in advance for your time and assistance with this matter. If you have any questions or concerns, please feel free to contact my office.

Sincerely,

A handwritten signature in black ink, appearing to be "TJ" or "DeGeeter" in a stylized, cursive script.

Timothy J. DeGeeter
Ohio State Representative
15th House District

77 South High Street • Columbus, Ohio 43215-6111

05/10/09

Representative Timothy DeGeeter
Chairman, Public Utilities Committee
Ohio House of Representatives
77 S. High Street, 11th Floor
Columbus, Ohio 43215

Dear Representative DeGeeter:

I am the Electrical Engineer for the Energizer Battery Manufacturing facility located in Marietta, Ohio. We currently employ 49 people at our plant. Due to the current economic situation, we have been looking for ways to decrease costs in order to keep our facility afloat.

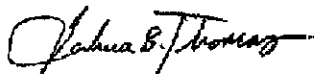
One area that we have been paying attention to closely is our utility usage and prices we pay for them. The PUCO's decision regarding AEP's electric security plan case hit us hard during these tough times. After reading the press release on this case I anticipated a 7% increase in 2009 because we are a Columbus Southern Power customer. This 7% increase is unusually high even during stable times, but during this economic situation it is even more grueling. The press release prompted me to compare our electric bill for the month of April with our electric bill from the month of March and we have seen an increase of 13%! This causes our company great concern and we now feel that we do not have any predictability when it comes to our electricity bill increase. Isn't one of the purposes of an electric security plan to secure some predictability of electricity bill increases?

A few questions have arisen at this time. Are the claims stated in your press release incorrect or is our utility wrong on the increase? If there are errors in your press release, then shouldn't you give the public some heads up so that they can prepare for these huge increases? I urge you and your fellow Commissioners to help out Ohio electric users by answering these questions in a way that keeps prices as low as possible for customers.

Here at Energizer we have taken as many actions as possible to prevent the loss of jobs and if we continue to see increases like this we may not be able to provide these jobs for people that depend so much on them during these hard times in our area. I anticipate seeing some better news than this from the PUCO soon.

Respectfully yours,

Joshua B. Thomas



(C277641)

*Explain difference
from PUCO
PUCO ...
Separate letter ask PUCO
for response
to his concern*

