

FILE

BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application)
of Columbus Southern Power) Case No. 09-1094-EL-FAC
Company and Ohio Power Company)
to Recover Commission-Authorized)
Deferrals Through Each Company's)
Fuel Adjustment Clause.)

COLUMBUS SOUTHERN POWER COMPANY'S
AND OHIO POWER COMPANY'S
REPLY TO OHIO CONSUMERS' COUNSEL
AND OHIO ENERGY GROUP'S OBJECTIONS

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Columbus Southern Power Company and Ohio Power Company (AEP Ohio) filed this application on November 13, 2009. Six days later Ohio Consumers' Counsel (OCC) and Ohio Energy Group (OEG) filed motions to intervene. OCC's motion raised a variety of concerns regarding the application, while OEG filed a standard motion to intervene. On November 25, 2009, Industrial Energy Users-Ohio (IEU) moved to intervene, along with its motion for hearing. AEP Ohio filed its memorandum contra IEU's motion for hearing on December 9, 2009. On December 16, 2009, OCC and OEG filed a reply memorandum to AEP Ohio's memorandum contra. It now appears that about a month after the filing of the application OCC and OEG believe that a hearing would be a good idea.

As if to demonstrate that OCC thought all along that a hearing was needed, OCC/OEG points out that in OCC's motion to intervene it argued "that it should have an opportunity to propose specific changes, alterations, or modifications to the Application to protect Ohio customers from bearing unreasonable rate increases." (OCC/OEG Reply,

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pp. 1, 2). In a footnote, OCC/OEG state that “[a] hearing would provide such an opportunity.” (Id. at 2).

AEP Ohio files this reply to the OCC/OEG objections. Based on the following reply the Commission should decide that the comments and objections which have been filed in this docket provided an efficient opportunity for interested parties to be heard, that a hearing is not necessary and that AEP Ohio’s application should be approved without change, alteration, or modification.¹

OCC/OEG claim to be confused by AEP Ohio’s statement, in responding to IEU’s motion for a hearing, that records before the Commission indicate that AEP Ohio already has responded to OCC’s concerns. OCC/OEG need only look at the record in the Interim Agreement proceeding (Case Nos. 08-1338-EL-AAM and 08-1339-EL-UNC) to see that AEP Ohio fully responded to OCC/OEG’s barrage of pleadings in that proceeding. In that proceeding OCC filed for rehearing on February 6, 2009 and AEP Ohio filed its memorandum contra rehearing on February 17, 2009. On May 11, 2009, OCC/OEG filed a motion to enforce the Commission’s June 7, 2009 order in the *Interim Agreement* proceeding and to cease additional deferrals under that order. Memoranda in opposition to that motion were filed by Ormet and by AEP Ohio on May 14 and 15, 2009, respectively. OCC and OEG, along with others, filed a motion on June 5, 2009 in AEP Ohio’s Electric Security Plan (ESP) proceeding (Case Nos. 08-917- and 918-SSO) seeking a refund of the delta revenues at issue in *this* proceeding which the motion alleged were being collected through ESP rates, and an order that AEP Ohio cease and

¹ AEP Ohio does not believe there is any difference in meaning between “change,” “alteration” or “modification.” Knowing, however, that OCC believes that when a string of words is used it must be assumed that each word has a distinct meaning, AEP Ohio wants to be inclusive in arguing that the application should be approved as filed.

desist from future collections of these delta revenues in the ESP rates. AEP Ohio filed its responses to that filing on June 12, 2009.

The fact that the *Commission* has not yet given final resolution to all of OCC/OEG's arguments does not change the fact, as stated by AEP Ohio, that *it* has responded to those arguments. OCC/OEG's assertion (at pp. 2, 3 of their Reply/Objections) that AEP Ohio has not responded to their concerns mischaracterizes the state of the record in the *Interim Agreement* and *ESP* cases.

OCC/OEG argue that the delta revenues resulting from the Interim Agreement "are costs of economic development" and should be collected "through the economic development rider."² (Reply/Objections, p. 3). Their recognition that the delta revenues are economic development costs leaves IEU as the only party contending otherwise.³ In any event, AEP Ohio confirms, as it stated in response to IEU's similar suggested methodology for collection, that it will comply with the allocation methodology directed by the Commission. It should be noted, however, that a distribution-based recovery, rather than an FAC-based recovery, will disfavor residential customers. OCC/OEG also characterize the delta revenues as a "customer-subsidized windfall to AEP..." (*Id.*) Characterizing the recovery of the revenues foregone because of the Interim Agreement as a "windfall" is, at best, hyperbole.

OCC/OEG continue describing the procedural history by implying that measuring the delta revenue as the difference between the rate Ormet would pay under the Interim

² See IEU's Motion for Hearing, p. 5.

³ OCC/OEG refer to the delta revenues as "foregone profits." (Reply/Objections, p. 4). "Revenues" and "profits" are not synonymous and this proceeding focuses on revenues foregone, as does §4905.31 (E), Ohio Rev. Code.

Agreement and the market price was tied to a need by AEP Ohio to “access the market to serve Ormet.” (*Id.* at 5). Actually, AEP never asserted a need to access the market to serve Ormet. The use of market price to determine delta revenues was a carryover of the AEP Ohio/Ormet contract that was to expire at the end of 2008. However, since the Commission was unable to complete its consideration of AEP Ohio’s *ESP* proceeding in time to implement new rates that would coincide with the expiration of the pre-Interim Agreement AEP Ohio/Ormet contract, the use of market price for calculating delta revenues was appropriate.

OCC/OEG SPECIFIC OBJECTIONS

OCC/OEG argue that measuring delta revenues based on a market-based rate is not lawful under §4901:1-38-01 (C), Ohio Admin. Code. There are at least two deficiencies in this argument. First, this rule was not in effect when the Interim Agreement was approved on January 7, 2009. In fact, the rule did not become effective until April 2, 2009. The accumulation of delta revenues under the Interim Agreement is controlled by the Commission’s order approving the request to defer those delta revenues, not by rules that became effective nearly three months later.

Second, even using the definition of delta revenues that is in the rule, the delta revenue calculation still should be based on the market-based rate. This is because the rate that would otherwise be applicable to Ormet, but for the Interim Agreement, was the market rate used for 2008. Even after new *ESP* rates became effective, the term of the Interim Agreement continued because the Commission’s *ESP* order did not supersede the

Interim Agreement and the long-term AEP Ohio/Ormet contract did not become effective until September 18, 2009.

OCC/OEG next argue that it is unreasonable to permit delta revenues to be calculated on market-based rates since AEP Ohio did not need to rely on market power to serve Ormet under the Interim Agreement. Their argument misses the point. Collection of delta revenues is not intended to reimburse the utility for the cost of providing the service. The purpose is, as described in §4905-31 (E), Ohio Rev. code, to provide recovery of “revenue foregone.”

OCC/OEG characterize the use of a market-based rate to calculate delta revenues as “special compensation, not given to any other electric distribution utility for continuing to supply Ormet.” (*Id.* at 9). OCC/OEG have a short memory. As the record in the complaint brought by Ormet to return to service from Ohio Power Company (OPCO) shows, OPCO strongly opposed taking back Ormet into its territory.⁴ OPCO even filed a motion to make Ohio’s other electric suppliers necessary parties to the complaint case in order to spread the consequences of serving Ormet more evenly throughout the State.⁵ Neither OCC nor OEG responded to that motion, let alone support it and the Commission denied the motion. In order to make the settlement of that case workable, Columbus Southern Power Company intervened and agreed to assume half of the burden of serving Ormet.

Yes, it is true, as the Commission has stated, that AEP Ohio consented to the return of Ormet. However, the significance of that observation is vastly overstated, particularly given the corner OPCO was being painted into and given the very keen

⁴ Case No. 05-1057-EL-CSS.

⁵ The motion was filed on July 10, 2006.

interest shown by the Commission in Ormet's return to service by OPCO. As for OCC/OEG reliance on the Commission statement that AEP Ohio was fully compensated for the return of Ormet to its service territory, that might be true for 2007 and 2008. In the longer-term, however, AEP Ohio's expectation of market-based rates for all customers, including Ormet, was pulled out from under it by S.B. 221 and it cannot be said that AEP Ohio's "consent" to Ormet's return to its service territory has worked out as expected.

OCC/OEG also argues that actual market prices over the period the Interim Agreement was in effect were significantly below the 2008 market price on which AEP Ohio's delta revenues were based. OCC/OEG fail to consider the relevant point. The Commission's January 7, 2009 order approving the Interim Agreement and the related delta revenue deferrals placed the risk on AEP Ohio. If market prices during the period to which OCC/OEG refer had exceeded the Commission's administratively-determined 2008 market price OCC/OEG surely would not be suggesting that the deferrals should be increased because the actual data would support such an increase. In fact, during 2007 and 2008, when an administratively-determined market price dictated the extent of AEP Ohio's recovery of delta revenues, there was no suggestion during those years that actual market prices should be substituted for the Commission's pre-determined market price.

The obvious potential existed in the Interim Agreement approval that the administratively-determined 2008 market price would be either greater than or less than actual market prices for the first roughly nine months of 2009. While that potential could have been avoided if the Commission-approved Interim Agreement had required AEP Ohio to lock in market prices for the unknown length of time the Interim Agreement

would be effective, that is not the structure approved by the Commission. OCC/OEG's suggestion to modify the Interim Agreement now that the result of an alternative structure is known should be rejected.

Finally, OCC/OEG argue that AEP Ohio's recoverable delta revenues should be no greater than \$2.7 million. Its position is based on segmenting the total effective period of the Interim Agreement into two parts -- the first three months of 2009 before the ESP rates became effective and the time from the effective date of the ESP until the AEP Ohio/Ormet long-term contract became effective.

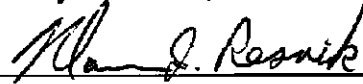
OCC/OEG argue that no delta revenues should have been deferred during the first three months of 2009. This position is based on the definition of "delta revenue" in §4901:1-38-01 (C), Ohio Admin. Code. As noted earlier, that rule did not become effective until April 2, 2009 -- after the three-month period to which OCC/OEG would apply it. Moreover, even if that rule had been in effect for some portion of the three-month period, the Commission's January 7, 2009 order in the *Interim Agreement* proceeding creates an exception to that rule.

Regarding the remaining time period, OCC/OEG resurrect their Motion to Enforce that was filed in the *Interim Agreement* proceeding. AEP Ohio fully responded to the OCC/OEG Motion to Enforce on May 15, 2009 and has attached a copy of that response to this memorandum contra. (Attachment A). For the reasons stated in AEP Ohio's May 15, 2009 pleading, OCC/OEG's argument concerning the period from March 30, 2009 to September 17, 2009 should be rejected.

CONCLUSION

For the reasons stated in AEP Ohio's application in this docket, its December 9, 2009 Memorandum Contra motion for hearing, its December 14, 2009 Memorandum Contra motion to consolidate, and this reply to OCC/OEG's objections, the Commission should approve AEP Ohio's application.

Respectfully submitted,



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ATTACHMENT A

FILE

BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of the Joint Application of)	
Columbus Southern Power Company and)	
Ohio Power Company for Authority to)	Case No. 08-1338-EL-AAM
Modify their Accounting Procedure)	
)	
)	
In the Matter of the Joint Application of)	
Columbus Southern Power Company and)	
Ohio Power Company and Ormet)	
Primary Aluminum Corporation for)	Case No. 08-1339-EL-UNC
Approval of Temporary Amendment to)	
Their Special Arrangement)	

**COLUMBUS SOUTHERN POWER COMPANY'S
AND OHIO POWER COMPANY'S
MEMORANDUM CONTRA
MOTION TO ENFORCE JANUARY 7, 2009 ORDER
AND TO CEASE ADDITIONAL DEFERRALS**

On December 29, 2008, Columbus Southern Power Company and Ohio Power Company, collectively, the "Companies," together with Ormet Primary Aluminum Mill Products Corporation (Ormet) jointly filed an application for approval of a temporary amendment to their special arrangement that was set to expire on December 31, 2008. The temporary amendment, which the Commission approved by Finding and Order dated January 7, 2009,¹ priced Ormet's "generation service at current applicable tariff rates and riders while Ormet and the Companies continue to negotiate a longer-term arrangement

¹ By its Entry on Rehearing dated March 4, 2009, the Commission granted the rehearing application of the Ohio Consumers' Counsel (OCC) to provide time for further consideration of the matters specified in OCC's application for rehearing.

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and pending the outcome of the Commission's ruling on the ESP application...."²
(Application, ¶8, p.4, emphasis added)

More specifically, the Companies and Ormet explicitly stated "that the temporary amendment will expire upon the effective date of new AEP Ohio approved tariffs based on a Commission ruling on the Companies' ESP application (i.e. if the Commission adopts the ESP as proposed or if the Companies accept the modifications made to the ESP by the Commission) and the effective date of a new special arrangement subsequently approved by the Commission." (*Id.* at 4, 5, emphasis added). Therefore, as discussed below, by the terms of the joint application which has been approved by the Commission, the temporary amendment is not superseded until both events occur.

On March 30, 2009 the Commission approved the Companies' tariffs that were based on the Commission's orders in the Companies' ESP proceeding and those tariffs became effective on that date.³ On February 17, 2009, Ormet filed an application for approval of a unique arrangement with the Companies. The unique arrangement, if ultimately approved by the Commission would be the special arrangement contemplated in the temporary amendment filed in this proceeding. The unique arrangement, filed unilaterally by Ormet, is far from being approved by the Commission. Initial hearings on the unique arrangement concluded on May 1, 2009 and additional hearings will be held, but have yet to be scheduled. (Case No. 09-119-EL-AEC, Tr. Vol. II, pp. 379-383). In the mean time, a briefing schedule has not been established. In light of these events, it is clear that the temporary amendment has not been superseded.

² Case Nos. 08-917-EL-SSO and 08-918-EL-SSO.

³ The record in the ESP case reflects that the Commission did not adopt the ESP "as proposed." Further the Companies have sought rehearing of certain of the Commission's modifications to the proposed ESP.

Nonetheless, on May 11, 2009 OCC and the Ohio Energy Group (OEG) filed a motion, supposedly to enforce the Commission's January 7, 2009 Finding and Order and to cease additional deferrals which are being recorded by the Companies pursuant to the Commission-approved joint application.⁴ The basis of the OCC/OEG motion is their belief that the temporary arrangement is superseded through a new special arrangement approved by the Commission *or* through the approval of final tariffs effectuating the ESP rulings." (emphasis in original, Motion, p. 5). OCC/OEG goes on to argue that "[f]inal ESP tariffs are now in place, subject to the standard rehearing process."⁵ The pre-ESP rates[for generation being paid by Ormet under the temporary amendment] have been superseded." (*Id.*)

Despite the OCC/OEG motion being based on an event which occurred nearly a month and a half prior to the filing of their motion, OCC/OEG seek expedited ruling by the Commission pursuant to §4901-1-12 (C), Ohio Admin. Code. Having done so, the time for filing memoranda contra to a motion that apparently was a month and a half in the making is reduced from 15 days to 7 days.⁶

The OCC/OEG motion should be denied. It is abundantly clear that the temporary amendment has not been superseded. The language in Paragraph 8 of the Companies/Ormet joint application in this proceeding provides that two distinct events must both have occurred in order for the temporary amendment to be superseded. Moreover, this is how the Commission understood the joint application, as reflected in its

⁴ In footnote 14 of the OCC/OEG motion, OCC reserves the right "to take further action against the Commission to support its rehearing application in this proceeding." The Companies are not aware of what this may be referring to.

⁵ OCC neglects to mention that the approved tariffs also are subject to the not-so-standard Complaint for Writ of Prohibition it filed against the Commission in Supreme Court of Ohio Case No. 09-710.

⁶ OCC/OEG offer no explanation for their delay in filing this motion.

Finding and Order approving the temporary amendment, without modification. In Paragraph 6 of the Finding and Order the Commission stated:

The joint applicants request that the temporary arrangement expire upon the effective date of the new AEP Ohio approved tariffs based on a Commission ruling on AEP Ohio's ESP application *and* the effective date of a new special arrangement subsequently approved by the Commission. (Emphasis added).

Similarly, the reliance that the OCC/OEG motion places on the language in Paragraph 9 of the joint application, and to which the Commission's Finding and Order refers in Paragraph 7, does not support either the notion of placing Ormet on the ESP GS-4 rate or the discontinuance of deferrals being booked. That language states:

The 2009 deferrals will continue to accrue *until the temporary amendment is superseded* through either a new special arrangement approved by the Commission or through the approval of final tariffs effectuating the Commission's ESP ruling. (Emphasis added).

As demonstrated above, the temporary amendment has not been superseded. This language simply reflects the likelihood that the two events needed for superseding the temporary amendment would not occur at the same time. Therefore, since one of the events was likely to precede the other, the event finally triggering the temporary amendment being superseded would be "*either* a new special arrangement approved by the Commission *or* through the approval of final tariffs effectuating the Commission's ESP rulings. (Emphasis added). The "either/or" structure simply reflects that one or the other event already would have occurred. In other words, under the terms of expiration set forth in Paragraph 8 of the joint application, it is the second of the two events that triggers the temporary amendment being superseded. The suggestion that either of these events occurring without the other having already occurred is sufficient to supersede the

joint application (the rate portion and the deferral portion) effectively deletes the phrase "until the temporary amendment is superseded" from Paragraph 9 of the joint application. Therefore, OCC's and OEG's argument in this regard should be rejected.

Besides the OCC/OEG motion's misunderstanding of the provisions regarding the temporary amendment, the motion expresses other bases in support of the requested relief.⁷ For instance, OCC and OEG argue that the temporary agreement should be tied to the new ESP rates. Of course, that is not what the Commission-approved temporary amendment provides and their argument to the contrary is essentially a very late-filed application for rehearing on that issue.

OCC and OEG also argue that the ESP rates must be charged to Ormet under §§4905.22, 4905.30 and 4905.32, Ohio Rev. Code. In making this argument, OCC and OEG fail to address the Commission's authority under §4905.31, Ohio Rev. Code, to approve reasonable arrangements between a public utility and its customers. The temporary amendment is such an arrangement and OCC's/OEG's argument to the contrary should be rejected.

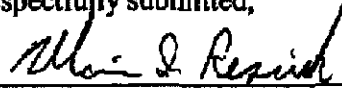
Finally, OCC and OEG speak of a "windfall" to the Companies and that the Companies have "figured out a way to get more" than authorized in the Commission's ESP order. The current situation is not of the Companies making. It is well documented that the Companies continuously urged that its ESP proceeding be completed within the statutory time frame. That did not happen, at least in part because of OCC's desire to extend the procedural schedule in the ESP proceeding. The record also is well documented that the Companies opposed Ormet's return to receive service from them.

⁷ OCC and OEG contend that granting their motion will incentivize Ormet to expeditiously resolve the unique arrangement proceeding. Ormet has responded to that argument.

Nonetheless, Ormet now is a customer of the Companies. To suggest that the Companies somehow have "figured out" a way of getting more than the ESP order authorized is baseless.

The OCC/OEG motion should be denied. Even if it were to be granted, such a ruling should be applied only prospectively because up until the time of such a ruling the Companies are billing Ormet and making deferrals in conformance with the Commission's January 7, 2009 Finding and Order.

Respectfully submitted,



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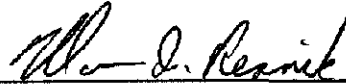
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CERTIFICATION OF SERVICE

I hereby certify that a copy of Columbus Southern Power Company's and Ohio Power Company's Reply to Ohio Consumers' Counsel and Ohio Energy Group's Objections was served by U.S. Mail upon the individuals listed below this 23rd day of December 2009.



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