

FILE

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IN THE SUPREME COURT OF OHIO

In the Matter of the Fuel Adjustment Clauses for
Columbus Southern Power Company and Ohio Power
Company

: Case No. **10-0730**
: Appeal from the Public
: Utilities Commission of Ohio
:
: Public Utilities
: Commission of Ohio
: Case Nos. 09-872-EL-FAC
: 09-873-EL-FAC

**NOTICE OF APPEAL OF
APPELLANT INDUSTRIAL ENERGY USERS-OHIO**

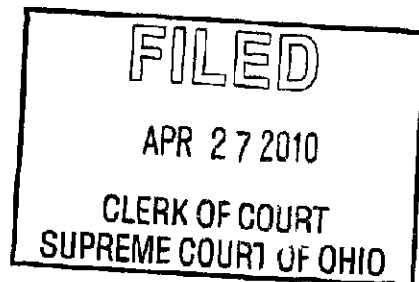
Samuel C. Randazzo
(Reg. No. 0016386)
(Counsel of Record)
Lisa G. McAlister
(Reg. No. 0075043)
Joseph M. Clark
(Reg. No. 0080711)
McNees Wallace & Nurick LLC
21 East State Street, 17th Floor
Columbus, OH 43215
Telephone: (614) 469-8000
Facsimile: (614) 469-4653
sam@mwncmh.com
lmcalister@mwncmh.com
jclark@mwncmh.com

**COUNSEL FOR APPELLANT,
INDUSTRIAL ENERGY USERS-OHIO**

Richard Cordray
(Reg. No. 0038034)
Attorney General of Ohio
Duane L. Luckey
(Reg. No. 0023557)
Section Chief, Public Utilities Section
(Counsel of Record)
180 East Broad Street, 6th Floor
Columbus, Ohio 43215
Telephone: (614) 466-4397
Facsimile: (614) 644-8764
duane.luckey@puc.state.oh.us

**COUNSEL FOR APPELLEE,
PUBLIC UTILITIES COMMISSION
OF OHIO**

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NOTICE OF APPEAL OF
APPELLANT INDUSTRIAL ENERGY USERS-OHIO

Appellant, Industrial Energy Users-Ohio ("IEU-Ohio" or "Appellant"), hereby gives its notice of appeal, pursuant to R.C. 4903.11, R.C. 4903.13, and Supreme Court Rule of Practice 2, to the Supreme Court of Ohio and Appellee, from a January 7, 2010 Finding and Order (Attachment A), a March 3, 2010 Entry on Rehearing (Attachment B), and a March 24, 2010 Entry on Rehearing (Attachment C) of the Public Utilities Commission of Ohio ("Commission or PUCO") in Case Nos. 09-872-EL-FAC and 09-873-EL-FAC.

Appellant was and is a party of record in PUCO Case Nos. 09-872-EL-FAC and 09-873-EL-FAC and timely filed its Application for Rehearing of Appellee's January 7, 2010 Finding and Order in accordance with R.C. 4903.10. Appellant's Application for Rehearing was denied with respect to the issues on appeal herein by the Appellee's Entry on Rehearing dated March 24, 2010.

The Appellee's Finding and Order and March 24, 2010 Entry on Rehearing approving Applications by Columbus Southern Power Company ("CSP") and Ohio Power Company ("OP") (collectively referred to as the "Companies" or "AEP-Ohio") are unlawful and unreasonable in multiple respects. Specifically, the Appellee's Finding and Order and March 24, 2010 Entry on Rehearing are unlawful and unreasonable in the following respects:

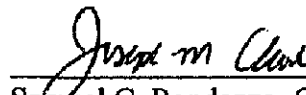
- A. The Finding and Order and March 24, 2010 Entry on Rehearing are unlawful and unreasonable inasmuch as the Commission has no subject matter jurisdiction over PUCO Case Nos. 09-872-EL-FAC and 09-873-EL-FAC. The Commission lost jurisdiction over AEP-Ohio's electric security plan ("ESP") and all proceedings stemming from the ESP when the Commission failed to issue an order within 150 days of the filing of AEP-Ohio's ESP Application.
- B. The Finding and Order and March 24, 2010 Entry on Rehearing are unlawful and unreasonable inasmuch as the Commission continues to permit AEP-Ohio to take the benefits of the higher rates contained in the

ESP while AEP-Ohio simultaneously still reserves the right to withdraw and terminate its ESP.

- C. The Finding and Order and March 24, 2010 Entry on Rehearing approving the recovery of delta revenues associated with the interim reasonable arrangement for Ormet Primary Aluminum Corporation ("Ormet") through the Companies' respective fuel adjustment clauses ("FAC") are unlawful and unreasonable.

WHEREFORE, Appellant respectfully submits that Appellee's January 7, 2010 Finding and Order and March 24, 2010 Entry on Rehearing are unlawful, unjust, and unreasonable and should be reversed. The case should be remanded to Appellee with instructions to correct the errors complained of herein.

Respectfully Submitted,



Samuel C. Randazzo, Counsel of Record (0016386)

Lisa G. McAlister (0075043)

Joseph M. Clark (0080711)

McNees Wallace & Nurick LLC

Fifth Third Center

21 East State Street, 17th Floor

Columbus, OH 43215

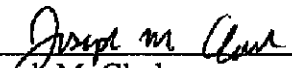
Telephone: (614) 469-8000

Facsimile: (614) 469-4653

**COUNSEL FOR APPELLANT,
INDUSTRIAL ENERGY USERS-OHIO**

CERTIFICATE OF SERVICE

I hereby certify that a copy of this *Notice of Appeal of Appellant Industrial Energy Users-Ohio* was sent by ordinary U.S. mail, postage prepaid, or hand-delivered to all parties to the proceeding before the Public Utilities Commission of Ohio, listed below, and pursuant to Section 4903.13 of the Ohio Revised Code on April 27, 2010.



Joseph M. Clark
Counsel for Appellant,
Industrial Energy Users-Ohio

Marvin I. Resnik
Steven T. Nourse
American Electric Power Service Corp.
1 Riverside Plaza, 29th Floor
Columbus, OH 43215

Daniel R. Conway
Porter Wright Morris & Arthur
Huntington Center
41 S. High Street
Columbus, OH 43215

**ON BEHALF OF COLUMBUS SOUTHERN
POWER AND OHIO POWER COMPANY**

David F. Boehm
Michael L. Kurtz
Boehm, Kurtz & Lowry
36 East Seventh Street, Suite 1510
Cincinnati, OH 45202

ON BEHALF OF OHIO ENERGY GROUP

Janine L. Migden-Ostrander
Consumers' Counsel
Gregory J. Poulos
Michael E. Idzkowski
Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, OH 43215-3485

**ON BEHALF OF THE OFFICE OF THE OHIO
CONSUMERS' COUNSEL**

Clinton A. Vince
Douglas G. Bonner
Daniel D. Barnowski
Keith C. Nausbaum
Emma C. Hand
Sonnenschein Nath & Rosenthal
1301 K Street NW
Suite 600, East Tower
Washington, DC 20005

**ON BEHALF OF ORMET PRIMARY
ALUMINUM CORPORATION**

Duane Luckey, Section Chief
Public Utilities Section
180 East Broad Street
Columbus, OH 43215

**ON BEHALF OF THE PUBLIC UTILITIES
COMMISSION OF OHIO**

Kimberly Bojko
Attorney Examiner
Public Utilities Commission of Ohio
180 East Broad Street, 12th Floor
Columbus, OH 43215

Greta See
Attorney Examiner
Public Utilities Commission of Ohio
180 East Broad Street, 12th Floor
Columbus, OH 43215

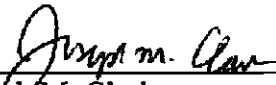
ATTORNEY EXAMINERS

Alan R. Schriber, Chairman
Valerie A. Lemmie, Commissioner
Paul A. Centolella, Commissioner
Cheryl Roberto, Commissioner
Steven Lesser, Commissioner
Public Utilities Commission of Ohio
180 East Broad Street
Columbus, OH 43215

**ON BEHALF OF THE PUBLIC UTILITIES
COMMISSION OF OHIO**

CERTIFICATE OF FILING

I hereby certify that a *Notice of Appeal of Appellant Industrial Energy Users-Ohio* has been filed with the docketing division of the Public Utilities Commission of Ohio in accordance with Rules 4901-1-02(A) and 4901-1-36 of the Ohio Administrative Code, on April 27, 2010.



Joseph M. Clark
Counsel for Appellant,
Industrial Energy Users-Ohio

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Fuel Adjustment)	Case No. 09-872-EL-FAC
Clauses for Columbus Southern Power)	Case No. 09-873-EL-FAC
Company and Ohio Power Company.)	
 In the Matter of the Application of)	
Columbus Southern Power Company)	Case No. 09-1906-EL-ATA
and Ohio Power Company to Modify)	
Their Standard Service Offer Rates.)	

FINDING AND ORDER

The Commission finds:

- (1) Columbus Southern Power Company (CSP) and Ohio Power Company (OP) (collectively, AEP-Ohio or the Companies) are public utilities as defined in Section 4905.02, Revised Code, and, as such, are subject to the jurisdiction of this Commission.
- (2) On March 18, 2009, and July 23, 2009, the Commission approved fuel adjustment clauses (FAC) for the Companies in the Companies' Electric Security Plan (ESP) adopted in Case Nos. 09-917-EL-SSO and 09-918-EL-SSO. *In the Matter of the Application of Columbus Southern Power Company for Approval of an Electric Security Plan; an Amendment to its Corporate Separation Plan; and the Sale or Transfer of Certain Generating Assets; and In the Matter of the Application of Ohio Power Company for Approval of its Electric Security Plan; and an Amendment to its Corporate Separation Plan.* The Commission also approved an annual audit of the accounting of the FAC costs in the ESP. Further, the Commission authorized 2010 rate increases of six percent for CSP and seven percent for OP.
- (3) Consistent with the Commission's ESP order, AEP-Ohio filed its initial quarterly FAC filing on September 29, 2009, in Case Nos. 09-872-EL-FAC and 09-873-EL-FAC. On December 1, 2009, the Companies submitted their quarterly FAC filings to adjust the FAC rates for the first quarter of 2010. The quarterly filing, which includes actual fuel data for July through September of 2009 and forecasted information for the first quarter of 2010,

proposes revised FAC rates, to be effective beginning with the January 2010 billing cycle, to reflect the percentage increases authorized in the Companies' ESP.

- (4) On December 3, 2009, the Companies filed a related application in Case No. 09-1906-EL-ATA to decrease the 2010 rates for each company's Enhanced Service Reliability Rider and CSP's gridSMART Rider in order to collect the revenues associated with the rates authorized by the Commission for 2010. Although the total revenue amount to be collected in 2010 is the same as the total revenue collected in 2009, the 2010 rates are a reduction from the 2009 rates due to the length of the period over which the revenue amount is to be collected. The tariff schedules attached to the 09-1906 filing also include generation rates which, in conjunction with the FAC rates filed on December 1, 2009, in Case Nos. 09-872-EL-FAC and 09-873-EL-FAC, limit the amount that the Companies are authorized to collect to the 2010 rate increases established by the ESP.
- (5) On December 10, 2009, Staff filed its review and recommendation for Case Nos. 09-873-EL-FAC, 09-873-EL-FAC, and 09-1906-EL-ATA, contending that the proposed rates provide for increases no greater than those authorized in the ESP, and recommending that the applications be approved.
- (6) On October 28, 2009, and December 11, 2009, the Office of the Ohio Consumers' Counsel (OCC) and the Industrial Energy Users-Ohio (IEU-Ohio) respectively, filed motions to intervene, asserting that each has a substantial interest in these proceedings, and that the disposition of the proceedings may impair or impede their ability to protect that interest.
- (7) On December 11, 2009, Ormet Primary Aluminum Corporation (Ormet) also filed a motion to intervene and, as explained below, a motion to set the matters for hearing. In its motion to intervene, Ormet asserts that it has an interest in these proceedings, as the outcome of these proceedings could impact a power agreement between Ormet and the Companies that determines the rate Ormet pays for electricity. Additionally, on December 14, 2009, Ormet filed a motion to permit Clifton A. Vince, Douglas G. Bonner, Daniel D. Barnowski, and Emma F.

Hand, counsel for Ornet, to practice before the Commission pro hac vice in this proceeding.

- (8) The Commission finds that OCC, IEU-Ohio, and Ornet have set forth reasonable grounds for intervention. Accordingly, their motions to intervene should be granted. Additionally, the Commission finds that Ornet's motion for admission pro hac vice, requesting that Clifton A. Vince, Douglas G. Bonner, Daniel D. Barnowski, and Emma F. Hand be permitted to practice before the Commission in this matter, is reasonable and should be granted.
- (9) On December 11, 2009, IEU-Ohio filed a motion to consolidate Case Nos. 09-872-EL-FAC, 09-873-EL-FAC, 09-1906-EL-ATA, 09-1094-EL-FAC, and 09-1095-EL-UNC, arguing that the interconnected nature of the proposals addressed in the cases demands that the Commission resolve the cases by means of one proceeding.
- (10) Additionally, in support of its motion to set the matters for hearing, Ornet argues that there is cause for concern that the rates proposed by the Companies for Ornet could cause the Companies to over collect.
- (11) On December 14, 2009, AEP-Ohio filed a memorandum contra IEU-Ohio's motion to consolidate, arguing that IEU-Ohio has offered no reason for postponing Commission consideration of Case Nos. 09-872-EL-FAC, 09-873-EL-FAC, and 09-1906-EL-ATA.
- (12) On December 15, 2009, IEU-Ohio filed a reply to AEP-Ohio's memorandum contra, arguing that IEU-Ohio is not the only party that has concerns about the cases at issue, and that the Commission should grant its motion to consolidate the cases and set the consolidated matters for hearing.
- (13) On December 15, 2009, AEP-Ohio filed a memorandum contra Ornet's motion for hearing, arguing that despite the fact that individual customers, depending on load and usage, may experience rate increases in their bills greater than the caps authorized by the ESP, the annual increases in revenues, per customer class, will not exceed the limitations imposed by the

ESP. Additionally, AEP-Ohio argues that, as a special contract customer, Ormet will not be paying the GS-4 rate, but will pay rates which reflect a \$60 million discount. AEP-Ohio further argues Ormet improperly disputes the GS-4 tariff rates, as Ormet's load is not included in calculating the overall increase to AEP-Ohio's GS-4 tariff rates.

- (14) On December 22, 2009, Ormet filed a reply to AEP-Ohio's memorandum contra, asserting that, although the limitations on rate increases are applied on a customer class basis, application of such increases must still occur in a just and reasonable manner. Ormet also contends that because its load is not included in calculating the overall increase to AEP-Ohio's GS-4 tariff rates, AEP-Ohio should not apply the GS-4 FAC rate to Ormet, but should apply an Ormet-specific FAC rate. Further, Ormet argues that standard GS-4 tariff rates are, in fact, relevant to the rate Ormet pays because, under Ormet's unique arrangement with AEP-Ohio, the rate that Ormet pays is tied to the London Metal Exchange (LME) price of aluminum. Beginning in 2010, if the price of aluminum increases above the target price set in the unique arrangement, Ormet will pay a premium above the GS-4 tariff rate. 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, Opinion and Order (July 15, 2009) and Entry on Rehearing (September 15, 2009).
- (15) Having reviewed the Companies' applications, the parties' arguments and Staff's review and recommendation, the Commission finds that the Companies' proposed tariff filings in Case Nos. 09-872-EL-FAC, 09-873-EL-FAC, and 09-1906-EL-ATA, implementing the Commission's March 18, 2009 and July 23, 2009, orders approving the ESP, with modifications, do not appear to be unjust, unreasonable, or inconsistent with the Commission's prior orders. Therefore, the Commission finds that the applications should be approved and that it is unnecessary to hold a hearing in this matter. Accordingly, the revised tariffs should be effective with bills rendered beginning the first billing cycle of 2010.

- (16) Notwithstanding the approval of the proposed tariff filings to establish new rates beginning with bills rendered for the first billing cycle of 2010, which includes the adjusted FAC rates, all fuel adjustment clause costs are subject to the annual audit and FAC audit process established by the Commission's entry issued on November 18, 2009 in Case Nos. 09-872-EL-FAC and 09-873-EL-FAC.

It is, therefore,

ORDERED, That the revised tariffs filed by the Companies in their applications of December 1, 2009, and December 3, 2009, be approved and become effective for bills rendered beginning the first billing cycle of 2010. It is, further,

ORDERED, That the motions to intervene filed by OCC, IEU-Ohio, and Ormet be granted. It is, further,

ORDERED, That Ormet's motion pro hac vice be granted. It is, further,

ORDERED, That the requests for a hearing be denied. It is, further,

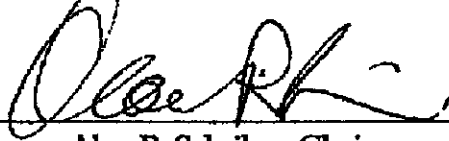
ORDERED, That the Companies are authorized to file, in final form, four complete copies of the tariffs, consistent with this finding and order. Each company shall file one copy in its TRF docket (or make such filing electronically as directed in Case No. 06-900-AU-WVR) and one copy in this case docket. The remaining two copies shall be designated for distribution to the Rates and Tariffs, Energy and Water Division of the Commission's Utilities Department. It is, further,

ORDERED, That the Companies notify all customers of the changes to the tariffs via a bill message or bill insert within 45 days of the effective date of the tariffs. A copy of this customer notice shall be submitted to the Commission's Service Monitoring and Enforcement Department, Reliability and Service Analysis Division, at least 10 days prior to its distribution to customers. It is, further,

ORDERED, That nothing in this finding and order shall be binding upon this Commission in any future proceeding or investigation involving the justness or reasonableness of any rate, charge, rule, or regulation. It is, further,

ORDERED, That a copy of this finding and order be served upon each company and all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO



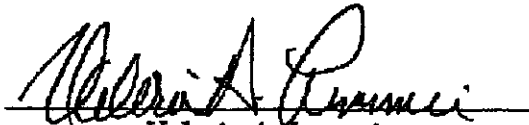
Alan R. Schriber, Chairman



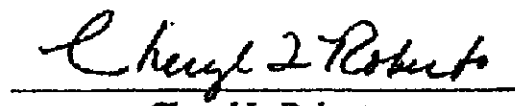
Paul A. Centolella



Ronda Hartman Fergus



Valerie A. Lemmie



Cheryl L. Roberto

RLH/RBF:ct

Entered in the Journal

JAN 07 2010



Renee J. Jenkins
Secretary

BEFORE

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In the Matter of the Fuel Adjustment)
 Clauses for Columbus Southern Power) Case No. 09-872-EL-FAC
 Company and Ohio Power Company.) Case No. 09-873-EL-FAC

In the Matter of the Application of)
 Columbus Southern Power Company and)
 Ohio Power Company to Adjust Their) Case No. 09-1095-EL-RDR
 Economic Development Cost Recovery)
 Rider Rates.)

In the Matter of the Application of Ohio)
 Power Company and Ohio Power) Case No. 09-1906-EL-ATA
 Company to Modify Their Standard Service)
 Offer Rates.)

ENTRY ON REHEARING

The Commission finds:

- (1) On November 13, 2009, Columbus Southern Power Company (CSP) and Ohio Power Company (OP) (collectively, AEP-Ohio or the Companies) filed an application in Case No. 09-1095-EL-RDR (09-1095) to adjust their respective economic development cost rider (EDR) rates to collect estimated deferred delta revenues and carrying costs associated with a unique arrangement with Ormet Primary Aluminum Corporation (Ormet), which was approved in *In the Matter of the Application of Ormet Primary Aluminum Corporation for Approval of a Unique Arrangement with Ohio Power Company and Columbus Southern Power Company*, Case No. 09-119-EL-AEC, Opinion and Order (July 15, 2009) and Entry on Rehearing (September 15, 2009) (09-119), and a reasonable arrangement with Eramet Marietta, Inc. (Bramet), which was approved in *In the Matter of the Application for Establishment of a Reasonable Arrangement between Eramet Marietta, Inc. and Columbus Southern Power Company*, Case No. 09-516-EL-AEC, Opinion and Order (October 15, 2009) (09-516).
- (2) Ohio Energy Group (OEG), Industrial Energy Users-Ohio (IEU-Ohio), the Office of Ohio Consumers' Counsel (OCC) and Ormet filed for and were granted intervention in 09-1095.

- (3) By Order issued January 7, 2010, the Commission concluded, among other things, that AEP-Ohio's proposal to utilize EDR rates of 10.52701 percent for CSP and 8.33091 percent for OP, which included provider of last resort credits, was reasonable.
- (4) On September 29, 2009, consistent with the Commission's order in Case Nos. 09-917-EL-SSO and 09-918-EL-SSO (ESP), AEP-Ohio filed its initial quarterly fuel adjustment clause (FAC) filing in Case Nos. 09-872-EL-FAC and 09-873-EL-FAC (09-872). On December 1, 2009, the Companies submitted their quarterly FAC filings to adjust the FAC rates for the first quarter of 2010. The quarterly filing proposed revised FAC rates, effective beginning with the January 2010 billing cycle, to reflect the percentage increases authorized in the Companies' ESP.
- (5) On December 3, 2009, the Companies filed a related application in Case No. 09-1906-EL-ATA (09-1906) to decrease the 2010 rates for each company's Enhanced Service Reliability Rider and CSP's gridSMART Rider in order to collect the revenues associated with the rates authorized by the Commission for 2010. The tariff schedules attached to the 09-1906 filing included generation rates which, in conjunction with the FAC rates filed on December 1, 2009, in 09-872, limited the amount that the Companies are authorized to collect to the 2010 rate increases established by the ESP order.
- (6) OCC, IEU-Ohio, and Ormet filed for and were granted intervention in 09-872 and 09-1906.
- (7) By Order issued January 7, 2010, the Commission concluded, among other things, that the Companies' proposed tariff filings in 09-872 and 09-1906, should be approved, with modifications. The Commission additionally ordered that the revised tariffs be effective with bills rendered beginning the first billing cycle of 2010.
- (8) Pursuant to Section 4903.10, Revised Code, any party who has entered an appearance in a Commission proceeding may apply for rehearing with respect to any matters determined by the Commission, within 30 days of the entry of the order upon the Commission's journal.
- (9) On February 5, 2010, AEP-Ohio filed an application for rehearing of the Commission's January 7, 2010, Order in 09-

1095. On February 5, 2010, IEU-Ohio filed an application for hearing in 09-872, 09-1906, and 09-1095.¹ Memorandum contra the applications for rehearing regarding 09-1095 were filed by AEP-Ohio, IEU-Ohio, and jointly by OCC and OEG on February 16, 2010. AEP-Ohio filed a memorandum contra IEU-Ohio's application for rehearing of 09-872 and 09-1906 on February 16, 2010.

- (10) The Commission grants the applications for rehearing filed by IEU-Ohio and AEP-Ohio in 09-1095, as well as the application for rehearing filed by IEU-Ohio in 09-872 and 09-1906. We believe that sufficient reason has been set forth by the parties seeking rehearing to warrant further consideration of the matters specified in the applications for rehearing.

It is, therefore,

ORDERED, That the applications for rehearing filed by IEU-Ohio and AEP-Ohio be granted for further consideration of the matters specified in the applications for rehearing. It is, further,

¹ In addition to the applications for rehearing IEU-Ohio filed in 09-1095, 09-872 et al., and 09-1906, it also filed concurrent applications for rehearing in Case Nos. 08-917-EL-SSO, 08-918-EL-SSO, and 09-1094-EL-FAC. Because no Commission orders in these cases were issued in the 30-day period preceding the filing of IEU-Ohio's applications for rehearing, they were improperly filed. The Commission has, therefore, excluded them from consideration herein.

ORDERED, That a copy of this entry on rehearing be served upon all parties and other interested persons of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO



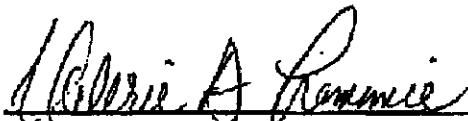
Alan R. Schriber, Chairman



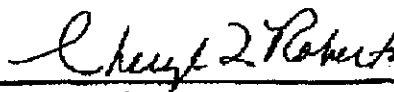
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Entered in the Journal

MAR 03 2010



Renee J. Jenkins
Secretary

BEFORE

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 Clauses for Columbus Southern Power) Case No. 09-872-EL-FAC
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ENTRY ON REHEARING

The Commission finds:

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- (2) The Ohio Energy Group (OEG), Industrial Energy Users-Ohio (IEU-Ohio), the Office of the Ohio Consumers' Counsel (OCC), and Ormet filed for and were granted intervention in 09-1095.

- (3) By Order issued January 7, 2010, the Commission concluded, among other things, that AEP-Ohio's proposal to utilize economic development rider (EDR) rates of 10.52701 percent for CSP and 8.33091 percent for OP, which included provider of last resort (POLR) credits, was reasonable.
- (4) On September 29, 2009, consistent with the Commission's order in Case Nos. 09-917-EL-SSO and 09-918-EL-SSO (ESP proceedings), AEP-Ohio filed its initial quarterly fuel adjustment clause (FAC) filing in Case Nos. 09-872-EL-FAC and 09-873-EL-FAC (09-872). On December 1, 2009, the Companies submitted their quarterly FAC filings to adjust the FAC rates for the first quarter of 2010. The quarterly filing proposed revised FAC rates, effective beginning with the January 2010 billing cycle, to reflect the percentage increases authorized in the Companies' ESP proceedings.
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rehearing in 09-872, 09-1906, and 09-1095.¹ Memoranda contra the applications for rehearing regarding 09-1095 were filed by AEP-Ohio, IEU-Ohio, and jointly by OCC and OEG on February 16, 2010. AEP-Ohio filed a memorandum contra IEU-Ohio's application for rehearing of 09-872 and 09-1906 on February 16, 2010.

- (9) In its first assignment of error in 09-1095, AEP-Ohio contends that the Commission's finding that the Companies had proposed EDR rates that reflected the Commission-ordered POLR credit is in error, and therefore, is unlawful and unreasonable. AEP-Ohio argues that its proposal was clearly for implementation of the EDR rates that did not reflect the POLR credit.
- (10) The Commission finds that rehearing on this assignment of error should be granted solely to clarify that AEP-Ohio did not specifically propose EDR rates that include a POLR credit to be implemented by the Commission. As AEP-Ohio explains in its application for rehearing, the Commission's prior decisions ordered it to enter into a service agreement with Ormet, and ordered CSP to enter into a service agreement with Eramet. AEP-Ohio's application calculated the delta revenue, excluding POLR credits, resulting from the Ormet and Eramet contracts, and proposed EDR rates, which did not include the POLR credit, of 13.18314 percent for CSP and 9.37456 percent for OP.

AEP-Ohio's application further, however, indicated the following with regard to EDR calculations:

In order to preserve their position that the Commission cannot require a POLR credit offset to the EDR rate, the Companies' proposed EDR rates do not reflect such a credit. * * *
Recognizing, however, that the Commission would likely require that the POLR credit be

¹ In addition to the applications for rehearing IEU-Ohio filed in 09-1095, 09-872, and 09-1906, it also filed concurrent applications for rehearing in Case Nos. 08-917-EL-SSO, 08-918-EL-SSO, and 09-1094-EL-FAC. Because no Commission orders in these cases were issued in the 30-day period preceding the filing of IEU-Ohio's applications for rehearing, they were improperly filed. The Commission has, therefore, excluded them from consideration herein.

reflected in this application, the Companies also provide EDR rates which include POLR credits[.]

The Commission wishes to clarify that, while AEP-Ohio's application did not request EDR rates that included a POLR credit, the EDR rates of 10.52701 percent for CSP and 8.33091 for OP, which do include a POLR credit, were provided therein alternatively, in anticipation of the Commission's decision on the EDR issue, and adopted accordingly.

- (11) In its second assignment of error in 09-1095, AEP-Ohio contends that the Commission's decision to reject the proposed EDR rates, which did not include POLR credits, was unlawful and unreasonable because those EDR rates would provide for full recovery of revenues foregone under the contracts with Ormet and Eramet, as permitted by Section 4905.31, Revised Code. OCC and OEG responded that providing POLR credits to customers is consistent with law, reason, and the Commission's previous decisions in 09-119 and 09-516. Therefore, OCC and OEG argue, rehearing on AEP-Ohio's second assignment of error should be denied. IEU-Ohio argues that the Companies' second assignment of error was raised and rejected in both 09-119 and 09-516, and therefore, rehearing on the issue should be denied.
- (12) The Commission finds that the argument AEP-Ohio advances in support of its second assignment of error merely repeats the arguments it made in its hearing briefs. AEP-Ohio has raised no new arguments on this issue in its application for rehearing. Accordingly, we find that rehearing on its second assignment of error should be denied.
- (13) In its third and fourth assignments of error in 09-1095, AEP-Ohio argues that the Commission's decision to reject its proposed EDR rates, which did not include POLR credits, was unlawful and unreasonable, because its decision was based on the 09-119 and 09-516 decisions, which were unlawful and unreasonable. AEP-Ohio's arguments in support of these assignments of error direct the Commission to review AEP-Ohio's arguments in its memoranda in support of rehearing in 09-119 and 09-516, and treat those arguments as fully incorporated into the application for rehearing in 09-1095.

OCC and OEG respond that the Commission's decisions in 09-119 and 09-516 were lawful and reasonable, and therefore, rehearing on AEP-Ohio's third and fourth assignments of error should be denied. In support of their position, OCC and OEG adopt the arguments set forth in their memoranda contra in 09-119 and 09-516, and incorporate those arguments into their memoranda contra AEP-Ohio's application for rehearing in 09-1095. IEU-Ohio asserts that assignments of error three and four of AEP-Ohio's application for rehearing should be denied because they simply restate and incorporate by reference AEP-Ohio's arguments advanced in its applications for rehearing in 09-119 and 09-516.

- (14) The Commission finds that rehearing should be denied on AEP-Ohio's third and fourth assignments of error. As indicated by AEP-Ohio, its arguments in favor of these assignments of error are simply incorporated from the arguments it has made in 09-119 and 09-516. AEP-Ohio also made the same arguments it asserts here in its hearing briefs. As AEP-Ohio has raised no new substantive arguments for the Commission's consideration, its application for rehearing on assignments of error three and four should be denied.
- (15) Turning to IEU-Ohio's application for rehearing, in its first assignment of error, IEU-Ohio argues that the findings and orders in 09-1095, 09-872, and 09-1906 are unlawful and unreasonable inasmuch as the Commission has no subject matter jurisdiction over 09-1095, 09-872, or 09-1906. IEU-Ohio contends that the Commission lost jurisdiction over the ESP proceedings and all proceedings stemming from the ESP proceedings when it failed to issue an order within 150 days of the filing of AEP-Ohio's ESP application. AEP-Ohio responds that while IEU-Ohio may challenge the decisions in 09-1095, 09-872, and 09-1906 as somehow being unreasonable and unlawful, it cannot do so through its argument that the Commission lost jurisdiction in the ESP proceedings.
- (16) The Commission finds that rehearing on this assignment of error should be denied. As AEP-Ohio indicates, IEU-Ohio unsuccessfully raised this issue in its Writ of Prohibition action (Case No. 2009-1907) before the Supreme Court of Ohio. The Commission finds that IEU-Ohio's attempt to raise this argument in the context of the current proceeding is an

improper attempt to relitigate the Supreme Court of Ohio's decision on this issue. Accordingly, IEU-Ohio's first assignment of error should be denied.

- (17) In its second assignment of error, IEU-Ohio claims that the findings and order in 09-1095, 09-872, and 09-1906 are unlawful and unreasonable, inasmuch as the Commission continues to permit AEP-Ohio to take the benefits of the higher rates contained in the ESP, while AEP-Ohio still reserves the right to withdraw and terminate its ESP. AEP-Ohio argues that IEU-Ohio's second assignment of error amounts to an attempt to relitigate the ESP proceedings and/or improperly expand the list of issues it can pursue on appeal to challenge the Commission's ESP decision.
- (18) The Commission finds that rehearing on IEU-Ohio's second assignment of error should be denied. IEU-Ohio raised this issue in its August 17, 2009, Application for Rehearing in the ESP proceedings. The Commission denied IEU-Ohio's argument in its November 4, 2009, Second Entry on Rehearing, on the basis that the issue was not ripe for review, given that AEP-Ohio had not withdrawn its ESP. Similarly, the Commission finds that the issue under consideration in IEU-Ohio's second assignment of error is not presently ripe for review, as AEP-Ohio has not withdrawn its ESP. As such, IEU-Ohio's second assignment of error should be denied.
- (19) In its third assignment of error, IEU-Ohio contends that the Commission's finding and order in 09-1095 is unlawful and unreasonable, inasmuch as the exception for the EDR from the maximum percentage increases authorized in the ESP violates the Commission's precedent and unreasonably increases customers' rates. IEU-Ohio argues that the Commission failed to indicate in the course of the ESP proceedings that riders or other charges, apart from those enumerated by the Commission, could be excluded from the maximum revenue increase limitations approved in the ESP. IEU-Ohio contends that the Commission's decision to exclude the EDR from the maximum percentage increases authorized in the ESP is unreasonable, as it imposes rate increases on customers at a precarious time for Ohio's economy. AEP-Ohio argues, in its memorandum contra, that if, as IEU-Ohio argues, the EDR were inside the rate increase cap set forth in the ESP

proceedings, the FAC deferrals and associated carrying charges would increase, resulting in increased costs for customers.

- (20) We find that rehearing on IEU-Ohio's third assignment of error should be denied. As we explained in 09-1095, the list of riders and other mechanisms presented in the ESP proceedings as exempt from the rate increase limitations was not exhaustive. IEU-Ohio's contention that the EDR is outside the cap because it was not listed amongst those riders and other mechanisms specifically excluded in the ESP proceedings raises no new issues, as IEU-Ohio presented the same argument in its hearing brief, as well as in separate proceedings. Accordingly, IEU-Ohio's third assignment of error should be denied.
- (21) In its fourth assignment of error, IEU-Ohio asserts that the 09-1095 finding and order is unlawful and unreasonable inasmuch as it permits AEP-Ohio to calculate the carrying costs on deferred EDR delta revenues at the weighted average cost of long-term debt without any evaluation of possible lesser-cost alternatives. IEU-Ohio contends that the Commission unreasonably accepted AEP-Ohio's proposal to use the average cost of CSP and OP's long-term debt to calculate carrying costs associated with EDR delta revenues without any inquiry as to whether a different debt rate would be more appropriate. AEP-Ohio argues that the regulatory treatment of carrying costs proposed by IEU-Ohio is simplistic and should be rejected, in that it believes that the selection of a carrying charge rate should be driven predominantly by what results in the lowest cost to customers, rather than by what is the most appropriate rate.
- (22) The Commission finds that IEU-Ohio's fourth assignment of error is without merit. Despite IEU-Ohio's assertions that the Commission made no inquiry into its proposal to utilize a short-term debt rate, we specifically addressed and rejected its proposal, finding that the use of long-term debt is a more appropriate mechanism for calculating carrying charges. Additionally, the grounds IEU-Ohio advances in support of its argument have already been raised in its hearing brief in 09-1095. IEU-Ohio has raised no new arguments with regard to this issue. Its fourth assignment of error should, therefore, be denied.

- (23) In its fifth assignment of error, IEU-Ohio argues that approval of the recovery of delta revenues associated with the interim Ormet agreement through the FAC as part of 09-872 and 09-1906 was unreasonably premature, inasmuch as the Commission has not yet issued an order in 09-1094-EL-FAC (09-1094). IEU-Ohio contends that it is unreasonable to collect delta revenues from customers through the FAC that have not yet been found to be just and reasonable. AEP-Ohio asserts that, as shown in 09-872, CSP can be characterized as recovering only a portion of the Ormet interim agreement deferrals, as only a portion of the reconciliation adjustment is reflected in the current FAC rate. OP is not presently recovering any of the Ormet interim agreement deferrals. AEP-Ohio claims that to the extent CSP's recovery of its reconciliation adjustment component includes Ormet interim agreement deferrals, those amounts can be reconciled with the decision in 09-1094 and passed back to customers through the FAC.
- (24) The Commission finds that IEU-Ohio's fifth assignment of error should be denied. Despite IEU-Ohio's arguments regarding premature recovery, in the circumstances hereunder, we find that recovery of the deferrals at issue is an incidental result of AEP-Ohio's rates, as established by the ESP proceedings. We note that any deferrals associated with the Ormet interim agreement that are recovered will be subject to a true-up following resolution of 09-1094 and any other cases affecting recovery under the Ormet interim agreement. In view of these circumstances, IEU-Ohio's fifth assignment of error should be denied.

It is, therefore,

ORDERED, That AEP-Ohio's application for rehearing be granted in part, and denied in part. It is, further,

ORDERED, That IEU-Ohio's application for rehearing be denied. It is, further,

ORDERED, That a copy of this entry on rehearing be served upon all parties and other interested persons of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO



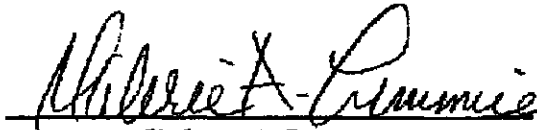
Alan R. Schriber, Chairman



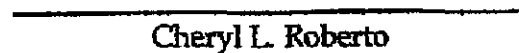
Paul A. Centolella



Ronda Hartman Fergus



Valerie A. Lemmie



Cheryl L. Roberto

RLH/GNS/sc

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MAR 24 2010



Renee J. Jenkins
Secretary