

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Ormet)
Primary Aluminum Corporation for)
Approval of a Unique Arrangement with) Case No. 09-119-EL-AEC
Ohio Power Company and Columbus)
Southern Power Company.)

ENTRY ON REHEARING

The Commission finds:

- (1) Pursuant to Section 4905.31, Revised Code, the Commission has the authority to approve schedules for electric service upon application of a public utility or to establish reasonable arrangements for electric service upon application of a public utility and/or mercantile customer.
- (2) By opinion and order issued on July 15, 2009, the Commission modified and approved the amended application of Ormet Primary Aluminum Corporation (Ormet) for a unique arrangement with Columbus Southern Power Company and Ohio Power Company (jointly, AEP Ohio) for electric service to Ormet's aluminum-producing facility located in Hannibal, Ohio.¹ Under this unique arrangement, the Commission approved rate subsidies for Ormet of up to \$308 million through December 31, 2018, including \$232 million through 2013.
- (3) On June 14, 2013, Ormet filed a motion to amend its unique arrangement with AEP Ohio and a request for emergency relief, along with a memorandum in support, pursuant to Sections 4905.31 and 4909.16, Revised Code,

¹ By entry issued on March 7, 2012, the Commission approved and confirmed the merger of Columbus Southern Power Company into Ohio Power Company, effective December 31, 2011. *In the Matter of the Application of Ohio Power Company and Columbus Southern Power Company for Authority to Merge and Related Approvals*, Case No. 10-2376-EL-UNC.

and Rules 4901-1-12 and 4901:1-38-05, Ohio Administrative Code (O.A.C.). In its motion, Ormet emphasized that the requested relief was necessary to enable Ormet to emerge from a recent bankruptcy sale as a going concern and to continue its operations in Ohio.

- (4) By entry issued on June 27, 2013, the attorney examiner found that, although Ormet's June 14, 2013, filing was posed to the Commission as a motion to amend Ormet's unique arrangement with AEP Ohio, Ormet's filing should be construed as an application for a unique arrangement under Rule 4901:1-38-05(B), O.A.C., given the nature and extent of the modifications requested by Ormet to the existing unique arrangement.
- (5) On October 2, 2013, the Commission issued an opinion and order approving Ormet's application for a unique arrangement with AEP Ohio to the extent set forth in the opinion and order. Specifically, the Commission authorized the acceleration of a rate discount of \$76 million, which constitutes the remaining portion of a total maximum rate discount of \$294 million available to Ormet under the unique arrangement for the period of 2010 through 2018. The Commission also established a fixed generation and fuel rate cap of \$50.00/megawatt hour for Ormet. The relief granted by the Commission, which was approved for 2013 and 2014, was intended to sustain Ormet until its projected return to profitability in late 2014 or early 2015, while protecting the interests of AEP Ohio and its other customers, which have already incurred more than \$200 million to fund Ormet's discount under the unique arrangement.
- (6) On November 1, 2013, the Ohio Consumers' Counsel (OCC) filed an application for rehearing of the Commission's opinion and order. Subsequently, on November 7, 2013, OCC filed a notice withdrawing four of its seven alleged grounds for rehearing.
- (7) In its first ground for rehearing, OCC argues that the Commission erred, under Section 4903.09, Revised Code,

when it did not address OCC's recommendations for consumer protections against charges from AEP Ohio in the event of Ormet's liquidation. OCC notes that Section 4903.09, Revised Code, requires the Commission, in all contested cases, to file findings of fact and written opinions setting forth the reasons prompting the decisions arrived at, based upon said findings of fact. Because the Commission did not make any findings with respect to OCC's recommendations, OCC contends that the Commission violated the statute.

- (8) In the October 2, 2013, opinion and order, the Commission determined that the relief granted to Ormet, which established a fixed generation and fuel rate cap and accelerated the remaining discounts under the unique arrangement, achieved the appropriate balance among the interests of Ormet and AEP Ohio's other customers. *The additional relief granted in the opinion and order was intended to sustain Ormet until its projected return to profitability, while protecting ratepayers from undertaking any further risk or financial responsibility on Ormet's behalf. (Opinion and Order at 24-25.)* The Commission was focused on sustaining Ormet, rather than preparing for its liquidation. OCC, however, recommended that the Commission impose conditions to protect customers in the event that Ormet ceases its operations. Specifically, OCC proposed that no adjustments be permitted to AEP Ohio's retail stability rider that would impose further costs on customers. OCC also proposed that customers be responsible for no more than \$30 million, if Ormet is unable to pay its deferred bills. The Commission finds that the provisions of the unique arrangement, as approved in the opinion and order, are adequate to protect ratepayers from additional financial risk. We further find that the opinion and order points to the facts in the record upon which the order is based and outlines the reasoning followed by the Commission in reaching its conclusion. We, therefore, disagree with OCC's contention that the opinion and order is in violation of Section 4903.09, Revised Code, and

find that OCC's first ground for rehearing should be denied.

- (9) In its second ground for rehearing, OCC asserts that the Commission erred when it did not protect customers against charges from AEP Ohio with regard to any additional bills that are unpaid by Ormet. OCC maintains that customers should not be held responsible for more than the \$30.5 million in deferred billings approved by the Commission to date. OCC notes that unpaid bills are a normal risk of AEP Ohio's business and, therefore, AEP Ohio should be responsible for any additional unpaid bills.
- (10) The Commission finds that OCC's argument is premature at this point. If Ormet is unable to pay its deferred billings, OCC may raise its concerns regarding allocation of the delta revenue responsibility at the proper time for the Commission's consideration. Accordingly, the Commission finds that OCC's second ground for rehearing should be rejected.
- (11) In its third ground for rehearing, OCC argues that the Commission erred when it did not order AEP Ohio to credit, for the benefit of customers, the proceeds from the sale of generating capacity and energy made available by Ormet's termination of its operations. OCC contends that, because customers have paid for the capacity used to serve Ormet's load through their payment of delta revenues over many years, customers should receive half of the proceeds from wholesale sales of capacity and energy previously used to serve Ormet, with the amount of the reimbursement limited to the amount contributed by customers since the original approval date of Ormet's unique arrangement, plus carrying costs. OCC adds that the Commission has recognized that, where jurisdictional customers pay for the resources used to facilitate non-jurisdictional sales, customers should receive at least a significant portion of the proceeds.

- (12) The Commission is not persuaded by OCC's argument. We find that OCC has offered no lawful justification for its proposal to credit half of the proceeds from the wholesale sale of energy and capacity freed up by Ormet's termination of its operations. Initially, the Commission notes that OCC provides no statutory support for its argument, which is contrary to recent Commission precedent finding it inappropriate for electric utilities to share the benefits of off-system sales revenue with jurisdictional customers.² We further note that electric sales for resale and other wholesale transactions are generally subject to the exclusive jurisdiction of the Federal Regulatory Energy Commission pursuant to the Federal Power Act.³ In any event, the Commission points out that the significantly excessive earnings test found in Section 4928.143(F), Revised Code, provides ratepayers with a measure of protection in the event that AEP Ohio experiences significantly excessive earnings under its electric security plan. The statute specifically requires that the amount of any such excess must be returned to consumers by prospective adjustments following the Commission's annual review. Therefore, as we have previously recognized, Section 4928.143(F), Revised Code, serves as a considerable check on AEP Ohio's retail rates.⁴ For these reasons, OCC's third ground for rehearing should be denied.

It is, therefore,

ORDERED, That the application for rehearing filed by OCC be denied. It is, further,

² *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*, Case No. 08-917-EL-SSO, *et al.*, Opinion and Order, at 16-17 (March 18, 2009).

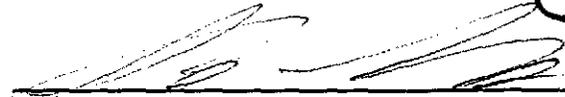
³ 16 U.S.C. § 824.

⁴ *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Administration of the Significantly Excessive Earnings Test under Section 4928.143(F), Revised Code, and Rule 4901:1-35-10, Ohio Administrative Code*, Case No. 10-1261-EL-UNC, Opinion and Order, at 9-10 (January 11, 2011).

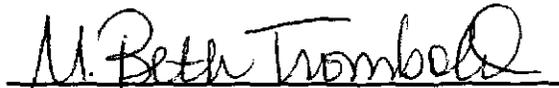
ORDERED, That a copy of this entry on rehearing be served upon all parties of record.

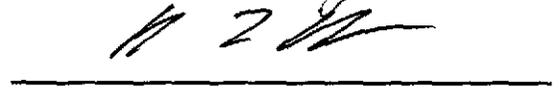
THE PUBLIC UTILITIES COMMISSION OF OHIO


Todd A. Snitchler, Chairman


Steven D. Lesser

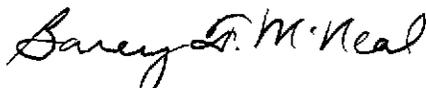

Lynn Slaby


M. Beth Trombold


Asim Z. Haque

SJP/sc

Entered in the Journal
NOV 13 2013


Barcy F. McNeal
Secretary