

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Ohio)
Power Company to Adjust Its Economic) Case No. 14-193-EL-RDR
Development Rider Rate.)

FINDING AND ORDER

The Commission finds:

- (1) Ohio Power Company d/b/a AEP Ohio (AEP Ohio or the Company) is a public utility as defined in R.C. 4905.02 and an electric utility as defined in R.C. 4928.01(A)(11), and, as such, is subject to the jurisdiction of this Commission.
- (2) On February 3, 2014, AEP Ohio filed an application to adjust its economic development rider (EDR) rate. AEP Ohio states that, in Case No. 11-346-EL-SSO, et al., the Commission approved the EDR, which is to be adjusted periodically to recover economic development amounts authorized by the Commission. *In re Columbus Southern Power Company and Ohio Power Company*, Case No. 11-346-EL-SSO, et al. (ESP Case), Opinion and Order (Aug. 8, 2012) at 66-67. In AEP Ohio's prior EDR rate adjustment case, the EDR rate was set at 10.00620 percent of base distribution rates. *In re Ohio Power Company*, Case No. 13-1739-EL-RDR (2013 EDR Case), Finding and Order (Sept. 18, 2013). In the application in the present case, AEP Ohio proposes to increase the EDR rate to 13.33676 percent to be effective with the first billing cycle in April 2014.
- (3) In support of its application, AEP Ohio explains that the proposed EDR rate is based on estimated cost under-recoveries as evidenced by the projected 2014 delta revenues, as well as on the actual and projected delta revenues associated with the Company's reasonable arrangements with Ormet Primary Aluminum Corporation (Ormet), Eramet Marietta, Inc. (Eramet), Globe Metallurgical, Inc. (Globe), and The Timken Company (Timken). Further, AEP Ohio notes that it has provided one set of schedules that reflect the amounts attributable to Ormet that the Company seeks to recover through the EDR

pursuant to a stipulation and recommendation (stipulation) filed in Case No. 13-2206-EL-CSS, which would resolve billing disputes and bankruptcy-related matters in connection with Ormet's reasonable arrangement. AEP Ohio adds that it has provided a second set of schedules that include only the Ormet deferrals previously authorized by the Commission for recovery through the EDR, which reflect an increased EDR rate of 11.68520 percent. AEP Ohio asserts, however, that recovery of the delta revenue associated with the stipulation is comparable to the current level of delta revenue associated with Ormet's reasonable arrangement and would not cause the EDR to increase significantly.

- (4) AEP Ohio states that its calculation of the proposed EDR rate, as in prior EDR applications, utilizes a levelized rate approach previously approved by the Commission, including the accrual of a carrying cost at the weighted average cost of the Company's long-term debt on the under-recovery caused by the levelized EDR rate. AEP Ohio adds that, if it determines during the EDR rate period that the EDR collections are or will be substantially different than anticipated or that the unrecovered costs based on delta revenues are or will be substantially different than anticipated, the Company will file an application to modify the EDR rate for the remainder of the rate period. AEP Ohio notes that it will continue to track the delta revenues and the EDR collections in order to reconcile any difference through subsequent EDR rate adjustments.
- (5) Additionally, AEP Ohio proposes to modify the treatment of carrying costs. Under the current approach, the EDR revenue collected each month is applied entirely to the regulatory asset, while the carrying charge balance continues to grow. AEP Ohio submits that a more appropriate approach is to collect the cumulative carrying charge balance each month, while the remaining revenue is applied to the regulatory asset.
- (6) Finally, AEP Ohio explains that its proposed EDR rate is just and reasonable and that a hearing is not necessary. AEP Ohio requests that, at the conclusion of the 20-day

comment period prescribed by Ohio Adm.Code 4901:1-38-08(C), the Commission approve the application in time for the new EDR rate to take effect with the first billing cycle of April 2014.

- (7) Along with its application, AEP Ohio filed a motion for protective treatment of customer-specific information filed in certain schedules under seal on behalf of Eramet, Globe, and Timken, in accordance with Ohio Adm.Code 4901-1-24. According to AEP Ohio, Ormet does not believe there is any need to redact the customer load information or to seek protective treatment for the information in the Company's schedules. While AEP Ohio takes no position as to the confidential and proprietary nature of the information under Ohio law, the Company notes that it filed the motion to permit its customers a timely opportunity to seek protective treatment.
- (8) On February 4, 2014, Eramet and Globe filed motions to intervene and motions for a protective order. Timken also filed a motion for limited intervention and a motion for a protective order on February 5, 2014. In their respective motions to intervene, Eramet, Globe, and Timken state that they are each served by AEP Ohio pursuant to a Commission-approved reasonable arrangement, and each also notes that its customer-specific information is part of the Company's EDR application. Eramet, Globe, and Timken assert that they may be affected by AEP Ohio's proposed adjustment to its EDR rate and, as such, each claims a direct, real, and substantial interest in this case that cannot be adequately represented by any other party to the proceeding. For these reasons, Eramet, Globe, and Timken request that the Commission grant their respective motions for intervention. No memoranda contra the motions to intervene of Eramet, Globe, and Timken were filed.
- (9) In their motions for protective treatment, Eramet, Globe, and Timken state that AEP Ohio's EDR application includes certain customer-specific information related to electric usage and pricing that is confidential, sensitive, and proprietary trade secret information, as defined in R.C. 1333.61(D), and, as recognized by Ohio Adm.Code 4901-1-

24(A)(7). According to Eramet, Globe, and Timken, if the customer-specific information is released to the public, it would compromise their business position and ability to compete, as well as disclose physical limits and the nature of the manufacturing process. Eramet, Globe, and Timken assert that non-disclosure of the customer-specific information is not inconsistent with the purposes of R.C. Title 49. No memoranda contra the motions for protective treatment were filed.

- (10) On February 10, 2014, and February 18, 2014, motions to intervene in this proceeding were filed by the Ohio Consumers' Counsel (OCC) and Industrial Energy Users-Ohio (IEU-Ohio), respectively. OCC and IEU-Ohio assert that they may be affected by AEP Ohio's proposed EDR adjustment and, accordingly, that they have a direct, real, and substantial interest in this case that cannot be adequately represented by any other party. No memoranda contra were filed.
- (11) On February 21, 2014, AEP Ohio filed corrected versions of certain schedules supporting the Company's application. The revised schedules reflect a proposed EDR rate of 12.59837 percent, which would incorporate the amounts addressed in AEP Ohio's stipulation with Ormet. If the amounts related to the stipulation are excluded from the EDR adjustment, AEP Ohio's proposed EDR rate is 10.89905 percent.
- (12) On February 26, 2014, Eramet and Globe filed motions for protective treatment of the customer-specific information contained in AEP Ohio's corrected schedules. On that same date, Timken and TimkenSteel Corporation (TimkenSteel) filed a supplemental motion for protective order, along with a supplemental motion for leave to intervene in this proceeding. No memoranda contra were filed in response to any of the motions filed on February 26, 2014.
- (13) The Commission finds that Eramet, Globe, OCC, and IEU-Ohio have set forth reasonable grounds for intervention and, therefore, their respective motions to intervene should be granted. Further, although the supplemental motion for

limited intervention filed by Timken and TimkenSteel was not filed within the time period prescribed by Ohio Adm.Code 4901:1-38-08(C), we find that the motion, which is unopposed, should be granted, given that the sole interest of Timken and TimkenSteel in this proceeding is to seek protective treatment for their customer-specific information.

- (14) With respect to the pending motions for protective orders, we note that the Commission has previously granted protective treatment for the same customer usage and pricing information that is the subject of the pending motions. *2013 EDR Case, Finding and Order (Sept. 18, 2013)* at 4. The Commission again finds that the motions for protective treatment filed by AEP Ohio, Eramet, Globe, Timken, and TimkenSteel are reasonable and should be granted. Pursuant to Ohio Adm.Code 4901-1-24(F), this protective order shall expire 18 months after the issuance of this Finding and Order, unless an appropriate motion seeking to continue protective treatment is filed at least 45 days in advance of the expiration date.
- (15) On February 24, 2014, OCC filed comments and objections in response to AEP Ohio's application. AEP Ohio filed reply comments on March 7, 2014. On March 10, 2014, Staff filed its review and recommendations regarding AEP Ohio's application to adjust its EDR rate, as revised on February 21, 2014.
- (16) On March 14, 2014, OCC filed a motion to strike AEP Ohio's reply comments, or, in the alternative, a motion to accept OCC's response instanter. According to OCC, AEP Ohio's reply comments are not authorized under the Commission's rules, including Ohio Adm.Code 4901:1-38-08(C), which OCC notes is specific to this proceeding. OCC adds that, although a responsive pleading may be allowed by the Commission for good cause shown, pursuant to Ohio Adm.Code 4901-1-38(B), AEP Ohio failed to argue that there is good cause for its reply comments in this case. OCC also points out that AEP Ohio did not file a motion seeking leave to file its reply comments. For these reasons, OCC maintains that AEP Ohio's reply comments should be stricken. Alternatively, if the motion to strike is denied, OCC requests

that the Commission grant OCC's motion to accept its response to AEP Ohio's reply comments.

- (17) On March 25, 2014, AEP Ohio filed a memorandum contra OCC's motion to strike. AEP Ohio argues that Ohio Adm.Code 4901:1-38-08 is inapplicable and does not govern this proceeding, as it addresses a process for an electric utility to apply for a rider to recover certain costs associated with delta revenue attributable to a reasonable arrangement. AEP Ohio points out that the EDR was authorized in the *ESP Case* and that the Company's application was filed based on that authority rather than Ohio Adm.Code 4901:1-38-08. In any event, AEP Ohio contends that Ohio Adm.Code 4901:1-38-08(C) does not prohibit comments from the applicant or otherwise limit the applicant's pleadings. AEP Ohio emphasizes that it has the burden of proof in this proceeding and that, as a matter of due process, the Company should be entitled to respond to OCC's objections. Additionally, AEP Ohio notes that the Company has routinely filed, without objection, a response to comments from other parties in these types of proceedings. AEP Ohio asserts that OCC ignores this routine practice and seeks to deny the Commission the benefit of a fully developed record. Finally, AEP Ohio notes that it does not oppose OCC's proposed response, provided that the Company's reply comments are also considered.
- (18) The Commission does not agree with AEP Ohio's assertion that Ohio Adm.Code 4901:1-38-08 is inapplicable to this proceeding. Although the rule authorizes an electric utility to apply for a rider to recover certain costs associated with delta revenue attributable to a reasonable arrangement, Ohio Adm.Code 4901:1-38-08(A)(5) specifically provides that such riders must be semiannually updated and reconciled by application to the Commission. AEP Ohio's application to adjust the EDR is, therefore, governed by the provisions of Ohio Adm.Code 4901:1-38-08, as the Company admits in the application. Although Ohio Adm.Code 4901:1-38-08(C) permits affected parties to file comments and objections within 20 days of the filing of the application, no further process is specified or contemplated under the rule. Further, if AEP Ohio believed that a response to OCC's objections

was necessary, the proper course would have been to request leave to file reply comments. As neither Ohio Adm.Code 4901:1-38-08(C) nor any other provision of the Commission's rules provides for reply comments in response to an affected party's objections, and AEP Ohio did not request leave to make such a filing, the Commission finds that OCC's motion to strike the Company's reply comments is reasonable under the circumstances and should, therefore, be granted.

Summary of Comments

OCC

- (19) In its comments and objections, OCC notes that AEP Ohio proposes to collect from customers all of the remaining \$49.336 million that the Company has not collected from Ormet due to subsidized rates, unpaid bills, and associated carrying charges. OCC explains that this amount consists of \$38.853 million in unpaid charges pertaining to Commission-approved deferrals for Ormet, which the Commission has approved for collection from AEP Ohio's customers. According to OCC, the remaining \$10.483 million consists of charges for Ormet's unpaid bills for September and October 2013 usage, along with a deferral for September 2013 usage. OCC argues that the Commission has not yet determined whether customers must pay for these more recent charges. OCC further argues that it would be unjust and unreasonable to permit AEP Ohio to collect the \$10.483 million from its customers, given that they have already paid more than \$200 million for Ormet's subsidy. OCC contends that AEP Ohio should be required to bear the \$10.483 million related to Ormet's unpaid bills associated with September and October 2013 usage. In support of its position, OCC asserts that the Commission has recognized the significant economic burden imposed on AEP Ohio's customers. OCC adds that R.C. 4905.31 does not require the Commission to approve AEP Ohio's request for recovery of delta revenues. OCC points out that AEP Ohio should use the proceeds from the sale of energy and capacity previously used to serve Ormet to offset the \$10.483 million in unpaid bills. Further, OCC argues that AEP Ohio seeks to collect the

\$10.483 million through an administrative expense claim in bankruptcy court, which, if the Company prevails, would provide it with a double-recovery. For these reasons, OCC believes that AEP Ohio should bear the \$10.483 million related to Ormet's unpaid bills.

Staff

- (20) After reviewing AEP Ohio's application and both sets of supporting schedules, as revised, Staff recommends that the Commission approve the alternate proposed EDR rate of 10.89905 percent, given that the stipulation between Ormet and the Company is pending before the Commission. Staff notes that, once the stipulation is acted upon by the Commission, the EDR may require further adjustments.

Conclusion

- (21) Under Ohio Adm.Code 4901:1-38-08(A)(5), the Commission requires that an electric utility's EDR rate be updated and reconciled semiannually. Ohio Adm.Code 4901:1-38-08(C) permits affected persons to file a motion to intervene, as well as comments and objections to the electric utility's application, within 20 days of the date on which the application is filed. Additionally, the Commission has previously directed AEP Ohio to file an application to adjust its EDR rate to allow the Commission sufficient time to review the filing and perform due diligence with regard to the application in order to facilitate implementation of the adjusted EDR rate with the first billing cycle of April and October. *In re Columbus Southern Power Company and Ohio Power Company*, Case No. 09-1095-EL-EDR, Finding and Order (Jan. 7, 2010) at 12.
- (22) Upon review of AEP Ohio's application to adjust its EDR rate, Staff's recommendations, and OCC's comments and objections, the Commission finds that the application does not appear to be unjust or unreasonable and that it should be approved to the extent set forth in this Finding and Order. Therefore, the Commission finds that it is unnecessary to hold a hearing in this matter.

- (23) Specifically, the Commission finds that AEP Ohio's alternate proposed EDR rate of 10.89905 percent, as set forth on Revised Schedule 1A, is reasonable. Although AEP Ohio seeks in this proceeding to recover amounts related to the Company's stipulation with Ormet in Case No. 13-2206-EL-CSS, the stipulation remains pending before the Commission. In order to facilitate implementation of the adjusted EDR rate with the first billing cycle of April 2014, we find that AEP Ohio's alternate proposal, which would include only the Ormet deferrals previously authorized by the Commission for recovery through the EDR, should be approved. If the stipulation is subsequently found to be reasonable and, thereby, is adopted by the Commission, AEP Ohio may file an application to modify its EDR rate for the remainder of the rate period, upon conclusion of the complaint proceeding.
- (24) We also find, consistent with our rulings on prior EDR applications, that the levelized approach proposed by AEP Ohio for the collection of EDR costs is a just and reasonable means of collection, as it will operate to avoid the extreme swings in EDR costs linked to the structure of reasonable arrangements. We find it reasonable for AEP Ohio to accrue a carrying cost on the under-recovery of delta revenues due to the levelized rate and, to the extent that there is an over-recovery of delta revenues, customers shall be afforded symmetrical treatment. Therefore, if an over-recovery of delta revenues occurs, AEP Ohio shall credit customers with the value of the equivalent carrying cost, calculated according to the weighted average cost of long-term debt. Additionally, the Commission finds that AEP Ohio's proposal to modify its treatment of carrying costs is reasonable and should be adopted, such that the Company may collect the cumulative carrying charge balance each month, while the remaining revenue is applied to the regulatory asset.
- (25) Accordingly, the Commission authorizes AEP Ohio to implement an adjusted EDR rate of 10.89905 percent to be effective with bills rendered in the first billing cycle of April 2014.

It is, therefore,

ORDERED, That the motions for intervention filed by Eramet, Globe, OCC, IEU-Ohio, Timken, and TimkenSteel be granted. It is, further,

ORDERED, That the motions for protective treatment filed by AEP Ohio, Eramet, Globe, Timken, and TimkenSteel be granted. It is, further,

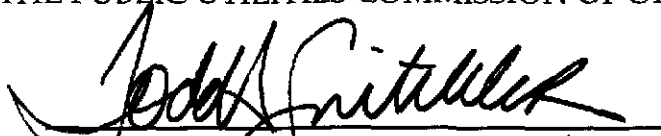
ORDERED, That OCC's motion to strike AEP Ohio's reply comments be granted. It is, further,

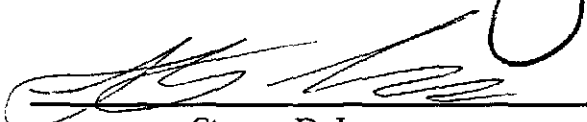
ORDERED, That AEP Ohio's application to adjust its EDR rate be approved as discussed herein. It is, further,

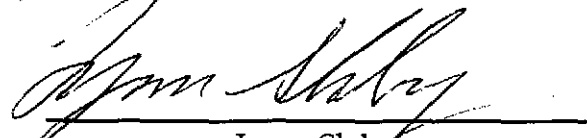
ORDERED, That AEP Ohio be authorized to implement its adjusted EDR rate of 10.89905 percent effective with bills rendered for the first billing cycle of April 2014. It is, further,

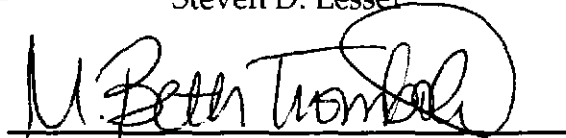
ORDERED, That a copy of this Finding and Order be served upon all parties and interested persons of record.

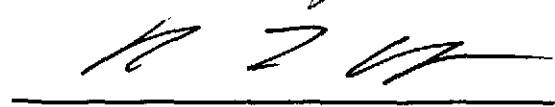
THE PUBLIC UTILITIES COMMISSION OF OHIO


Todd A. Snitchler, Chairman


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SJP/sc

Entered in the Journal **MAR 26 2014**


Barcy F. McNeal
Secretary