

**BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of)	
For Establishment of an Amendment to a)	
Reasonable Arrangement between)	Case No. 09-516-EL-AEC
Eramet Marietta Inc. and Ohio Power)	
Company)	

REPLY COMMENTS OF OHIO POWER COMPANY

Eramet Marietta, Inc. (Eramet) filed an application to amend its reasonable arrangement in this case on January 22, 2015. On February 6, 2015, the Ohio Energy Group (OEG) filed comments on Eramet’s amendment request. And on February 13, 2015, the Office of the Ohio Consumers’ Counsel (OCC) filed comments on Eramet’s request. Ohio Power Company (AEP Ohio) did not file comments and is not generally advocating for approval or disapproval of Eramet’s proposal in these reply comments, but would like to reply to OCC’s final alternative position in its comment (at pages 10-11) that AEP Ohio should fund some of the discount requested by Eramet.

In advancing its alternative proposal that AEP Ohio fund the requested discount, OCC misapplies the precedent of the Commission and the Supreme Court. In support of its position, OCC quotes a misguided and cavalier statement made by the Attorney General’s office – not the Commission in one of its own order – in an appeal before the Supreme Court. Specifically, the AG’s brief took the position that the Commission “can approve a unique arrangement without having any provision that allows the utility to collect *any* amount from other customers to pay for the discount under the arrangement.” This position was not adopted by the Court and did not reflect the reasoning or impact of the Commission’s prior decision under review in the appeal.

Ohio law contemplates that AEP Ohio will be made whole as a result of any reasonable arrangement. Specifically, Section 4905.31(E), Ohio Rev. Code, provides that electric light companies “recover costs incurred in conjunction with any economic development and job retention program of the utility within its certified territory, including recovery of revenue foregone as a result of any such program” And the reality is that the Commission has approved full delta revenue in all R.C. 4905.31 reasonable arrangement cases involving AEP Ohio¹ – except for a single case involving application of a single rider under highly unusual circumstances.

In the case involving the largest economic development subsidy in Ohio regulatory history, for Ormet Primary Aluminum Corporation,² the Commission held that the Provider of Last Resort (POLR) charge in effect at that time should not be included in the delta revenue to be recovered from other customers – all other delta revenues associated with the Ormet contract were to be recovered from other customers. That holding was, in effect, saying that the POLR charge should not be recovered in conjunction with Ormet given the unusual terms of the service contract. Specifically, one of the provisions in the arrangement proposed by Ormet (Article 2.01) was for AEP Ohio to be the exclusive supplier to Ormet during the 10-year term of the arrangement. (July 15, 2009 Opinion and Order at 13; Power Agreement at Article 2.03).

AEP Ohio argued against adoption of this provision, as violating the policy of the State of Ohio and the fundamental notion of customer choice embodied in SB 3 and SB 221. Over AEP Ohio’s objections, the Commission held as follows:

¹ See Case Nos. 10-3066-EL-AEC (Timken Steel), 13-1170-EL-AEC (Globe Metallurgical), and 09-516-EL-AEC (Eramet Marietta Inc.)

² Case No. 09-119-EL-AEC

The Commission finds that under the terms of the unique arrangement AEP-Ohio will be the exclusive supplier to Ormet. *Therefore, there is no risk that Ormet will shop* for competitive generation and then return to AEP-Ohio's POLR service.

(Opinion and Order at 13) (emphasis added; internal citations omitted). Based on the Company's prior experience with Ormet, AEP Ohio sought a determination first by the Commission and subsequently by the Supreme Court of Ohio as to whether the exclusive supplier provision was valid and binding under Ohio law. In its September 15, 2009 rehearing decision in this case, the Commission confirmed that:

Under the terms of the unique arrangement as approved by the Commission, AEP Ohio will be the exclusive supplier to Ormet for ten years, commencing January 1, 2009.

(Entry on Rehearing at 8) (internal citations omitted). On appeal, the Supreme Court firmly upheld the Commission's imposition of the exclusive supplier provision:

*Even though AEP argues to the contrary, the orders issued by the commission do not allow [Ormet and Eramet] to shop for electric service for the duration of the arrangement. * * * We cannot say that the commission erred in finding that there was no risk that the manufacturers would shop. The commission relied on the fact that "AEP-Ohio will be the exclusive supplier" to the manufacturers. As we have already discussed, that is true—the orders require the customers to take service exclusively from AEP. If they must take service exclusively from AEP, then it follows that they cannot take it from another supplier.*

(*Ohio Power Co. v. Pub. Util. Comm.*, 2011-Ohio-2377 at Par. 22, 26) (emphasis added).

Thus, the narrow circumstance in the Ormet case was that the POLR charge (which compensated the Company for the risk of shopping) did not apply given the contractual provision that prevented Ormet from shopping for generation service. This was a "one off" situation involving the largest tab for delta revenue ever imposed on Ohio customers. Notwithstanding OCC's position, the Ormet precedent should not be blindly extended beyond the highly unusual situation presented in that case which are not present here.

CONCLUSION

If the Commission deems a modification to the Eramet contract is warranted, any such modification should provide for full delta revenue recovery. AEP Ohio notes that Eramet's amendment request proposes full delta revenue recovery by the Company. But if the Commission does not plan to incorporate full delta revenue as proposed by Eramet and instead seeks contribution from AEP Ohio, then the Company opposes adoption of the amendment. AEP Ohio does a lot to support economic development in its service territory but it should not have to fund rate discounts where the Commission determines provide a net benefit to Ohio's economy and the Company's other customers.

Respectfully submitted,

/s/ Steven T. Nourse

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing the Ohio Power Company's *Reply Comments* was served by electronic mail upon counsel identified below this 26th day of February 2015.

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Summary: Comments -Reply Comments electronically filed by Mr. Steven T Nourse on behalf of Ohio Power Company