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October 28, 2015

Barcey McNeal  
Secretary  
Public Utilities Commission of Ohio  
180 E. Broad Street, 13<sup>th</sup> Floor  
Columbus, Ohio 43215

Re: *In the Matter of the Application for Approval of an Amendment to a Contract for Electric Service between Ohio Power Company and Eramet Marietta, Inc., Case No. 09-516-EL-AEC*

Dear Secretary McNeal:

On October 14, 2015, the Public Utilities Commission of Ohio ("Commission") issued an Opinion and Order ("Order") in the above referenced case that approved a Stipulation and Recommendation regarding a modification to a reasonable arrangement with the Ohio Power Company ("OP") filed by Eramet Marietta, Inc. ("Eramet"). The Commission directed OP and Eramet to provide, within 14 days of the Order date, a contract incorporating the terms of the Stipulation and Recommendation.

Pursuant to the Commission's direction to file the contract in the above referenced case, please find a final, executed contract for services attached hereto.

If you have any questions regarding this matter, please feel free to contact me at 614-719-2850.

Sincerely,

A handwritten signature in black ink, appearing to read 'Scott E. Elisar'.

Scott E. Elisar  
Attorney for Eramet Marietta Inc.

SE/lrg  
Attachments

cc: Parties of Record

{C48535: }

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## CONTRACT FOR ELECTRIC SERVICE

**THIS CONTRACT** is entered into on this 28<sup>th</sup> day of October 2015, by and between Ohio Power Company, its successors and assigns ("Company"), and Eramet Marietta, Inc., its permitted successors and assigns ("Customer"), and is effective as set forth below ("Effective Date"). This Contract replaces in its entirety the contract entered into by Customer and Columbus Southern Power Company on October 28, 2009 and filed with the Public Utilities Commission of Ohio ("Commission") in Case No. 09-516-EL-AEC on October 28, 2009.

### WITNESSETH

**WHEREAS**, the Company currently provides electric service to the Customer at the facilities, plant and equipment associated with the Customer's facilities, plant, and equipment directly associated with the manufacturing operations identified in Customer's June 19, 2009 and January 22, 2015 applications filed with the Commission in Case No. 09-516-EL-AEC ("Customer's Facility"); and

**WHEREAS**, the Customer asserts that it wishes to make capital investment in its current manufacturing operation at the Customer's Facility, which requires access to and successful deployment of capital, predicated, in part, on the Customer's ability to secure a reliable supply of electricity pursuant to terms and conditions that will provide it with a reasonable and predictable price over a term sufficient to justify a significant capital expenditure; and

**WHEREAS**, in order to obtain such a supply of electricity, the Customer submitted to the Commission an application dated January 22, 2015, to modify its reasonable arrangement in Commission Case No. 09-516-EL-AEC, which was modified by a Stipulation and Recommendation dated September 21, 2015, and approved by the Commission in its October 14, 2015 Opinion and Order ("Order"), which along with the September 21, 2015 Stipulation and Recommendation is attached as Exhibit A to this Contract; and

**WHEREAS**, the Commission has ordered the Company and the Customer to execute a contract based on its October 14, 2015 Opinion and Order; and

**NOW, THEREFORE**, in consideration of the Commission's Order approving the September 21, 2015 Stipulation and Recommendation, the Company and the Customer enter into this Contract, and do hereby agree as follows:

- **Electric Service.** This Contract shall be applicable to the electric supply furnished to the Customer's Facility (Account No. 105-112-083-0).
- The Customer may elect to obtain its generation supply from a competitive retail electric service ("CRES") provider. If the Customer elects to obtain its generation

supply from a CRES provider, unless otherwise agreed by the Company and the Customer, the Company shall supply and deliver to the Customer electric service having the same quality of service that Company is obligated to provide to the Customer under the Company's OAD-GS-4 rate schedule(s) and successors thereto. If the Customer elects to obtain its generation from a CRES provider, the supplier generation charges will be billed using AEP Ohio consolidated billing with rate ready functionality.

- If the Customer does not elect to secure its generation supply from a CRES provider or elects to secure its generation supply from a competitive supplier but subsequently elects to obtain generation supply from the Company, unless otherwise agreed by the Company and the Customer, the Company shall supply and deliver to the Customer electric service having the same quality of service that the Company is obligated to provide to the Customer under the Company's GS-4 rate schedule(s) and successors thereto. The Company shall deliver electricity in such amount as may be sufficient to meet the Customer's full requirements at the Customer's Facility for its direct use at the Customer's Facility at 16705 State Route 7, Marietta, Ohio. However, during the term of this arrangement, the base level of usage shall not exceed 38,000,000 KWh per month<sup>1</sup> at a maximum demand level of 65 MVA<sup>2</sup> unless otherwise stated herein or unless otherwise modified with the approval of the Commission. The Customer shall consume and purchase such delivered supply to the same extent as would otherwise be the case if the Customer were served by the Company under the otherwise applicable tariff.
- Nothing herein shall preclude the Customer from installing or using submeters provided that the Customer shall coordinate such installation and use with the Company, but the rates provided for under this Contract shall only apply to the Customer's own demand and energy and the Customer agrees to facilitate the provision of any metering information needed by the Company to ensure appropriate billing to the Customer under this Contract pursuant to the Commission's Order. The Customer shall be responsible for all transforming, controlling, regulating and protective equipment and its operation and maintenance as well as all the Customer substation requirements necessary to receive electric service at 138 kilovolts. The Company shall continue to be responsible for, in accordance with applicable rules or tariff provisions, the installation of all upstream facilities, plant and equipment that may be reasonably required to reliably supply the Customer with electricity. The Company shall apply the rates and charges specified in the Commission's Order, which along with the Stipulation and Recommendation, is attached hereto and incorporated herein for purposes of billing and collecting for the electric service provided to the Customer pursuant to this Contract.

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<sup>1</sup> This amount set forth herein reflects the amount of electricity consumed directly by Eramet and excludes electricity used by third parties located on Eramet's premises.

<sup>2</sup> Based upon an 85% load factor and a 95% power factor.

{C48457:5 }

- **Assignment.** The Customer may assign this Contract with the written consent of the Company and express approval of the Commission.
- **Notices.** Any notice required or desired by either party to be given hereunder shall be made:

If to the Company at:

Ohio Power Company  
Attn: AEP Ohio President  
850 Tech Center Drive  
Gahanna, Ohio 43230

If to the Customer at:

Eramet Marietta, Inc.  
Attn: President  
P.O. Box 299  
Marietta, Ohio 45750-0299

Either party may submit to the other party a written notice of a location, address, or title of contact person change and such notice shall serve to modify this Contract. Any communications required to be in writing pursuant to this Contract may be delivered by first class U.S. Mail, courier service or commonly used forms of electronic communication (e.g., fax or email) consistent with the provisions set forth in this document. Notice shall be deemed to be received upon actual receipt if delivered by courier, fax or email, or three (3) days after postmarked if sent by first class U.S. Mail, postage prepaid.

- **Effective Date and Term.** The Effective Date of this Contract shall be the date upon which the Customer files this contract. This Contract shall continue in effect pursuant to the terms approved by the Commission in its Order. Additionally, if, after notice and opportunity for a hearing, the Commission determines that the Customer has not substantially met the approved terms, this Contract shall terminate on the date specified by the Commission. During such term, regardless of length, the Customer shall maintain operations of its manufacturing facilities at the location or locations receiving service pursuant to this Contract.
- **Customer-Sited Capabilities.** After the PJM 2009-2010 planning year, and in accordance with the Commission's rules and Ohio law, the Customer shall make its demand response capabilities available to the Company in order to reduce the Company's peak demand reduction compliance costs. During the term of this Contract, the parties shall work in good faith to determine how and to what extent Customer's customer-sited capabilities might be committed to the Company for integration into the Company's portfolio and to implement those commitments in a manner that is consistent with the applicable statutes and Commission rules. During the term of this Contract, the Customer and the Company shall cooperate to recommend to the Commission the billing determinants, if any, that the Commission should remove for purposes of computing the Company's portfolio compliance baseline pursuant to Sections 4928.64(B) and 4928.66(A)(2)(a), Revised Code.

- **Other Events of Default; Termination.** This Contract shall not be cancelled without the prior written consent of the Commission. Notwithstanding the foregoing, the parties agree that each of the following events shall individually constitute a breach of this Contract that allows the Company the right to cancel without liability to the Customer all or any part of this Contract and/or pursue any further remedies available at law or in equity: (1) the Commission determines the Customer fails to comply with Section IV (C) of the September 21, 2015 Stipulation and Recommendation as approved by the Commission in Case No. 09-516-EL-AEC on October 14, 2015; or (2) the Customer assigns this Contract or any part hereof without obtaining the proper consent as provided above; or, (3) the Customer becomes insolvent or makes a general assignment for the benefit of creditors or admits in writing its inability to pay debts as they mature or if a trustee or receiver of the Customer or of any substantial part of the Customer's assets is appointed by any court or proceedings instituted under any provisions of the Federal Bankruptcy Code or any state insolvency law by or against the Customer are acquiesced in or are not dismissed within thirty (30) days or result in an adjudication in bankruptcy or insolvency.
- **Force Majeure.** Except with regard to the Customer's obligation to make payment(s) then due or becoming due to the Company, the Customer shall not be liable to the Company for any expenses, loss or damage resulting from delays or prevention of performance arising from a Force Majeure. The Company shall not be required to perform or resume performance of its obligations to the Customer corresponding to the obligations of Customer excused by Force Majeure. "Force Majeure" shall mean acts of God, riots, strikes, labor disputes, labor or material shortages, act(s) by any government, governmental body or instrumentality, or regulatory agency (including, but not limited to, delay or failure to act in the issuance of approvals, permits or licenses), fires, explosions, floods, breakdown of or damage to plants, equipment or facilities, or other causes of similar nature which are beyond the reasonable control of the Customer and which wholly or partially prevent the receipt or utilization of electricity by the Customer. If the Customer is affected by Force Majeure, the Customer shall give notice to the Company as promptly as practical of the nature and probable duration of such Force Majeure, with the effect of such Force Majeure eliminated insofar as possible with all reasonable dispatch. The performance by the Customer hereunder shall be excused only to the extent made necessary by the Force Majeure condition. The Customer shall make reasonable efforts to avoid the adverse impacts of a Force Majeure and to resolve the event or occurrence once it has occurred in order to resume performance, provided that the Customer shall not be required to settle a labor dispute on terms unacceptable to the Customer; and provided further, that the Customer shall not be required to rebuild all or a major portion of its facilities which are destroyed or substantially impaired by a Force Majeure Event.
- **Reporting.** Subject to such confidentiality requirements as may be appropriate, the Customer shall, in accordance with Rule 4901:1-38-06, Ohio Administrative Code, and Section IV (D) of the September 21, 2015 Stipulation and Recommendation as

approved by the Commission in Case No. 09-516-EL-AEC, during the term of this Contract, provide the Company and Commission Staff no later than January 31st of each year with an annual report that demonstrates the Customer's compliance with the eligibility criteria and commitments, the value of any incentives received by the Customer and such other information as the Commission may request for purposes of monitoring compliance with this Contract. The reports described herein shall not be filed with the Commission unless otherwise directed by the Commission.

- **Dispute Resolution.** If a dispute arises out of this Contract, and if the dispute relates to a subject matter which is within the Commission's exclusive or primary jurisdiction, the parties agree first to try in good faith to settle the dispute. Nothing herein shall be construed or implied to preclude either party from initiating litigation on questions outside of the Commission's jurisdiction if they are unable to resolve such dispute through negotiations with the other party.
- **Mutual Cooperation.** The parties agree to provide mutual and timely support for purposes of effectively administering this Contract. Such support shall include, without limitation, reasonable and timely access to documents and personnel of the other party.
- **Governing Law and Continuing Jurisdiction.** The validity, construction and performance of this Contract shall be determined in accordance with the laws of the State of Ohio not taking into account any conflict of law provisions. The parties understand and agree that the Commission shall have continuing jurisdiction to, for good cause shown, modify, amend or terminate this Contract and that good cause will be presumed in the event that the Customer has not complied with the commitments set forth in Section IV (C) of the Stipulation and Recommendation as approved by the Commission in Case No. 09-516-EL-AEC on October 14, 2015.
- **Interpretation.** This Contract and the Company's standard tariff (including the terms and conditions of service), as applicable and as amended from time to time by the Commission, sets forth the entire Contract between the parties. **THE PARTIES EXPRESSLY ACKNOWLEDGE THAT NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, WRITTEN OR ORAL, HAVE BEEN MADE BY EITHER PARTY TO THE OTHER.** In the event of any conflict between the Company's standard tariff and this Contract, the latter shall control. In the event of any conflict between the terms and conditions set forth in this Contract and the Commission's Order, the latter shall control. This Contract remains, where applicable, subject to the Company's standard tariff as applicable and as amended from time to time, unless and to the extent otherwise expressly stated herein.
- **Reservation of Rehearing and Appeal Rights.** The Company and the Customer reserve their rights to apply for rehearing before the Commission and to pursue an appeal before the Supreme Court of Ohio and the Contract remains subject to modification or termination based on the outcome of any such proceedings.


**IN WITNESS WHEREOF**, the parties hereto have caused this Contract to be executed by their duly authorized officers or representatives as of the day and year first above written.

**Eramet Marietta, Inc. (Customer)**

By: /s/ Laure Guillot  
(Electronic signature approval 10/27/15)  
\_\_\_\_\_

Title: Chief Executive Officer

**Ohio Power Company (Company)**

By:   
GARY O. SPITZNOGLE

Title: VP- REGULATORY & FINANCE

## EXHIBIT A



**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

|                                           |   |                        |
|-------------------------------------------|---|------------------------|
| In the Matter of the Application for      | ) |                        |
| Establishment of a Reasonable Arrangement | ) | Case No. 09-516-EL-AEC |
| between Eramet Marietta Inc. and          | ) |                        |
| Columbus Southern Power Company.          | ) |                        |

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**JOINT STIPULATION AND RECOMMENDATION**

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Samuel C. Randazzo (Reg. No. 0016386)  
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**On Behalf of Eramet Marietta Inc.**

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**On Behalf of the Office of the Ohio  
Consumers' Counsel**

**September 21, 2015**

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**On Behalf of the Public Utilities  
Commission of Ohio**

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

|                                           |   |                        |
|-------------------------------------------|---|------------------------|
| In the Matter of the Application for      | ) |                        |
| Establishment of a Reasonable Arrangement | ) | Case No. 09-516-EL-AEC |
| between Eramet Marietta Inc. and          | ) |                        |
| Columbus Southern Power Company.          | ) |                        |

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**JOINT STIPULATION AND RECOMMENDATION**

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**I.     INTRODUCTION**

Rule 4901-1-30, Ohio Administrative Code ("O.A.C."), provides that any two or more parties to a proceeding may enter into a written stipulation covering the issues presented in such a proceeding. The purpose of this document is to set forth the understanding and agreement of the parties who have signed ("Signatory Parties") this Joint Stipulation and Recommendation ("Stipulation") and to recommend that the Public Utilities Commission of Ohio ("Commission") approve and adopt this Stipulation as part of its Opinion and Order in this proceeding, resolving all of the issues in this proceeding.

Since the January 22, 2015 filing of Eramet Marietta Inc.'s ("Eramet" or "Marietta Facility" ) application<sup>1</sup> seeking approval of modifications to the reasonable arrangement previously approved by the Commission in this proceeding, the Signatory Parties have engaged in good faith and lengthy discussions to address and resolve any issues and exchange information related to the 2015 Application. These discussions and negotiations culminated in this Stipulation, which is supported by adequate data and

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<sup>1</sup> Eramet Marietta Inc.'s Application to Amend Reasonable Arrangement Application (hereinafter referred to as the "2015 Application").

information; represents a just and reasonable resolution of issues in this proceeding; violates no regulatory principle or precedent; and is the product of lengthy, serious bargaining among knowledgeable and capable parties in a cooperative process and undertaken by parties representing a wide range of interests to resolve the aforementioned issues. For purposes of resolving the issues raised by this proceeding, the undersigned Signatory Parties further stipulate, agree and recommend as set forth below.

As noted in the 2015 Application, Eramet is one of the largest employers in Washington County, Ohio and supports over 700 retirees with pension or medical benefits. Eramet's estimated direct annual impact on the local economy through active employees, retiree benefits, vendor payments, and state and local taxes is approximately \$65,000,000. Approval of this Stipulation will allow Eramet to continue its positive impact on Ohio's economy.

The delivered cost of electricity has a significant impact on Eramet's cost of production and its ability to compete domestically, internationally and within its own corporate structure. The local delivered price of electricity is the main source of any competitive advantage or disadvantage for any ferromanganese alloy producer since the two other major costs of production, manganese ore and reductants, are dictated by international markets. Approval of this Stipulation will promote Eramet's competitiveness in the global economy.

The 2015 Application has also received widespread support from local labor and business officials and state and local government officials as evidenced by the letters in support filed in the above-captioned Commission docket. These letters urging the

Commission to approve the 2015 Application were filed by State Representative Andy Thompson; State Representative Debbie Phillips; State Senator Lou Gentile; Thomas Webster, Chairman of the Southeastern Ohio Port Authority; David White, Rick Walters, and Ronald Feathers, Washington County Commissioners; Joe Matthews, Mayor of the City of Marietta, Ohio; Steven Brown, President of the United Steelworkers Local 1-00639-01; Charlotte Keim, President and CEO, Marietta Area Chamber of Commerce; and Michael Lorentz, Mayor of the City of Belpre, Ohio.

The Signatory Parties urge the Commission to, as quickly as reasonably possible, approve the 2015 Application as modified herein to facilitate Eramet's efforts to compete in the global economy and to facilitate parental reviews and decision making related to capital investment that may be made to comply with the United States Environmental Protection Agency ("EPA") regulations.

## **II. PARTIES**

Pursuant to Rule 4901-1-10(C), O.A.C., the Staff of the Commission ("Staff") is considered a party for the purpose of entering into a stipulation under Rule 4901-1-30, O.A.C. The Signatory Parties to this Stipulation are: Eramet and Staff.

## **III. RECITALS**

R.C. 4905.31 and Chapter 4901:1-35, O.A.C., permit the Commission to authorize a reasonable schedule or arrangement between a mercantile customer and a public utility. Eramet is a mercantile customer pursuant to R.C. 4928.01(A)(19), and has an average billing load in excess of 250 kilowatts ("kW") as required by Rule 4901:1-38-03(B)(2)(c), O.A.C. Ohio Power Company ("OPC") is a public utility pursuant to R.C. 4905.02 and R.C. 4905.03, and an electric distribution utility pursuant to R.C.

4928.01(A)(6). Pursuant to R.C. 4905.31 and Chapter 4901:1-35, O.A.C., the Commission previously approved a reasonable arrangement for Eramet on October 15, 2009.

On January 22, 2015, Eramet filed the 2015 Application, requesting that the Commission exercise its authority to amend Eramet's reasonable arrangement to facilitate Eramet's effort to secure parental approvals required to undertake capital investment at its Marietta, Ohio manufacturing facility ("Marietta Facility"). The need for such capital investment is related to compliance with forthcoming EPA regulations. Eramet's cost of electricity plays a vital role in its ability to continue operations and secure the capital investment necessary to comply with EPA regulations.

The reasonable arrangement proposed by Eramet in the 2015 Application, as modified by this Stipulation, will facilitate Eramet's effectiveness in the global economy; promote job growth and retention in the state; and ensure the availability of reasonably priced electric service to Eramet.<sup>2</sup> The reasonable arrangement proposed by Eramet in the 2015 Application, as modified by this Stipulation, will further result in the retention of at least 25 full-time or full-time equivalent jobs.<sup>3</sup>

#### **IV. STIPULATIONS**

The Signatory Parties recommend that the Commission approve the 2015 Application and enable the amended reasonable arrangement requested therein, subject to the terms and modifications contained herein, all of which are set forth below:

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<sup>2</sup> See Rule 4901:1-38-02(A), O.A.C.

<sup>3</sup> Rule 4901:1-38-03(B)(2)(b), O.A.C.

## **A. Background Facts**

The Signatory Parties agree and stipulate that the background facts contained in the 2015 Application are true, accurate, and sufficient to warrant the Commission authorizing the relief recommended herein.

## **B. Pricing, Delta Revenue and Service Quality**

The Signatory Parties recommend that Eramet be permitted to purchase its energy, capacity, market-based service components and other competitive retail electric services (collectively "CRES services") from a certificated CRES provider.<sup>4</sup> The Signatory Parties agree that allowing Eramet to obtain CRES from a CRES provider can facilitate Eramet's efforts to compete in the global economy while reducing the difference between Eramet's bill computed at the otherwise applicable rate and Eramet's bill resulting from the reasonable arrangement as modified herein (thereby reducing "delta revenue"). The Signatory Parties, therefore, recommend that the Commission authorize a modification to the current reasonable arrangement so that Eramet, at its option and effective with the date the Commission may issue an order adopting this Stipulation, can obtain such CRES services from a CRES provider. The Signatory Parties recommend that the Commission modify the current reasonable arrangement so that the currently-approved declining discount is maintained but applied to Eramet's total bill regardless of whether Eramet obtains CRES services as a standard service offer ("SSO") customer or a customer obtaining CRES services from a CRES provider.

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<sup>4</sup> The scope of this recommendation includes all services that can currently be obtained from or through a CRES provider as well as any additional services that may be obtained from a CRES provider in the future.

The Signatory Parties recommend that the Commission find that the reduced difference between Eramet's bill computed at the otherwise applicable shopping rate and the electric bill Eramet would pay based upon the 2015 Application as modified by this Stipulation shall be deemed delta revenue. The Signatory Parties agree that this computation of delta revenue continues the same basic computation method in the currently-approved reasonable arrangement but operates to reduce the potential amount of delta revenue because the otherwise applicable shopping bill payable by Eramet will be less than the otherwise applicable rate that would apply if Eramet was assumed to be an SSO customer. The Signatory Parties recommend that the Commission find that OPC's current authority to recover delta revenue shall remain in place subject to the computation adjustments necessary as a result of Eramet obtaining CRES services from a CRES provider.

The Signatory Parties agree that the modifications recommended in this Stipulation, including but not limited to those that will permit Eramet to immediately obtain CRES services from a CRES provider, can facilitate the Marietta Facility's ability to compete in the global economy. The Signatory Parties further agree that such modifications may also help to position the Marietta Facility to obtain needed approvals for capital investment that will be necessary to comply with environmental regulations promulgated by the EPA.

### **C. Commitments**

The Signatory Parties agree that the Marietta Facility's commitments specified in the 2015 Application are reasonable and satisfy Rule 4901:1-38-03, O.A.C. These commitments include the Marietta Facility using its best efforts to maintain an average of 175 full-time equivalent direct employees at the Marietta Facility over the term of the currently-approved reasonable arrangement. The Signatory Parties further recommend that the Commission find that Eramet has fully satisfied all existing commitments in its current reasonable arrangement and that this Stipulation contains any going forward commitments that may apply during the balance of the term of the current reasonable arrangement.

### **D. Other Terms and Conditions**

The Signatory Parties recommend that the Marietta Facility continue to submit to the Commission annual reports regarding its performance and the impact of this modified reasonable arrangement on its Marietta Facility in the same fashion that it is currently reporting and that such reports shall continue to be deemed confidential.

The Signatory Parties recommend that the Commission retain continuing jurisdiction over this modified reasonable arrangement and that the Commission find that the Marietta Facility retains the right to request further modifications of its reasonable arrangement as may be warranted based on facts and circumstances as they may become known in the future.

The Signatory Parties agree that the modifications recommended herein address and resolve any issues or concerns that may have been raised in this proceeding and



that the Stipulation is, as a package, reasonable and should be adopted based on the long-standing 3-part test the Commission has used to evaluate settlements.<sup>5</sup>

The Signatory Parties agree that the settlement agreement embodied in this Stipulation was reached after negotiations between and among the Signatory Parties and among the other parties to the case, and it reflects a bargained compromise involving a balancing of competing interests. Although this Stipulation does not necessarily reflect the position that certain of the Signatory Parties would have taken if all of the issues addressed herein had been fully litigated, the Signatory Parties believe that, as a package, this Stipulation strikes a reasonable balance among the various interests represented by the Signatory Parties, does not violate any important regulatory principle, and is in the public interest. The Signatory Parties agree that this Stipulation shall not be relied upon as precedent for or against any Signatory Party, for or against the Commission itself, or as precedent in any subsequent proceeding, except as may be necessary to enforce the terms of this Stipulation and, therefore, recommend approval of such precedential limitations as part of the Commission's Opinion and Order approving this Stipulation.

The Signatory Parties recommend that the Commission find that following the approval recommended herein, the Marietta Facility and OPC shall promptly enter into and file with the Commission a modified reasonable arrangement on the terms and conditions recommended herein. The Signatory Parties recommend that the Commission find that the Marietta Facility can begin to obtain CRES services from a CRES provider beginning, at Eramet's election, on the date this Stipulation may be

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<sup>5</sup> See *In the Matter of the Application of the Ohio Development Services Agency for an Order Approving Adjustments to the Universal Service Fund Riders of Jurisdictional Ohio Electric Distribution Utilities*, Case No. 14-1002-EL-USF, Opinion and Order at 10 (Dec. 10, 2014)

approved by the Commission so as to accelerate the timing of any reduction in any delta revenue and regardless of when a modified reasonable arrangement may be filed with the Commission.

Because this Stipulation is an integrated settlement, it is expressly conditioned upon the Commission adopting this Stipulation in its entirety without material modification. Rejection of all or any part of this Stipulation by the Commission shall be deemed to be a material modification for purposes of this provision. If the Commission materially modifies this Stipulation, the Signatory Parties shall have the right, within thirty (30) days of the Commission's Opinion and Order, to file an application for rehearing or to terminate and withdraw this Stipulation by filing a notice with the Commission.<sup>6</sup>

## **V. CONCLUSION**

For the reasons discussed above, the Signatory Parties recommend that the Commission approve the 2015 Application filed by the Marietta Facility on January 22, 2015, subject to the terms and modifications specified in this Stipulation. The Signatory Parties also request that the Commission, as quickly as reasonably possible, approve the 2015 Application as modified herein to facilitate the Marietta Facility's efforts to obtain the parental approvals that must be secured to make any capital investment related to compliance with EPA regulations.

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<sup>6</sup> The Commission Staff is not considered a Signatory Party for the purposes of requirements regarding rehearing applications.

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application for )  
Approval of an Amendment to a Contract )  
for Electric Service between Ohio Power ) Case No. 09-516-EL-AEC  
Company and Eramet Marietta, Inc. )

OPINION AND ORDER

The Public Utilities Commission of Ohio, having considered the record in this matter and the stipulation and recommendation submitted by the signatory parties, and being otherwise fully advised, hereby issues its Opinion and Order.

APPEARANCES:

McNees, Wallace & Nurick, LLC, by Scott E. Elisar and Samuel C. Randazzo, 21 East State Street, Columbus, Ohio 43215, on behalf of Eramet Marietta, Inc.

Mike DeWine, Ohio Attorney General, by Werner L. Margard and Thomas McNamee, Assistant Attorneys General, Public Utilities Section, 180 East Broad Street, Columbus, Ohio 43215, on behalf of the staff of the Public Utilities Commission of Ohio.

Steven T. Nourse, American Electric Power Service Corporation, 1 Riverside Plaza, Columbus, Ohio 43215, Porter Wright Morris & Arthur, LLP, by Christine M. Blend, 41 South High Street, Columbus, Ohio 43215, on behalf of Ohio Power Company.

Bruce J. Weston, Ohio Consumers' Counsel, by Maureen R. Grady, Assistant Consumers' Counsel, 10 West Broad Street, Suite 1800, Columbus, Ohio 43215-3485, Bricker & Ecker, LLP, by Dane Stinson, 100 South Third Street, Columbus, Ohio 43215, on behalf of the residential customers of Ohio Power Company.

Boehm, Kurtz, & Lowry, by David F. Boehm, Michael L. Kurtz, and Jody Kyler Cohn, 36 East Seventh Street, Suite 1510, Cincinnati, Ohio 45202, on behalf of Ohio Energy Group.

OPINION:I. History of the Proceeding

On June 19, 2009, Eramet Marietta, Inc. (Eramet) filed an application with the Commission pursuant to R.C. 4905.31 to establish a reasonable arrangement with Columbus Southern Power Company (AEP Ohio) for electric service to its manganese alloy-producing facility in Marietta, Ohio. In its application, Eramet requested that the Commission establish a reasonable arrangement for electric service with AEP Ohio that would allow Eramet to secure a reliable supply of electricity at a reasonable, predictable price over a term that would allow the investment of approximately \$40 million capital investments to upgrade the Marietta facility.

AEP Ohio, the Ohio Energy Group (OEG), and the Ohio Consumers' Counsel (OCC), each filed motions to intervene in this proceeding, which were granted by the attorney examiner on July 16, 2009. Thereafter, a hearing was held in this matter and, during the course of the hearing, a joint stipulation and recommendation signed by the parties was filed. On October 15, 2009, the Commission found that the joint stipulation and recommendation was reasonable and should be approved.

On January 22, 2015, Eramet filed an application in this case to amend its existing reasonable arrangement with AEP Ohio (2015 Application). OEG and OCC filed comments on Eramet's application. Reply comments were filed by AEP Ohio on February 26, 2015. Thereafter, on September 21, 2015, Staff and Eramet filed a stipulation and recommendation (Stipulation) regarding the amendment to Eramet's existing reasonable arrangement. However, OCC, OEG, and AEP Ohio were not signatory parties to the Stipulation. A hearing was held in this matter on September 25, 2015. At the hearing, Eramet presented one witness in support of the Stipulation, while OCC presented one witness in opposition to the Stipulation.

II. Discussion

## A. Summary of the Application

In its application, Eramet proposed to modify its existing reasonable arrangement to extend the term of the reasonable arrangement by one year and end on December 31, 2020. Further, Eramet proposed that its delivered price outcomes should be accomplished using generation supply from a competitive retail electric service (CRES) provider. Eramet also proposed to modify its capital investment and employment commitments, such that it would use its best efforts to secure investment to the level necessary to comply with pending United States Environmental Protection Agency (EPA) regulations and maintain the facility's operations. It would also use its

best efforts to maintain an average of 175 full-time equivalent employees over the six-year period of the modified reasonable arrangement.

#### B. Summary of the Stipulation

The Stipulation was filed on September 21, 2015. The Stipulation was intended by the signatory parties to resolve all of the outstanding issues in this proceeding (Eramet Ex. 1 at 1). The Stipulation contains the following terms, among others, as summarized by the Commission, and not intended to supersede or amend the terms of the Stipulation:

- (1) Eramet be permitted to purchase its energy, capacity, market-based service components and other competitive retail electric services (collectively referred to as competitive services) from a certificated CRES provider;
- (2) The currently-approved declining discount be maintained but applied to Eramet's total bill regardless of whether Eramet obtains competitive services as a standard service offer (SSO) customer or a customer obtaining competitive services from a certified CRES provider;
- (3) The reduced difference between Eramet's bill computed at the otherwise applicable shopping rate and the electric bill (i.e., transmission and distribution charges) Eramet would pay shall be deemed delta revenue. The delta revenue continues the same basic computation method in the currently-approved reasonable arrangement, but operates to reduce the potential amount of delta revenue, because the otherwise applicable shopping bill payable by Eramet will be less than the otherwise applicable rate that would apply if Eramet was assumed to be an SSO customer;
- (4) AEP Ohio's current authority to recover delta revenue remains in place subject to the computation adjustments necessary as a result of Eramet obtaining competitive services from a CRES provider;
- (5) Eramet will use its best efforts to maintain an average of 175 full-time equivalent direct employees at the Marietta facility over the term of the currently-approved reasonable arrangement;

- (6) Eramet has fully satisfied all existing commitments in its current reasonable arrangement and the Stipulation contains any going forward commitments that may apply during the balance of the term of the current reasonable arrangement;
- (7) Eramet will continue to submit to the Commission annual reports regarding the performance of the Marietta facility and the impact of the modified reasonable arrangement on the Marietta facility; and
- (8) The Commission will retain continuing jurisdiction over the modified reasonable arrangement and Eramet retains the right to request further modifications of its reasonable arrangement.

(Eramet Ex. 1 at 4-8).

Further, the stipulating parties agree that the Stipulation satisfies the three-part test traditionally used by the Commission to consider stipulations. Specifically, the stipulating parties agree that:

- (1) The Stipulation is a product of lengthy, serious, arms-length bargaining among capable, knowledgeable parties representing diverse interests;
- (2) The Stipulation does not violate any important regulatory principle or practice; and
- (3) The Stipulation, as a whole, benefits customers and the public interest, and represents a just and reasonable resolution of all of the issues in this proceeding.

(Eramet Ex. 1 at 8-9.)

#### C. Consideration of the Stipulation

Ohio Adm.Code 4901-1-30 authorizes parties to Commission proceedings to enter into a stipulation. Although not binding on the Commission, the terms of such an agreement are accorded substantial weight. See *Consumers' Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d 123, 125, 592 N.E.2d 1370 (1992), citing *Akron v. Pub. Util. Comm.*, 55 Ohio St.2d 155, 157, 378 N.E.2d 480 (1978). This concept is particularly valid where the stipulation is supported or unopposed by the vast majority of parties and resolves all issues presented in the proceeding in which it is offered.

The standard of review for considering the reasonableness of a stipulation has been discussed in a number of prior Commission proceedings. See, e.g., *Cincinnati Gas & Elec. Co.*, Case No. 91-410-EL-AIR (Apr. 14, 1994); *W. Reserve Tel. Co.*, Case No. 93-230-TP-ALT (Mar. 30, 1994); *Ohio Edison Co.*, Case No. 91-698-EL-FOR, et al. (Dec. 30, 1993); *Cleveland Elec. Illum. Co.*, Case No. 88-170-EL-AIR (Jan. 30, 1989); *Restatement of Accounts and Records (Zimmer Plant)*, Case No. 84-1187-EL-UNC (Nov. 26, 1985). The ultimate issue for our consideration is whether the agreement, which embodies considerable time and effort by the signatory parties, is reasonable and should be adopted. In considering the reasonableness of a stipulation, the Commission has used the following criteria:

- (1) Is the settlement a product of serious bargaining among capable, knowledgeable parties?
- (2) Does the settlement, as a package, benefit ratepayers and the public interest?
- (3) Does the settlement package violate any important regulatory principle or practice?

The Supreme Court of Ohio has endorsed the Commission's analysis using these criteria to resolve issues in a manner economical to ratepayers and public utilities. *Indus. Energy Consumers of Ohio Power Co. v. Pub. Util. Comm.*, 68 Ohio St.3d 559, 629 N.E.2d 423 (1994), citing *Consumers' Counsel* at 126. The Court stated in that case that the Commission may place substantial weight on the terms of a stipulation, even though the stipulation does not bind the Commission.

1. Is the settlement a product of serious bargaining among capable, knowledgeable parties?

The signatory parties agree that the Stipulation is a just and reasonable resolution of the issues raised in this proceeding and is the product of lengthy, serious bargaining among knowledgeable and capable parties, representing a wide range of interests (Eramet Ex. 1 at 8). The Stipulation asserts that the parties are each capable, knowledgeable parties, and that intervenors in this proceeding were invited to discuss and negotiate the stipulation. Eramet witness Kevin Murray testified that the Stipulation is the product of negotiations that have been ongoing for nearly a year, and that there have been considerable back and forth negotiations (Tr. at 12). Additionally, he testified that the Stipulation will result in reduced delta revenues and the benefit of that will flow to all customer classes, including residential customer classes (Tr. at 17-18).

OCC witness Michael Haugh testified that the settlement lacks a diversity of interests, meaning customers who would pay the discount subsidy are not signatories to the Stipulation (OCC Ex. 1 at 5).

### Commission Conclusion

The Commission finds that the Stipulation is the product of serious bargaining among capable, knowledgeable parties. The record demonstrates that all of the parties were included in settlement discussions and were provided opportunities to represent their interests in the Stipulation. Further, the parties in this case routinely participate in matters before the Commission, are capable and knowledgeable with respect to regulatory matters, and are represented by experienced counsel. Additionally, the signatory parties represent a wide variety of diverse interests. Although OCC did not ultimately sign the Stipulation, the record indicates that the Stipulation benefits residential customers (Tr. at 17-18).

Additionally, the Commission notes that we have repeatedly determined that we will not require any party, including OCC, to agree to a stipulation, in order to meet the first part of the three-part test. *In re Vectren Energy Delivery of Ohio, Inc.*, Case No. 13-1571-GA-ALT, Opinion and Order (Feb. 19, 2014) at 10; *In re FirstEnergy*, Case No. 12-1230-EL-SSO, Opinion and Order (July 18, 2012) at 26, citing *Dominion Retail, Inc. v. The Dayton Power and Light Co.*, Case No. 03-2405-EL-CSS, et al., Opinion and Order (Feb. 2, 2005) at 18, Entry on Rehearing (Mar. 23, 2005) at 7-8; *In re The Dayton Power and Light Co.*, Case No. 12-3062-EL-RDR, et al., Opinion and Order (Dec. 17, 2014) at 9. Further, there is no evidence in the record that any class of customers was excluded from the settlement negotiations. See *Time Warner AxS v. Pub. Util. Comm.*, 75 Ohio St.3d 229, 233, 661 N.E.2d 1097 (1996). Therefore, upon review of the record, the Commission finds that the Stipulation meets the first prong of the Commission's three-part test for reasonableness.

2. Does the settlement, as a package, benefit ratepayers and the public interest?

The signatory parties submit that, as a package, the Stipulation benefits ratepayers and is in the public interest (Eramet Ex. 1 at 8). Eramet witness Murray argues that the Stipulation benefits ratepayers and serves the public interest because it will allow Eramet to lower its overall price of electricity that would be associated with the reasonable arrangement (Tr. at 12-13). The signatory parties agree that the Stipulation will facilitate Eramet's ability to compete in the global economy and is necessary for Eramet to obtain needed approval for capital investment necessary to comply with environmental regulations promulgated by the United States EPA (Eramet Ex. 1 at 6).



OCC argues that the Stipulation does not meet the Commission's three-part test for the reasonableness of a stipulation, and that the Commission should modify the terms of the Stipulation (Tr. at 20-21). OCC witness Haugh testified that to move the settlement closer to benefitting ratepayers and the public interest, the Commission should require Eramet to engage in an auction or request for proposal (RFP) process to choose a CRES provider. Additionally, OCC witness Haugh argued that the Commission should require that an annual report on the reasonable arrangement be made available to parties to ensure that Eramet is fulfilling its commitments to the state of Ohio for economic development.

### Commission Conclusion

Upon consideration of the parties' arguments, the Commission finds that the evidence of record demonstrates that, as a package, the Stipulation benefits ratepayers and the public interest. We find that the Stipulation is likely to result in a decrease in the delta revenue, while maintaining vital jobs in the state of Ohio. We find that the Stipulation will promote Eramet's ability to compete in the global economy, which benefits both ratepayers and the public interest. Additionally, the Commission notes that it is already in Eramet's best interest to seek out the best available offer for competitive services, so modifying the Stipulation to include an auction or RFP process is unnecessary.

3. Does the settlement package violate any important regulatory principle or practice?

Finally, the signatory parties assert that the Stipulation does not violate any important regulatory principle or practice (Eramet Ex. 1 at 8). Additionally, Eramet witness Murray testified that the Stipulation does not violate any important regulatory principle or practice (Tr. at 13). Further, Mr. Murray noted that there is not a cap on delta revenue in the existing reasonable arrangement. He testified that applying a cap on the delta revenue would add another degree of uncertainty to the list of variables that Eramet must consider when deciding whether to make the capital investment necessary for its facility to remain in operation (Tr. at 16).

However, OCC argues that the Stipulation violates regulatory principle and practice because it does not include a cap on what customers will be asked to pay in delta revenue. OCC witness Haugh testified that the Stipulation does not provide for a cap on the total delta revenue that AEP Ohio can collect from customers. Additionally, OCC witness Haugh testified that Eramet should publicly confirm that it has fulfilled its past commitments for economic development and that future filings should publicly confirm that Eramet has fulfilled its commitments for economic development. OCC

witness Haugh asserts that these requirements are not unique to Eramet, but are appropriate generally for these types of cases. (OCC Ex. 1 at 5).

#### Commission Conclusion

The Commission finds that the Stipulation does not violate any important regulatory principle or practice. The Commission notes that the third part of the three-part test is whether an important regulatory principle or practice has been violated, not whether the Stipulation could include additional regulatory requirements. In this instance, the Stipulation does not violate any important regulatory principle or practice. The additional provisions proposed by OCC are not required by Ohio law or pursuant to any regulatory requirement or practice.

Therefore, because the Stipulation satisfies the Commission's three-part test for evaluating the reasonableness of a stipulation, we find that the Stipulation should be adopted and approved. Accordingly, Eramet's reasonable arrangement with AEP Ohio should be modified consistent with the terms of the Stipulation.

#### FINDINGS OF FACT AND CONCLUSIONS OF LAW:

- (1) On January 22, 2015, Eramet filed an application pursuant to R.C. 4905.31 to modify its existing reasonable arrangement with AEP Ohio for electric service to its manganese alloy-producing facility in Marietta, Ohio.
- (2) AEP Ohio 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.
- (3) On September 21, 2015, a Stipulation was filed by Eramet and Staff, which was intended to resolve all of the issues in this case. OCC, OEG, and AEP Ohio were not signatory parties to the Stipulation.
- (4) A hearing was held in this matter on September 25, 2015.
- (5) The Stipulation meets the criteria used by the Commission to evaluate stipulations, is reasonable, and should be adopted.

ORDER:

It is, therefore,

ORDERED, That the stipulation of the signatory parties is reasonable, and should be adopted and approved. It is, further,

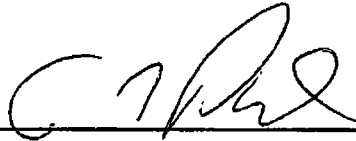
ORDERED, That AEP Ohio take all necessary steps to carry out the terms of the stipulation and this Opinion and Order. It is, further,

ORDERED, That Eramet and AEP Ohio file an executed or revised power agreement in this docket that conforms to the provisions ordered by the Commission within 14 days of the effective date of this Order. It is, further,

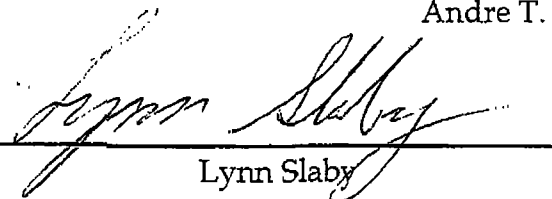
ORDERED, That the approved reasonable arrangement be effective for services rendered following the filing in this docket of an executed or revised power contract. It is, further,

ORDERED, That a copy of this Opinion and Order be served upon each party of record.


## THE PUBLIC UTILITIES COMMISSION OF OHIO



Andre T. Porter, Chairman



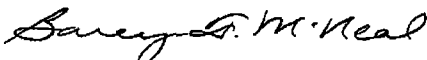
Lynn Slaby

  
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Secretary

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Summary: Contracts between Eramet Marietta, Inc. and Ohio Power Company electronically filed by Scott E. Elisar on behalf of Eramet Marietta Inc.