



exceeding \$18 million annually. For its part, Globe will produce and supply the metallurgical grade silicon which Solsil will then upgrade to solar grade silicon.

In its July 31, 2008 Finding and Order, the Commission approved the OPCO/Globe contract. The Commission, however, expressed concern with the discount mechanism proposed in the CSP/Solsil contract. The Commission tentatively approved that contract, provided that CSP and Solsil could agree to modify the contract in accordance with the method set out by the Commission in its Finding and Order.<sup>1</sup>

As part of its Finding and Order, the Commission permitted the recovery by OPCO and CSP of the difference between what Globe and Solsil are charged under their respective contracts and tariff rates that otherwise would have applied. The recovery will be accomplished pursuant to §4905.31 (E), Ohio Rev. Code, in a mechanism to be determined as part of OPCO's and CSP's standard service offer applications filed with the Commission pursuant to §4928.141, Ohio Rev. Code.

On September 2, 2008, the Ohio Consumers' Counsel filed an application for rehearing in these dockets. OCC raises three issues on rehearing: 1) the approval of the contract provision precluding Globe and Solsil from participating in PJM demand response programs without the approval of OPCO and CSP, respectively; 2) the approval of full recovery by OPCO and CSP of the rate differential between the contract rates and the tariff rates which otherwise would apply, i.e. the delta revenue; and 3) the failure to ensure the economic benefits associated with these contracts would materialize.

Pursuant to §4901-1-35 (B), Ohio Admin. Code, OPCO and CSP file this memorandum contra OCC's rehearing application. In doing so, it is not enough to simply

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<sup>1</sup> Though not the subject of OCC's rehearing application, on August 20, 2008 CSP submitted a revised contract with Solsil. Final approval of that contract is pending before the Commission.

say that the Commission's Finding and Order is lawful and reasonable -- which it is. The policy considerations supporting the contracts and their approval by the Commission are compelling.

By enacting S.B. 221, the General Assembly demonstrated its interest in promoting economic development in Ohio and in promoting the development in Ohio of alternative energy resources and technology infrastructure, including for renewable energy resources. (Sec§§4905.31 (E), 4928.143 (B)(2)(i), 4928.64 (B) and (D), 4928.66 (A)(2)(a) and 4928.621, Ohio Rev. Code). The contracts which are at issue in these cases address both of these interests. They will help move Ohio to the forefront of renewable energy resource development and they will help support hundreds of jobs at a time and in a place where jobs are critical to the regional economy.

Despite the obvious benefits associated with these jobs, including benefits to employees who, as customers of AEP Ohio, are represented in these dockets through OCC's intervention, OCC seeks to have the Commission reverse its approval of the contracts. The Commission's reversal of its Finding and Order would be contrary to sound public policy and is unwarranted on the merits.

#### Participation in PJM Demand Response Programs

OCC should not be heard to complain about a contract term to which Globe and Solsil agreed regarding PJM demand response programs. The contract term affects residential customers, if at all, on only a theoretical and remote basis.

Besides OCC's lack of standing regarding this term of the agreement between two non-residential customers, there is no valid reason why OPCO and Globe, and CSP and Solsil, could not agree as they did regarding PJM demand response programs. That

provision was part of the overall agreements and OCC's objection to that provision in each contract has no merit. Globe and Solsil are represented by experienced counsel and management personnel who are well versed in their rights as electric utility company customers. The parties' decisions to agree to contract provisions should not be second-guessed by OCC.

#### Recovery of Delta Revenue

OCC's arguments concerning this issue are rooted deeply in the past. In making its arguments, OCC ignores the clear signal from the General Assembly that greater incentives to economic growth in Ohio are appropriate. To that end, S.B. 221 amended §4905.31 (E), Ohio Rev. Code, to provide, for "recovery of revenue foregone" as a result of any "economic development and job retention program of the utility within its certified territory ...." By this amendment, the General Assembly reflected its understanding that economic development/job retention programs would benefit all Ohioans. OCC's persistence to stick with the way things used to be done fails to endorse the General Assembly's direction. This ground for rehearing should be denied.

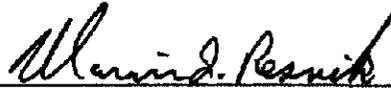
#### Ensure Benefits Materialize

OCC seeks assurance that the projected benefits actually will materialize. While language to that effect is not included in the contract, the Commission would be able to inquire into the ongoing benefits associated with either or both contracts. If the Commission were to determine that Globe or Solsil did not achieve the benefits they have projected, the Commission will retain jurisdiction to determine if these customers need the continuing benefits associated with the contracts. It was not necessary for the Commission to expressly state in its Finding Order that it will exercise that authority over

the life of each contract or state how frequently and in what manner it will exercise that authority. This ground for rehearing should be denied.

For the reasons stated above, OCC's application for rehearing should be denied.

Respectfully submitted,



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### CERTIFICATE OF SERVICE

I hereby certify that a copy of Columbus Southern Power Company's and Ohio Power Company's Memorandum Contra Application for Rehearing was served by U.S. Mail and electronic mail upon counsel identified below this 12<sup>th</sup> day of September, 2008.



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