BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application for Approval of a Contract for Electric Service Between Columbus Southern Power Company and Solsil, Inc.	)	Case No. 08-883-EL-AEC
In the Matter of the Application for Approval of a Contract for Electric Service Between Ohio Power Company and Globe Metallurgical, Inc.	)	Case No. 08-884-EL-AEC

SECOND FINDING AND ORDER

The Commission finds:

(1) Columbus Southern Power Company (CSP) and Ohio Power Company (OP) (jointly, AEP-Ohio) are public utilities as defined in Section 4905.02, Revised Code, and, as such, are subject to the jurisdiction of this Commission.

(2) Pursuant to Section 4905.31, Revised Code, the Commission has the authority to establish reasonable arrangements for electric service upon application of a public utility or mercantile customer. Such reasonable arrangements are under the supervision and regulation of the Commission and are subject to change, alteration, or modification by the Commission.

(3) On July 16, 2008, CSP filed an application pursuant to Section 4905.31, Revised Code, for approval of a contract and contract addendum to establish a reasonable arrangement with Solsil, Inc. (Solsil). As a manufacturer of high-purity silicon metal for the solar industry, Solsil intends to invest $46 million to build a state-of-the-art plant for producing solar grade silicon at its facility in Beverly, Ohio. The plant is to depend on Globe Metallurgical, Inc. (Globe), also located in Beverly, Ohio, to produce and supply metallurgical grade silicon, which Solsil plans to upgrade to solar grade silicon.[1] Solsil's solar grade silicon

[1] In a letter filed on July 16, 2008, Arden Sims, Chief Executive Officer of Globe and President of Solsil, noted that Globe and Solsil are subsidiaries of Globe Specialty Metals, Inc.

is to be used by the photovoltaic industry to generate solar power. The contract is for a ten-year term beginning January 1, 2009, and provides rates for electric service that are expected to facilitate the significant expansion at Solsil's facility.

(4) Also on July 16, 2008, OP filed an application pursuant to Section 4905.31, Revised Code, for approval of a contract and contract addendum to establish a reasonable arrangement with Globe. Globe manufactures silicon metal, specialty alloys, and ferroalloys. The contract is for a ten-year term beginning January 1, 2009, and provides rates for electric service that are expected to facilitate the continuation of operations at Globe's facility.

(5) The Ohio Energy Group (OEG) and the Office of the Ohio Consumers' Counsel (OCC) filed motions to intervene in these cases and comments regarding the proposed contracts.

(6) In a finding and order issued July 31, 2008 (July 31, 2008 Finding and Order), the Commission granted the motions to intervene of OEG and OCC and approved the proposed contract and addendum between OP and Globe. The Commission also approved the contract and addendum between CSP and Solsil but required that the contract be modified to provide that the market rate at the outset of the contract be estimated in accordance with generally accepted statistical criteria, as arrived at by consultation with the Commission's Staff, for the purpose of establishing the discount benchmark.

(7) On August 5, 2008, The Kroger Co. (Kroger) filed a motion to intervene in Case No. 08-884-EL-AEC. The attorney examiner granted intervention to Kroger on January 24, 2011.

(8) On August 20, 2008, CSP filed a revised contract in Case No. 08-883-EL-AEC, as required by the July 31, 2008 Finding and Order.

(9) On September 2, 2008, OCC filed an application for rehearing of the July 31, 2008 Finding and Order. The

Commission subsequently denied OCC's application for rehearing by operation of law, pursuant to Section 4903.10, Revised Code.

(10) On November 12, 2010, AEP-Ohio, Globe, and Solsil filed a stipulation and recommendation (November Stipulation), based on additional developments and disagreement relative to implementation of the July 31, 2008 Finding and Order. The November Stipulation states that the proposed Solsil plant upgrade in Beverly, Ohio, has not yet been initiated; AEP-Ohio has not provided discounted rates under the reasonable arrangements to date; and disagreement exists as to the applicability of the two reasonable arrangements and their relationship to each other (November Stipulation at 2).

(11) With respect to the reasonable arrangement between OP and Globe, the November Stipulation provides that Globe will receive a discounted rate for generation service from OP for a period of ten years effective January 1, 2009. Specifically, Globe will receive a 10 percent discount of OP's then-current generation service rate including all applicable riders (Big G) for the period January 1, 2009 through December 31, 2011. The generation rate discount will be effective on the first regular billing cycle subsequent to approval of the November Stipulation by the Commission. The generation rate discount will be implemented through two rate adjustments, the catch-up rate adjustment and the ESP-period rate adjustment. The catch-up rate adjustment will cover the period from January 1, 2009 through the first billing cycle subsequent to Commission approval of the November Stipulation and will be credited over a period of 7 months, beginning with the same billing period that the ESP-period rate adjustment is put in place. The catch-up rate adjustment will not include interest. The ESP-period rate adjustment will begin as of the second billing cycle subsequent to Commission approval of the November Stipulation and extend through the end of the December 2011 billing cycle. (November Stipulation at 2-3.)

OP will continue to provide Globe with a 4.3 percent discount of Big G for the period January 1, 2012 through December 31, 2018, provided that Globe maintains employment during this period at a level of not less than 180 full-time employees. The November Stipulation proposes that the Commission review Globe's employment level annually. If the Commission determines that Globe has not maintained the requisite level of employment, the Commission, taking into consideration the economic environment and other industry or market conditions that reasonably could affect employment, may reduce or discontinue Globe's discounted electric rate. (November Stipulation at 3.)

During the period January 1, 2012 through December 31, 2018, if the Solsil plant is developed and new jobs are created, Globe's generation service discount will be increased from the 4.3 percent discount as follows: if Solsil has an average of between 25 and 74 full-time employees during a given calendar year, Globe's discount for the subsequent calendar year will be 6 percent of Big G; if Solsil has an average of between 75 and 149 full-time employees during a given calendar year, Globe's discount for the subsequent calendar year will be 7 percent of Big G; if Solsil has an average of between 150 and 224 full-time employees during a given calendar year, Globe's discount for the subsequent calendar year will be 8 percent of Big G; if Solsil has an average of between 225 and 299 full-time employees during a given calendar year, Globe's discount for the subsequent calendar year will be 9 percent of Big G; and if Solsil has an average of at least 300 full-time employees during a given calendar year, Globe's discount for the subsequent calendar year will be 10 percent of Big G (November Stipulation at 3-4).

The November Stipulation further provides that Globe must maintain its accounts in current paid status for all electric bills throughout the term of the agreement. Finally, the November Stipulation is conditioned upon the Commission reaffirming that OP may collect 100 percent delta revenues (*i.e.,* the total difference between the contract rate and tariff rate, including provider of last resort (POLR) charges) through its Economic Development Rider or similar rate adjustment mechanism for the entire term of the rate discount. (November Stipulation at 4.)

(12) Regarding the reasonable arrangement between CSP and Solsil, the November Stipulation provides that Solsil's rights and obligations under the contract and addendum shall not commence until Solsil's first power draw, at which time Solsil shall be entitled to the discounts in full and shall be liable for all of the obligations set forth in the contract and addendum and the July 31, 2008 Finding and Order, including, but not limited to, Solsil investing $46 million to build a state-of-the-art plant for producing solar grade silicon in Beverly, Ohio, and employment of approximately 350 workers with a payroll exceeding $18 million annually (November Stipulation at 4).

The November Stipulation recommends that the Commission approve the revised contract between CSP and Solsil, as filed on August 20, 2008, which provides for the estimated market price for calculating the discounted benchmark under the reasonable arrangement (November Stipulation at 4).

(13) Additionally, the November Stipulation provides that all other Commission-approved tariff terms and conditions of electric service will apply, and that, at any time, Globe or Solsil may, upon ninety days' notice, terminate the reasonable arrangement without minimum monthly billing demand charges or other penalties, including for purposes of switching its electric generation service to a competitive retail electric service provider (November Stipulation at 5).

(14) On December 2, 2010, OCC filed comments on the November Stipulation. AEP-Ohio, Globe, and Solsil filed reply comments on December 16, 2010.

(15) On March 21, 2011, a stipulation and recommendation (March Stipulation) was filed by AEP-Ohio, Globe, Solsil, OCC, and Staff (collectively, Signatory Parties).[2] The

2 The Signatory Parties filed a corrected signature page on March 22, 2011.

March Stipulation is intended to resolve all contested issues associated with the November Stipulation.

(16) With regard to the November Stipulation's provisions addressing the reasonable arrangement between OP and Globe, the March Stipulation provides that those provisions should be promptly adopted and approved by the Commission, as filed with the Commission on November 12, 2010 (March Stipulation at 3).

(17) Regarding the November Stipulation's provisions pertaining to the reasonable arrangement between CSP and Solsil, the March Stipulation provides that those provisions should be promptly adopted and approved by the Commission, with the additional condition that the Solsil reasonable arrangement shall sunset on December 31, 2013, without further action by the Commission, if Globe Specialty Metals, Inc., on behalf of Solsil, has not made a formal commitment on or before that date to proceed with the $46 million investment in Beverly, Ohio, as described in Solsil's original application filed on July 16, 2008 in Case No. 08-883-EL-AEC. A sunset of the Solsil reasonable arrangement pursuant to the March Stipulation shall not prejudice Solsil's right or opportunity to file an application seeking approval of a future reasonable arrangement. In the event the Solsil reasonable arrangement sunsets, a future application for approval of a reasonable arrangement for Solsil shall be made in accordance with the Revised Code and applicable Commission rules. (March Stipulation at 3-4.)

(18) By letters filed on March 24, 2011 and March 29, 2011, OEG and Kroger, respectively, stated that they take no position on the November Stipulation or the March Stipulation.

(19) Rule 4901-1-30, Ohio Administrative Code, authorizes parties to Commission proceedings to enter into a stipulation. Although not binding on the Commission, the terms of such an agreement are afforded substantial weight. *Consumers' Counsel v. Pub. Util. Comm.* (1992), 64 Ohio St.3d 123, 125, *citing Akron v. Pub. Util. Comm.* (1978), 55 Ohio St.2d 155. This concept is particularly valid where

the stipulation is unopposed by any party 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. *Cincinnati Gas & Electric Co.*, Case No. 91-410-EL-AIR (April 14, 1994); *Western Reserve Telephone Co.*, Case No. 93-230-TP-ALT (March 30, 1994); *Ohio Edison Co.*, Case No. 91-698-EL-FOR *et al.* (December 30, 1993); *Cleveland Electric Illum. Co.*, Case No. 88-170-EL-AIR (January 30, 1989); *Restatement of Accounts and Records (Zimmer Plant)*, Case No. 84-1187-EL-UNC (November 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:

(a) Is the settlement a product of serious bargaining among capable, knowledgeable parties?

(b) Does the settlement, as a package, benefit ratepayers and the public interest?

(c) Does the settlement package violate any important regulatory principle or practice?

The Ohio Supreme Court 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.* (1994), 68 Ohio St.3d 559, *citing Consumers' Counsel, supra*, 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. (*Id.*)

(20) Addressing the Commission's three-part test, the Signatory Parties agree that the March Stipulation is the product of serious bargaining among capable, knowledgeable parties and that it does not violate any important regulatory principle or practice. The Signatory Parties further agree that the March Stipulation benefits customers and the

public interest by providing Globe with discounted electric rates to permit the retention of jobs in the state of Ohio; pushing the Solsil project forward, which would result in a $46 million investment in Ohio with the creation of approximately 350 jobs; and reducing the delta revenues that are to be collected from OP's customers (March Stipulation at 3).

(21) Based on our review of the record in these cases, we find that it is not necessary to hold a hearing in order to evaluate the reasonableness of the March Stipulation. The Commission has already approved the reasonable arrangements between OP and Globe and CSP and Solsil. The March Stipulation, as well as the November Stipulation, as modified by the March Stipulation, is merely intended to resolve a disagreement as to those previously approved reasonable arrangements.

With respect to the three-pronged test, the Commission finds that the first criterion is clearly met. The March Stipulation appears to be the product of serious bargaining among capable, knowledgeable parties. The Signatory Parties met and engaged in negotiations for the purpose of resolving any contested issues associated with the November Stipulation, are represented by able counsel and have been involved in numerous cases before the Commission. In addition, the March Stipulation meets the second criterion. It benefits customers and the public interest by providing discounted electric rates to Globe, which is expected to enable the retention of jobs in Ohio, while also reducing the delta revenues to be collected from OP's customers. The March Stipulation is also intended to advance the Solsil project, which is expected to result in a $46 million investment and the creation of approximately 350 jobs in the state. Finally, the March Stipulation meets the third criterion because it does not violate any important regulatory principle or practice.

(22) Accordingly, we find that the March Stipulation is reasonable and should be approved and adopted. As a result, we also find that the November Stipulation, as

modified by the March Stipulation, is reasonable and should be approved and adopted.

With respect to the recovery of the difference between what Globe and Solsil are charged and tariff rates, the Commission reaffirms that AEP-Ohio may recover those delta revenues in full and may do so through its Economic Development Rider, or a similar rate adjustment mechanism as may be approved by the Commission. Although we have in other cases ordered AEP-Ohio to credit any POLR charges paid pursuant to a reasonable arrangement to its Economic Development Rider in order to reduce the impact of the arrangement on other ratepayers, those orders were based on our finding that AEP-Ohio was the exclusive supplier under the arrangement and that there was no risk that the customer taking service under the arrangement would shop for competitive generation and then return to POLR service.[3] In the present cases, however, the Signatory Parties have agreed that both Globe and Solsil may, upon ninety days' notice, terminate their reasonable arrangements, without penalty, including for the purpose of switching their generation service to a competitive retail electric service provider. Therefore, there is a risk to AEP-Ohio that Globe or Solsil may shop for competitive generation and later seek to return to POLR service.

Finally, we find that the revised contract between CSP and Solsil, as filed by CSP in Case No. 08-883-EL-AEC on August 20, 2008, which provides for the estimated market price for calculating the discounted benchmark, should be approved.

It is, therefore,

ORDERED, That the stipulation and recommendation filed on March 21, 2011 be approved and adopted. It is, further,

[3] *In the Matter of the Application of Ormet Primary Aluminum Corporation for Approval of a Unique Arrangement with Ohio Power Company and Columbus Southern Power Company*, Case No. 09-119-EL-AEC, Opinion and Order (July 15, 2009); *In the Matter of the Application for Establishment of a Reasonable Arrangement Between Eramet Marietta, Inc. and Columbus Southern Power Company*, Case No. 09-516-EL-AEC, Opinion and Order (October 15, 2009).

ORDERED, That the stipulation and recommendation filed on November 12, 2010, as modified by the stipulation and recommendation filed on March 21, 2011, be approved and adopted. It is, further,

ORDERED, That the revised contract between CSP and Solsil, as filed by CSP in Case No. 08-883-EL-AEC on August 20, 2008, be approved. It is, further,

ORDERED, That CSP and Solsil and OP and Globe file in these dockets executed power agreements that conform to the provisions in the stipulation and recommendation filed on November 12, 2010, as modified by the stipulation and recommendation filed on March 21, 2011, within 14 days of the effective date of this finding and order. It is, further,

ORDERED, That a copy of this second finding and order be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Todd A. Snitchler, Chairman

Paul A. Centolella

Valerie A. Lemmie

Steven D. Lesser

Cheryl L. Roberto

SJP/sc

Entered in the Journal APR 05 2011

Betty McCauley

Betty McCauley
Secretary