

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) Case No. 13-1170-EL-AEC
Ohio Power Company and Globe)
Metallurgical, 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:

Vorys, Sater, Seymour & Pease, LLP, by M. Howard Petricoff, 52 East Gay Street, Columbus, Ohio 43215, on behalf of Globe Metallurgical, Inc.

Steven T. Nourse, American Electric Power Service Corporation, One Riverside Plaza, 29th floor, Columbus, Ohio 43215, on behalf of Ohio Power Company.

Mike DeWine, Ohio Attorney General, by Thomas W. McNamee, Assistant Attorney General, 180 East Broad Street, 6th floor, Columbus, Ohio 43215, on behalf of Staff of the Commission.

OPINION:

I. Background

Pursuant to Section 4905.31, Revised Code, the Commission approved a unique arrangement contract between Globe Metallurgical, Inc. (Globe) and Ohio Power Company (AEP Ohio) for a ten year term, beginning January 1, 2009. *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, Finding and Order (July 31, 2008), Second Finding and Order (April 5, 2011). Globe is a mercantile customer in AEP Ohio's service territory that manufactures silicon metal, specialty alloys, and ferroalloys at its facility in Beverly, Ohio.

On May 10, 2013, Globe filed an application pursuant to Section 4905.31, Revised Code, and Rule 4901:1-38-05(B), Ohio Administrative Code (O.A.C.), for approval of an amendment to its unique arrangement with AEP Ohio. On May 30, 2013, AEP Ohio filed a motion to intervene, explaining that as a party to Globe's unique arrangement, it should be permitted to intervene in this proceeding. By entry issued June 19, 2013, the attorney examiner granted AEP Ohio's motion to intervene and established a procedural schedule for this matter. On July 3, 2013, Globe filed a motion to reschedule the evidentiary hearing to an earlier date, and by entry issued July 3, 2013, the attorney examiner granted Globe's motion and set this matter for hearing on July 17, 2013. At the evidentiary hearing, Globe indicated that it had entered into a stipulation and recommendation with Staff and AEP Ohio. The stipulation was introduced and admitted into the record at the evidentiary hearing.

II. Summary of the Application

In its amendment application, Globe explains that several unforeseeable events have occurred since the Commission approved Globe's original unique arrangement application in 2008. Globe provides that the intended market for its metallurgical grade silicon, the Solisil solar panel project, was suspended indefinitely, resulting in a reduction of Globe's unique arrangement discount from 10 percent to 4.3 percent. In addition, Globe notes that the other party to its unique arrangement contract, AEP Ohio, will no longer directly own generation facilities that supply energy or capacity by June 2015. Globe adds that it is one of AEP Ohio's largest interruptible power rate customers, purchasing approximately 85 MW of interruptible power and 2.5 MW of power from schedule GS-4. (Application at 1-2.)

Globe seeks an amendment to end its unique arrangement three years early upon the June 1, 2015, transition by AEP Ohio to market procurement of energy and capacity. Accordingly, Globe requests that the contract termination date be amended from December 31, 2018, to June 1, 2015. In light of the shorter duration of the unique arrangement, Globe proposes that the pricing mechanism be changed from a percentage off AEP Ohio's tariff rates to a fixed price of \$42.78 per megawatt-hour, which allows Globe to achieve the same level of savings that were anticipated in the original unique arrangement. Globe maintains that all delta revenue would continue to be recoverable by AEP Ohio. (*Id.* at 2-3.)

In exchange for an earlier termination date of its unique arrangement, Globe states that it will remain an interruptible power customer for reliability and/or economic reasons and forgo its right to go to participate in the competitive market until either the

June 2015 billing cycle or the date in which AEP Ohio procures capacity for its standard service offer by auction, whichever is earlier. Globe points out that the rates in the application are necessary to maintain the competitiveness of its facilities and will also allow for Globe to expand its pledged workforce by ten percent within six months from the first calendar month after its proposed fixed pricing mechanism is implemented. Globe assures that the new higher level of employment would become the condition precedent for maintaining Globe's proposed fixed price. (*Id.* at 3.)

III. Summary of the Stipulation

As previously stated, a stipulation signed by Globe, AEP Ohio, and Staff was admitted into the record in this case on July 17, 2013. The stipulation was intended by the signatory parties to resolve all outstanding issues in this proceeding. The following is a summary of the provisions agreed to by the stipulating parties and is not intended to replace or supersede the stipulation:

- (1) The current unique arrangement contract termination date shall be moved up from December 31, 2018, to June 1, 2015.
- (2) The price of the unique arrangement should be changed from a percentage off AEP Ohio's tariff rates to a fixed price of \$42.78 per megawatt-hour for the remainder of the unique arrangement. Delta revenue associated with the unique arrangement is fully recoverable by AEP Ohio.
- (3) Globe will forego its right to participate in the competitive market on notice and agrees to remain an interruptible customer of AEP Ohio for 85 MWs until the earlier of the June 2015 billing cycle or the date that AEP Ohio procures 100 percent of its energy and capacity for its standard service offer by auction. (Joint Ex. 1 at 4.)

IV. Consideration of the Stipulation

Rule 4901-1-30, Ohio Administrative Code, authorizes parties to Commission proceedings to enter into stipulations. Although not binding on the Commission, the terms of such an agreement are accorded substantial weight. *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 unopposed by any party and resolves almost 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:

- (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 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.*, 68 Ohio St.3d 559, 561, 629 N.E.2d 423 (1994), citing *Consumers' Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d 123, 126, 592 N.E.2d 1370 (1992). Additionally, the Court stated that the Commission may place substantial weight on the terms of a stipulation, even though the stipulation does not bind the Commission. *Consumers' Counsel* at 126.

Globe witness Russell Lang testified that the stipulation is the product of serious bargaining and negotiation and benefits ratepayers and the public interest. Mr. Lang states that the stipulation will allow for the continued employment for many Globe employees and allow for an increase in employment. Furthermore, Globe witness Lang opines that the stipulation does not violate any regulatory principle or practice. (Tr. at 7-8.)

The Commission finds that the stipulation, as proposed, should be modified. We note that in Globe's application, Globe explains that, if approved, the amendment will allow Globe to expand its pledged workforce by ten percent within six months from the implementation of its fixed megawatt-hour price mechanism. The Commission believes

that this is an important aspect of Globe's application, as it not only benefits the public interest by facilitating job growth in southeast Ohio, but also aids in enhancing Ohio's effectiveness in the global economy. Further, the addition of this condition is consistent with Mr. Lang's testimony indicating that the stipulation does not recommend any changes to the amendment application. (Application at 3, Tr. at 7.)

Therefore, we find that, the stipulation, as modified, reflects the product of serious bargaining among capable, knowledgeable parties, and there is no evidence that the stipulation violates any regulatory principle or practice. Further, the stipulation benefits ratepayers and the public interest by allowing Globe to maintain the competitiveness of its facilities and allows for the expansion of its workforce by ten percent. Accordingly, the Commission finds that the stipulation, as modified, is reasonable and should be adopted.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

- (1) On May 10, 2013, Globe filed an application to amend its unique arrangement.
- (2) An evidentiary hearing in this matter was held on July 17, 2013.
- (3) At the evidentiary hearing, a stipulation was submitted on the record by Globe, AEP Ohio, and Staff.
- (4) The stipulation, as modified by this opinion and order, meets the criteria used by the Commission to evaluate stipulations. Consequently, the Commission finds the stipulation, as modified, is reasonable and should be adopted.

ORDER:

It is, therefore,

ORDERED, That the stipulation, as modified, be approved and adopted. It is, further,

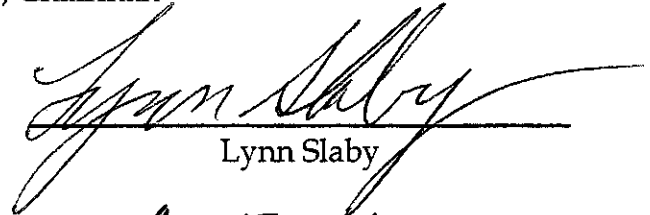
ORDERED, That Globe and AEP Ohio take all necessary steps to carry out the terms of the stipulation and this order. It is, further,

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

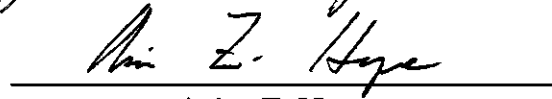
THE PUBLIC UTILITIES COMMISSION OF OHIO


Todd A. Snitchler, Chairman


Steven D. Lesser

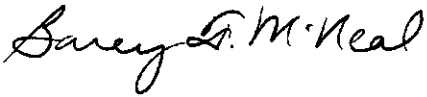

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Entered in the Journal
JUL 31 2013


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Secretary