

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE APPLICATION OF
NATURE FRESH FARMS FOR APPROVAL OF
A REASONABLE ARRANGEMENT.

CASE NO. 16-1664-EL-AEC

OPINION AND ORDER

Entered in the Journal on September 29, 2016

I. SUMMARY

{¶ 1} The Commission adopts and approves the stipulation authorizing a unique arrangement between Nature Fresh Farms and the Toledo Edison Company.

II. PROCEDURAL BACKGROUND

{¶ 2} Nature Fresh Farms (Nature Fresh or the Company) is a mercantile customer, as defined by R.C. 4928.02(A)(19). Further, the Toledo Edison Company (TE) is an electric distribution utility (EDU) as defined in R.C. 4928.01(A)(6), and a public utility, as defined by R.C. 4905.02, and, as such, is subject to the jurisdiction of this Commission.

{¶ 3} R.C. 4928.141 provides that an EDU shall provide consumers within its certified territory a standard service offer (SSO) of all competitive retail electric services necessary to maintain essential electric services to customers, including a firm supply of electric generation services. The SSO may be either a market rate offer in accordance with R.C. 4928.142 or an electric security plan (ESP) in accordance with R.C. 4928.143. On March 31, 2016, the Commission issued an Opinion and Order that, among other things, authorized TE to provide consumers an SSO in the form of an ESP through May 2024. *In re Ohio Edison Co., Cleveland Elec. Illum. Co., and Toledo Edison Co.*, Case No. 14-1297-EL-SSO, et al. (*ESP Case*), Opinion and Order (March 31, 2016).

{¶ 4} In the *ESP Case*, the Commission authorized TE to continue its Economic Development Rider, which includes a General Service-Transmission (Rate GT) provision. This provision incentivizes Rate GT customers to achieve and maintain a high load factor. Customers with low load factors receive a net charge; customers with a high load factor

receive energy credits. The funding for the rider is self-contained as all of the dollars collected through the charges are returned to Rate GT customers via the energy credits. The Rate GT provision expires after May 31, 2019.

{¶ 5} Pursuant to R.C. 4905.31 and Ohio Adm.Code 4901:1-38-05(B), a mercantile customer of an electric utility may apply to the Commission for a unique arrangement with the electric utility.

{¶ 6} On August 1, 2016, Nature Fresh filed an application for approval of a unique arrangement for electric service with TE to help the Company expand its operations in Ohio. Nature Fresh requests an exemption from the Rate GT provision of TE's Economic Development Rider, where they would neither pay any charges nor receive any revenue under that provision.

{¶ 7} On August 22, 2016, motions to intervene were filed by the Ohio Manufacturers' Association (OMA) and TE. On September 9, 2016, a joint stipulation and recommendation (stipulation) was filed by Nature Fresh and Staff that purports to resolve all of the issues in the case. Thereafter, by Entry on September 12, 2016, the attorney examiner granted the motions to intervene by OMA and TE and scheduled a hearing for September 15, 2016.

{¶ 8} The hearing was held, as scheduled on September 15, 2016. Todd Brophy, business development manager for Nature Fresh, testified in support of the stipulation. At the hearing, neither TE nor OMA opposed the stipulation.

III. SUMMARY OF APPLICATION

{¶ 9} Nature Fresh filed its application pursuant to R.C. 4905.31 and Ohio Adm.Code 4901:1-38-05. Nature Fresh, based in Leamington, Ontario, states it is the largest independent greenhouse produce grower in Canada and the largest greenhouse pepper grower in North America. According to the Company, it intends to build a 181-acre production facility in Delta, Ohio that would be the largest greenhouse facility in

North America. It plans to build the facility in 12 phases over the next seven years with a capital investment of over \$181 million. By 2023, Nature Fresh avers it intends to employ over 350 full-time employees, with an average wage of \$17/hour and an annual payroll of \$12 million. Nature Fresh says the facility will also create 150 support jobs in Ohio. (Nature Fresh Ex. 1 at 1-2.)

{¶ 10} According to Nature Fresh, its electric demand will start at 8 megawatts (MW) in 2016 and expand to 93 MW in 2023. It contends its electric use will primarily be for plant growth lighting. Nature Fresh's energy usage for plant growth lighting will occur only during off-peak, evening hours and only between the months of September and April. (Nature Fresh Ex. 1 at 2.)

{¶ 11} In its application, Nature Fresh requests an exemption from the Rate GT provision of TE's Economic Development Rider such that the Company neither pays any charges nor receives any revenue under that provision. Nature Fresh states this exemption creates no delta revenue and is revenue neutral for TE. The arrangement is requested to last until either May 31, 2019, or when the Rate GT provision expires. (Nature Fresh Ex. 1 at 2.)

{¶ 12} Nature Fresh asserts the arrangement advances state policy to facilitate Ohio's effectiveness in the global economy. The Company states that to achieve the full construction and operation of the facility, the arrangement is necessary. Further, Nature Fresh contends the arrangement is not anti-competitive, discriminatory, or unduly preferential. (Nature Fresh Ex. 1 at 2-3.)

IV. STIPULATION OF THE PARTIES

{¶ 13} As noted above, on September 9, 2016, Nature Fresh and Staff filed a stipulation that, if adopted, would resolve all of the issues in the case. The following is a summary of the stipulation and is not intended to supersede or replace the stipulation.

- (1) The terms of the reasonable arrangement will begin when the Commission approves the application and when commercial operations using plant growth lighting have begun at Nature Fresh's Ohio production facility.
- (2) The arrangement will end on the later of May 31, 2019, or when TE's ESP in the *ESP Case* expires.
- (3) Nature Fresh will take distribution service from TE under Rate GT or another applicable rate.
- (4) Nature Fresh will be exempt from the Rate GT provision of TE's economic development rider for the term of the arrangement.
- (5) The arrangement will be fully assignable by Nature Fresh to any new owner or operator with prior written consent from TE and with approval from the Commission. Additionally, Nature Fresh may terminate the agreement at any time with prior written notice to TE.

(Joint Ex. 1 at 7-8.)

V. COMMISSION CONCLUSION

{¶ 14} 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 afforded substantial weight. *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 unopposed by any party and resolves all issues presented in the proceeding in which it is offered.

{¶ 15} The standard of review for considering the reasonableness of a stipulation has been discussed in a number of prior Commission proceedings. *See, e.g., In re Cincinnati Gas & Elec. Co.*, Case No. 91-410-EL-AIR, Order on Remand (Apr. 14, 1994); *In re Western Reserve Telephone Co.*, Case No. 93-230-TP-ALT, Opinion and Order (Mar. 30, 1994); *In re Ohio Edison Co.*, Case No. 91-698-EL-FOR, et al., Opinion and Order (Dec. 30, 1993); *In re Cleveland Elec. Illum. Co.*, Case No. 88-170-EL-AIR, Opinion and Order (Jan. 31, 1989); *In re Restatement of Accounts and Records*, Case No. 84-1187-EL-UNC, Opinion and Order (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?

{¶ 16} 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, 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.

{¶ 17} After applying the three-part test for evaluating the reasonableness of a stipulation, we find that stipulation should be approved and adopted. First, we find the stipulation is the product of serious bargaining among capable, knowledgeable parties.

Nature Fresh witness Todd Brophy testified that the stipulation is the result of lengthy negotiations. He stated that Nature Fresh has been having discussions with Staff for over two years and the terms of the agreement have changed multiple times over the course of negotiations. (Tr. at 13-14.) We also note that both Staff and Nature Fresh are represented by counsel that regularly appear before the Commission in complex proceedings. Thus, we find the first prong is satisfied.

{¶ 18} The Commission also determines that the second part of the test is satisfied as the stipulation would benefit ratepayers and the public interest. Mr. Duff states that the production facility will have a large, positive impact on the economy of Ohio, both directly and indirectly. Specifically, he states Nature Fresh intends to invest \$181 million into the facility and employ up to 362 people with a payroll of \$12 million a year. He further asserts that approval of the stipulation will have no adverse affects on any other ratepayer as there is no delta revenue associated with the arrangement. (Tr. at 11, 14-15.) We find the capital investment and job creation would ultimately be beneficial to the public interest.

{¶ 19} Regarding the final part of the test, Mr. Duff testified that he believes the stipulation is in compliance with regulatory practices and principles (Tr. at 15). The Commission agrees, as the agreement does not appear to violate any important regulatory principles or practices.

{¶ 20} The Commission finds that the stipulation, as proposed, is reasonable and should be adopted. The stipulation implements a unique arrangement that allows Nature Fresh to make a significant investment into Ohio's economy. We find that the arrangement will enable Nature Fresh to establish a facility that facilitates job growth and aids in enhancing Ohio's competitiveness in the global economy. Additionally, we find that because of the unique nature of the Company, where almost all of its energy usage will occur between September and April and during off-peak, evening hours, Nature Fresh has a distinctive energy profile that supports approval of this particular arrangement. Further,

we find the arrangement does not violate R.C. 4905.33 or 4905.35 and is just and reasonable.

VI. FINDINGS OF FACT AND CONCLUSION OF LAW

{¶ 21} Nature Fresh is a mercantile customer, as defined by R.C 4928.02(A)(19).

{¶ 22} TE is an electric light company, as defined by R.C. 4905.03(A)(3), and a public utility, as defined by R.C. 4905.02, and, as such, is subject to the jurisdiction of this Commission.

{¶ 23} On August 1, 2016, Nature Fresh filed an application seeking approval of a unique arrangement for the Company's planned facilities in Delta, Ohio.

{¶ 24} On September 9, 2016, a joint stipulation was filed by Nature Fresh and Staff that purports to resolve all of the issues in the case.

{¶ 25} By Entry on September 12, 2016, the attorney examiner granted the motions to intervene of TE and OMA.

{¶ 26} An evidentiary hearing was held on September 15, 2016.

{¶ 27} The stipulation submitted by Nature Fresh and Staff meets the criteria used by the Commission to evaluate stipulations, is reasonable, and should be adopted.

VII. ORDER

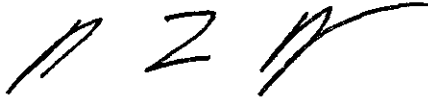
{¶ 28} It is, therefore,

{¶ 29} ORDERED, That the stipulation be approved and adopted. It is, further,

{¶ 30} ORDERED, That nothing in this Opinion and Order shall be binding upon the Commission in any future proceeding or investigation involving the justness or reasonableness of any rate, charge, rule, or regulation. It is, further,

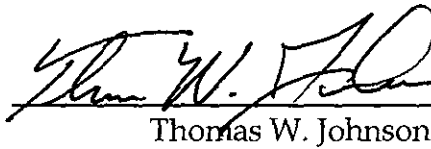
{¶ 31} ORDERED, That a copy of this Opinion and Order be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO



Asim Z. Haque, Chairman

Lynn Slaby


M. Beth Trombold
Thomas W. Johnson
M. Howard Petricoff

NW/vrm

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Barcy F. McNeal
Secretary