

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE APPLICATION
OF GLOBE METALLURGICAL, INC.
FOR APPROVAL OF A UNIQUE
ARRANGEMENT BETWEEN OHIO POWER
COMPANY AND GLOBE METALLURGICAL,
INC.

CASE NO. 16-737-EL-AEC

OPINION AND ORDER

Entered in the Journal on October 26, 2016

I. SUMMARY

{¶ 1} The Commission finds the stipulation and recommendation signed by Globe Metallurgical, Inc., Ohio Power Company, and Staff meets the criteria used by the Commission to evaluate stipulations, is reasonable, and should be adopted.

II. PROCEDURAL HISTORY

{¶ 2} Globe Metallurgical, Inc. (Globe) is a mercantile customer, as defined by R.C. 4928.01(A)(19), that manufactures silicon metal, specialty alloys, and ferroalloys at its facility in Beverly, Ohio. Ohio Power Company (AEP Ohio) is an electric light company, as defined by R.C. 4905.03(A)(3), and a public utility, as defined under R.C. 4905.02, and, as such, is subject to the jurisdiction of this Commission.

{¶ 3} 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.

{¶ 4} In 2008, the Commission approved a unique arrangement between Globe and AEP Ohio, pursuant to R.C. 4905.31. *In re Globe Metallurgical, Inc.*, Case No. 08-884-EL-AEC, Finding and Order (July 31, 2008), Second Finding and Order (April 5, 2011). According to the arrangement, for a ten year term lasting from January 1, 2009, until December 31, 2018, Globe would receive a 10 percent discount from AEP-Ohio's IRP-D

standard service and GS-4 energy rate, provided that Globe maintained certain employment levels.

{¶ 5} On May 10, 2013, Globe filed an application in Case No. 13-1170-EL-AEC for approval of an amendment to its unique arrangement with AEP Ohio. By Order issued on July 31, 2013, the Commission approved a stipulation, as modified, for an amendment to the unique arrangement between Globe and AEP Ohio. *In re Globe Metallurgical, Inc.*, Case No. 13-1170-EL-AEC, Opinion and Order (July 31, 2013). The amended arrangement moved the termination date up to June 1, 2015, and changed the rate price from a 10 percent discount to a fixed rate. Thereafter, on February 13, 2015, Globe filed another application to amend its unique arrangement with AEP Ohio. By Order issued on May 13, 2015, the Commission approved the stipulation of the parties to amend Globe's unique arrangement a second time.

{¶ 6} On April 11, 2016, Globe filed the application in this case for approval of a unique arrangement with AEP Ohio. In its application, Globe proposed a unique arrangement with a 60 month term. Globe asserted that approval of its application would allow it to maintain the competitiveness of its facilities and continue to provide employment and economic benefits to Ohio.

{¶ 7} AEP Ohio, the Ohio Consumers' Counsel (OCC), and the Ohio Manufacturers' Association Energy Group (OMAEG) each filed motions to intervene. No party filed memoranda contra to the motions to intervene. Accordingly, the attorney examiners granted each of the motions to intervene. Additionally, on May 2, 2016, OCC and OMAEG filed comments regarding Globe's application for a unique arrangement.

{¶ 8} On August 1, 2016, Staff filed its review and recommendation regarding Globe's application for a unique arrangement. Staff recommended the Commission find that Globe's application, as proposed, did not achieve the objectives outlined in Ohio Adm.Code 4901:1-38-02, and, as proposed, would not be in the public interest.

{¶ 9} On October 19, 2016, a stipulation and recommendation (Stipulation) signed by Globe, AEP Ohio, and Staff was filed and admitted into the record in this case. OMAEG did not join the Stipulation as a signatory party but signed for the sole purpose of stating its non-opposition to the Stipulation. OCC opposes the Stipulation.

III. DISCUSSION

A. *Summary of the Application*

{¶ 10} Globe asserts that it has become one of the world's largest and most efficient producers of metallurgical and chemical-grade silicon metal and silicon-based specialty alloys. It is a vertically integrated company with a well-diversified business serving growing markets in which demand is expected to rise over the next five years across a wide range of applications. For fiscal year 2015, Globe increased net sales at more than twice the rate of increase in cost of goods sold. Further, due to a recent merger of its corporate parent, Globe anticipates additional benefits from optimized industrial planning and production, best practice efficiencies, and financial synergies. Globe's Beverly Plant is its operations hub, and handles orders, shipment coordination, and customer service for Globe's entire United States operations. Additionally, the Beverly Plant is the only U.S. plant that produces all three of Globe's primary product lines. Globe asserts the Beverly Plant plays a vital role in Appalachia and throughout Ohio. However, Globe is facing market challenges from unfair import prices and a strong U.S. dollar. Accordingly, Globe requests a unique arrangement. (Globe Ex. 2 at 4-8.)

{¶ 11} Globe's Application proposed to run for a 60 month term, until May 31, 2021, during which time Globe would receive generation and capacity from a competitive retail electric service provider. Further, it would set a contract rate for wire service either in the amount of \$8.50 per MWh, which is the same as Globe's previous unique arrangements, or at a going-forward discount available one time at Globe's option. Further, the proposed unique arrangement included a total fixed delta revenue cap and annual delta revenue caps. Additionally, the unique arrangement would allow Globe to

serve as an interruptible resource for AEP Ohio on an on-going basis and to receive a monthly demand credit during the term of the unique arrangement. Finally, in the unique arrangement, Globe made capital investment and employment commitments at its Beverly Plant. (Globe Ex. 2 at 12-13.)

B. *Summary of the Stipulation*

{¶ 12} The Stipulation in this case signed by Globe, AEP Ohio, and Staff was filed and admitted into the record on October 19, 2016. OMAEG did not join the Stipulation as a signatory party but signed for the sole purpose of stating its non-opposition to the Stipulation. However, OCC opposes the Stipulation signed by the parties. The Stipulation is 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 term of the unique arrangement stated in the Application (Globe Ex. 2 at 12, ¶24) shall be modified such that the unique arrangement will be effective as of the commencement of the October 2016 billing cycle and will terminate as of the conclusion of the December 2018 billing cycle.
- (2) The delta revenue caps stated in the Application (Globe Ex. 2 at 12, ¶24(c); 14, ¶31; and 18, ¶46) shall be modified such that the aggregate cap shall be reduced to \$9.3 million and annual caps shall be set according to the following schedule:
a) \$1 million through 2016; b) \$4.5 million for 2017; and
c) \$3.8 million for 2018.
- (3) The employment commitment stated in the Application (Globe Ex. 2 at 13, ¶25; 15-16, ¶36) shall be modified such that Globe shall retain a certain monthly average of full-time

employees as of the end of each calendar year during the term of the reasonable arrangement and, if the delta revenue cap for 2017 is met or exceeded in 2017, Globe shall commit to retain a certain monthly average of full-time employees.

- (4) The capital investment commitment stated in the Application (Globe Ex. 2 at 13, ¶25; 15, ¶35; and 16, ¶38) shall be modified such that Globe will make capital investment commitments over the period starting October 1, 2016 and ending December 31, 2017. If the capital investment is not made by December 31, 2017, a shortfall shall be declared under the Application (Globe Ex. 2 at 16, ¶38-39).
- (5) The definition of *force majeure* shall be modified as defined in the Stipulation (Joint Ex. 1).
- (6) Although R.C. 4905.31 allows otherwise, Globe shall not apply to renew the unique arrangement or apply for a new unique arrangement for two years after the expiration of the unique arrangement. Nonetheless, if certain events occur after this unique arrangement expires, as outlined in the Stipulation, Globe may apply for a new unique arrangement.
- (7) The proposal that Globe receive a monthly demand credit of \$8.21/kWh-month even if the credit or program is no longer available under tariff or the IRP-D rider as stated in the Application (Globe Ex. 1 at 12, ¶24(d); 15, ¶32) shall be withdrawn such that Globe's receipt of demand credits shall remain subject to tariff.

C. *Consideration of the Stipulation*

{¶ 13} Ohio Adm.Code 4901-1-30 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.

{¶ 14} The standard of review for considering the reasonableness of a stipulation has been discussed in a number of prior Commission proceedings. *In re Cincinnati Gas & Elec. Co.*, Case No. 91-410-EL-AIR, Order on Remand (Apr. 14, 1994); *In re Western Reserve Tel. 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 Record (Zimmer Plant)*, 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?

{¶ 15} 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, 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 has 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.

{¶ 16} 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. Further, Globe witness Lang asserts that the Stipulation does not violate any regulatory principle or practice. (Tr. at 14-16.)

{¶ 17} However, OCC witness Wm. Ross Willis testified that the Stipulation does not fully meet the Commission's three-pronged test for the consideration of stipulations. He testified the Stipulation lacks a signatory party that is solely and directly a representative of residential consumers. Further, he testified that the Stipulation violates important regulatory principles and practices because it should allow for reducing the amount of delta revenue that consumers are asked to subsidize, by sharing the subsidy between customers and AEP Ohio. Mr. Willis testified that the Commission has previously authorized a 50/50 sharing mechanism, which recognizes that both the utility and its customers benefit from the company's policy of providing economic incentive rates to certain customers. *In re Columbus Southern Power Co.*, Case No. 91-418-EL-AIR, Opinion and Order (May 12, 1992). Further, he testified that the Commission has specifically stated that it can approve a unique arrangement without allowing the utility to recover any of the delta revenue from other customers. Citing *In re Ormet Primary Aluminum Co.*, Supreme Court Case No. 09-1060, Brief of the Public Utilities Commission at 12 (Mar. 3, 2010). Mr. Willis then testified that the settlement, as a package, does not

benefit customers and the public interest. He testified that a fourth request for a unique arrangement is not in the public interest. Finally, he testified that the Commission should require Globe to provide OCC a copy of its annual reports. (OCC Ex. 1 at 3-6).

{¶ 18} The Commission finds the Stipulation is the product of serious bargaining and negotiation amongst capable, knowledgeable parties. We first note that the signatory parties routinely participate in complex Commission proceedings and that counsel for the signatory parties have extensive experience practicing before the Commission in utility matters. *See, e.g., In re Globe Metallurgical, Inc.*, Case No. 08-884-EL-AEC; *In re Globe Metallurgical, Inc.*, Case No. 13-1170-EL-AEC. Further, the stipulation was the result of lengthy negotiations between all parties over the course of several months (Tr. at 14-15). We also find the signatory parties represent diverse interests. OCC's argument (OCC Ex. 1 at 3) that a settlement without its signature lacks diversity is without merit. We have previously rejected proposals that that any one class of customers, including OCC, can effectively veto a stipulation. *Dominion Retail v. Dayton Power & Light Co.*, Case No. 03-2405-EL-CSS, Opinion and Order (Feb. 2, 2005) at 18; Entry on Rehearing (Mar. 23, 2005) at 7; *In re Ohio Edison Co., Cleveland Elec. Illum. Co., Toledo Edison Co.*, Case No. 14-1297-EL-SSO), Opinion and Order (March 31, 2016) at 43. Accordingly, we find the stipulation is the result of serious bargaining among capable and knowledge parties, and that the first portion of the test is satisfied.

{¶ 19} Further, we find no merit to Mr. Willis's testimony that the Stipulation is not in the public interest. Globe is making a significant commitment to jobs and capital investment in Ohio, which benefits the public (Tr. at 15). As Dr. Kornstein testified, each job initiated by Globe creates at least four other jobs in Ohio (Globe Ex. 3 at 5). Additionally, we find the arrangement allows Globe, North America's largest producer of silicon metal, to remain competitive in the marketplace which assists Ohio's effectiveness in the global economy (Globe Ex. 1 at 2, 10). Further, Globe commits that it will not apply to renew this unique arrangement or apply for a new unique arrangement

for at least two years after this arrangement expires, unless certain events occur (Joint Ex. 1 at 5). Therefore, we find the Stipulation, as a package, is in the public interest.

{¶ 20} Additionally, we find that the Stipulation does not violate any important regulatory principle or practice. The Commission has approved numerous unique arrangements authorizing the utility to recover delta revenue from customers. We reject OCC's assertion that the unique arrangement violates important regulatory principles or practices simply because it does not include a 50/50 cost sharing mechanism.

{¶ 21} Accordingly, we find that the Stipulation 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 its competitiveness in the global economy, consistent with the policy of the state of Ohio set forth in R.C. 4928.02(N). Therefore, the Commission finds that the Stipulation is reasonable and should be adopted.

IV. ORDER

{¶ 22} It is, therefore,

{¶ 23} ORDERED, That the Stipulation be approved and adopted. It is further,

{¶ 24} ORDERED, That Globe and AEP Ohio take all necessary steps to carry out the terms of the Stipulation and this Opinion and Order. It is, further,

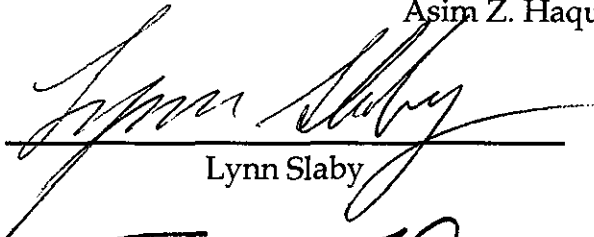
{¶ 25} ORDERED, That nothing in this Opinion and Order shall be binding upon the Commission in any future proceeding or investigation involving the justness or reasonableness of any rate, charge, rule, or regulation. It is, further,

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

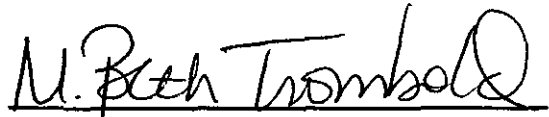
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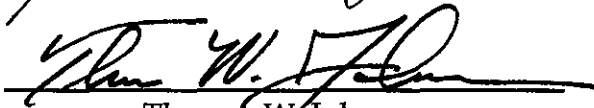
Asim Z. Haque, Chairman



Lynn Slaby



M. Beth Trombold



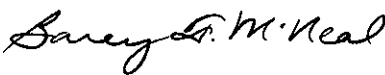
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