

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Globe     )  
Metallurgical, Inc. for Approval of a     ) Case No. 16-0737-EL-AEC  
Reasonable Arrangement for its Beverly,     )  
Ohio Plant.     )

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**APPLICATION FOR REHEARING  
BY  
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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OCC files this application for rehearing<sup>1</sup> to bring transparency to the reasonable arrangement process so that the Office of the Ohio Consumers' Counsel ("OCC") can review the annual progress reports filed by mercantile customers who are receiving discounted electric rates subsidized by utility customers. Specifically, OCC seeks rehearing on the PUCO's October 26, 2016 Opinion and Order that approved the reasonable arrangement but failed to require the mercantile customer to provide a copy of the annual progress report to OCC.

The PUCO's October 26, 2016, Opinion and Order was unreasonable and unlawful in the following respects:

ASSIGNMENT OF ERROR NO. 1: The PUCO erred when it unreasonably and unlawfully failed to require that OCC be provided a copy of the annual report, departing from its past.

ASSIGNMENT OF ERROR NO. 2: The PUCO erred by failing to comply with R.C. 4903.09 and set forth the reasons it did not order that the report be released to OCC.

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<sup>1</sup> This application for rehearing is authorized under R.C. 4903.10 and Ohio Adm. Code 4901-1-35.

The reasons in support of this application for rehearing are set forth in the accompanying Memorandum in Support. The PUCO should grant rehearing and abrogate or modify its Opinion and Order as requested by OCC.

Respectfully submitted,

BRUCE WESTON (0016973)  
OHIO CONSUMERS' COUNSEL

*/s/ Jodi Bair*

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**I. INTRODUCTION**

The PUCO should order the release of the Mercantile Customer's annual report to the OCC. The PUCO failed to explain why it did not order the that the report be released to OCC. AEP Ohio's 1.4 million customers who are paying the subsidy should be entitled to understanding if the Mercantile Customer is honoring its commitment to make capital investments in Ohio and maintaining employment levels.

**II. ERRORS**

**ASSIGNMENT OF ERROR NO. 1: The PUCO erred when it unreasonably and unlawfully failed to require that OCC be provided a copy of the annual report, departing from its past precedent.**

As part of the unique arrangement, this mercantile customer receives a discount on its electricity bill that is funded by other customers. The Mercantile Customer must comply with Ohio Adm. Code 4901:1-38-06(A). That Ohio Rule requires that a customer served under a special contract, such as the one approved in this case, submit an annual report to the Utility and the Staff no later than April thirtieth of each year. The report is to display the value of any incentives and the impact of the arrangement on other customers (those paying for the discount). Additionally, the report is intended to allow a

determination of whether the mercantile customer is complying with the terms of the arrangement. These terms can include job creation or retention, and investment, as well as other specific commitments.

In this proceeding, the mercantile customer agreed to invest specific dollar amounts on capital projects. And the customer has agreed to maintain a certain level of full time employees. The annual report submitted to the PUCO Staff would provide detail on whether the customer is complying with its commitments with regard to capital investment and full-time employment level.

OCC was a party to this case. OCC's witness, Ross Willis provided testimony recommending that the PUCO order that the annual reports be released to the OCC, as they have been in the past. Mr. Willis testified that it is appropriate for the public to know that companies receiving funding from Ohioans (for electricity discounts) are fulfilling their commitments to Ohioans for economic development.<sup>2</sup> OCC Witness Willis testified that the PUCO should release the reports to OCC, as it did in an earlier case (*Eramet*).<sup>3</sup>

But the PUCO did not order the mercantile customer to provide its reports to OCC. And it did not provide any rationale as to why it was not ordered. The PUCO simply noted that Mr. Willis "testified that the Commission should require Globe to provide OCC a copy of its annual reports."<sup>4</sup>

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<sup>2</sup> Direct Testimony of Wm. Ross Willis at 13 (Sept. 1, 2016).

<sup>3</sup> *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 , Entry at 8 (Mar. 3, 2011).

<sup>4</sup> Opinion and Order at 7 ¶17 (Oct. 26, 2016).

And while the PUCO may depart from precedent, it is not free to do so unless the need is clear and it is shown that prior decisions are in error.<sup>5</sup> Otherwise it should respect its own precedents in its decisions "to assure the predictability which is essential in all areas of law, including administrative law."<sup>6</sup>

But the PUCO gives no explanation or justification of why the PUCO did not order this. There are no citations to the record supporting the PUCO's reasoning for denying OCC's request nor is there any justification for modifying its ruling in *Eramet*, wherein the PUCO granted the release of the report to OCC. The PUCO erred. Rehearing should be granted.

**ASSIGNMENT OF ERROR NO. 2: The PUCO erred by failing to comply with R.C. 4903.09 and set forth the reasons it did not order that the report be released to OCC.**

Additionally, the PUCO erred in failing to make findings of fact and setting forth the reasons prompting its decision. Yet this it must do under R.C. 4903.09. The Ohio Supreme Court has held that in order to meet the requirements of R.C. 4903.09 the PUCO's order must show, in sufficient detail, the facts in the record upon which the order is based, and the reasoning followed by the PUCO in reaching its conclusion.<sup>7</sup> The PUCO provided no reasoning for denying OCC's request to obtain the report. It violated R.C. 4903.09. Rehearing should be granted.

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<sup>5</sup> See, e.g., *Office of Consumers' Counsel v. Pub. Utilities Comm.*, 10 Ohio St.3d 49, 461 N.E.2d 303, 50 (1984).

<sup>6</sup> *Cleveland Electric Illuminating Co. v. Pub. Util. Comm.*, 42 Ohio St.2d 403, 330 N.E.2d 1, 431-32 (1975).

<sup>7</sup> *Ohio Consumers' Counsel v. PUC* (2006), 111 Ohio St.3d 300 at 306.

### III. CONCLUSION

The PUCO should grant rehearing as requested by the OCC and order the release of the Mercantile Customer's annual reports to the OCC. Doing so would be consistent with past precedent. It is fair, reasonable, and consistent with the public records laws in Ohio for OCC (and the 1.4 million AEP Ohio customers it represents.). Residential customers under this economic development arrangement will pay millions of dollars for the electric discount (subsidy) given to the mercantile customer. There should be no secret as to whether the Mercantile Customer is holding up its part of the economic development bargain -- capital investments and jobs.

Respectfully submitted,

BRUCE WESTON (0016973)  
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*/s/ Jodi Bair*

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### **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing Application for Rehearing has been served upon the below-named persons via electronic transmission this 25<sup>th</sup> day of November, 2016.

/s/ Jodi Bair  
Jodi Bair  
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Summary: App for Rehearing Application for Rehearing by the Office of the Ohio Consumers' Counsel electronically filed by Ms. Deb J. Bingham on behalf of Bair, Jodi Ms.