

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

FILE

In the Matter of the Application for
Establishment of a Reasonable
Arrangement Between Presrite
Corporation and The Cleveland Electric
Illuminating Company

Case No. 17-1981-EL-AEC

**JOINT
STIPULATION AND RECOMMENDATION**

[PUBLIC VERSION]

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BACKGROUND

For purposes of resolving any contested issues that may have been raised in this proceeding, the undersigned Parties stipulate and agree that the following statements are, based on information and belief, true and correct.

On September 13, 2017, Presrite Corporation ("Presrite"), a mercantile customer as defined by R.C. 4928.01(A)(19), that operates hot metal forging facilities on three sites located in Cleveland and Jefferson, Ohio and a technical center and machining operations building at a fourth site in Eastlake, Ohio, properly filed an application ("Application") seeking approval of a reasonable arrangement between The Cleveland Electric Illuminating Company ("CEI") and Presrite. Presrite's manufacturing facilities are located within the certified territory of CEI, an electric distribution utility ("EDU") as defined by R.C. 4928.01.

The addresses of the three forging facilities and technical center, respectively, are as follows: 3665 East 78th Street, Cleveland, OH 44105; 7105 Bessemer Ave.,

Cleveland, OH 44127; 322 S. Cucumber Street, Jefferson, OH 44047 and 33800 Lakeland Blvd., Eastlake, OH 44095. Presrite takes service under eight separate accounts with CEI.

Presrite represents that it suffered a significant reduction in investment and employment as a result of a collapse in the world commodity market and was required to reduce its workforce, freeze wages and cut benefits, and reduce capital expenditures. It now wishes to expand employment, restore employment benefits, and make capital investment in its current manufacturing operation at Presrite's facilities, which requires access to and successful deployment of capital, predicated, in part, on Presrite's ability to secure a reliable supply of electricity pursuant to terms and conditions that will provide it with a reasonable and predictable price over a term sufficient to justify significant expenditures.

The Application was properly filed with the Public Utilities Commission of Ohio ("Commission") pursuant to R.C. 4905.31 and Rule 4901:1-38-05, Ohio Admin. Code.

The Office of the Ohio Consumers' Counsel ("OCC"), the Ohio Manufacturers' Association Energy Group ("OMAEG"), and CEI filed motions to intervene and comments.

Since the filing of Presrite's Application on September 13, 2017, CEI, OCC, OMAEG, the Staff of the Commission ("Staff"), and Presrite have engaged in good faith discussions to address and resolve any issues and exchange information related to the Application. Presrite and Staff have agreed to the terms and conditions set out in this Stipulation. CEI and OMAEG have stated that they will not oppose this Stipulation and Recommendation.

INTRODUCTION

Among other things, R.C. 4905.31 authorizes, with Commission approval and upon application by a mercantile customer, the filing of a schedule and establishing or entering of a reasonable arrangement that addresses a classification of service or involves any other financial device that may be practicable or advantageous.

Rule 4901-1-30, Ohio Admin. Code, provides that any two or more parties to a proceeding may enter a written stipulation covering the issues presented in such a proceeding. The purpose of this document is to set forth the understanding and agreement of the parties that have agreed to the stipulation and to recommend that the Commission approve and adopt this Joint Stipulation and Recommendation ("Stipulation") as part of its Opinion and Order in this proceeding, resolving the contested issues that have been or could have been raised in this proceeding.

This Stipulation is supported by adequate data and information as set out in the Stipulation, the Application, and the supporting testimony submitted in support of the Stipulation; represents a just and reasonable resolution of issues in this proceeding; violates no regulatory principle or precedent; as a package, benefits the ratepayers and public interest by promoting the state's effectiveness in the global economy through a transmission service pilot that does not impose significant costs on other customers; and is the product of lengthy, serious bargaining among knowledgeable and capable parties in a cooperative process, and undertaken by parties representing a wide range of interests to resolve the aforementioned issues. This Stipulation represents an accommodation of the diverse interests represented by the parties, and it is entitled to careful consideration by the Commission. For purposes of resolving the issues raised by

this proceeding, the undersigned parties further stipulate, agree and recommend as set forth below.

PARTIES

This Stipulation is entered into by Presrite and the Staff ("the Parties").

RECITALS

R.C 4905.31 permits the Commission to approve and authorize a reasonable schedule or arrangement between a mercantile customer and an EDU or a public utility electric light company upon application by a mercantile customer. Presrite filed such an application with the Commission in this docket.

The Parties agree and recommend that the Commission approve this Stipulation, the components of which are all set forth below:

1. Terms and Conditions of the Reasonable Arrangement

A. Term

The term of the proposed arrangement shall be through May 31, 2024 and commence with its effective date which shall be the date upon which the Commission permits the schedule or arrangement to become effective. No modification shall become effective without the Commission's prior approval.

B. Pricing

Under the proposed schedule or arrangement, Presrite will secure electric distribution service from CEI under the Rate GSU tariff for each of Presrite's accounts, as those terms and conditions are modified from time to time, except that Presrite may elect to opt out of the Non-Market-Based Services Rider (Rider NMB) as to any of Presrite's accounts and participate in the NMB Pilot under the terms and conditions approved by the Commission in Case No. 14-1297-EL-SSO. To ensure its enrollment in the NMB Pilot, Presrite may make an initial election to participate in the NMB Pilot within three months of a Commission order approving the Application.

C. Contract

Upon Commission approval of this Stipulation, Presrite and CEI shall enter an agreement in the form contained in Attachment A to this Stipulation. Upon Commission order, the parties shall execute the agreement and file it with the Commission. A public version of the agreement may be filed in a redacted form.

D. Commitments

1. If the application as modified by this Stipulation is approved without material modification, Presrite will make capital improvement investments in plant facilities of at least [REDACTED] over the term of the unique arrangement.
2. If the application as modified by this Stipulation is approved without material modification, Presrite will make its best effort to maintain current employee levels and to add [REDACTED] new employees during the first year of the arrangement. Within appropriate management discretion and legal requirements, Presrite will provide increases in wages and salaries and restore certain employee benefits.

E. Reporting

Presrite shall provide a report to Parties, OCC, OMAEG, and CEI annually in the form and at the time as required by Rule 4901:1-38-06, Ohio Admin. Code. Parties agree that the reports shall be deemed confidential and subject to individually arranged protective agreements. Information furnished to the Staff by Presrite in accordance with this reporting requirement shall be treated as information that the Staff has obtained in its investigatory capacity and subject to the same protections as called for under R.C. 4901.16. The report shall include (i) the amount of capital improvement investments during the previous calendar year, and (ii) updated information regarding employee levels such that parties can evaluate whether Presrite has complied with section 1.D of this Stipulation.

2. All of the related issues and concerns raised by the Parties have been addressed in the substantive provisions of this Stipulation and reflect, as a result of such discussions and compromises by the Parties, an overall reasonable resolution of all such issues.
3. This Stipulation is submitted for purposes of this proceeding only, is not deemed binding in any other proceeding and shall not be offered or relied upon in any other proceeding, except as necessary to enforce the terms of this Stipulation. The agreement of the Parties reflected in this document is expressly conditioned upon its acceptance in its entirety and without alteration by the Commission. Any party

to this Stipulation has the right to withdraw from the Stipulation if the Commission, or any court of competent jurisdiction, rejects all or any part of the Stipulation or otherwise modifies its terms or provisions. The Parties agree that if the Commission or any court of competent jurisdiction rejects all or any material part of this Stipulation, or otherwise materially modifies its terms, any adversely affected party shall have the right to file an application for rehearing or a motion for reconsideration. Additionally, the Parties agree that if the Commission or any court of competent jurisdiction rejects all or any part of the Stipulation or otherwise modifies its terms or provisions, the Applicant reserves the right to withdraw its application in this matter.

This Stipulation has been signed as of this 9th day of February 2018. The Parties respectfully request that the Commission promptly issue its Opinion and Order in accordance with the terms of this Stipulation.

Respectfully submitted,



FOR PRESRITE



**FOR STAFF OF THE PUBLIC
UTILITIES COMMISSION OF OHIO**

ATTACHMENT A

REASONABLE ARRANGEMENT AGREEMENT

THIS CONTRACT is entered into on this ____ day of _____ 2018, by and between Cleveland Electric Illuminating Company, its successors and assigns ("Company"), and Presrite Corporation, its permitted successors and assigns ("Customer"), and is effective as set forth below ("Effective Date").

WITNESSETH

WHEREAS, the Company currently provides electric distribution service to the Customer at the facilities, plant, and equipment directly associated with the manufacturing operations identified in Customer's application filed with the Public Utilities Commission of Ohio ("Commission") in Case No. 17-1981-EL-AEC ("Customer's Facilities"). The addresses of the three forging facilities and technical center, respectively, are as follows: 3665 East 78th Street, Cleveland, OH 44105; 7105 Bessemer Ave., Cleveland, OH 44127; 322 S. Cucumber Street, Jefferson, OH 44047 and 33800 Lakeland Blvd., Eastlake, OH 44095; and

WHEREAS, the Customer asserts that it wishes to expand employment, restore employment benefits, and make capital investment in its current manufacturing operations at the Customer's Facilities, which requires access to and successful deployment of capital, predicated, in part, on the Customer's ability to secure a reliable supply of electricity pursuant to terms and conditions that will provide it with a reasonable and predictable price over a term sufficient to justify significant expenditures; and

WHEREAS, in order to obtain such a supply of electricity, the Customer submitted to the Commission an application dated September 13, 2017; and

WHEREAS, the Commission has approved the Company and the Customer to execute a contract based on its _____ Opinion and Order; and

NOW, THEREFORE, in consideration of the Commission's Order approving the _____ Stipulation and Recommendation, the Company and the Customer enter into this Contract, and do hereby agree as follows:

- **Electric Service.** This Contract shall be applicable to the electric distribution and transmission service furnished by Company to the Customer's Facilities.
- The term shall be from the Effective Date through May 31, 2024.
- Customer will secure electric distribution service from CEI under the Rate GSU tariff, as those terms and conditions are modified from time to time, except that Presrite may elect to participate in the Company's Rider NMB Pilot program for one or more of its accounts. The participation shall be subject to the same terms and conditions as set forth in the NMB Pilot approved by the Commission in Case No. 14-1297-EL-SSO.

- **Assignment.** The Customer may assign this Contract with the written consent of the Company and express approval of the Commission.
- **Notices.** Any notice required or desired by either party to be given hereunder shall be made:

If to the Company at:

Cleveland Electric Illuminating Company

If to the Customer at:

Presrite Corporation
 Attn: Executive Vice President
 3665 E. 78th Street
 Cleveland, Ohio 44105
 (Email)

Either party may submit to the other party a written notice of a location, address, or title of contact person change and such notice shall serve to modify this Contract. Any communications required to be in writing pursuant to this Contract may be delivered by first class U.S. Mail, courier service or commonly used forms of electronic communication (e.g., fax or email) consistent with the provisions set forth in this document. Notice shall be deemed to be received upon actual receipt if delivered by courier, fax, or email, or three (3) days after postmarked if sent by first class U.S. Mail, postage prepaid.

- **Effective Date and Term.** The Effective Date of this Contract shall be the date upon which the Customer files this contract, following Commission approval. This Contract shall continue in effect pursuant to the terms approved by the Commission in its Order. Additionally, if, after notice and opportunity for a hearing, the Commission determines that the Customer has not substantially met the approved terms, this Contract shall terminate on the date specified by the Commission. During such term, regardless of length, the Customer shall maintain operations of its manufacturing facilities at the location or locations receiving service pursuant to this Contract.
- **Other Events of Default; Termination.** This Contract shall not be cancelled without the prior written consent of the Commission. Notwithstanding the foregoing, the parties agree that each of the following events shall individually constitute a breach of this Contract that allows the Company the right to cancel without liability to the Customer all or any part of this Contract and/or pursue any further remedies available at law or in equity: (1) the Customer assigns this Contract or any part hereof without obtaining the proper consent as provided above; or (2) the Customer becomes insolvent or makes a general assignment for the benefit of creditors or admits in writing its inability to pay debts as they mature or if a trustee or receiver of the Customer or of any substantial part of the Customer's assets is appointed by any court or proceedings instituted under any provisions of the Federal Bankruptcy Code or any state insolvency law by or against the Customer are acquiesced in or are not

dismissed within thirty (30) days or result in an adjudication in bankruptcy or insolvency.

- **Force Majeure.** Except with regard to the Customer's obligation to make payment(s) then due or becoming due to the Company, the Customer shall not be liable to the Company for any expenses, loss, or damage resulting from delays or prevention of performance arising from a Force Majeure. The Company shall not be required to perform or resume performance of its obligations to the Customer corresponding to the obligations of Customer excused by Force Majeure. "Force Majeure" shall mean acts of God, riots, strikes, labor disputes, labor or material shortages, act(s) by any government, governmental body or instrumentality, or regulatory agency (including, but not limited to, delay or failure to act in the issuance of approvals, permits, or licenses), fires, explosions, floods, breakdown of or damage to plants, equipment, or facilities, or other causes of similar nature which are beyond the reasonable control of the Customer and which wholly or partially prevent the receipt or utilization of electricity by the Customer. If the Customer is affected by Force Majeure, the Customer shall give notice to the Company as promptly as practical of the nature and probable duration of such Force Majeure, with the effect of such Force Majeure eliminated insofar as possible with all reasonable dispatch. The performance by the Customer hereunder shall be excused only to the extent made necessary by the Force Majeure condition. The Customer shall make reasonable efforts to avoid the adverse impacts of a Force Majeure and to resolve the event or occurrence once it has occurred in order to resume performance, provided that the Customer shall not be required to settle a labor dispute on terms unacceptable to the Customer; and provided further, that the Customer shall not be required to rebuild all or a major portion of its facilities which are destroyed or substantially impaired by a Force Majeure Event.
- **Reporting.** Subject to such confidentiality requirements as may be appropriate, the Customer shall, in accordance with Rule 4901:1-38-06, Ohio Administrative Code, provide the Company and Commission Staff no later than April 30 of each year with an annual report that demonstrates the Customer's compliance with the eligibility criteria and commitments, the value of any incentives received by the Customer and such other information as the Commission may request for purposes of monitoring compliance with this Contract. The reports described herein shall not be filed with the Commission unless otherwise directed by the Commission.
- **Dispute Resolution.** If a dispute arises out of this Contract, and if the dispute relates to a subject matter which is within the Commission's exclusive or primary jurisdiction, the parties agree first to try in good faith to settle the dispute. Nothing herein shall be construed or implied to preclude either party from initiating litigation on questions outside of the Commission's jurisdiction if they are unable to resolve such dispute through negotiations.
- **Mutual Cooperation.** The parties agree to provide mutual and timely support for purposes of effectively administering this Contract. Such support shall include,

without limitation, reasonable and timely access to documents and personnel of the other party.

- **Governing Law and Continuing Jurisdiction.** The validity, construction and performance of this Contract shall be determined in accordance with the laws of the State of Ohio not taking into account any conflict of law provisions. The parties understand and agree that the Commission shall have continuing jurisdiction, for good cause shown, to modify, amend or terminate this Contract and that good cause will be presumed in the event that the Customer has not complied with the commitments set forth in the Stipulation and Recommendation as approved by the Commission in Case No. 17-1981-EL-AEC on _____, 2018.
- **Interpretation.** This Reasonable Arrangement Agreement and the Company's standard tariff (including the terms and conditions of service), as applicable and as amended from time to time by the Commission, including any contract(s) required by the Company's standard tariff, sets forth the entire agreement between the parties. **THE PARTIES EXPRESSLY ACKNOWLEDGE THAT NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, WRITTEN OR ORAL, HAVE BEEN MADE BY EITHER PARTY TO THE OTHER.** In the event of any conflict between the Company's standard tariff and this Contract, the Contract shall control. In the event of any conflict between the terms and conditions set forth in this Contract and the Commission's Order, the Commission's Order shall control. This Contract remains subject to the Company's standard tariff as applicable and as amended from time to time, unless and to the extent otherwise expressly stated herein.
- **Reservation of Rehearing and Appeal Rights.** The Company and the Customer reserve their rights to apply for rehearing before the Commission and to pursue an appeal before the Supreme Court of Ohio and the Contract remains subject to modification or termination based on the outcome of any such proceedings.

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be executed by their duly authorized officers or representatives as of the day and year first above written.

Presrite Corporation (Customer)

**Cleveland Electric Illuminating
Company (Company)**

By: _____

By: _____

Title: _____

Title: _____

CERTIFICATE OF SERVICE

I hereby certify that a service copy of the foregoing *Joint Stipulation and Recommendation [PUBLIC VERSION]* was sent by, or on behalf of, the undersigned counsel for Presrite to the following parties of record this 9th day of February 2018, by ordinary mail.

/s/ Frank P. Darr

Frank P. Darr

Christopher Healey (0086027)
65 East State Street, 7th Floor
Columbus, OH 43215-4203
christopher.healey@occ.ohio.gov

**COUNSEL FOR THE OFFICE OF THE OHIO
CONSUMERS' COUNSEL**

Kimberly W. Bojko (0069402)
CARPENTER LIPPS & LELAND LLP
280 North High Street, Suite 1300
Columbus, OH 43215
bojko@carpenterlipps.com

COUNSEL FOR OMAEG

Robert M. Endris
FIRSTENERGY SERVICE COMPANY
76 South Main Street
Akron, OH 44308
rendris@firstenergycorp.com

**COUNSEL FOR THE CLEVELAND ELECTRIC
ILLUMINATING COMPANY**

William Wright
Thomas McNamee
ATTORNEY GENERAL'S OFFICE
30 East Broad St., 16th Fl.
Columbus, OH 43215
william.wright@ohioattorneygeneral.gov
thomas.mcnamee@ohioattorneygeneral.gov

Patricia Schabo
Legal Department
PUBLIC UTILITIES COMMISSION OF OHIO
180 East Broad Street, 12th Floor
Columbus, OH 43215
patricia.schabo@puc.state.oh.us

ATTORNEY EXAMINER