

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE APPLICATION
FOR ESTABLISHMENT OF A REASONABLE
ARRANGEMENT BETWEEN PRESRITE
CORPORATION AND THE CLEVELAND
ILLUMINATING COMPANY.

CASE NO. 17-1981-EL-AEC

OPINION AND ORDER

Entered in the Journal on March 14, 2018

I. SUMMARY

{¶ 1} The Commission adopts and approves the stipulation authorizing a unique arrangement between Presrite Corporation and the Cleveland Electric Illuminating Company.

II. PROCEDURAL BACKGROUND

{¶ 2} Presrite Corporation (Presrite) is a mercantile customer, as defined by R.C. 4928.02(A)(19), that operates three hot metal forging facilities and a technical center with machining operations. The Cleveland Electric Illuminating Company (CEI) is a public utility and electric distribution utility (EDU) as defined under R.C. 4905.02 and R.C. 4928.01, respectively. As such, CEI is subject to the jurisdiction of this Commission.

{¶ 3} On March 31, 2016, the Commission approved an electric security plan (ESP) by which CEI offers a standard service offer to consumers within its certified territory as required by R.C. 4928.141. *In re Ohio Edison Co., The Cleveland Elec. Illum. Co., and The Toledo Edison Co. for Authority to Provide for a Std. Serv. Offer Pursuant to R.C. 4928.143 in the Form of an Elec. Sec. Plan*, Case No. 14-1297-EL-SSO, Opinion and Order (Mar. 31, 2016) (*ESP IV Case*). As part of the *ESP IV Case*, the Commission authorized CEI to establish a small scale pilot program offering an alternative means for customers to obtain and pay for services otherwise provided by or through the Non-Market-Based Services Rider (Rider NMB). *Id.* Through subsequent rehearing, the Commission

clarified that one avenue for a potential customer to participate in the Rider NMB pilot program (NMB Pilot) would be through the filing of an application pursuant to R.C. 4905.31. *ESP IV Case*, Fifth Entry on Rehearing (Oct. 12, 2016) at ¶309.

{¶ 4} 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 that utility.

{¶ 5} Pursuant to those authorities, Presrite filed an application for approval of a unique arrangement for electric service with CEI on September 13, 2017. In the application, Presrite represents that the unique arrangement would allow it to make necessary capital improvements, as well as sustain and expand its employment, to position itself for continued business viability. Also on September 13, 2017, Presrite filed a motion for protective order by which it sought to protect the confidential nature of certain information contained in the application.

{¶ 6} Between September 19, 2017, and November 28, 2017, the Ohio Consumers' Counsel (OCC), the Ohio Manufacturer's Association Energy Group (OMAEG), and CEI filed motions to intervene. OCC and OMEAG also filed comments regarding the application.

{¶ 7} On February 9, 2018, Presrite filed a joint stipulation and recommendation (Stipulation) executed by Presrite and Commission Staff (Staff) along with supporting testimony and an accompanying motion for protective order.

{¶ 8} By Entry dated February 13, 2018, the attorney examiner granted the motions to intervene and scheduled a hearing on the Stipulation.

{¶ 9} The hearing was held, as scheduled, on February 20, 2018. Both the public and confidential versions of Presrite's application (Jt. Ex. 1; Jt. Ex. 1C), the testimony of Presrite witness Gary Davis in support of the Stipulation (Jt. Ex. 2; Jt. Ex. 2C), and the

Stipulation (Jt. Ex. 3; Jt. Ex. 3C) were admitted to the record. At the hearing, neither CEI nor OCC opposed the Stipulation; OMAEG did not appear.¹ Also on February 20, 2018, Presrite filed a motion for protective order to protect and prohibit the disclosure of certain information contained in those exhibits marked and admitted as confidential.

III. SUMMARY OF APPLICATION

{¶ 10} Presrite reports that it operates hot metal forging facilities on three sites located in Cleveland and Jefferson, Ohio, as well as a technical center with machining operations at a fourth site in Eastlake, Ohio. Presrite is part of the global market, selling to international customers such as Caterpillar, Inc., Deere & Company, Dana Manufacturing, and similar companies that demand a globally competitive supply base. Presrite asserts that its operations employ and sustain a significant annual payroll and further support employment at numerous other Ohio businesses that provide it products and services. Currently, Presrite takes transmission service subject to the nonbypassable Rider NMB and is not eligible to participate in the NMB Pilot. (Jt. Ex. 1 at 1.)

{¶ 11} However, as a result of various factors including a global commodity collapse in 2013-2015, Presrite discloses that it reduced its workforce, froze wages, cut benefits, and reduced capital expenditures. Hindered by circumstances outside its control—identified as an uneven international playing field, general economic conditions, and increasing costs of inputs such as electric service—Presrite states it has a limited ability to make investments in its facilities and address employment related issues. Yet, to remain competitive, Presrite must invest in its workforce and made capital investments, which prompts Presrite to seek a unique arrangement. (Jt. Ex. 1 at 2.)

{¶ 12} Presrite is currently evaluating upgrades of its current manufacturing operations at all locations, upgrades that require a reliable supply of electricity on terms

¹ In his testimony, Mr. Davis avers that CEI, OMAEG, and OCC each indicated it did not oppose approval of the Stipulation (Jt. Ex. 3 at 4).

and conditions that will provide a reasonable and predictable price. This, Presrite states, would allow a significant capital investment to ensure the continued, successful operation of its Ohio facilities. Presrite also anticipates that the arrangement, if approved, would place it in a better position to engage in long-term planning and investments to ensure that it remains competitive in the global marketplace. (Jt. Ex. 1 at 2.)

{¶ 13} The application proposes a six-year term, until May 21, 2024, during which Presrite would secure electric distribution service from CEI under the GSU tariff, except that Presrite may elect to exempt from Rider NMB one or more of its accounts. Under the terms of the application, the initial election to exempt accounts could occur within 60 days of its approval by the Commission, with an option to later elect to exempt an existing or additional accounts. The application further proposes that the total charges for distribution service of each Presrite account would be reduced by a credit, the amount of which would be based in part on Presrite's monthly billing demand. Finally, Presrite would commit to make capital improvements in plant facilities in a specified dollar amount and make its best efforts to maintain current employee levels and add a specified number of new employees within the term of the arrangement; within appropriate management discretion and legal requirements, Presrite would additionally provide wage and salary increases, and restore certain employee benefits. (Jt. Ex. 1 at 2.)

IV. MOTIONS FOR PROTECTIVE ORDER

{¶ 14} Presrite has filed three motions for a protective order in this proceeding. First, on September 13, 2017, Presrite moved for an order to protect the confidentiality of certain information contained in its Application by prohibiting its disclosure. Second, on February 9, 2018, Presrite similarly moved for an order to protect the confidential information contained in the Stipulation, as well as in the testimony of Gary Davis submitted in support of the Stipulation. And, third, on February 20, 2018, Presrite moved to protect the information contained in the confidential versions of the Application, Stipulation, and testimony in support as marked and admitted into evidence at the

hearing. All three motions were filed pursuant to Ohio Adm.Code 4901-1-24(D) and claim that the pertinent information constitutes trade secrets deserving protection under R.C. 149.43 and Ohio case law. No memoranda opposing the motions have been filed; and, no party objected to confidential treatment of the information at the February 20, 2018 hearing.

{¶ 15} Presrite seeks to protect information relating to employment levels, capital expenditures, and, in the case of the Application, requested rates. Presrite characterizes the information as competitively sensitive and highly proprietary business and financial information that falls within the statutory interpretation of a trade secret under R.C. 1333.61(D). Presrite asserts that public disclosure of the information would jeopardize Presrite's business position and ability to compete. Furthermore, Presrite states that non-disclosure of the information would not impair the purposes of R.C. Title 49.

{¶ 16} Under R.C. 4905.07, "all facts and information in the possession of the [Commission] shall be public * * * [and] open to inspection by interested parties or their attorneys," except as provided in R.C. 149.43. In turn, R.C. 149.43 provides that a record prohibited from release under state or federal law is not a "public record." R.C. 149.43(A)(1)(v). This exemption includes trade secrets. *State ex rel. Besser v. Ohio State Univ.*, 89 Ohio St.3d 396, 399, 732 N.E.2d 737 (2000) ("Trade secrets are exempt from disclosure under the 'state or federal' law exemption of R.C. 149.43.").

{¶ 17} Ohio's statutory definition of a trade secret is found in R.C. 1333.61. To qualify as a trade secret under the statute, the pertinent business or financial information must both derive "independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other person who can obtain economic value from its disclosure or use" and be subject to reasonable efforts to maintain its secrecy. R.C. 1333.61(D). The Supreme Court of Ohio provided further guidance by establishing a six-part test to apply when analyzing a trade secret

claim. *State ex rel. The Plain Dealer v. Ohio Dept. of Ins.*, 80 Ohio St.3d 513, 524-525, 687 N.E.2d 661 (1997).

{¶ 18} The Commission has examined the information redacted from the Application, the Stipulation, and the submitted testimony in support of the Stipulation. We have also reviewed Presrite's arguments in support of retaining the confidentiality of the information by shielding it from public disclosure. In light of our review and the legal standards discussed above, the Commission concludes that the redacted information falls within the legal definition of a trade secret. The Commission further finds that the nondisclosure of information is not inconsistent with the purposes of R.C. Title 49. Accordingly, we find that Presrite's September 13, 2017, February 9, 2018, and February 20, 2018 motions for protective order should be granted. Any party wishing to extend this confidential treatment should file an appropriate motion at least 45 days in advance of the expiration date. *Ohio Adm.Code 4901-1-24(F)*.

V. STIPULATION

{¶ 19} As stated above, on February 9, 2018, Presrite filed a Stipulation that, if adopted, would resolve all issues in this case. The following is a summary of the Stipulation and is not intended to supersede or replace the Stipulation.

- (1) The effective date of the proposed arrangement will be the date upon which the Commission permits it to become effective. No modification shall be effective without the Commission's prior approval.
- (2) The term of the arrangement will extend through May 31, 2024.
- (3) Presrite will take distribution service from CEI under the Rate GSU tariff for each of Presrite's accounts, except that Presrite

may elect to opt out of Rider NMB as to any of its accounts and participate in the NMB Pilot under the terms and conditions approved by the Commission in Case No. 14-1297-EL-SSO. Presrite may make an initial election to participate in the NMB Pilot within three months of a Commission order approving the Application.

- (4) Upon Commission approval of the Stipulation, Presrite and CEI shall enter into an agreement in the form of Attachment A to the Stipulation, execute that agreement, and file it with the Commission. A public version of the arrangement may be filed in redacted form.
- (5) If the application as modified by the Stipulation is approved without material modification, Presrite will make capital improvement investments in plant facilities in at least the agreed amount over the term of the unique arrangement.
- (6) If the application as modified by the Stipulation is approved without material modification, Presrite will make its best effort to maintain current employee levels and to add a certain number of 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.
- (7) Presrite shall provide a report to Staff, OCC, OMAEG, and CEI annually in the form and at the time as required by Ohio Adm.Code 4901:1-38-06. Presrite and Staff agree that the reports shall be deemed confidential and subject to

individually arranged protective agreements. Information provided to Staff by Presrite pursuant to this reporting requirement shall be treated as information obtained by Staff in its investigatory capacity and subject to the protections 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 the parties can evaluate whether Presrite has complied with the terms of the Stipulation.

(Jt. Ex. 3 at 4-5.)

VI. COMMISSION CONCLUSION

{¶ 20} Ohio Adm.Code 4901-1-30 authorizes parties to Commission proceedings to enter into a stipulation. Although not binding on us, the Commission may afford substantial weight to the terms of such an agreement. *Consumers' Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d 123, 126, 592 N.E.2d 1370 (1992). This is especially true where the stipulation is unopposed by any party and resolves all issues presented in the proceeding in which it is offered.

{¶ 21} 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., (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 the 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 Supreme Court of Ohio has endorsed the Commission's use of these criteria to resolve cases 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, supra*, at 126.

{¶ 22} Applying these criteria, the Commission finds that the Stipulation is reasonable and should be adopted. In his testimony, Gary Davis characterized the negotiating parties as capable and knowledgeable about the issues raised in this proceeding, noted the participation of experienced counsel and the presence of diverse stakeholders, and observed that all intervening parties had the opportunity to conduct discovery. Moreover, it is noteworthy that settlement discussions resulted in Presrite making several concessions. Specifically, Presrite withdrew its request for a distribution credit, strengthened its commitments relative to the arrangement, and, with the exception of initial enrollment process, will participate in the NMB Pilot on the same terms and conditions as approved by the Commission. Given these factors as a whole, we find that the Stipulation is the product of serious bargaining among capable, knowledgeable parties. (Jt. Ex. 2 at 4-6.)

{¶ 23} We further find that the Stipulation, as a package, benefits ratepayers and the public interest. Mr. Davis testified that the arrangement will provide Presrite with a means of remaining competitive and viable, which translates to the continued employment of over 450 people and the ability to expand its employment. This investment in human capital, combined with investment in Presrite's facilities, will benefit the company, its customers and the communities supported by Presrite's facilities. Additionally, the arrangement would encourage Presrite to exercise its abilities to reduce load during system peaks. Reducing load during system peaks tends to increase system reliability and stability, the prevention of load shedding during emergency events, and job retention. Moreover, Mr. Davis explained that the arrangement creates no lost revenue that would be recovered by CEI under its economic development rider, which means these benefits can be realized without any explicit cost recovery from other CEI customers. (Jt. Ex. 2 at 6-7.)

{¶ 24} Finally, the Commission finds that there is no evidence that the Stipulation violates any important regulatory principle or practice. To the contrary, Mr. Davis provides testimony to support the opposite conclusion, stating that the Stipulation fits squarely within Ohio's regulatory policy by promoting the availability of adequate, reliable, and reasonably priced electric service (Jt. Ex. 2 at 7).

{¶ 25} The Stipulation is the result of serious bargaining among capable, knowledgeable parties espousing competing and complimentary interests. The unique arrangement reached within the Stipulation benefits Presrite and the public by increasing Presrite's ability to compete in the global market and, thus, support its employees and surrounding communities. Moreover, no important regulatory principle or practice is violated; to the contrary, the arrangement fosters state policies of ensuring availability of adequate, reliable and reasonably priced electric service while facilitating the competitiveness in the global economy. R.C. 4928.02(A) and (N). Accordingly, we conclude that the Stipulation is reasonable and should be adopted.

VII. FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶ 26} Presrite is a mercantile customer as defined by R.C. 4928.02(A)(19).

{¶ 27} CEI is an EDU and public utility as defined under R.C. 4928.01 and R.C. 4905.02; therefore, CEI is subject to the Commission's jurisdiction.

{¶ 28} 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 that utility.

{¶ 29} On September 13, 2017, Presrite filed an application for approval of a unique arrangement for electric service with CEI and a motion for protective order.

{¶ 30} On February 9, 2018, Presrite and Staff filed a joint stipulation and recommendation that resolves all issues in this proceeding. Also on February 9, 2018, Presrite filed testimony in support of the stipulation and a motion for protective order.

{¶ 31} By Entry dated February 13, 2018, the attorney examiner granted motions to intervene filed by OCC, OMAEG, and CEI and scheduled a hearing on the stipulation.

{¶ 32} On February 20, 2018, the evidentiary hearing was held as scheduled, and Presrite filed a third motion for protective order.

{¶ 33} The joint stipulation meets the criteria used by the Commission to evaluate stipulations, is reasonable, and should be adopted.

VIII. ORDER

{¶ 34} It is, therefore,

{¶ 35} ORDERED, That Presrite's motions for protective order are granted. It is, further,

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

{¶ 37} ORDERED, That Presrite and CEI take all necessary steps to carry out the terms of the Stipulation and this Opinion and Order. It is, further,

{¶ 38} 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,

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

THE PUBLIC UTILITIES COMMISSION OF OHIO

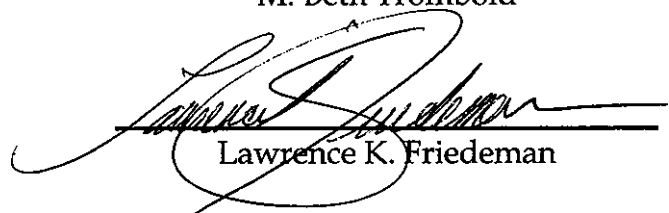


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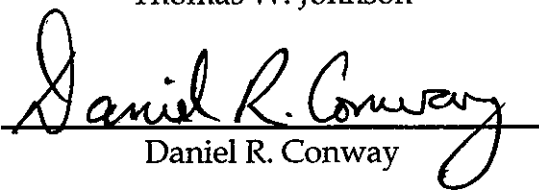
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