

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application for)
Approval of a Contract for Electric Service) Case No. 08-883-EL-AEC
Between Columbus Southern Power)
Company and Solsil, Inc.)

In the Matter of the Application for)
Approval of a Contract for Electric Service) Case No. 08-884-EL-AEC
Between Ohio Power Company and Globe)
Metallurgical, Inc.)

ENTRY

The attorney examiner finds:

- (1) Pursuant to Section 4905.31, Revised Code, the Commission has the authority to approve schedules for electric service upon application of a public utility or establish reasonable arrangements for electric service upon application of a public utility and/or mercantile customers.
- (2) Columbus Southern Power Company (CSP) and Ohio Power Company (OP) (collectively, AEP), are public utilities as defined in Section 4905.02, Revised Code, and, as such, are subject to the jurisdiction of this Commission.
- (3) By finding and order issued on July 31, 2008, the Commission approved proposed contracts and addendums, as modified by the Commission, between CSP and Solsil, Inc. (Solsil) and between OP and Globe Metallurgical, Inc. (Globe). The July 31, 2008 finding and order also granted the motions to intervene filed by the Ohio Energy Group and the Office of the Ohio Consumers' Counsel (OCC).
- (4) On August 5, 2008, The Kroger Co. (Kroger) filed a motion to intervene in Case No. 08-884-EL-AEC. No memorandum contra Kroger's motion to intervene was filed. The attorney examiner finds that Kroger's motion to intervene is reasonable and should be granted.
- (5) On August 20, 2008, CSP and Solsil filed a revised contract, as required by the Commission's July 31, 2008 finding and order.

- (6) OCC filed an application for rehearing on September 2, 2008. AEP filed a memorandum contra OCC's application for rehearing on September 12, 2008. The Commission subsequently denied OCC's application for rehearing by operation of law, pursuant to Section 4903.10, Revised Code.
- (7) On November 12, 2010, AEP, Globe, and Solsil filed a stipulation and recommendation.
- (8) OCC filed comments on the stipulation and recommendation on December 2, 2010; AEP, Globe, and Solsil filed reply comments on December 16, 2010.
- (9) In its comments, OCC notes that Chapter 4901:1-38, Ohio Administrative Code (O.A.C.), provides for three types of reasonable arrangements — economic development arrangements, energy efficiency arrangements, and unique arrangements. OCC contends that the stipulation does not meet the filing requirements for any type of reasonable arrangement, although OCC points to only one specific shortcoming in the filing. OCC states that the stipulation does not contain an affidavit from a company official verifying the veracity of the information provided, which Chapter 4901:1-38, O.A.C., requires be included as part of the application for any type of reasonable arrangement.
- (10) In response, AEP, Globe, and Solsil explain that the stipulation resolves issues that arose under the reasonable arrangements previously approved by the Commission. They characterize OCC's comments as a collateral attack on the Commission's July 31, 2008 finding and order and contend that OCC incorrectly claims that the stipulation must comply with Chapter 4901:1-38, O.A.C. AEP, Globe, and Solsil alternatively maintain that even if those rules do apply, the information contained in the stipulation satisfies the affidavit requirement. Finally, AEP, Globe, and Solsil submit that the unique circumstances associated with these reasonable arrangements, which predate the effective date of Chapter 4901:1-38, O.A.C., support a finding that good cause exists for a waiver of the affidavit requirement. They contend that, if necessary, a waiver should be granted because the signatory parties

substantially complied with the attestation requirement by filing an agreement signed by corporate officers of the parties.

- (11) The attorney examiner finds that Rule 4901:1-38-02(B), O.A.C., allows for a waiver of any requirement of Chapter 4901:1-38, O.A.C., other than a requirement mandated by statute, for good cause shown. The attorney examiner finds that good cause exists to grant AEP, Globe, and Solsil a waiver of the affidavit requirement imposed by Chapter 4901:1-38, O.A.C., as those parties have substantially complied with that requirement by filing an agreement signed by their respective corporate officers. Accordingly, the request by AEP, Globe, and Solsil for a waiver of the affidavit requirement is granted.
- (12) Having reviewed the stipulation and recommendation, the comments, and the reply comments, the attorney examiner finds that this matter should be set for hearing. In addition, the attorney examiner finds it reasonable under the circumstances of these cases to modify the 20-day intervention deadline established by Chapter 4901:1-38, O.A.C. Accordingly, the following procedural schedule shall be set:
- February 11, 2011 Deadline for filing motions to intervene
- March 21, 2011 Prehearing conference
 Pre-filed testimony deadline
- March 28, 2011 Hearing commences
- Both the March 21, 2011 prehearing conference and the March 28, 2011 hearing will take place at 10:00 a.m., at the offices of the Commission, 180 East Broad Street, 11th Floor, Hearing Room 11-C, Columbus, Ohio 43215-3793.
- (13) OCC additionally requests that the response time for discovery be shortened to seven days and that all discovery requests and responses be served by e-mail. AEP, Globe, and Solsil oppose expediting discovery in this matter, arguing that, since OCC has not submitted a discovery request to any of the signatory parties to the stipulation, OCC has not demonstrated any need for expedited discovery. The attorney examiner finds that OCC's request for expedited discovery should be denied at this time as the procedural schedule established in finding (12)

affords the parties sufficient time to conduct discovery. However, the attorney examiner finds that OCC's request that the parties should serve all discovery requests and responses by e-mail is reasonable and should be granted.

It is, therefore,

ORDERED, That Kroger's motion to intervene in Case No. 08-884-EL-AEC be granted. It is, further,

ORDERED, That AEP, Globe, and Solsil's request for a waiver of the affidavit requirement imposed by Chapter 4901:1-38, O.A.C, be granted. It is, further,

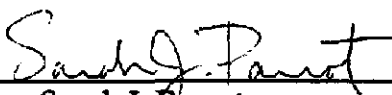
ORDERED, That the procedural schedule set forth in finding (12) be adopted. It is, further,

ORDERED, That OCC's request for expedited discovery be denied, in accordance with finding (13). It is, further,

ORDERED, That all discovery requests and responses be served by e-mail, in accordance with finding (13). It is, further,

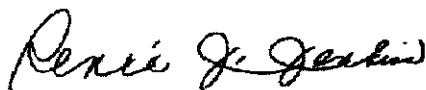
ORDERED, That a copy of this entry be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO


By: Sarah J. Parrot
Attorney Examiner

JPJ/sc

Entered in the Journal
JAN 24 2011



Renee J. Jenkins
Secretary