

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application)
for Establishment of a Reasonable)
Arrangement between ASHTA Chemicals) Case No. 12-1494-EL-AEC
Incorporated and The Cleveland Electric)
Illuminating Company.)

OPINION AND ORDER

The Public Utilities Commission of Ohio, having considered the record in this matter and the joint stipulation and recommendation submitted by the signatory parties, and being otherwise fully advised, hereby issues its opinion and order.

APPEARANCES:

McNees Wallace & Nurick, LLC, by Samuel C. Randazzo, 21 East State Street, 17th floor, Columbus, Ohio 43215, on behalf of ASHTA Chemicals, Inc.

David F. Boehm, Boehm Kurtz & Lowry, 36 East Seventh Street, Suite 1510, Columbus, OH 45202, on behalf of The Ohio Energy Group.

Mike DeWine, Ohio Attorney General, by Thomas W. McNamee, Assistant Attorney General, 180 East Broad Street, 6th floor, Columbus, Ohio 43215, on behalf of Staff of the Commission.

OPINION:

I. Background

ASHTA Chemicals, Inc. (ASHTA), is a mercantile customer as defined by R.C. 4928.01 and obtains electric service from The Cleveland Electric Illuminating Company (CEI). CEI is an electric utility as defined by R.C. 4928.01 and, as such, is subject to the jurisdiction of the Commission.

On May 7, 2012, ASHTA filed an application (2012 Application) in accordance with R.C. 4905.31 and Ohio Adm.Code 4901:1-38-05(B) seeking approval of a reasonable arrangement with CEI for ASHTA's Ashtabula, Ohio facilities. CEI and Staff filed comments on ASHTA's application on June 28, 2012. On August 1, 2012, the Commission issued an entry directing ASHTA to file additional information regarding its application, including a recommended price per kWh, a recommended discount per

kWh, and an estimated level of delta revenue. On August 20, 2012, ASHTA filed the additional information as directed by the Commission. Moreover, ASHTA filed testimony in support of the 2012 Application, containing proposed modifications to the 2012 Application regarding the scope of the project and the scope of the job creation that would occur because of the arrangement. On By entry issued November 5, 2012, the attorney examiner granted motions to intervene filed by CEI and OEG. On January 22, 2013, the attorney examiner granted a motion filed by ASHTA to continue the procedural schedule. On May 31, 2013, ASHTA and Staff filed a motion for a continuance, and by entry issued June 3, 2013, the attorney examiner granted the joint motion for continuance and set this matter for hearing on September 25, 2013. At the evidentiary hearing, ASHTA submitted a joint stipulation and recommendation (Stipulation) with entered into with Staff and OEG.

II. Summary of the 2012 Application

In its 2012 Application, ASHTA explains that it manufactures and markets chlorine and potassium-based inorganic chemicals at its facility in Ashtabula, Ohio. ASHTA's manufacturing facilities are located within the certified service area of CEI, which 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. ASHTA receives electric distribution service from CEI at transmission voltage 138 kV. According to ASHTA, the cost of electricity is a significant percentage of ASHTA's total production cost. In its 2012 Application, ASHTA indicates that it is evaluating a capital expenditure program to make significant changes in the manufacturing process at its current location in Ashtabula, Ohio. ASHTA is seeking an arrangement that will provide it with a reasonable and predictable electricity price over a term that will allow ASHTA to make such a large capital investment in its facilities. (2012 Application at 1-2.) ASHTA estimates that its investment will make its manufacturing facility viable for many years, allow for substantial operational and environmental performance improvements, sustain current employment of 90 employees, and likely expand ASHTA's direct employment. Moreover, the capital investment will create additional jobs related to design, engineering, and construction during the project cycle. ASHTA contends that, without the proposed capital investment, its current Ohio-based manufacturing process is not sustainable. ASHTA is currently sourcing generation supply and intends to do so under the arrangement. (2012 Application at 3-4.)

ASHTA further requests that the Commission approve, as part of the reasonable arrangement, an exemption throughout the term of the reasonable arrangement from CEI's demand side-management and energy efficiency rider (Rider DSE-2). Additionally, ASHTA seeks that the Commission authorize CEI to provide a credit of \$10 per kW-month for the portion of ASHTA's demand that can be offered as a capacity resource into the base residual auctions of PJM Interconnection, Inc. (PJM). Upon

Commission approval, ASHTA believes that the arrangement will: (1) facilitate ASHTA's ability to compete in the global economy; (2) facilitate ASHTA obtaining the management and ownership approvals required to invest the capital that must be invested to transform its current manufacturing process; (3) address certain environmental concerns; and (4) reduce the electrical energy intensity of ASHTA's manufacturing process. (2012 Application at 2.)

In exchange for the aforementioned terms of the proposed reasonable arrangement, ASHTA states it will commit its peak demand and energy efficiency capabilities, including its mercantile customer advance energy resource capabilities, towards CEI's energy efficiency and peak demand portfolio obligation. ASHTA points out that not only are the rates in the 2012 Application necessary to maintain the competitiveness of its facilities, but they may also allow ASHTA to expand its pledged workforce. (2012 Application at 3-4.)

III. Summary of the Stipulation

The Stipulation was 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) ASHTA will undergo a capital investment of at least \$60 million at its existing manufacturing facility in Ashtabula, Ohio, to replace its existing mercury-cell-based manufacturing process.
- (2) During the term of the reasonable arrangement, ASHTA will retain 90 full-time or full-time equivalent direct employees and make a good faith effort to hire an additional five full-time or full-time equivalent employees upon commercial operation of the new manufacturing process.
- (3) CEI will bill ASHTA monthly distribution-related charges based on the following schedule: CEI will first compute what ASHTA's distribution-related bill would be under the otherwise applicable rate schedule, excluding Rider DSE-2, as well as the state kWh tax rider (Rider SKT). The amount billed will depend on a per kVa of monthly billing demand basis, but shall not exceed \$25,000 in one billing month and CEI shall be entitled to recover through its delta revenue recovery rider (Rider DRR) 100 percent of any delta revenue that may arise from this limitation on the amount that CEI may bill ASHTA for distribution-related charges.

- (4) In recognition of ASHTA's existing peak demand reduction (PDR), ASHTA will have immediate exemption from Rider DSE-2 if ASHTA commits such capabilities to CEI for the term of the exemption, which is to be effective with the first billing month subsequent to the Commission's approval and extend for a period of 36 billing months.
- (5) ASHTA's exemption from Rider DSE-2 will continue beyond the 36-month period of exemption, provided that the facility is commercially operational and Staff verifies the energy savings.
- (6) The electrical energy intensity reduction verification process will rely on the "as-found" method of measurement.
- (7) ASHTA is subject to the rates, terms and conditions of the otherwise applicable distribution rate schedule.
- (8) ASHTA will pay for transmission service through CEI and PJM will bill CEI for transmission service on behalf of ASHTA.
- (9) ASHTA will continue to competitively source capacity and energy and pay CEI in accordance with the competitive supply contract.
- (10) ASHTA will commit its PDR capabilities to CEI in exchange for an exemption from CEI's rider to collect its energy efficiency and peak demand portfolio compliance costs.
- (11) ASHTA will be exempt from the advanced energy, energy efficiency and PDR cost recovery mechanisms in exchange for the commitment of ASHTA's customer-sited capabilities.
- (12) CEI will be able to count the energy efficiency gain and the advanced energy and renewable resource for purposes of meeting its compliance benchmarks.
- (13) The arrangement will be in place for a minimum term of five years with the possibility of extending the arrangement to a maximum of eight years. The term shall run from the date that ASHTA provides written notification to CEI and the Staff that its new manufacturing process has begun commercial operation.

IV. Consideration of the Stipulation

R.C. 4905.01 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. 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.

The standard of review for considering the reasonableness of a stipulation has been discussed in a number of prior Commission proceedings. *In re The Cincinnati Gas & Electric Company*, Case No. 91-410-EL-AIR, Opinion and Order (April 14, 1994); *In re The Western Reserve Telephone Company*, Case No. 93-230-TP-ALT, Opinion and Order (March 30, 1994); *In re Ohio Edison Co.*, Case No. 91-698-EL-FOR, et al., Opinion and Order (December 30, 1993); *In re The Cleveland Electric Illum. Co.*, Case No. 88-170-EL-AIR, Opinion and Order (January 30, 1989); *In re Restatement of the Accounts and Records of The Cincinnati Gas & Electric Co., The Dayton Power and Light Co., and Columbus & Southern Ohio Electric Co.*, Case No. 84-1187-EL-UNC, Opinion and Order (November 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?

The Ohio Supreme Court 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 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.

ASHTA witness Kevin Murray testified that the Stipulation is the product of serious bargaining and negotiation, and benefits ratepayers and the public interest. ASHTA witness Murray explained that the Stipulation would enable the commercial operation of the new manufacturing process as well as allow for an increase in employment. (Tr. at 8-9.) Furthermore, ASHTA witness Murray opined that the Stipulation does not violate any regulatory principle or practice (Tr. at 9). Although CEI was not a signatory party to the Stipulation, counsel for CEI asserted that CEI did not oppose the adoption of the Stipulation by the Commission (Tr. at 11).

The Commission finds that the Stipulation, as proposed, is reasonable and should be adopted. As indicated by the parties, the Stipulation will allow ASHTA to invest at least \$60 million in order to facilitate a successful transformation, which will position ASHTA's Ohio manufacturing facility to be viable for many years, allow for operational and environmental performance improvements, sustain its current employment of 90 employees and likely expand ASHTA's direct employment. (Stipulation at 3.) The Commission finds that this is an important aspect of the Stipulation, as it not only benefits the public interest by facilitating job growth in northeast Ohio, but also aids in enhancing Ohio's effectiveness in the global economy (Stipulation at 4-5).

Therefore, 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 (Stipulation at 4). Further, the Stipulation benefits ratepayers and the public interest by allowing ASHTA to maintain the competitiveness of its facilities as well as expand its workforce in order to fulfill operational efficiencies (Stipulation at 3). Accordingly, the Commission finds that the Stipulation is reasonable and should be adopted.

The Commission notes, however, that this particular reasonable arrangement presents unusual circumstances not previously addressed by the Commission in our application of R.C. 4905.31. Accordingly, we will approve this application only on a pilot basis. As a result, before approving any similar proposed reasonable arrangement, the Commission will thoroughly review whether this stipulation obtains the promised economic development and job retention benefits to Ohio ratepayers, in light of the rate support provided by the stipulation.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

- (1) On May 7, 2012, ASHTA filed an application for the establishment of a reasonable arrangement.
- (2) The evidentiary hearing on this matter was held on September 25, 2013.

- (3) At the evidentiary hearing, a stipulation was submitted on the record by ASHTA, OEG, and Staff.
- (4) The Stipulation meets the criteria used by the Commission to evaluate stipulations. Consequently, the Commission finds the Stipulation is reasonable and should be adopted.

ORDER:

It is, therefore,


ORDERED, That the Stipulation be approved and adopted. It is, further,

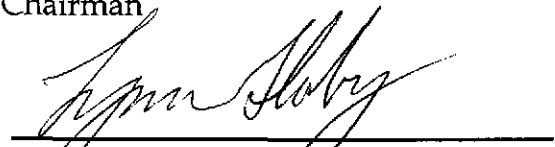
ORDERED, That ASHTA take all necessary steps to carry out the terms of the Stipulation and this order. It is, further,

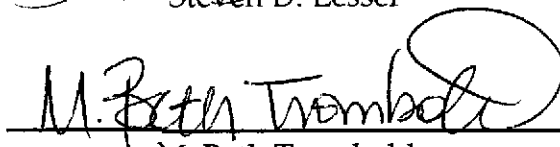
ORDERED, That a copy of this Opinion and Order be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO


Todd A. Snitchler, Chairman


Steven D. Lesser

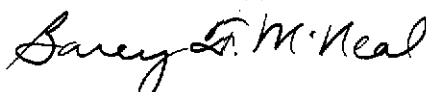

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