

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application                    )  
of Globe Metallurgical, Inc. for                    )  
Approval of a Unique Arrangement                )     Case No. 15-327-EL-AEC  
Between Ohio Power Company and                 )  
Globe Metallurgical, Inc.                            )

OPINION AND ORDER

The Commission, having considered the record in this matter, and being otherwise fully advised, issues this Opinion and Order (Order). For the reasons set forth below, we find that the stipulation and recommendation (Stipulation), signed by Globe Metallurgical, Inc. (Globe), Ohio Power Company (AEP Ohio), and Staff, as modified by this Order, meets the criteria used by the Commission to evaluate stipulations. Accordingly, the Stipulation, as modified, is reasonable and should be adopted.

APPEARANCES:

Vorys, Sater, Seymour & Pease, LLP, by M. Howard Petricoff, 52 East Gay Street, P.O. Box 1008, Columbus, Ohio 43216-1008, on behalf of Globe Metallurgical, Inc.

Steven T. Nourse, American Electric Power Service Corporation, One Riverside Plaza, 29th floor, Columbus, Ohio 43215-2373, on behalf of Ohio Power Company.

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.

OPINION:

I. Background

Globe is a mercantile customer, as defined by R.C. 4928.02(A)(19), that manufactures silicon metal, specialty alloys, and ferroalloys at its facility in Beverly, Ohio. AEP Ohio 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 and, as such, is subject to the jurisdiction of this Commission. The Commission has the authority to approve a unique arrangement between an electric utility and a customer or group of customers upon application by the customer or the utility, pursuant to R.C. 4905.31 and Ohio Adm.Code 4901:1-38-05(B).

In 2008, the Commission approved a unique arrangement contract between Globe and AEP Ohio, pursuant to R.C. 4905.31. *In re Globe Metallurgical, Inc.*, Case No. 08-884-EL-AEC, Finding and Order (July 31, 2008), Second Finding and Order (April 5, 2011). According to the arrangement, for a ten year term lasting from January 1, 2009, until December 31, 2018, Globe would receive a 10 percent discount from AEP Ohio's current IRP-D standard service and GS-4 energy rate, provided that Globe maintained an expanded employee level of at least 180 employees.

On May 10, 2013, Globe filed an application in Case No. 13-1170-EL-AEC, pursuant to R.C. 4905.31 and Ohio Adm.Code 4901:1-38-05(B), for approval of an amendment to its unique arrangement with AEP Ohio. By Order issued on July 31, 2013, the Commission approved a stipulation, as modified, for an amendment to the unique arrangement between Globe and AEP Ohio. *In re Globe Metallurgical, Inc.*, Case No. 13-1170-EL-AEC, Opinion and Order (July 31, 2013). The amended arrangement moved the termination date up to June 1, 2015, and changed the rate price from a 10 percent discount to a fixed rate of \$42.78 per megawatt hour (MWh).

On February 13, 2015, Globe filed the application in the present case, pursuant to R.C. 4905.31 and Ohio Adm.Code 4901:1-38-05(B), for approval of a second amendment to its unique arrangement with AEP Ohio originally approved in 2008. On February 27, 2015, an affidavit was filed on behalf of Russell Lang attesting to the veracity of the information provided in the application, as required by Ohio Adm.Code 4901:1-38-05(B)(2). Thereafter, on March 5, 2015, AEP Ohio filed a motion to intervene, explaining that as a party to Globe's unique arrangement, it should be permitted to intervene in this proceeding. By Entry issued on May 5, 2015, the attorney examiner granted AEP Ohio's motion to intervene and established a procedural schedule for this matter. Additionally, in the Entry issued on May 5, 2015, the attorney examiner set this matter for hearing on May 6, 2015. At the evidentiary hearing, Globe indicated that it had entered into a stipulation with Staff and AEP Ohio. The Stipulation in this case was introduced and admitted into the record at the evidentiary hearing (Tr. at 13; Jt. Ex. 1).

## II. Summary of the Application

Initially, Globe notes that it currently exceeds the arrangement's expanded employee level by retaining 237 full-time employees and has an Ohio payroll of over \$12 million. Additionally, Globe avers that it paid over \$56 million to Ohio vendors for goods and services, as well as state and local taxes of \$2.5 million. In its application to amend its unique arrangement, Globe explains that its existing unique arrangement is scheduled to end in June of 2015. Globe requests that the end date for the unique arrangement be extended until the end of the May 2016 billing cycle to allow for an orderly transition for interruptible service. Globe notes that this is still sooner than the

term of the original unique arrangement approved in 2008, which would have ended in December of 2018. (Globe Ex. 1 at 3-4.)

Globe asserts that, during the extension period, it will continue to maintain employment at the agreed upon level and will continue to invest in its Ohio facilities. Additionally, during the extension period, Globe intends to continue to offer 85 megawatts (MWs) for interruption by AEP Ohio for emergency purposes, and agrees not to enter that 85 MW into PJM or other interruptible or demand response programs. Globe proposes that, during the extended year, the competitive power price will increase from \$42.78 per MWh to \$45 per MWh. Additionally, Globe's amendment application includes a \$10,000,000 cap on the delta revenues during the extension year. Finally, Globe asserts that it is willing to shop for the bundled competitive service, if such shopping can produce a lower cost that would reduce the delta revenue. Globe asserts that the approval of its application will allow it to maintain the competitiveness of its facilities and continue to provide employment and economic benefits to the state of Ohio. (Globe Ex. 1 at 3-5.)

Pursuant to Ohio Adm.Code 4901:1-38-05(F), interested persons had the opportunity to file comments or objections regarding the application for a unique arrangement. No comments or objections were filed in this proceeding.

### III. Summary of the Stipulation

As previously stated, a stipulation signed by Globe, AEP Ohio, and Staff was admitted into the record in this case on May 6, 2015. The Stipulation is 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) The current unique arrangement contract termination date shall be extended from the June 2015 billing cycle to the end of the May 2016 billing cycle. (Jt. Ex. 1 at 3.)
- (2) Globe pledges to continue the employment level at 200 and to invest an additional \$5,000,000 of capital into the Beverly, Ohio facility. (Jt. Ex. 1 at 4.)
- (3) During the extension period, Globe will continue to make 85 MW of power available for emergency interruption upon call from AEP Ohio. The interruption program under this reasonable arrangement will be administered in a manner consistent with AEP-Ohio's Commission-approved IRP program. AEP Ohio shall pay Globe a credit per kW for

interruptible service in a manner consistent with AEP-Ohio's IRP rider. (Jt. Ex. 1 at 4.)

- (4) Globe shall purchase wire service consisting of distribution service, all non-bypassable transmission services, all non-bypassable ancillary services, and all non-bypassable riders at the discounted rate of \$8.50 per MWh for all such services. Globe shall purchase its energy and other competitive services from a certificated competitive retail electric service provider. (Jt. Ex. 1 at 4-5.)
- (5) The difference between the \$8.50 per MWh for the applicable distribution, non-bypassable transmission, non-bypassable ancillary services, and non-bypassable riders as calculated under the then-current tariff shall be deemed the economic development discount or delta revenues. AEP Ohio shall be reimbursed the amount of the economic development discount via a charge to the Economic Development Rider (EDR). (Jt. Ex. 1 at 5.)
- (6) There shall be a limit, or cap, for the entire extension period as to the total amount of delta revenues which can be passed through the EDR. The cap shall be \$4,000,000 for the extension year. If the cap figure is reached during any month of the extension year, the economic development discount for that month in which the cap is reached shall be limited to the lesser of the monthly economic development delta revenue or the remainder of the capped funds. There will be no further economic development discounts in any month after the cap is reached, but the Rider IRP credits shall continue for so long as Globe stays in compliance with the terms of the interruptible service called for in the AEP Ohio tariff. (Jt. Ex. 1 at 5.)

#### IV. Consideration of the Stipulation

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 Cincinnati Gas & Elec. Co.*, Case No. 91-410-EL-AIR, Order on Remand (Apr. 14, 1994); *In re Western Reserve Tel. 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., Opinion and Order (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 Record (Zimmer Plant)*, 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 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 Supreme Court of Ohio 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 has 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.

Globe witness Russell Lang testified that the Stipulation is the product of serious bargaining and negotiation, and benefits ratepayers and the public interest. Mr. Lang states that the Stipulation will allow for the continued employment for many Globe employees. Further, Globe witness Lang asserts that the Stipulation does not violate any regulatory principle or practice. (Tr. at 12.)

The Commission finds that the Stipulation, as proposed, should be modified, in part. The Stipulation states that AEP Ohio's agreement is premised upon acceptance by the Commission of the clarification requested on rehearing in Case No. 13-2385-EL-SSO to include an imputed PJM revenue offset to the IRP credit (Jt. Ex. 1 at 4). See *In re Ohio Power Co.*, Case No. 13-2385-EL-SSO (*AEP ESP Case*), AEP Ohio App. for Rehearing (Mar. 27, 2015) at 47-49. However, the Commission finds that this issue should be addressed in the *AEP ESP Case* where it has been properly raised. Further, the Commission notes that the Stipulation in the present case should not be used to bind

the Commission's decisions on specific assignments of error or clarifications in a future entry on rehearing. Accordingly, the Commission finds that the Stipulation should be modified such that the final sentence in paragraph 13 of the Stipulation is removed from the Stipulation. The Commission will determine the issue regarding the IRP credit where it has been properly raised in the *AEP ESP Case*.

Accordingly, we find that the Stipulation, as modified, reflects the product of serious bargaining among capable, knowledgeable parties, and there is no evidence that the Stipulation violates any regulatory principle or practice. Further, the Stipulation benefits ratepayers and the public interest by allowing Globe to maintain its competitiveness in the global economy, consistent with the policy of the state of Ohio set forth in R.C. 4928.02(N). Therefore, the Commission finds that the Stipulation, as modified, is reasonable and should be adopted.

#### FINDINGS OF FACT AND CONCLUSIONS OF LAW:

- (1) On February 13, 2015, Globe filed an application requesting that the Commission approve an amendment to its unique arrangement with AEP Ohio.
- (2) An evidentiary hearing in this matter was held on May 6, 2015.
- (3) At the evidentiary hearing, a stipulation was submitted on the record by Globe, AEP Ohio, and Staff.
- (4) The Stipulation, as modified by this Order, meets the criteria used by the Commission to evaluate stipulations. Consequently, the Commission finds the Stipulation, as modified, is reasonable and should be adopted.

It is, therefore,

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

ORDERED, That Globe and AEP Ohio take all necessary steps to carry out the terms of the Stipulation and this Opinion and Order. It is, further,

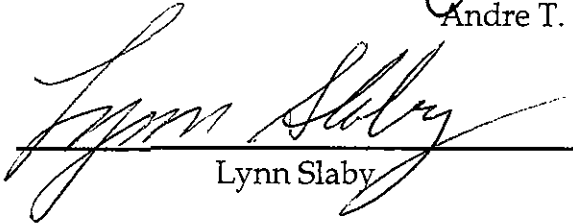
ORDERED, That nothing in this Opinion and Order shall be binding upon the Commission in any future proceeding or investigation involving the justness or reasonableness of any rate, charge, rule, or regulation. It is, further,

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

THE PUBLIC UTILITIES COMMISSION OF OHIO



Andre T. Porter, Chairman



Lynn Slaby



M. Beth Trombold



Asim Z. Haque

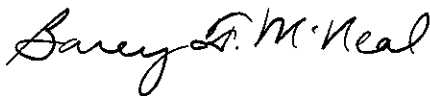


Thomas W. Johnson

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**MAY 13 2015**



Barcy F. McNeal  
Secretary