

## THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE APPLICATION OF  
GLOBE METALLURGICAL, INC. FOR  
APPROVAL OF A UNIQUE ARRANGEMENT  
BETWEEN OHIO POWER COMPANY AND  
GLOBE METALLURGICAL, INC.

CASE NO. 16-737-EL-AEC

### ENTRY ON REHEARING

Entered in the Journal on December 14, 2016

#### I. SUMMARY

{¶ 1} The Commission denies the application for rehearing filed by the Ohio Consumers' Counsel.

#### II. PROCEDURAL HISTORY

{¶ 2} Globe Metallurgical, Inc. (Globe) is a mercantile customer, as defined by R.C. 4928.01(A)(19), that manufactures silicon metal, specialty alloys, and ferroalloys at its facility in Beverly, Ohio. Ohio Power Company (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.

{¶ 3} 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 the electric utility.

{¶ 4} On October 26, 2016, the Commission issued its Opinion and Order in this case adopting the Stipulation filed by the signatory parties. Pursuant to the Stipulation and the Commission's Opinion and Order, Globe and AEP Ohio were authorized to enter into a reasonable arrangement with a term lasting until the December 2018 billing cycle.

{¶ 5} R.C. 4903.10 states that any party who has entered an appearance in a Commission proceeding may apply for rehearing with respect to any matters determined

in that proceeding, by filing an application within 30 days of the entry of the order upon the journal of the Commission.

{¶ 6} On November 25, 2016, the Ohio Consumers' Counsel (OCC) filed an application for rehearing in this case. Thereafter, on December 5, 2016, Globe filed a memorandum contra to OCC's application for rehearing.

### III. DISCUSSION

{¶ 7} OCC raises two assignments of error. OCC's first assignment of error is that the Commission unreasonably and unlawfully failed to require that OCC be provided a copy of the annual report. OCC's second assignment of error is that the Commission failed to set forth the reasons it did not order that the report be released to OCC. OCC notes that Ohio Adm.Code 4901:1-38-06(A) requires that customers served under a reasonable arrangement, such as Globe, must submit an annual report to the electric utility and staff no later than April 30 of each year. OCC avers that the report is to display the impact of the arrangement on customers and to allow determination of whether the mercantile customer is complying with the terms of the arrangement. OCC asserts that its witness, Ross Willis, testified that the Commission should direct this annual report be released to OCC. OCC argues that the Commission has previously directed annual reports for reasonable arrangements to be filed with OCC and cites *Eramet* in support of its argument. *In re Eramet*, Case No. 09-516-EL-AEC (*Eramet*), Entry (Mar. 3, 2011) at 8. Further, OCC avers the Commission failed to provide its reasoning for not adopting Mr. Willis's testimony, which is a violation of R.C. 4903.09. According to OCC, the Commission's Opinion and Order must show, in sufficient detail, the facts in the record upon which the order is based, and the reasoning followed by the Commission in reaching its conclusion.

{¶ 8} Globe argues that the Commission should deny OCC's application for rehearing and deny OCC access to Globe's annual reports. Globe asserts that OCC does not have, and has not identified, any right or need to review Globe's future annual

reports. Globe avers that in the 2011 *Eramet* entry, the attorney examiner made a fact-specific finding that certain existing annual reports were not protected from a single public records request. *In re Eramet*, Case No. 09-516-EL-AEC, Entry (Mar. 3, 2011) at 7-8. The 2011 *Eramet* entry involved a one-time application of public records law to a limited set of documents. However, OCC's application in this case does not involve a public records request and does not involve any existing report. Further, Globe notes that in the same *Eramet* case cited by OCC, the Commission held regarding the annual reports that they "are not required by Ohio law or pursuant to any regulatory requirement or practice." *In re Eramet*, Case No. 09-516-EL-AEC, Opinion and Order (Oct. 14, 2015) at 8.

{¶ 9} Additionally, Globe asserts the Commission did not violate R.C. 4903.09 because it fully supported its decision with sound reasoning and citations to the record. Globe notes that the Supreme Court of Ohio has held that "all that is required is that the commission set forth 'some factual basis and reasoning based thereon in reaching its conclusion.'" *Migden-Ostrander v. Pub. Util. Comm.*, 102 Ohio St.3d 451, 455 (2004). Globe argues that the Commission more than met the requirements of R.C. 4903.09.

#### IV. CONCLUSION

{¶ 10} The Commission finds that OCC's assignments of error lack merit and rehearing should be denied. It is neither unjust nor unreasonable for the Commission to deny OCC's request to order Globe to provide OCC with its annual reports. The Commission's finding is consistent with the plain language of both the Revised Code and the Ohio Administrative Code. OCC has not demonstrated that the Commission's Opinion and Order is unjust or unreasonable by failing to direct that OCC be provided copies of the annual reports when there is no statutory requirement for those reports. The requirement in Ohio Adm.Code 4901:1-38-06(A) for an annual report to be submitted to Staff comes from the Commission's authority to supervise and regulate reasonable arrangements, pursuant to R.C. 4905.31. There is no statutory requirement for the report requested by OCC, and Ohio Adm.Code 4901:1-38-06(A) only requires that the annual report be submitted to Staff.

{¶ 11} Additionally, the Commission's denial of OCC's application for rehearing applies only to OCC's request for the Commission to require Globe to provide its annual report contemporaneously to OCC. However, OCC may request Globe's annual report after it has been submitted to Staff. Further, in *Eramet*, which is cited by OCC in support of its argument, the Commission denied the same proposal by OCC for the Commission to require Columbus Southern Power Co. (CSP) to provide OCC with the annual report, as it was "not required by Ohio law or pursuant to any regulatory requirement or practice." *In re Eramet*, Case No. 09-516-EL-AEC, Opinion and Order (Oct. 14, 2015) at 8. The issue in the Attorney Examiner's Entry cited by OCC is not applicable to this case. The issue was whether the information contained in the annual report was confidential or otherwise not subject to a public records request. The attorney examiner reviewed the disputed annual report, applied the six-factor test set forth by the Supreme Court of Ohio<sup>1</sup>, and found that the information was not trade secret information because it was already publicly available. The attorney examiner stated that the confidentiality of the annual report was "rendered moot by the fact that either the information has already been publicly released by CSP or the information is otherwise publicly available." Accordingly, the attorney examiner held that the annual report was subject to a public records request pursuant to R.C. 149.43, was not exempt from a public records request by R.C. 4901.16, and should be released to OCC pursuant to R.C. 4905.07. *In re Eramet*, Case No. 09-516-EL-AEC, Entry (Mar. 3, 2011) at 8. The Attorney Examiner Entry in *Eramet* is not applicable to the present case because no annual report has been filed, no motion for protective order has been filed, no public records request has been submitted, no arguments regarding the confidentiality of the information have been raised, and the attorney examiner has not had an opportunity to review the information. Therefore, the Commission finds that OCC's application for rehearing should be denied.

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<sup>1</sup> See *State ex-rel. the Plain Dealer v. Ohio Dept. of Ins.* (1997), 80 Ohio St.3d 513, 524-525.

V. ORDER

{¶ 12} It is, therefore,

{¶ 13} ORDERED, That the application for rehearing filed by OCC be denied. It is, further,

THE PUBLIC UTILITIES COMMISSION OF OHIO

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Asim Z. Haque, Chairman

*Lynn Slaby*  
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**DEC 14 2016**

*Barcy F. McNeal*  
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Secretary