

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of the :
Application for :
Establishment of a :
Reasonable Arrangement : Case No. 17-1981-EL-AEC
Between Presrite :
Corporation and :
The Cleveland Electric :
Illuminating Company. :

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PROCEEDINGS

before Ms. Patricia Schabo, Attorney Examiner, at the
Public Utilities Commission of Ohio, 180 East Broad
Street, Room 11-D, Columbus, Ohio, called at
10:03 a.m. on Tuesday, February 20, 2018.

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APPEARANCES:

McNees Wallace & Nurick LLC
By Mr. Frank P. Darr
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On behalf of Presrite Corporation.

Mike DeWine, Ohio Attorney General
Public Utilities Section
By Mr. William L. Wright,
Section Chief,
and Mr. Thomas W. McNamee,
Assistant Attorney General
30 East Broad Street, 16th Floor
Columbus, Ohio 43215

On behalf of the Staff of the Public
Utilities Commission of Ohio.

Bruce J. Weston, Consumers' Counsel
Office of the Ohio Consumers' Counsel
By Mr. Christopher Healey,
Assistant Consumers' Counsel
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Columbus, Ohio 43215

On behalf of the Office of the Ohio
Consumers' Counsel.

Calfee, Halter & Griswold LLP
By Mr. N. Trevor Alexander
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Columbus, Ohio 43215

FirstEnergy Service Company
By Ms. Carrie Dunn-Lucco
76 South Main Street
Akron, Ohio 44308

On behalf of The Cleveland Electric
Illuminating Company.

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Tuesday Morning Session,
February 20, 2018.

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EXAMINER SCHABO: The Public Utilities
Commission of Ohio has assigned for hearing at this
time and place, Case No. 17-1981-EL-AEC, being In the
Matter of the Application for the Establishment of a
Reasonable Arrangement between Presrite Corporation
and The Cleveland Electric Illuminating Company.

My name is Trish Schabo. I'm the
Attorney Examiner assigned by the Commission to hear
this case.

Let's begin with appearances of Counsel,
beginning with you, Mr. Darr, and just move our way
down.

MR. DARR: On behalf of the Applicant,
Presrite, my name is Frank Darr. I'm with the law
firm of McNees Wallace and Nurick, 21 East State
Street, Columbus, Ohio 43215.

EXAMINER SCHABO: Thank you.

MR. WRIGHT: On behalf of the Staff of
the Public Utilities Commission, Ohio Attorney
General Mike DeWine, Public Utilities Section. I'd
like to, this morning, enter the appearance of Thomas
W. McNamee, and my name is William Wright,

1 W-r-i-g-h-t, 30 East Broad Street, Columbus, Ohio
2 43215.

3 MR. HEALEY: Good morning, your Honor.
4 On behalf of the Ohio Consumers' Counsel, I'm
5 Christopher Healey. We're at 65 East State Street,
6 Suite 700, Columbus, Ohio 43215. Thank you.

7 MR. ALEXANDER: Good morning, your Honor.
8 My name is Trevor Alexander with the firm of Calfee,
9 Halter & Griswold, appearing on behalf of The
10 Cleveland Electric Illuminating Company. A Notice of
11 Appearance was filed on behalf of myself and Carrie
12 Dunn of FirstEnergy Corporation, 76 South Main
13 Street, Akron, Ohio, yesterday afternoon, but my
14 understanding is the docketing system was down, so it
15 may not have shown up electronically yet, but we have
16 had confirmation that the Notice of Appearance was
17 filed.

18 EXAMINER SCHABO: Great. Thank you.

19 Anybody else?

20 Mr. Darr, would you like to begin?

21 MR. DARR: Thank you, your Honor.

22 On behalf of the Company, I'd like to
23 thank the Intervenor and other parties that have
24 been involved in this matter and the support of the
25 Staff. This has been a relatively long road that

1 began last summer to attempt to secure a reasonable
2 arrangement for Presrite, a foundry that's located in
3 Cleveland and which is served for distribution
4 services by CEI.

5 Pursuant to an agreement among the
6 parties, I would like to have three exhibits marked
7 as follows, and you have them in front of you in a
8 notebook tabbed off.

9 The first exhibit is Joint Exhibit 1,
10 which is the Application, the public version, that
11 Presrite filed last year. The second exhibit is
12 Joint Exhibit 2, the testimony in support of the
13 Stipulation and Recommendation, the public version.
14 And the third exhibit I'd like to have marked is
15 Joint Exhibit -- which is 3, which is the Joint
16 Stipulation and Recommendation filed in this matter.

17 My understanding is the parties are
18 agreeing to stipulate those in and so they've been
19 identified as Joint. If there's a reason to identify
20 them in another way, I would not object to that.

21 In addition, in your folder you have in
22 front of you a Motion for Protective Order. This
23 goes to three additional exhibits which I'd like to
24 have marked as Joint Exhibit 1C, Joint Exhibit 2C,
25 and Joint Exhibit 3C. These are the same three

1 exhibits with portions of it, portions that are
2 redacted in the public versions, and a sealed version
3 of this has been provided to the court reporter for
4 filing in the record of this case.

5 EXAMINER SCHABO: Could I stop you short
6 just for a second?

7 MR. DARR: Sure.

8 EXAMINER SCHABO: So Joint Exhibit --
9 proposed Joint Exhibit 1 would be the Application?

10 MR. DARR: Correct.

11 EXAMINER SCHABO: Proposed Exhibit Joint
12 1C would be the --

13 MR. DARR: The confidential version.

14 EXAMINER SCHABO: -- the confidential
15 version. So Joint Exhibit 2 would be the testimony
16 of Mr. Davis?

17 MR. DARR: Correct.

18 EXAMINER SCHABO: Okay. And then Joint
19 Exhibit 3 would be the Joint Stipulation and
20 Recommendation.

21 MR. DARR: That's correct.

22 EXAMINER SCHABO: Okay. Go ahead. I'm
23 sorry.

24 MR. DARR: With that, I would request
25 that the motion be granted for protection of the

1 Exhibits 1C, 2C, and 3C, and move the admission of
2 all six exhibits.

3 EXAMINER SCHABO: Is there any objection
4 to marking these exhibits as Joint exhibits?

5 MR. ALEXANDER: Your Honor, no
6 objections, subject to the result of OCC Exhibit 1, I
7 think we're going to number it. Right now the Joint
8 Stipulation and Recommendation references CEI as a
9 non-opposing party, and depending on how the Court
10 rules on OCC Exhibit 1, we may be withdrawing from
11 that non-opposition position.

12 EXAMINER SCHABO: Okay. But any
13 objection to -- okay, gotcha.

14 Subject to that qualification, we'll go
15 ahead and mark the exhibits as proposed. So Joint
16 Exhibit 1 being the Application for Unique
17 Arrangement, Joint Exhibit 1C being the confidential
18 version of that Application; Joint Exhibit 2 being
19 the Testimony of Gary Davis, Joint Exhibit 2C being
20 the confidential version of that testimony; Joint
21 Exhibit 3 being the Stipulation and Recommendation,
22 and Joint Exhibit 3C being the confidential version
23 of that.

24 (EXHIBITS MARKED FOR IDENTIFICATION.)

25 EXAMINER SCHABO: I will state for now

1 that the Commission will take the Motion for
2 Protective Order under consideration, but for
3 purposes of today's hearing let's go ahead and treat
4 that information as confidential. All right? Okay.
5 So they are marked.

6 Mr. Darr, anything further?

7 MR. DARR: No, your Honor. Just again
8 renew my motion to admit.

9 EXAMINER SCHABO: Yes. We'll address
10 that after we address the argument over what I am
11 going to hand over to Mr. Healey.

12 MR. HEALEY: Thank you, your Honor.

13 OCC would like to mark as Exhibit OCC 1,
14 its comments that were filed in this case on
15 October 3rd, 2017. May I approach, your Honor?

16 EXAMINER SCHABO: You may.

17 Any objections to having them marked?

18 MR. DARR: Pursuant to the agreement
19 entered into between OCC and the Company Presrite,
20 Presrite does not have an objection.

21 EXAMINER SCHABO: Okay. We'll go ahead
22 and we'll mark your comments as OCC No. 1.

23 (EXHIBIT MARKED FOR IDENTIFICATION.)

24 EXAMINER SCHABO: We will hear arguments
25 as to whether or not they will be admitted.

1 MR. ALEXANDER: Are you moving?

2 MR. HEALEY: Yes. I'm moving for the
3 admission of OCC Exhibit 1, your Honor.

4 EXAMINER SCHABO: Let's hear your
5 arguments.

6 MR. ALEXANDER: And, your Honor, on
7 behalf of CEI, I would object. And if it would help
8 the Court, I brought copies of the relevant rule for
9 unique arrangements if it would help.

10 Your Honor, I've just handed you a copy
11 of Ohio Administrative Code Section 4901:1-38-05,
12 which OCC correctly cited in its rules as being --
13 or, excuse me -- in its comments as being applicable
14 to this dispute.

15 If the Court will turn its attention to
16 subsection (F) at the bottom of the page. It allows
17 parties, such as OCC, to file a motion to intervene
18 and file comments and objections to applications
19 within 20 days of the date of the filing of the
20 application. CEI does not contest OCC's right to do
21 that and OCC timely filed comments in this
22 proceeding. There's no objection about that.

23 The objection arises from OCC's attempt
24 to move those comments to be admitted into evidence
25 in this proceeding, and here's why: This rule

1 anticipates that comments would be filed and then the
2 case would proceed to hearing eventually. At that
3 hearing, parties may disagree with those comments,
4 would have the opportunity to test them through
5 cross-examination, through potentially witness
6 testimony, there would be a chance to test some of
7 the factual assertions and conclusions which are
8 contained in the comments.

9 Here, CEI disagrees with OCC's comments
10 for two primary purposes. Purpose 1 is the comments
11 relate to the as-filed Application rather than the
12 Joint Stipulation. There are significant changes
13 which have taken place between when OCC filed the
14 comments and the Joint Stipulation, most notably with
15 regard to delta revenue recovery which is a
16 significant portion of OCC's comments, OCC's beliefs
17 as to the proprietary -- or, whether delta revenue
18 recovery is proper.

19 The second major issue is Rider NMB. OCC
20 has made several factual statements about Rider NMB
21 that we don't believe are accurate and if given the
22 opportunity would contest.

23 And so we would ask that admission of
24 these comments be denied. We do not feel this would
25 be prejudicial to OCC, because at the end of the day

1 the comments have been filed in this proceeding.
 2 Those comments are available for the Commission to
 3 review and the Commission can do what it would like
 4 with those publicly-filed comments. But admitting
 5 them as evidence, in a case where CEI is currently
 6 signed on as a non-opposing party, would make it seem
 7 that we would not contest those comments, which we
 8 assuredly do.

9 EXAMINER SCHABO: Okay.

10 Mr. Healey.

11 MR. HEALEY: Thank you, your Honor.

12 By asking for the admission of OCC's
 13 comments, OCC is not asking CEI or any other party to
 14 this case to accept the truth of anything stated in
 15 those comments. We are simply asking that they be
 16 recognized as OCC's position in this case based on
 17 the Application as there is, according to CEI, no
 18 prejudice to OCC by not admitting. At the same time,
 19 there's no prejudice to CEI if they are admitted into
 20 evidence because CEI is not accepting the truth of
 21 any of the positions that OCC took.

22 With respect to the comment that those --
 23 those comments are on the Application, the
 24 Application still stands largely intact with some
 25 modifications by the Stipulation. So while there are

1 some modifications to the Application, parts of the
2 Application still remain in place.

3 In the alternative, I would ask simply
4 that the Court take administrative notice of OCC's
5 comments if that's preferable. I would be just as
6 happy with that as admitting them into evidence.

7 EXAMINER SCHABO: Okay.

8 Mr. Alexander.

9 MR. ALEXANDER: Your Honor, second thing
10 first. With regard to the administrative notice,
11 administrative notice is proper for undisputed facts,
12 things like, you know, what day of the week
13 March 21st is. This is not something which was
14 subject to administrative notice; whether delta
15 revenue recovery is appropriate or not is something
16 we contest, we disagree with.

17 And with regard to whether it is proper
18 to admit comments in as evidence, we would again
19 point back to rule, which calls for hearing, people
20 have filed testimony, and that is where evidentiary
21 issues should be cited, via testimony, rather than
22 via comments which people don't have the ability to
23 contest.

24 EXAMINER SCHABO: Mr. Healey.

25 MR. HEALEY: Just one last thing. I

would note that the Commission has admitted comments, particularly in unopposed settlement cases before. Most recently in AEP's DIR case, 16-21. OCC agreed not to oppose the Stipulation there. And there are comments from multiple cases, in addition to other parties' comments, that were admitted into the record.

EXAMINER SCHABO: Did anyone oppose admitting those comments into the record --

MR. HEALEY: There was no --

EXAMINER SCHABO: -- at the time?

MR. HEALEY: -- there was no opposition at the time.

EXAMINER SCHABO: Okay. Thank you.

Anyone else?

Okay.

I believe OCC's position is clear as to their comments and I think that the comments are part of the record without being deemed evidence. I don't believe that they are proper evidence because they don't have any tendency to make the existence of any fact of consequence to the Stipulation more or less probable, so I'm going to go ahead and not admit them into the record. So OCC Exhibit 1 will not be admitted into the record.

Which leaves admission of the Joint exhibits. With your comments -- with OCC's comments not being admitted, is there any objection to the exhibits?

MR. HEALEY: I have no objection, your Honor.

MR. ALEXANDER: No objection, your Honor.

MR. WRIGHT: No objection.

EXAMINER SCHABO: Joint Stipulations 1, 1C, 2 -- I'm sorry. Joint Exhibits 1, 1C, 2, 2C, and 3 and 3C will be admitted.

(EXHIBITS ADMITTED INTO EVIDENCE.)

EXAMINER SCHABO: Okay. Is there anything else for the Commission's attention?

MR. DARR: Not on the part of Presrite, your Honor.

MR. HEALEY: Nothing further.

MR. ALEXANDER: Nothing. Thank you.

EXAMINER SCHABO: All right. Thank you for your time. We will adjourn.

(Thereupon, the proceedings concluded at 10:18 a.m.)

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CERTIFICATE

I do hereby certify that the foregoing is a true and correct transcript of the proceedings taken by me in this matter on Tuesday, February 20, 2018, and carefully compared with my original stenographic notes.

Carolyn M. Burke
Carolyn M. Burke, Registered
Professional Reporter, and
Notary Public in and for the
State of Ohio.

My commission expires July 17, 2018.

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This foregoing document was electronically filed with the Public Utilities

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Case No(s). 17-1981-EL-AEC

Summary: Transcript In the Matter of the Application for Establishment of a Reasonable Arrangement Between Presrite Corporation and The Cleveland Electric Illuminating Company, hearing held on February 20, 2018. electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Burke, Carolyn