

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of)
the TimkenSteel Corporation for Approval)
of a Unique Arrangement for the) Case No. 15-1857-EL-AEC
TimkenSteel Corporation's Stark County)
Facilities.)

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 TimkenSteel Corporation (TimkenSteel) and Staff meets the criteria used by the Commission to evaluate stipulations. Accordingly, the Stipulation is reasonable and should be adopted.

APPEARANCES:

Steven T. Nourse, American Electric Power Service Corporation, 1 Riverside Plaza, Columbus, Ohio 43215, and Porter, Wright, Morris & Arthur, LLP, by Christen M. Blend, 41 South High Street, Columbus, Ohio 43215, on behalf of Ohio Power Company.

Vorys, Sater, Seymour & Pease, LLP, by Michael J. Settineri, 52 East Gay Street, Columbus, Ohio 43216, on behalf of the TimkenSteel Corporation.

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

Carpenter, Lipps & Leland, by Kimberly J. Bojko and Ryan P. O'Rourke, 280 North High Street, Columbus, Ohio 43215, on behalf of the Ohio Manufacturers' Association Energy Group.

Boehm, Kurtz & Lowry, by David F. Boehm, 36 East Seventh Street, Cincinnati, Ohio 45202, on behalf of the Ohio Energy Group.

Bruce J. Weston, Ohio Consumers' Counsel, by Jodi Bair, Assistant Consumers' Counsel, 10 West Broad Street, Columbus, Ohio 43215, on behalf of the residential consumers of Ohio Power Company.

OPINION:I. History of the Proceeding

The TimkenSteel Corporation (TimkenSteel) is a mercantile customer, as defined by R.C. 4928.02(A)(19). 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. 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).

On April 27, 2011, the Commission approved a unique arrangement contract between TimkenSteel and AEP Ohio, pursuant to R.C. 4905.31. *In re The Timken Company*, Case No. 10-3066-EL-AEC, Opinion and Order (April 27, 2011). Thereafter, on March 26, 2014, on October 29, 2014, and on February 3, 2015, the Commission approved amendments to the unique arrangement between TimkenSteel and AEP Ohio. *In re The Timken Company*, Case No. 10-3066-EL-AEC, Opinion and Order (Mar. 26, 2014); Opinion and Order (Oct. 29, 2014); Finding and Order (Feb. 3, 2015). The approved amendments to the unique arrangement permitted TimkenSteel to shop for electric generation service and to serve as an interruptible resource for AEP Ohio through December 31, 2015. Additionally, TimkenSteel indicated in its amendment applications that it intended to file for approval of a new arrangement in 2015, pending the outcome of the Commission's determination in AEP Ohio's electric security plan (ESP) proceeding. *In re The Timken Company*, Case No. 10-3066-EL-AEC, Opinion and Order (Oct. 29, 2014); *See In re Ohio Power Co.*, Case No. 13-2385-EL-SSO, et al., Opinion and Order (Feb. 25, 2015).

On November 2, 2015, TimkenSteel filed the application in the present case pursuant to R.C. 4905.31 (Application), seeking approval of a unique arrangement for TimkenSteel's Stark County, Ohio, facilities. Additionally, concurrent with its Application, TimkenSteel filed a motion for protective order and memorandum in support. No party filed a memorandum contra TimkenSteel's motion for protective order. TimkenSteel states in the Application that approval of the unique arrangement will allow TimkenSteel to build upon and protect the nearly half-billion dollars in capital investments it has made in its Stark County facilities for steelmaking technologies, and will benefit all of Ohio by allowing TimkenSteel to make continued capital investments, maintain and increase employment, and to continue to make approximately \$850 million in purchases from other Ohio businesses.

Motions to intervene in the proceeding were timely filed by AEP Ohio, the Ohio Energy Group (OEG), the Ohio Consumers' Counsel (OCC), and the Ohio Manufacturers'

Association Energy Group (OMAEG). No memoranda contra the motions to intervene were filed.

On November 12, 2015, AEP Ohio filed a statement of non-opposition and a memorandum in support. On November 20, 2015, OMAEG filed comments regarding the application and, on November 23, 2015, OCC filed comments regarding the application. Thereafter, on November 20, 2015, AEP Ohio filed reply comments in response to OCC's comments. By Entry issued on November 24, 2015, the attorney examiner granted the motions to intervene filed by AEP Ohio, OEG, OCC, and OMAEG, and, based upon the comments, scheduled the matter for hearing on December 3, 2015.

The hearing was held, as scheduled, on December 3, 2015. At the hearing, TimkenSteel indicated that it had entered into a stipulation with Staff. Additionally, TimkenSteel noted that OEG signed the Stipulation not as a signatory party but only to represent that it is not opposed to the Application or the Stipulation. TimkenSteel presented Peggy Claytor, Manager of State Government Affairs for TimkenSteel, in support of the Stipulation and introduced into evidence the public and confidential versions of her pre-filed testimony (TimkenSteel Exs. 3, 4). Additionally, TimkenSteel offered into evidence the public and confidential versions of the Application (TimkenSteel Exs. 1, 2), the public and confidential versions of the pre-filed testimony of Christopher J. Holding (Timken Exs. 5, 6), the public and confidential versions of the pre-filed testimony of Shawn J. Seanor (TimkenSteel Exs. 7, 8), the public and confidential versions of the pre-filed testimony of Thomas D. Moline (TimkenSteel Exs. 9, 10), the public and confidential versions of the pre-filed testimony of Paul A. Coomes (TimkenSteel Exs. 11, 12), the public and confidential versions of the pre-filed testimony of Susan Misconish (TimkenSteel Exs. 13, 14), and the Stipulation (TimkenSteel Exs. 15, 15a). Additionally, at the hearing OCC introduced into evidence the pre-filed testimony and supplemental testimony of Michael P. Haugh (OCC Exs. 1, 2). At hearing, parties agreed to waive all cross-examination of witnesses (TimkenSteel Exs. 15, 15a at 5; Tr. at 9, 18, 25).

II. Summary of the Application

TimkenSteel filed its Application for approval of a unique arrangement pursuant to R.C. 4905.31 and 4928.66, and Ohio Adm.Code 4901:1-38-05 and 4901:1-39-05(G). TimkenSteel asserts that in just the last four years, the company has invested more than \$490 million its steel operations to improve productivity and energy efficiency, support strong employment in Ohio, and assist with meeting increased global competition in U.S. domestic markets.

In the Application, TimkenSteel proposes a unique arrangement that will run for a 65 month term, during which TimkenSteel will receive generation from a competitive retail electric service (CRES) provider. Additionally, the proposed unique arrangement contains a

discount on AEP Ohio's monthly tariff charges (excluding Basic Transmission Cost Rider charges) and provides that TimkenSteel will be subject to a fixed delta revenue cap for the term of the unique arrangement, as well as a fixed cap over any 24 month period. Further, the unique arrangement proposed in the Application would allow TimkenSteel to begin paying for transmission service through the Basic Transmission Cost Rider (BTCR) and allow TimkenSteel to serve as an interruptible resource for AEP Ohio.

TimkenSteel asserts that during the term of the unique arrangement, it would continue to maintain employment at the agreed upon level and continue to invest in its Ohio facilities. Additionally, TimkenSteel states that its size and energy flexibility assist AEP Ohio in maintaining system reliability and economic rates for the benefit of AEP Ohio's other customers. Specifically, TimkenSteel is able to interrupt a significant number of megawatts (MW) on short notice. Consequently, AEP Ohio may interrupt power to TimkenSteel's facilities on short notice in order to enhance the reliability of AEP Ohio's system for firm customers and for economic reasons. (TimkenSteel Ex. 1 at 1-4.)

III. Summary of the Stipulation

As previously stated, a Stipulation signed by TimkenSteel and Staff was admitted into the record in this case. Additionally, AEP Ohio filed a notice of non-opposition to the Stipulation and OEG signed the Stipulation for the purpose of stating its non-opposition to the Application or the Stipulation. 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, as summarized by this Commission, and is not intended to replace or supersede any term of the Stipulation:

- (1) The unique arrangement will run for a 65 month term (January 1, 2016 to May 31, 2021) during which TimkenSteel will receive generation from a CRES provider;
- (2) The unique arrangement will allow TimkenSteel to receive a discount as set forth in the Application on AEP Ohio's monthly tariff charges (excluding Basic Transmission Cost Rider charges) during the term of the unique arrangement and such discount shall only apply to TimkenSteel's Stark County facilities;
- (3) The unique arrangement will be subject to the fixed delta revenue cap over the term of the unique arrangement and a separate fixed delta revenue cap in any 24 month period, both as stated in the Application;
- (4) The unique arrangement will allow TimkenSteel to pay for transmission service through the BTCR, based upon

TimkenSteel's annual single electric distribution utility transmission coincident peak; and,

- (5) The unique arrangement will allow TimkenSteel to serve as an interruptible resource for AEP Ohio during the term of this unique arrangement and receive the interruptible service credit regardless whether that credit or program is available through the tariff.

Additionally, the Stipulation indicates that the proposed unique arrangement will benefit all of Ohio, allowing TimkenSteel to make continued capital investments in its Stark County facilities and maintain a minimum level of full-time equivalent associates during the term of the unique arrangement. Additionally, the unique arrangement provides TimkenSteel with a goal of achieving an increased level of employment of full-time associates by the end of 2020, with minimum and pledged levels of employment as stated in the Application. (TimkenSteel Exs. 15, 15a.)

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.

TimkenSteel witness Claytor testified that the Stipulation is the product of serious bargaining among capable knowledgeable parties. She stated at hearing that the Stipulation is the product of a lengthy dialogue that occurred over several months between TimkenSteel, AEP Ohio, Staff, and various stakeholders (Tr. at 13). Additionally, Ms. Claytor testified that the Stipulation, as a package benefits the public interest because it adopts a unique arrangement that will provide for competitive electricity rates that will further facilitate significant capital investment in TimkenSteel's Stark County facilities. These capital investments could be in excess of \$75 million and will facilitate the retention of more than 2,000 jobs. Further, she testified that the Stipulation benefits the public interest, and particularly residential customers, by minimizing the delta revenue impacts. She testified that the Stipulation negotiations were an iterative process that significantly reduced the delta revenue from the company's original ask (Tr. at 19). Further, she indicated that the Stipulation benefits the public interest because TimkenSteel is supported by over 1,800 Ohio-based suppliers from whom the company purchases over \$850 million per year in goods and service (Tr. at 15). Finally, Ms. Claytor asserted that the Stipulation does not violate any regulatory principle or practice (Tr. at 17).

However, OCC witness Michael Haugh, Assistant Director of Analytical Services for OCC, testified that the Stipulation does not fully meet the Commission's three-pronged test for evaluating the reasonableness of a Stipulation. Mr. Haugh testified that the Stipulation lacks a diversity of interests because the customers who would pay a subsidy to AEP Ohio for its discounts to TimkenSteel are not one of the signatory parties to the Stipulation (OCC Ex. 2 at 3). Further, OCC witness Haugh testified that the Stipulation violates important regulatory principles and practices because it does not identify all subsidy amounts that constitute the delta revenue that electric customers are asked to pay AEP Ohio to fund TimkenSteel's electricity discounts (OCC Ex. 2 at 3).

Commission Conclusion

Initially, the Commission finds that the motions for protective order filed by TimkenSteel on November 2, 2015, and November 25, 2015, should be granted. We note

that Ohio Adm.Code 4901-1-24 provides that, unless otherwise ordered, protective orders issued pursuant to the rule automatically expire after a period of 24 months, unless otherwise ordered by the Commission or a subsequent motion for protective order is filed at least 45 days in advance of the expiration date of the existing order. We note that we have reviewed the confidential information and find that TimkenSteel properly filed the documents with only such information redacted as is essential to prevent disclosure, consistent with Ohio Adm.Code 4901-1-24(D).

The Commission finds that the Stipulation, as proposed, is reasonable and should be adopted. The Stipulation implements a unique arrangement that will allow TimkenSteel to facilitate continued capital investments and maintain a minimum level of employment while setting employment goals to be achieved by the end of the year 2020 (TimkenSteel Ex. 15 at 3-4). The Commission finds that this both facilitates job growth and aids in enhancing Ohio's competitiveness in the global economy. The record reflects that the unique arrangement will bolster TimkenSteel's positive financial and economic impact on the Ohio economy, both in terms of direct, highly-skilled job creation, as well as the secondary benefits flowing from indirect and support jobs (TimkenSteel Ex. 15 at 4). Further, the record reflects the arrangement does not violate R.C. 4905.33 or 4905.35, and is just and reasonable.

Applying the three-part test for evaluating the reasonableness of a Stipulation, we find that the Stipulation reflects the product of serious bargaining among capable, knowledgeable parties. We note that we have repeatedly held that we will not require any party, including OCC, to agree to a Stipulation in order for the Stipulation to meet the first part of the three-part test. *In re Vectren Energy Delivery of Ohio, Inc.*, Case No. 13-1571-GA-ALT, Opinion and Order (Feb. 19, 2014) at 10; *In re FirstEnergy*, Case No. 12-1230-EL-SSO, Opinion and Order (July 18, 2012) at 26, citing *Dominion Retail, Inc. v. The Dayton Power and Light Co.*, Case No. 03-2405-EL-CSS, et al., Opinion and Order (Feb. 2, 2005) at 18, Entry on Rehearing (Mar. 23, 2005) at 7-8; *In re The Dayton Power and Light Co.*, Case No. 12-3062-EL-RDR, et al., Opinion and Order (Dec. 17, 2014) at 9. Further, there is no evidence in the record that any class of customers was excluded from the settlement negotiations. See *Time Warner AxS v. Pub. Util. Comm.*, 75 Ohio St.3d 229, 233, 661 N.E.2d 1097 (1996). Additionally, the parties in this case, including OCC, regularly appear before this Commission and are capable and knowledgeable regarding matters that come before the Commission. Ms. Claytor also testified that residential customers were considered in arriving at the Stipulation, and that the delta revenues are structured in a manner specifically to minimize the impacts to residential customers (Tr. at 19).

Further, we find that the Stipulation benefits ratepayers and the public interest. TimkenSteel represents that it purchases over \$850 million in goods and services from Ohio businesses, and over \$60 million in additional tax revenues are created indirectly as a result of TimkenSteel's Stark County steel operation (TimkenSteel Ex. 1 at 2). This Stipulation will

facilitate in excess of \$75 million in further capital investment and the retention of more than 2,000 jobs (Tr. at 15). We find that the capital investment and jobs resulting from the Stipulation demonstrate that the Stipulation, as a package, benefits the public interest. Additionally, the Stipulation benefits ratepayers by allowing TimkenSteel to be interrupted on an emergency basis, which improves reliability and provides price suppression benefits for all ratepayers (Tr. at 16). Finally, we find that the Stipulation benefits ratepayers and the public interest by maintaining TimkenSteel's competitiveness in the global economy, consistent with the policy of the state of Ohio set forth in R.C. 4928.02(N).

Additionally, we find that the Stipulation in this case does not violate any regulatory principle or practice. OCC witness Haugh testified that the Stipulation violates important regulatory principles because it does not identify the delta revenues (OCC Ex. 2 at 3). However, TimkenSteel indicated that the delta revenues in this case are capped at \$27.5 million over the term of the unique arrangement (TimkenSteel Ex. 1 at 3; Tr. at 19). Therefore, we find that the Stipulation does not violate any regulatory principle or practice and meets the third part of the Commission's three-part test for evaluating the reasonableness of a Stipulation. Accordingly, having met all three parts of the Commission's three-part test for evaluating the reasonableness of a Stipulation, the Commission finds that the Stipulation is reasonable and should be approved.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

- (1) On November 2, 2015, TimkenSteel filed an application seeking approval of a unique arrangement for TimkenSteel's Stark County, Ohio, facilities pursuant to R.C. 4905.31, and a motion for protective order and memorandum in support.
- (2) Comments regarding the Application were filed by OMAEG and OCC. Reply comments were filed by AEP Ohio.
- (3) The evidentiary hearing in this matter was held on December 3, 2015.
- (4) At the evidentiary hearing, a Stipulation signed by TimkenSteel and Staff was submitted on the record.
- (5) The Stipulation meets the criteria used by the Commission to evaluate stipulations. Accordingly, the Commission finds that the Stipulation is reasonable and should be adopted.

ORDER:

It is, therefore,

ORDERED, That TimkenSteel's motions for protective order be granted and the information be deemed confidential and remain under seal. It is, further,

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

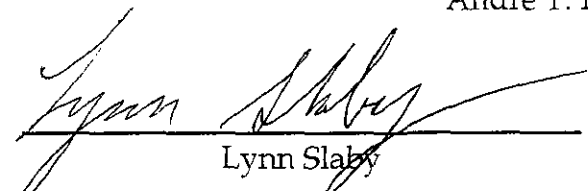
ORDERED, That TimkenSteel and AEP Ohio take all necessary steps to carry out the terms of the Stipulation and this Opinion and Order. It is, further,

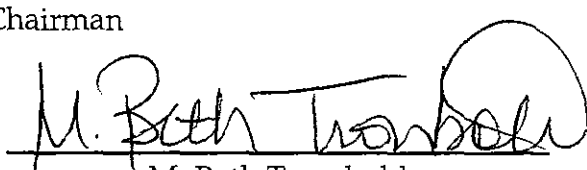
ORDERED, That nothing in this Opinion and Order shall be binding upon the Commission in any future proceeding or investigation involving the justness or reasonableness of any rate, charge, rule, or regulation. It is, further,

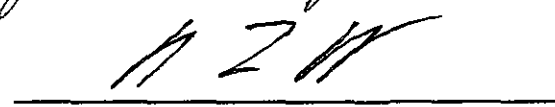
ORDERED, That a copy of this Opinion and Order be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO



Andre T. Potter, Chairman

Lynn Slaby

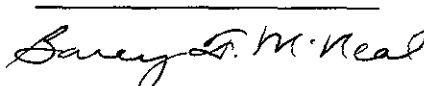
M. Beth Trombold

Asim Z. Haque

Thomas W. Johnson

BAM/sc

Entered in the Journal **DEC 16 2015**



Barcy F. McNeal
Secretary