

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application for)	
Establishment of a Reasonable)	Case No. 16-2020-EL-AEC
Arrangement Between U.S. Steel)	
Seamless Tubular Operations, LLC.,)	
Lorain Tubular Operations and The Ohio)	
Edison Company.)	

**COMMENTS
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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I. INTRODUCTION

In this type of case the PUCO will consider whether the claimed benefits of a unique arrangement justify the subsidy Ohioans would pay to fund the electric rate discount sought under the arrangement. Here, U.S. Steel Seamless Tubular Operations LLC and Lorain Tubular Operations (“Applicant”) seek to establish a “unique arrangement” with Ohio Edison. Under the arrangement the Applicant would obtain a subsidy from consumers for electricity supplied by a competitive retail electric service provider (“marketer”).

Under Ohio Adm. Code 4901:1-38-05(F), parties may file comments and objections to a unique arrangement within twenty days of its filing. The PUCO may hold a hearing on the application if it determines the application appears to be unjust or unreasonable. Under the present circumstances of the application (where details about the proposal are limited), a hearing is warranted. In the following comments, OCC recommends consumer protections regarding the arrangement and the yet to be identified

“delta revenue” (reflecting the rate discount) that the Applicant seeks to have other customers pay.

OCC understands that these initial comments are a preliminary method by which it can present its concerns about the application. OCC also understands that, according to PUCO precedent, it is in no way prohibited from developing recommendations in favor of or against the application after these comments are submitted.¹ OCC appreciates that the Applicant discussed its proposal with OCC prior to filing.

II. COMMENTS

The Applicant bears the burden of proving that the filing ("application") for a unique arrangement should be approved.² The Applicant must establish that the proposal is lawful based on information that is filed with and approved by the PUCO.³ And such arrangements are under the supervision and regulation of the PUCO. The PUCO can modify the arrangement.⁴

As an initial matter the PUCO must address whether it should (and can) establish a unique arrangement for an applicant that is not a mercantile customer of a utility. And if the PUCO determines it can (and should) do so, the PUCO must consider, inter alia:

- how much of a discount should be provided,
- the structure of the discount,
- how long the discount should last,

¹ See *In the Matter of the Application for Establishment of a Reasonable Arrangement Between Eramet Marietta, Inc. and Columbus Southern Power Company*, Case No. 09-516-EL-AEC, Entry at ¶4 (July 2, 2009).

² Ohio Admin Code 4901:1-38-05(B)(1).

³ R.C. 4905.31(E).

⁴ R.C. 4905.31(E).

- who should bear the cost of the discount and
 - what portion of the discount should be borne by customers
- versus Ohio Edison.

A. The Applicant is not presently a mercantile customer of a utility.

Under the PUCO's rules (and the law) a reasonable arrangement can be established by a mercantile customer of an electric distribution utility.⁵ But as the Applicant acknowledges, it is not currently a customer of Ohio Edison Company, although it "will be a mercantile customer" during the term of the arrangement.⁶

The Applicant receives electricity indirectly from Ohio Edison. The Applicant receives service that is directly delivered to another Ohio Edison customer, Republic Steel. Republic resells electricity to the Applicant to support the needs of its tubular operations.⁷

The Applicant's tubular operations were previously part of a large integrated manufacturing facility. But in the 1990s, portions of the facility were sold to Republic Steel's predecessor. The sold facilities included a substation and electric switchgear used to deliver electricity supplied by Ohio Edison directly to the Applicant. In a filing by the Applicant at the PUCO, it claims that when the substation was sold, "it was desirable to continue to receive electricity service through the existing infrastructure rather than construct redundant infrastructure."⁸ It appears that Applicant now seeks a reasonable

⁵ R.C. 4905.31; Ohio Admin. Code 4901:1-38-05.

⁶ Application at ¶¶2, 3.

⁷ See *In the Matter of the Application of Republic Steel for Approval of a Unique Arrangement for Republic Steel's Lorain, Ohio Facility*, Case No. 13-1913-EL-AEC, Motion to Intervene and Memorandum in Support of United States Steel Corporation at 4 (Sept. 20, 2013).

⁸ Id.

arrangement so that it can reconstruct the facilities it previously sold and considered to be redundant.

The rules and law require that a reasonable arrangement can be established only by a mercantile customer. As the Applicant seems to acknowledge, the PUCO cannot create a reasonable arrangement, to be subsidized by other consumers, until and unless the Applicant meets the definition of a mercantile customer.

B. The Application includes only limited information that is insufficient, at this time, to determine if the proposed arrangement is just and reasonable.

Applicant requests firm electricity for its full requirements at a delivered price per kWh that includes all generation, transmission and distribution charges plus any surcharges, riders or other adders.⁹ Applicant refers to this as an “all-in” kWh-based price. The all in price would be set for six years.

Yet the Application does not provide a recommended price per kWh, nor a recommended discount per kWh. Without this information, the amount of delta revenue subsidy that other customers will fund is not known. It is important to include such information so that the PUCO and stakeholders can evaluate the benefits of the proposed arrangement in context with the effect of the proposed arrangement on other customers.¹⁰ Only then can the PUCO determine if the arrangement is “just and reasonable” and should be approved.

⁹ Application at 3.

¹⁰ See, e.g., *In the Matter of the Application for Establishment of a Reasonable Arrangement between ASHTA Chemicals Inc., and the Cleveland Electric Illuminating Company*, Case No. 12-1494-EL-AEC, Entry at (Aug. 1, 2012) (requiring the applicant, if it wished to go forward with its application, to file information regarding its recommended price per kWh, the recommended discount per kWh, and the estimated delta revenue).

There is PUCO precedent¹¹ for requiring the needed information to evaluate a proposed unique arrangement. The PUCO should require such information be provided for the application in this case.

C. The PUCO should establish caps (limits) on what customers could be charged to subsidize economic development programs (as in electric discounts for certain customers).

The PUCO should rule that the subsidies consumers are asked to pay for all economic development in the service area should not exceed, in total, a certain low percentage of consumers' electric bills.

If this unique arrangement is approved, the PUCO should limit the total subsidy sought from customers and limit the annual subsidy that Ohio Edison can charge its customers. As noted by the PUCO, the ability of customers to fund recovery of delta revenues is not unlimited.¹² A cap will protect consumers who pay the subsidy and help keep the cost of electricity down. The PUCO has recognized in the past that it cannot expose customers to unreasonable and unlimited risk and thus must include reasonable protections for the customers who bear the burden of sustaining economic development arrangements.¹³ A cap is one of those reasonable protections that the PUCO should order for this economic development arrangement.

In order for the cap to work and protect customers, the PUCO should not approve an "all-in" price, as the Applicant requests. Using an all-in price can impede the ability of the PUCO to identify the exact amount of the subsidy. If the amount of the subsidy is

¹¹ Id.

¹² See, e.g., *In the Matter of the Application of Ormet for Approval of a Unique Arrangement with Ohio Power Company and Columbus Southern Power Company*, Case No. 09-119-EL-AEC, Opinion and Order at 21 (Oct. 2, 2013).

¹³ Id.

masked, it is difficult to set and enforce a reasonable cap for the arrangement. For this reason, the PUCO should not favor proposals for an all-in rate.

D. The PUCO should ensure that Ohioans pay the least subsidy to their utility that is needed for economic development.

The Applicant seeks permission to modify or extend its arrangement “as circumstances and conditions warrant.”¹⁴ This is problematic. This proposal is overbroad, and lacks a needed limit on charges to other customers related to the subsidy for the unique arrangement. Under this provision, the Applicant could seek, for instance, to increase the level of subsidy collected from customers, or seek to extend the term of the agreement beyond the six years requested.

The PUCO should achieve in individual cases and over time the least cost to consumers who are subsidizing any applicant’s electricity discounts (economic development). For seeking the least cost to consumers, the PUCO should protect consumers and facilitate future planning from mercantile customers by deterring repeat applications (including extensions of existing arrangements) for customer-funded subsidies.

Customer-funded, economic development discounts should not be required as a continuous or long-term subsidy of a business. Instead, customer funding should be a limited short term solution to help maintain or grow the mercantile customers’ business while providing economic benefits (jobs and investment) for Ohioans.¹⁵ The term of this agreement should have a firm end date.

¹⁴ Application at ¶5B.

¹⁵ See, e.g., *In the Matter of the Application of Ormet for Approval of a Unique Arrangement with Ohio Power Company and Columbus Southern Power Company*, Case No. 09-119-EL-AEC, Entry at ¶5 (Oct. 17, 2012) (recognizing that an economic development arrangement should reduce over time and eventually eliminate the mercantile customers' dependency on delta revenue).

E. Under a unique arrangement, the mercantile customer should make specific commitments (jobs, investment) that benefit other utility customers.

Under the application, it appears that the Applicant must invest a "significant amount of capital" so that it can become a direct mercantile customer of Ohio Edison.¹⁶ The Applicant claims that it seeks the unique arrangement "to position itself to be viable for many years allowing for improvements and sustaining current employment."¹⁷ The Applicant also speaks about expanding employment and increasing the productive capacity of its operations.¹⁸

It is not clear what commitments to Ohio economic development the Applicant is willing to make in exchange for the subsidy from Ohioans. Because the commitments are important in judging if the subsidy is warranted,¹⁹ the Applicant should plainly state what it is committing to. Only then can the PUCO measure the quantifiable benefits of the unique arrangement and determine if the benefits outweigh the subsidy that other customers are asked to pay.

¹⁶ Application at ¶4.

¹⁷ Id.

¹⁸ Id. at ¶5.

¹⁹ See, e.g., *In the Matter of the Application for Establishment of a Reasonable Arrangement between ASHTA Chemicals Inc., and the Cleveland Electric Illuminating Company*, Case No. 12-1494-EL-AEC, Opinion and Order at 6 (Jan. 8, 2014)(opining that investment and jobs are an important aspect of the reasonable arrangement because the public interest is benefitted and Ohio's effectiveness in the global economy is enhanced); *In the Matter of the Application of the TimkenSteel Corporation for Approval of a Unique Arrangement for the TimkenSteel Corporation's Stark County Facilities*, Case No. 15-1857-EL-AEC, Opinion and Order at 8 (Dec. 16, 2015)(capital investment and jobs resulting from the reasonable arrangement demonstrate that the arrangement is in the public interest).

F. The proposed purchase of power from a marketer (instead of from the utility), along with annual and total caps, may reduce the customer-funded subsidy required under the unique arrangement.

The Applicant proposes to buy power from a marketer rather than obtain the electricity from Ohio Edison's standard service offer tariff.²⁰ Applicant claims that this will reduce the amount of any delta revenues (subsidy) that might otherwise arise. Reducing the subsidy Ohioans will pay is a good objective.

In this regard, the application should (but does not) include a proposed requirement for the Applicant to obtain the lowest possible rate from a marketer. This would protect consumers who otherwise fund the delta revenues subsidy. This is another reason to have an annual and total cap on the delta revenue. With caps in place, an incentive would be created to obtain the lowest possible price for generation.

G. Any demand response capability that Applicant has should be committed to Ohio Edison for integration into its portfolio at no cost to the utility or its customers.

Under the application, the Applicant states that it has demand response capability and is willing to commit its demand response capability to Ohio Edison "provided LTO [US Steel] can gain access to the rider(s) or tariff provisions that provide a credit for such demand response."²¹ But if the unique arrangement is approved by the PUCO, the Applicant should commit the demand response to Ohio Edison at no cost to the utility or its customers. It should commit its capabilities to Ohio Edison in exchange for receiving its service discount subsidy from other customers. This will help reduce the peak demand reduction compliance costs borne by all customers. It is only fair that customers

²⁰ Application at ¶5A.

²¹ Application at ¶5D.

who have paid for the Applicant's discounted electric rates get the benefit of demand response for activities they have subsidized.

H. The PUCO should identify a reasonable sharing of the costs (delta revenue) of economic development discounts between Ohio Edison and its customers, so that customers do not bear the full burden of the subsidy.

The Applicant asks that the PUCO address questions regarding the appropriate treatment of costs and benefits of the arrangement and the delta revenues in compliance with R.C. 4905.31 and Rule 4901:1-38-08.²² By this ask, the Applicant appears to take no position on who should pay for the discount it receives. It is anticipated that Ohio Edison will oppose paying any of its own funds for this economic development proposal. Instead it will ask that consumers pay the full subsidy.

The solution should be somewhere in the middle, with both customers and the utility sharing the cost of the discount/subsidy. The PUCO should provide for a reasonable split of the subsidy between utility and its customers.

In this regard, the PUCO had an early policy regarding the sharing of economic development delta revenues (subsidies) between the utility and customers, dating back several decades.²³ In the past the PUCO has held "that a 50/50 split properly recognizes that both the company and its customers benefit from the company's policy of providing economic incentive rates to certain customers to attract new business in the utility's

²² Application at ¶6.

²³ See *Ohio Edison Company*, Case No. 89-1001-EL-AIR, Opinion and Order at 40-41. (August 16, 1990), at 40-41 and *Cleveland Electric Illuminating Co.*, Case No. 88-170-EL-AIR, Opinion and Order at 18-19 (January 31, 1989).

service territory.”²⁴ And this 50/50 sharing of the delta revenue is consistent with other PUCO decisions that addressed the issue.²⁵

The PUCO’s historic policy complements the provisions in S.B. 221 that address economic development arrangements. S.B. 221 allows a utility to seek to charge other customers for “revenues foregone” as a result of an economic development arrangement.²⁶ But the PUCO’s enabling rules,²⁷ along with the permissive statutory language,²⁸ make it clear that the collection of delta revenues from other customers is a matter within the discretion of the PUCO.²⁹ The PUCO acknowledged, in an appeal to the Ohio Supreme Court, that it can approve a unique arrangement without allowing the utility to collect any amount from other customers to pay the utility for the discount to the mercantile customer.³⁰

In considering the equities of the delta sharing, the PUCO should conclude that a 50/50 split of the delta revenue is more equitable than asking consumers to be liable for

²⁴ *In the Matter of the Application of Columbus Southern Power Company for Authority to Amend its Filed Tariffs to Increase the Rates and Charges for Electric Service*, Case No. 91-418-EL-AIR. Opinion and Order at 110. (May 12, 1992).

²⁵ See *Ohio Edison Company*, Case No. 89-1001-EL-AIR, Opinion and Order at 40-41. (August 16, 1990), at 40-41 and *Cleveland Electric Illuminating Co.*, Case No. 88-170-EL-AIR, Opinion and Order at 18-19 (January 31, 1989).

²⁶ R.C. 4905.31(E).

²⁷ O.A.C. 4901:1-38.

²⁸ Under R.C. 4905.31(E) a utility is not prohibited from seeking an arrangement that includes a “financial device” that “may include a device to recover costs incurred in conjunction with any economic development and job retention program of the utility within its certified territory, including recovery of revenue foregone.” The arrangement must then be approved by the PUCO and are subject to change, alteration, or modification by the Application.

²⁹ Ohio Admin. Code 4901:1-38-08(A)(1).

³⁰ See *In the Matter of the Application of Ormet Primary Aluminum Corporation for Approval of a Unique Arrangement with AEP Ohio Company and Columbus Southern Power Company*, Supreme Ct. Case No. 09-2060, Brief of the Public Utilities at 12 (Mar. 3, 2010). “Appellant [CSP/OP] mistakenly believes that it is entitled to receive specific amounts from all customers, reasoning that money it doesn’t get from one customer it must get from another. This is not now, and never was, the law. As discussed above, R.C. 4905.31 requires no adjustment at all.”

100% of the delta revenue. Ohio Edison is likely to receive benefits from serving the Applicant. Once the Applicant is a customer of Ohio Edison, it will take distribution service from the utility. This will generate additional revenues for Ohio Edison. So Ohio Edison should share in the cost of the economic development.

I. The Applicant should commit to filing information in the public docket on the arrangement. The information should include the delta revenue created along with annual reports detailing the progress on commitments (such as for Ohio jobs) under the arrangement.

The PUCO should ensure that public transparency and accountability exist for economic development programs. This is important also for consumers who pay subsidies to electric utilities for funding economic development rate discounts.

The public should have access to information that confirms whether companies receiving subsidies from Ohioans (for electricity discounts) regarding unique arrangements are fulfilling commitments to Ohioans for economic development.³¹ The Ohio Administrative Code, that the PUCO adopted, requires an annual report to be filed by customers served under a unique arrangement. The report is to display the value of any incentives and the impact on customers.³² At a minimum, the PUCO should treat these reports similar to the annual reports in an earlier case where the PUCO ordered the reasonable arrangement reports to be released to the Ohio Consumers' Counsel.³³

For example, the Ohio Attorney General annually provides a reporting of the compliance of economic development awards given by the Ohio Development Services

³¹ R.C. 4901.12 and 4905.07.

³² Ohio Admin. Code 4901:1-38-06 (A).

³³ *In the Matter of the Application for Establishment of a Reasonable Arrangement between Eramet Marietta, Inc. and Columbus Southern Power Company*, Case No. 09-516-EL-AEC Entry at 8 (March 3, 2011).

Agency.³⁴ This report publicly discloses the amount of grant awards, loan amounts, commitments, performance, and actions taken if the commitments are not reached.

The Applicant here seeks to prohibit public access to details of the arrangement that it considers to be “competitively sensitive.”³⁵ Information about how much customers are going to be charged to subsidize the arrangement, and details regarding the applicant’s commitments should not be considered competitively sensitive information. Considering that consumers would be paying subsidies to Ohio Edison for the Applicant’s business, they should know how much they are paying for the economic development. Disclosing information would serve the public through transparency and accountability in ratemaking, such as information in the annual report by the Ohio Attorney General.

The amount of delta revenue (subsidy paid by consumers) was made publicly available in another recent case.³⁶ Also, in other cases, the delta revenue cap was not treated as confidential.³⁷ Consistent with this past treatment, the PUCO should make the delta revenue cap amounts part of the public record in this case. And it should require annual reports detailing the Applicant’s progress on commitments to be filed in the public docket.

³⁴ *2015 Report to the General Assembly: Award Recipient Compliance with State Awards for Economic Development*, [http://www.ohioattorneygeneral.gov/Files/Publications-Files/Publications-for-Business/2015-Economic-Development-Report_FINAL-\(11_23_15\).aspx](http://www.ohioattorneygeneral.gov/Files/Publications-Files/Publications-for-Business/2015-Economic-Development-Report_FINAL-(11_23_15).aspx).

³⁵ Application at ¶5.

³⁶ *In the Matter of the Application of the TimkenSteel Corporation for Approval of a Unique Arrangement for the TimkenSteel Corporation’s Stark County Facilities*, Case No. 15-1857-EL-AEC, Opinion and Order at 8 (Dec. 12, 2015).

³⁷ *In the Matter of the Application for Approval of an Amendment to a Contract for Electric Service between AEP Ohio Company and Applicant Metallurgical, Inc.*, Case No. 15-327-EL-AEC, Opinion and Order at 4 (May 13, 2015).

III. CONCLUSION

The Ohio Consumers' Counsel appreciates this opportunity to comment. Our recommendations are directed toward assisting the PUCO find the balance between the benefits of economic development and the costs (charges) to consumers who fund the subsidies for economic development. And OCC appreciates the dialogue to date with the Applicant.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing
Comments have been served upon the below-named persons via electronic transmission
this 2nd day of November, 2016.

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Ohio Edison Company

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Summary: Comments Comments by The Office of the Ohio Consumers' Counsel electronically filed by Ms. Jamie Williams on behalf of Willis, Maureen Mrs.