

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of North Star)
BlueScope Steel for Approval of a Reasonable) Case No. 19-950-EL-AEC
Arrangement)

**COMMENTS OF
THE OHIO MANUFACTURERS' ASSOCIATION ENERGY GROUP**

I. INTRODUCTION

The Ohio Manufacturers' Association Energy Group (OMAEG) has long advocated that the Public Utilities Commission of Ohio (Commission) should be cautious in requiring Ohio's electric customers to fund a portion of electric costs of select businesses and should only do so if there is a legitimate reason to do so, such as economic development. Additionally, OMAEG has advocated that the Commission should create standards so that any economic development tools are fair and available to all customers on a non-discriminatory basis. Moreover, in cases where the Commission does approve special arrangements with certain customers under Ohio law, recovery of costs under those arrangements should be set at a just and reasonable level, last for a specified term, and be paired with firm, enforceable commitments on the part of the beneficiaries of these special arrangements to make capital investments and increase employment levels. By adhering to these standards, the Commission is able to ensure that special arrangements provide tangible benefits to the public, and not just to their recipients.

This proceeding concerns the Application before the Commission of North Star BlueScope Steel (North Star) for approval of a reasonable arrangement with the Toledo Edison Company (Toledo Edison) under R.C. 4905.31 and Ohio Adm. Code 4901:1-38-05. According to the Application, North Star is "considering the construction of a new electric arc furnace and

caster at its Delta, Ohio facility.”¹ North Star explicitly says, however, that it has not made a final decision on commencing construction of the described expansion.² North Star goes on to state that without approval of the proposed arrangement, the new facility may not be viable in Ohio and that North Star would need to consider other locations around the world.³

Among other provisions, the Application requested up to \$28 million in electric credits or discounts for committing to interrupt a portion of the load associated with its expanded facility over a seven-year term that would commence upon the beginning of commercial operations at the new facility.⁴ This provision has the potential to create delta revenue that Toledo Edison would collect from its other customers, including those customers that compete with North Star for the same business. Meanwhile, Staff recommended⁵ and the Commission approved provisions of a special arrangement that does not result in delta revenue charged to other customers.⁶ These provisions include allowing North Star to procure its supply from a CRES provider, participate in demand response programs, retain existing interruptible credits (IRP credits), remove its load and usage from the R.C. 4928.644 compliance baseline and allowing North Star to arrange related generation supply price reduction, and remove its load and usage from the R.C. 4928.66(A)(2)(i) compliance baseline. The Commission further noted that these approved measures would not be dependent on North Star meeting any sort of job creation or capital investment standards.⁷

¹ See Application for Expedited Approval of a Reasonable Arrangement at 2 (April 17, 2019) (Application).

² Id.

³ Id.

⁴ Id. at 3.

⁵ Staff Review and Recommendation at 3-4 (May 29, 2019).

⁶ See Finding and Order at ¶ 18 (June 5, 2019) (Order).

⁷ Id.

After approving the measures discussed above, the Commission stated that it was soliciting comments on the remaining portions of North Star's Application, including the recovery of delta revenue from customers through an IRP credit.⁸ OMAEG intervened and filed initial comments in this matter on April 29, 2019,⁹ and hereby submits the following comments pursuant to the Commission's June 5, 2019 Order.

II. COMMENTS

The Commission should keep several principals in mind as it considers North Star's Application. First, the burden that the arrangement poses on other customers of Toledo Edison should be minimal or nonexistent. Second, to the extent that there is a financial burden for other customers, that burden should be accompanied by an enforceable commitment that North Star provide benefits to the public in the form of capital investment and job creation. And, third, the Commission should strive to treat all special arrangement applicants equally and not approve provisions or amounts of recovery for one customer that it has not approved for others. Applied to the Application at issue in this case, these factors suggest that any cost recovery allowed at all by the Commission should be significantly lower than that which was proposed in the Application.

A. The Commission Should Minimize the Burden this Special Arrangement Imposes on Other Customers.

Above-market charges in any form are detrimental to residents and businesses because they increase energy costs above the level that the competitive market has set for those costs. In the case of special arrangements, the impact becomes doubly troublesome, as those increased charges also work to elevate competitors in the marketplace. In considering any application such

⁸ Id. at ¶ 20.

⁹ See Motion to Intervene and Comments of the Ohio Manufacturers' Association Energy Group (April 29, 2019) (OMAEG Motion to Intervene and Comments).

as the one that North Star filed in this proceeding, the Commission should always keep in mind that other customers are responsible for any delta revenue that results from the special arrangement. For applicants like North Star, these other customers may include steel manufacturers and other businesses that compete with North Star in the market and for employees. This dynamic complicates the process of collecting delta revenue for the benefit of a select recipient like North Star because the special arrangement effectively acts as a transfer of money from one competitor to another. Accordingly, OMAEG would advocate that any needed economic development tool be consistent, both in level and commitments, to what the Commission has approved for other customers.

OMAEG submits that the Commission can mitigate the potential for anticompetitive results of special arrangements by limiting the amount of delta revenue to be recovered to a reasonable amount and requiring commitments in capital investment and job creation or retention. In this case, North Star requested recovery of up to \$28 million through an IRP credit. This amount is excessive, would result in unjust and unreasonable rates for customers if it were approved, and should be greatly reduced in the event that the Commission determines that any recovery of delta revenue is appropriate.

B. The Commission Should Require North Star to Make Capital Investment and Job Commitments.

In its Order approving certain elements of a special arrangement for North Star, the Commission stated that it was not imposing any capital investment or job creation requirements on North Star.¹⁰ The Commission also noted that the Application is silent as to the continuation of operations at the new facility.¹¹ Insofar as this lack of commitment regarding jobs,

¹⁰ Order at ¶ 20.

¹¹ Id. at ¶ 19.

investment, or future operations has only been blessed by the Commission to the extent that no such commitments are required in order for North Star to access the portions of the special arrangement approved in the Order (which do not result in increased costs for other customers), OMAEG does not necessarily object. If, however, the Commission intends to afford North Star electric cost savings by recovering delta revenue from other customers, the Commission should require North Star to make enforceable commitments related to capital investment, job creation, and sustained operation of the new facility beyond the term of the special arrangement.

The Commission has approved arrangements with commitments such as these before, including provisions that result in a reduction of the benefits received under a special arrangement when the commitments are not met. For example, in a recent special arrangement approved between Duke Energy Ohio, Inc. and the AK Steel Corporation (AK Steel), the Commission approved a special arrangement that provided for a reduction in the credits received by AK Steel in the event that AK Steel does not meet its capital investment commitments during the term of the special arrangement.¹² Other special arrangements that the Commission has approved have included similar provisions regarding commitments made by the special arrangements' recipients.¹³ Indeed, even North Star's Application in this case proposed a

¹² See *In the Matter of the Application of AK Steel Corporation for Approval of a Reasonable Arrangement with Duke Energy Ohio*, Case No. 18-450-EL-AEC, Opinion and Order (June 28, 2018); Joint Stipulation and Recommendation at 5 (May 11, 2018).

¹³ See, e.g., *In the Matter of the Application of Acero Junction, Inc. and Ohio Power Company for Approval of a Reasonable Arrangement*, Case No. 17-2132-EL-AEC, Opinion and Order at ¶ 17 (May 2, 2018) (providing for a proportional reduction in the recipient's benefits if employment or capital investment commitments are not met); *In the Matter of the Application of PRO-TEC Coating Company, LLC for the Approval of a Reasonable Arrangement for Its Leipsic, Ohio Plant*, Case No. 19-124-EL-AEC, Application for a Reasonable Arrangement at 14 (January 11, 2019); Opinion and Order (February 27, 2019) (providing that the continuation of the arrangement is contingent on the recipient meeting its commitments).

provision for enforcing job and capital investment commitments similar to the ones used in the cases cited above.¹⁴

The utility and necessity of firm, enforceable commitments is apparent. Special arrangements like the one North Star proposes are permitted under Ohio law because they, in theory, provide benefits to the public at large in the form of economic development, employment, community involvement, and other benefits. Simply put, if the Commission requires Toledo Edison's customers and North Star's competitors to fund North Star's special arrangement, those customers should be guaranteed that the funding will result in tangible benefits to the community.

Additionally, the Commission should set a reasonable term for any benefits funded by customers and require a commitment from North Star to maintain operations at the new facility throughout that term and after its expiration without seeking a renewal of the special arrangement. The Commission should not be repeatedly approving special arrangements with the same select customers as a revenue stream in their business model. It would be unjust and unreasonable for the Commission to allow other customers to fund repeated renewals of the same special arrangement for the same customer. Rather, the Commission should set a reasonable term for all special arrangements and then provide that the recipient is not permitted to apply for a renewed or new special arrangement upon the conclusion of the first special arrangement. This is a fair compromise that allows economic development incentives and cost relief for businesses as they commence or expand operations without committing all other customers to funding that cost relief in perpetuity. OMAEG's view is that a term of five years or less would be reasonable. This term would still afford an applicant like North Star a substantial period wherein it is

¹⁴ Application at 4.

receiving cost recovery while also not subjecting other customers to seven years (or more) of funding the subsidies.

Further, the Commission noted that North Star failed to address the issue of whether it intends to continue operating at the new facility after the expiration of the proposed special arrangement.¹⁵ OMAEG believes that the Commission should require North Star to continue operating at the new facility for at least two years after any special arrangement that involves cost recovery from other customers expires or else forfeit a portion of the costs it received from other customers under the special arrangement. This would be a just and reasonable provision because the positive impact of the new facility would be severely dampened in the event that North Star shuts down the new facility and eliminates the jobs and economic development benefits it created. This would be another appropriate measure that would protect the customers that would be providing subsidies to North Star.

C. The Commission Should Consistently Consider Special Arrangements Under the Same Criteria.

As alluded to above, the Commission has approved a number of special arrangements in recent years. These special arrangements have been approved for commercial customers of Ohio's various electric utilities for different lengths of time and with different terms. OMAEG understands that given the varying terms and commitments contained in these special arrangements, it would be unreasonable to have a single, uniform special arrangement that is approved for all applicants or even an objective set of rules to determine the terms of an special arrangement based on the applicant. However, the Commission should still strive to maintain fairness and equality between recipients of special arrangements such that two applicants that provide similar public benefits are approved for similar special arrangements at similar levels.

¹⁵ See Order at ¶ 20.

Striving to maintain consistency in the amounts and types of credits approved by the Commission will create more fair outcomes for applicants and customers and ensure predictability for all parties regarding the types of special arrangements and electric discounts or economic development incentives that the Commission will approve.

Specific to this case, North Star is proposing to receive an IRP credit. Before approving such a credit, the Commission should look to its past cases to determine whether previous special arrangement applicants that sought an IRP credit or similar mechanism were granted such a credit. As OMAEG noted in its initial comments, programs such as these, if they exist at all, should be non-discriminatory and available to all similarly situated customers.¹⁶ If the Commission is not willing or able to offer IRP credits to all customers, it should not allow select customers such as North Star access to a credit that is not available to its competitors.

Similarly, the Commission should look at applicants that have made similar capital investment and job creation commitments and use the amount of credits approved for those applicants as a baseline. For instance, if North Star commits to adding 75 employees and making \$600 million in capital investments as it does in its Application, the Commission should consider what level of cost relief and similar commitments have been received, and should grant them a relatively equal cost relief here. OMAEG does not believe that the level of commitments contained in the application warrants \$28 million in cost relief for a single customer or that such cost relief is consistent or comparable with other approved reasonable arrangements and discounts. Regarding the amount that is appropriate for cost recovery, the Commission should approve cost recovery in an amount that it could make available to all customers that make the same commitments in the future. By making the same programs available on the same terms to

¹⁶ See OMAEG Motion to Intervene and Comments at 5.

all similarly-situated customers that seek them, the Commission would be taking positive steps towards eliminating the anti-competitive nature of these special arrangements.

III. CONCLUSION

OMAEG believes that applications of customers seeking cost relief from other customers before the Commission deserve careful consideration prior to approval. Before allowing cost recovery, the Commission should work to ensure that any recovery occurs at an appropriate amount, is available to other similarly situated customers, is only allowed for a set period of time, and is accompanied by commitments on the part of the recipient to take actions that will benefit the community. With regard to North Star's Application in this case, OMAEG believes that approving \$28 million in cost recovery for North Star at the proposed terms and commitments set forth in the Application would result in unjust and unreasonable rates for customers in violation of Ohio law and Commission rules.¹⁷

Respectfully submitted,

/s/ Kimberly W. Bojko

Kimberly W. Bojko (0069402)

Brian W. Dressel (0097163)

Carpenter Lipps & Leland LLP

280 North High Street, Suite 1300

Columbus, Ohio 43215

Telephone: (614)-365-4100

Email: Bojko@carpenterlipps.com

Dressel@carpenterlipps.com

(willing to accept service by email)

Counsel for OMAEG

¹⁷ See R.C. 4905.26; Ohio Adm. Code 4901:1-38-03 and 4901:1-38-05.

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was served upon all parties of record via electronic mail on June 20, 2019.

/s/ Kimberly W. Bojko
Kimberly W. Bojko

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

6/20/2019 4:54:39 PM

in

Case No(s). 19-0950-EL-AEC

Summary: Comments of the Ohio Manufacturers' Association Energy Group electronically filed by Mr. Brian W Dressel on behalf of The Ohio Manufacturers' Association Energy Group