

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application for)
Establishment of a Reasonable)
Arrangement Between Marathon) Case No. 10-2777-EL-AEC
Petroleum Company LP and Ohio)
Power Company.)

OPINION AND ORDER

The Commission, having considered the record in this matter and the stipulation and recommendation submitted by the signatory parties, and being otherwise fully advised, hereby issues its opinion and order.

APPEARANCES:

McNees, Wallace, and Nurick, LLC, by Samuel C. Randazzo and Scott E. Elisar, 21 East State Street, Columbus, Ohio 43215, on behalf of Marathon Petroleum Company LP.

Matthew J. Satterwhite, 1 Riverside Plaza, Columbus, Ohio 43215, on behalf of Ohio Power Company.

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

Nolan Moser and Trent A. Dougherty, 1207 Grandview Avenue, Suite 201, Columbus, Ohio 43212, on behalf of the Ohio Environmental Council.

OPINION:

I. Background

Marathon Petroleum Company LP (Marathon) is a mercantile customer as defined by Section 4928.01, Revised Code. Pursuant to Section 4905.31, Revised Code, and Rule 4901:1-38-05(B), Ohio Administrative Code (O.A.C.), a mercantile customer of an electric utility may apply to the Commission for a unique arrangement with the electric utility.

On November 22, 2010, Marathon filed an application for approval of a unique arrangement with Ohio Power Company (Ohio Power) for electric service at

Marathon's refinery in Canton, Ohio, which has the capacity to convert 78,000 barrels of crude oil per day into products such as gasoline, diesel fuels, kerosene, propane, asphalt, roofing flux, and industrial fuel oil. The refinery currently employs approximately 350 direct employees and approximately 250 contract workers. The total payroll for the facility is \$70 million per year. In 2009, the Canton refinery paid over \$1 million in taxes and paid more than \$50,000 in universal service fund charges to help fund bill payment assistance for eligible residential customers.

The application contains both an energy efficiency (EE)/peak demand reduction (PDR) component and an advanced energy (AE) component. Marathon states that approval of the application will permit Marathon to focus its energies on continuous improvement planning for longer-term investments in Canton that will help the refinery operations remain competitive in the global marketplace.

Motions to intervene and comments on the application were filed by Ohio Environmental Council (OEC) and Ohio Power on November 24, 2010, and December 10, 2010, respectively. By entry issued on February 25, 2011, the attorney examiner granted the motions to intervene filed by OEC and Ohio Power and scheduled a hearing to commence on April 12, 2011.

On April 4, 2011, Marathon, Ohio Power, Staff, and OEC filed a stipulation and recommendation (Stipulation) resolving a number of issues in the case (Jt. Ex. 1). The hearing was held, as scheduled, on April 12, 2011, in order to consider the stipulation.

II. Summary of the Application

In its application, Marathon explains that it is requesting that the Commission authorize an arrangement that will permit the Canton refinery to establish a structure that will enable higher utilization of the customer-sited capabilities of Marathon to facilitate compliance with the mandates of Amended Substitute Senate Bill 221 (S.B. 221), which will advance the policy of the state. In addition, Marathon avers that the unique arrangement would permit Marathon to focus its energies on continuous improvement planning for longer term investments in Canton that will help the refinery operations remain competitive in the global marketplace.

Under the proposed unique arrangement, Marathon explains that it will employ a continuous improvement plan whereby Marathon commits its EE/PDR and AE capabilities to Ohio Power so that such customer-sited capabilities can be counted for purposes of compliance with Ohio Power's EE, PDR, and AE targets. As part of its proposal, Marathon will earmark the financial benefits described in the application and dedicate such benefits to investments in additional EE/PDR and AE projects at the

Canton refinery as part of a plan to continuously reduce the energy intensity of the Canton refinery. In addition to this reinvestment, Marathon states that it will commit to invest \$2.5 million total for the combined customer-sited existing and new EE, PDR, and AE projects over the term of the unique arrangement.

With respect to its proposed EE/PDR plan, Marathon explains that it has identified projects completed since January 1, 2007, that produced energy savings and has included those existing projects in its savings calculation in Attachment 1 to the application. According to Marathon, it believes that the programs/projects included in Attachment 1 comply with the presumption that the mercantile projects are part of a demand response, EE, or PDR program to the extent the projects either provide for early retirement of functioning equipment which is not yet fully depreciated or achieve reductions in energy use and peak demand that exceed the reductions that would have occurred had the customer used standard new equipment.

Marathon proposes that based upon the EE/PDR quantities resulting from the projects identified in Attachment 1, Marathon shall receive an exemption from the EE/PDR Rider for a defined period commencing on June 1, 2010 for purposes of encouraging Marathon to commit its customer-sited capabilities. New customer sited EE/PDR capabilities will also be dedicated to Ohio Power.

Marathon further proposes to verify its performance consistent with the International Performance Measurement Verification Protocol or other such measurement and verification standard. Moreover, Marathon submits that the projects shall be cost-effective under the Utility Cost Test.

III. Summary of the Stipulation

The stipulation explains that Marathon's application contains two categories to be covered by the unique arrangement: EE/PDR capabilities and AE capabilities. This stipulation results in the bifurcation of this proceeding and addresses only the EE/PDR portion of Marathon's November 22, 2010, application. The following is a summary of the provisions agreed to by the stipulating parties and is not intended to replace or supersede the stipulation:

- (A) Upon approval of this stipulation, Marathon shall commit its customer-sited existing and new EE/PDR capabilities as it may have available to Ohio Power for integration into Ohio Power's compliance portfolio and such capabilities will be counted for purposes of compliance with Ohio Power's performance benchmark obligations.

- (B) Attachment 1 to the application identifies projects for potential EE/PDR activities and provides an adequate basis for commencing the measurement and verification process for the projects or actions identified thereon and provides a brief description of such projects or actions and estimated kWh savings. The parties agree that the Canton Refinery has worked with Ohio Power and OEC in good faith to provide documentation where such documentation has been reasonably requested to facilitate their efforts to measure and verify the EE/PDR effects of Marathon's action. Upon approval, the Canton Refinery shall continue such good faith efforts.
- (C) The projects included in Attachment 1 to the application are eligible to be counted for purposes of satisfying the requirements in Section 4928.66, Revised Code, and also further the State of Ohio's policy goals of reducing energy costs and usage.
- (D) Approval of this application entitles Ohio Power to count the effects of projects and actions completed by the Canton Refinery for purposes of its compliance with the benchmarks, provided such projects and actions satisfy applicable measurement and verification requirements.
- (E) The Canton Refinery will be exempt from the EE/PDR Rider for a period commencing on the effective date of the proposed reasonable arrangement and for so long as the Canton Refinery has committed customer-sited capabilities that meet or exceed the benchmarks in Section 4928.66(A)(1)(a), Revised Code. Since Marathon is currently paying the EE/PDR Rider, the exemption is recommended to begin upon submittal and Ohio Power's verification of each project's kWh savings. The EE/PDR exemption months will be determined by the "Benchmark Method."
- (F) During the term of the reasonable arrangement with regard to the EE/PDR Category, Marathon shall apply the electric bill reduction effects of the rider exemption to undertake additional EE/PDR projects or activities that Marathon may be able to undertake to reduce its overall energy intensity. If the Canton Refinery achieves annual compliance in any year that is in excess of the percentage target for such year, as established using the Benchmark Method, the Canton Refinery shall be permitted to bank such excess to use in subsequent years during the term of the reasonable arrangement described in the Application. Nothing herein shall preclude the

Canton Refinery or Ohio Power from seeking Commission approval of an amendment to or modification of the electric kWh baseline for benchmark compliance as applied to the Canton Refinery for the reasons identified in Section 4928.66(A)(2)(a) and (b), Revised Code, or other appropriate reasons.

- (G) The Canton Refinery's EE/PDR performance shall be measured and verified consistent with the International Performance Measurement Verification Protocol or such other measurement and verification standard as the Canton Refinery and Ohio Power may propose and the Commission may approve. To be counted for compliance with the S.B. 221 portfolio requirements, such performance shall be determined to be cost-effective based on the Utility Cost Test. Staff and Ohio Power shall be permitted to monitor, measure, and verify the Canton Refinery's EE/PDR performance.
- (H) The term of the reasonable arrangement approved herein shall be the same as the term approved by the Commission for the AE/AER Category if a term is approved for the AE/AER category. If the Commission does not approve a term for the AE/AER Category, the reasonable arrangement regarding the EE/PDR Category shall commence on the date such reasonable arrangement is approved by the Commission and shall end 90 days after Marathon or Ohio Power submit a written notice of termination to the other party or the first billing period after Marathon has not, based on the Benchmark Method, contributed EE/PDR capabilities sufficient to continue any such exemption, whichever occurs first.
- (I) Except as modified by the reasonable arrangement, the Canton Refinery shall be subject to Ohio Power's applicable standard tariffs as approved by the Commission. If a conflict between the applicable tariff and the terms and conditions of the reasonable arrangement for the EE/PDR Category, the latter will control. Nothing in the reasonable arrangement precludes the Canton Refinery from shopping for generation service.

CONCLUSION:

Rule 4901-1-30, O.A.C., 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. See, *Consumers' Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d 123, at 125 (1992), citing *Akron v. Pub. Util. Comm.*, 55 Ohio St.2d 155 (1978). This concept is particularly valid where the stipulation is unopposed by any party and resolves almost all of the 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. See, e.g., *Cincinnati Gas & Electric Co.*, Case No. 91-410-EL-AIR (April 14, 1994); *Western Reserve Telephone Co.*, Case No. 93-230-TP-ALT (March 30, 1994); *Ohio Edison Co.*, Case No. 91-698-EL-FOR et al. (December 30, 1993); *Cleveland Electric Illum. Co.*, Case No. 88-170-EL-AIR (January 30, 1989); *Restatement of Accounts and Records (Zimmer Plant)*, Case No. 84-1187-EL-UNC (November 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 Ohio Supreme Court 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 547 (1994) (citing *Consumers' Counsel*, supra, at 126). The court stated in that case that the Commission may place substantial weight on the terms of a stipulation, even though the stipulation does not bind the Commission (*Id.*).

Staff witness Greg Scheck testified that the stipulation was achieved as a result of serious bargaining among capable, knowledgeable parties. Witness Scheck further explained that the stipulation, as a package, benefits ratepayers and the general public and does not violate any regulatory principle or practice. (Tr. at 6-8.)

Based on our review of the three-pronged test, the Commission finds the first criterion, that the process involved serious bargaining by knowledgeable, capable parties, is clearly met. The Commission finds that the stipulation filed in this case appears to be the product of serious bargaining among capable, knowledgeable parties. All parties to the stipulation have been involved in numerous cases before the Commission and have consistently provided extensive and helpful information to the Commission. In addition, the stipulation also meets the second criterion. As a package, the stipulation advances the public interest by resolving all the issues raised in this matter without resulting in extensive litigation. Finally, the stipulation meets the third criterion because it does not violate any important regulatory principle or practice. *Consumers' Counsel*, supra, at 126. Accordingly, we find that the stipulation is reasonable and should be adopted.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

- (1) On November 22, 2010, Marathon filed an application for approval of a unique arrangement with Ohio Power.
- (2) By entry issued February 25, 2011, OEC and Ohio Power were granted intervention in this proceeding.
- (4) On April 4, 2011, Marathon, Ohio Power, Staff, and OEC filed a stipulation resolving all of the issues in this proceeding related to the EE/PDR provisions of the application.
- (5) The evidentiary hearing was held before the Commission on April 12, 2011.
- (6) At the hearing, the stipulation was admitted into the record, intending to resolve all issues in this case.
- (7) The stipulation meets the criteria used by the Commission to evaluate stipulations, is reasonable, and should be adopted.
- (8) Marathon should be authorized to enter into a unique arrangement with Ohio Power consistent with the stipulation and this order.

It is, therefore,

ORDERED, That the stipulation and recommendation submitted in this case be approved and adopted in its entirety. It is, further,

ORDERED, That Marathon and Ohio Power take all necessary steps to carry out the terms of the stipulation and this order. It is, further,

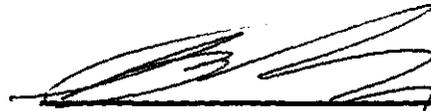
ORDERED, That nothing in this opinion and order shall be binding upon the Commission in any future proceeding or investigation involving the justness or reasonableness of any rate, charge, rule, or regulation. It is, further,

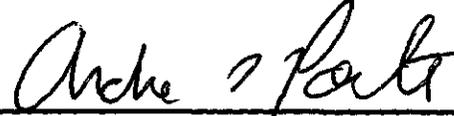
ORDERED, That a copy of this opinion and order be served upon each party of record.

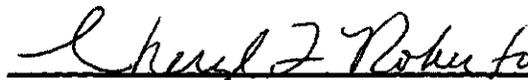
THE PUBLIC UTILITIES COMMISSION OF OHIO


Todd A. Snitchler, Chairman


Paul A. Centolella


Steven D. Lesser

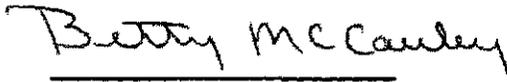

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