

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of)
Republic Steel for Approval of a) Case No. 13-1913-EL-AEC
Reasonable Arrangement for Republic)
Steel's Lorain Ohio Facility.)

OPINION AND ORDER

The Commission, having considered the record in this matter, and being otherwise fully advised, hereby issues its opinion and order.

APPEARANCES:

Taft, Stettinius & Hollister, LLP, by Mark S. Yurick and Zachary Kravitz, 65 East Street, Suite 1000, Columbus, Ohio 43215, and Elizabeth Evans, 2633 Eighth St. N.E., Canton, Ohio 44704, on behalf of Republic Steel.

McNees, Wallace & Nurick, LLC, by Scott Elisar, 21 E. State Street, 17th Floor, Columbus, Ohio 43215, on behalf of U.S. Steel.

James W. Burk, 76 S. Main Street, Akron, Ohio 44308, on behalf of Ohio Edison.

Carpenter, Lipps & Leland, LLP, by Kimberly W. Bojko, 280 Plaza, Suite 1300, 280 North High Street, Columbus, Ohio 43215, on behalf of Ohio Manufacturers' Association.

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.

OPINION:

I. Background

The Commission has the authority to approve a unique arrangement between an mercantile customer and an electric distribution utility (EDU) upon application by a mercantile customer, pursuant to R.C. 4905.31 and Ohio Adm.Code 4901:1-38-05(A). More specifically, R.C. 4905.31 provides for reasonable arrangements, including arrangements to recover the costs incurred in connection with economic development and job retention programs. Republic Steel (Republic) is a

manufacturer of specialty bar steel products and a mercantile customer as defined by R.C. 4928.01. Republic is within the certified service territory and is a retail customer of Ohio Edison Company (Ohio Edison), which is a public utility as defined by R.C. 4905.02 and an EDU as defined in R.C. 4928.01.

On September 9, 2013, Republic filed an application with the Commission requesting approval of a unique arrangement for Republic's Lorain, Ohio facility (Lorain Facility). Motions to intervene were filed regarding the application by the Ohio Energy Group (OEG), United States Steel Corporation (U.S. Steel), Ohio Edison, and the Ohio Manufacturer's Association (OMA). The attorney examiner granted these motions to intervene by entry dated November 12, 2013. On February 6, 2014, Republic and Staff submitted a joint stipulation and recommendation (Stipulation). An evidentiary hearing was held on February 13, 2014, in order to consider the Stipulation. At the evidentiary hearing, Republic witness Kevin Higgins testified in support of the Stipulation.

II. Summary of the Proceeding

In the Stipulation, Republic explains that it is seeking approval and authorization to expand and operate its production facility in Lorain, Ohio (Lorain Facility) to meet customer demand and to expand and retain employment for Ohio workers (Republic Ex. 2 at 4). The expansion will include, but not be limited to, the installation and operation of an electric arc furnace (EAF) that will require substantial infrastructure upgrades at and around the Lorain Facility in order to meet the expanded facility's power and energy requirements to operate successfully. The implementation of this \$100,000,000 investment will help to ensure Republic's continued successful operation in northern Ohio and will allow for operational and performance improvements at the expanded Lorain Facility (Republic Ex. 2 at 4). Under the terms of the unique arrangement, Republic will hire 449 new full time equivalent employees to operate its Lorain Facility, as expanded by the EAF, and will use reasonable efforts to obtain electric generation service from a competitive retail electric service (CRES) provider at a price that is lower than the otherwise applicable standard service offer (SSO) rate for electric generation. (Republic Ex. 2 at 4-5).

The Stipulation states that the unique arrangement entered into between Republic and Ohio Edison will provide electric service at a cost that allows the Lorain Facility to be economically operated once the EAF is in full commercial production. The Stipulation provides Republic with a price for electricity that is discounted from the price Republic would have paid for electricity absent the arrangement, delivered to the new meter installed for the EAF (Incremental Load). Republic's existing meter for all non-EAF electric load (Existing Load) will not be modified or discounted by the rate discount. (Republic Ex. 2 at 5). The Stipulation is

designed to limit delta revenue recovered from customers by reducing the overall cost of electricity by permitting Republic to shop for electric generation from a CRES provider for the Incremental Load, if Republic is able to reasonably acquire electric generation service at a price lower than Ohio Edison's applicable SSO price (Republic Ex. 2 at 6). Republic retains the ability to continue taking service at the SSO price or may acquire retail generation service from a CRES provider for its Existing Load consistent with Ohio Edison's otherwise applicable tariff provisions (Republic Ex. 2 at 6).

Republic affirms that the application is consistent with state policy set forth in R.C. 4928.02 by encouraging additional expansion of its Lorain Facility. The Stipulation reiterates that the savings realized by Republic will be reinvested in infrastructure, which will help facilitate the state's effectiveness in the global economy. The parties assert that the arrangement is not anti-competitive or discriminatory and, thus, does not violate R.C. 4905.33 or R.C. 4905.35. (Republic Ex. 2 at 17.)

III. Summary of the Stipulation

The Stipulation was intended by Republic and Staff (Signatory Parties) to resolve all outstanding issues in this proceeding. The following is a summary of the provisions agreed to by the stipulating parties and is not intended to replace or supersede the Stipulation:

- (1) Republic will undergo a capital investment at its existing Lorain Facility to install the new EAF system.
- (2) Ohio Edison will provide service at two distinct points of service for the entire term of the unique arrangement due to several unique elements, including: the significant size of the new EAF load being provided, which is expected to be in excess of 80 MW; the significant number of jobs being created and investment being made; and the separate metering of the Incremental Load and Existing Load will support the competitive market in Ohio and provide a benefit not only to Republic but all other customers as well.
- (3) The term for the unique arrangement will be for six years, with the rate discount calculated monthly following notification that the EAF is in full commercial production at the Lorain Facility. The rate discount will be equal to the positive difference between the SSO price and the

target price multiplied by the monthly kilowatt-hour consumption of the Incremental Load, subject to the delta revenue caps.

- (4) Delta revenue will be equal to the positive difference resulting from subtracting the target price from the CRES price or the SSO price, whichever is applicable, multiplied by the monthly kilowatt hour consumption of the Incremental Load, subject to the delta revenue caps. Republic will not pay more than the target price for service for the term of the arrangement subject to the delta revenue caps set for the Incremental Load.
- (5) Upon commercial operation of the EAF system, the maximum delta revenue per year of each term will be \$10,000,000. The maximum delta revenues collected over the six year term of the unique arrangement will be limited to a total of not more than \$40,000,000.
- (6) If the maximum annual delta revenue cap is realized, then the rate discount will be suspended until the following year. If the rate discount is suspended, Republic will be billed at the applicable SSO price or CRES price for the Incremental Load for the remainder of that year.
- (7) No modifications or extensions to the unique arrangement will be effective without the Commission's prior approval.
- (8) During the expansion of the Lorain Facility, and prior to Republic notifying Ohio Edison that the EAF is in full commercial production, electricity will be provided to the Lorain Facility by Ohio Edison at its applicable SSO price.
- (9) Republic will notify Ohio Edison when (i) full commercial production of the EAF commences and (ii) the Incremental Load is receiving generation service from a CRES provider, or that Republic desires to take SSO service for the Incremental Load, at which time electric service for the Incremental Load will be provided pursuant to the terms in the Stipulation. If Republic has not made such notification within one year after approval of the arrangement, then either Republic or Ohio Edison

will have the option to petition the Commission to terminate the arrangement.

- (10) Ohio Edison will issue one combined or totalized monthly bill to Republic for all of its electric service, separately stating the applicable charges for the existing meter and the EAF meter, and the latter will include the rate discount calculation including the determination of the target price, SSO price, and if applicable, the CRES price.
- (11) Ohio Edison will calculate the target price and the rate discount and Republic's consolidated bill will be based on the target price per kWh for the Incremental Load or the CRES price, whichever is lower, subject to the delta revenue caps. The delta revenue will be recovered pursuant to the terms of the delta revenue recovery rider (Rider DRR), or its successor rider. Ohio Edison will be permitted to fully recover all delta revenues for the duration of the arrangement, or the arrangement will terminate.
- (12) If the maximum total delta revenue cap is not met at the conclusion of the unique arrangement, then Republic, Ohio Edison, and Staff may enter into discussions regarding the remaining balance.
- (13) To the extent that Republic is otherwise eligible to participate in the emergency curtailment programs offered by Ohio Edison or any PJM emergency demand response program, nothing in the unique arrangement will prevent Republic from participating in such programs.
- (14) Republic intends to investigate the feasibility of power cogeneration solutions and energy efficiency and peak demand initiatives to determine how and to what extent a waste energy recovery system or customer-sited energy efficiency and demand response capabilities might be employed by Republic and whether such system or capabilities could be committed to Ohio Edison for integration into Ohio Edison's portfolio requirements.

- (15) The arrangement will not alter, amend, or modify Republic's reporting or payment obligations for the kilowatt hour tax required pursuant to R.C. 5727.81.
- (16) Republic will submit an annual report to Staff, stating the status of employment levels at Republic's Lorain Facility.
- (17) During the term of the arrangement, Republic will hire an additional 449 full-time or full-time equivalent employees for the Lorain Facility.
- (18) After three years following the commencement of the EAF, the Commission retains the right to reduce the annual rate discount percentage, or require Republic to return a portion of the rate discount amount received or accrued, in proportion to the amount of an employment shortfall.

IV. Consideration of the Stipulation

R.C. 4905.01 permits the Commission to approve and authorize a reasonable schedule or arrangement between a mercantile customer and an EDU or a public utility electric light company upon application by a mercantile customer. 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 The Cincinnati Gas & Electric Company*, Case No. 91-410-EL-AIR, Opinion and Order (April 14, 1994); *In re The Western Reserve Telephone Company*, Case No. 93-230-TP-ALT, Opinion and Order (March 30, 1994); *In re Ohio Edison Co.*, Case No. 91-698-EL-FOR, et al., Opinion and Order (December 30, 1993); *In re The Cleveland Electric Illum. Co.*, Case No. 88-170-EL-AIR, Opinion and Order (January 30, 1989); *In re Restatement of the Accounts and Records of The Cincinnati Gas & Electric Co., The Dayton Power and Light Co., and Columbus & Southern Ohio Electric Co.*, Case No. 84-1187-EL-UNC, Opinion and Order (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 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 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.

Republic witness Kevin Higgins testified that the Stipulation is the product of serious bargaining and negotiation, and benefits ratepayers and the public interest (Republic Ex. 1 at 11-12; Republic Ex. 2 at 3, 18). Republic witness Higgins explained that the Stipulation would enable the expansion and operation of its Lorain Facility, specifically noting the installation of the EAF, which would require substantial infrastructure upgrades. Additionally, Mr. Higgins asserted that the expansion would allow for an increase in employment. (Republic Ex. 1 at 4, 9-10) Furthermore, Mr. Higgins opined that the Stipulation does not violate any regulatory principle or practice (Tr. at 14; Republic Ex. 1 at 12). Mr. Higgins also clarified that Republic and Ohio Edison had yet to negotiate the actual terms of the contract in order to comply with the terms of the Stipulation (Tr. at 12). Although OMA, Ohio Edison, OEG, and U.S. Steel were not signatory parties to the Stipulation, counsel for these parties asserted they did not oppose the adoption of the Stipulation by the Commission (Tr. at 7, 9, 14).

V. Conclusion

The Commission finds that the Stipulation, as proposed, is reasonable and should be adopted. As indicated by the parties, the Stipulation will allow Republic to facilitate a successful expansion of its Lorain Facility, which will allow for operational performance improvements, sustain current employment and expand direct employment. (Republic Ex. 2 at 16-17.) The Commission finds that this is an important aspect of the Stipulation, as it not only benefits the public interest by facilitating job growth in northern Ohio, but also aids in enhancing Ohio's effectiveness in the global economy (Republic Ex. 2 at 17). The unique arrangement

will assist Republic to retain approximately 100 high paying, industrial jobs, as well as create approximately 449 new jobs during the term of the arrangement, at the expanded Lorain Facility (Republic Ex. 2 at 16). The record reflects that the unique arrangement will bolster Republic's positive financial 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 (Republic Ex. 2 at 16-17). Further, the record reflects that the arrangement does not violate R.C. 4905.33 and 4905.35, and is just and reasonable (Republic Ex. 2 at 17).

Therefore, we find that the Stipulation reflects the product of serious bargaining among capable, knowledgeable parties, and there is no evidence that the Stipulation violates any regulatory principle or practice. Further, the Stipulation benefits ratepayers and the public interest by allowing Republic to maintain the competitiveness of its facilities as well as expand its workforce in order to fulfill operational efficiencies. Accordingly, the Commission finds that the Stipulation is reasonable and should be adopted.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

- (1) On September 9, 2013, Republic filed an application requesting that the Commission approve a reasonable arrangement for its Lorain Facility.
- (2) A joint stipulation and recommendation was filed by Republic and Staff on February 6, 2014.
- (3) The evidentiary hearing on this matter was held on February 13, 2014.
- (4) The Stipulation meets the criteria used by the Commission to evaluate stipulations. Consequently, the Commission finds the Stipulation is reasonable and should be adopted.

It is, therefore,


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

ORDERED, That Republic and Ohio Edison 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.

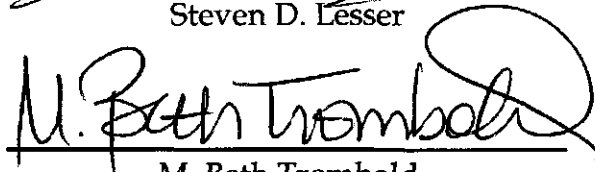
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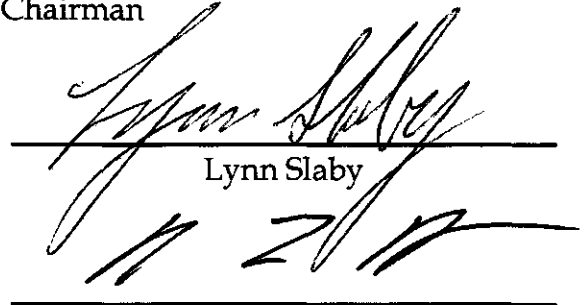
Todd A. Snitchler, Chairman



Steven D. Lesser



M. Beth Trombold



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Secretary