

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE APPLICATION OF
U.S. STEEL SEAMLESS TUBULAR
OPERATIONS, LLC, LORAIN TUBULAR
OPERATIONS FOR APPROVAL OF A
REASONABLE ARRANGEMENT.

CASE NO. 16-2020-EL-AEC

OPINION AND ORDER

Entered in the Journal on February 8, 2017

I. SUMMARY

{¶ 1} The Commission adopts and approves the stipulation authorizing a unique arrangement between U.S. Steel Seamless Tubular Operations, LLC, Lorain Tubular Operations and the Ohio Edison Company.

II. PROCEDURAL BACKGROUND

{¶ 2} The Ohio Edison Company (OE) is an electric distribution utility (EDU) as defined in R.C. 4928.01(A)(6), and a public utility, as defined by R.C. 4905.02, and, as such, is subject to the jurisdiction of this Commission.

{¶ 3} R.C. 4928.141 provides that an EDU shall provide consumers within its certified territory a standard service offer (SSO) of all competitive retail electric services necessary to maintain essential electric services to customers, including a firm supply of electric generation services. The SSO may be either a market rate offer in accordance with R.C. 4928.142 or an electric security plan (ESP) in accordance with R.C. 4928.143. On March 31, 2016, the Commission issued an Opinion and Order that, among other things, authorized OE to provide consumers an SSO in the form of an ESP through May 2019. *In re the Ohio Edison Co., the Cleveland Illuminating Co., and the Toledo Edison Co.*, Case No. 14-1297-EL-SSO, et al. (*ESP Case*), Opinion and Order (March 31, 2016).

{¶ 4} In the *ESP Case*, the Commission authorized OE to continue its Economic Load Response Rider (Rider ELR) and the interruptible credit provision of its Economic

Development Rider (Rider EDR). These rider allows customers meeting specific criteria to nominate part of their load to be subject to interruption. In exchange, those customers receive a credit.

{¶ 5} Pursuant to R.C. 4905.31 and Ohio Adm.Code 4901:1-38-05(B), a mercantile customer of an electric utility may apply to the Commission for a unique arrangement with the electric utility.

{¶ 6} On October 13, 2016, U.S. Steel Seamless Tubular Operations, LLC, Lorain Tubular Operations (LTO) filed an application for approval of a unique arrangement for electric service with the Ohio Edison Company (OE). In its application, LTO proposes a unique arrangement with a six year term. LTO asserts that the approval of its application will allow it to expand employment and increase the utilization of its productive capacity.

{¶ 7} On November 1, 2016, and November 2, 2016, motions to intervene were filed by OE, the Ohio Manufacturers' Association Energy Group (OMAE), and the Ohio Consumers' Counsel (OCC). Thereafter, by Entry on January 25, 2017, the attorney examiner granted the motions to intervene.

{¶ 8} On January 23, 2017, a joint stipulation and recommendation (stipulation) was filed by LTO and Staff that purport to resolve all of the issues in the case.

{¶ 9} Also on January 23, 2017, OCC filed a letter stating it neither supported nor opposed the stipulation.

{¶ 10} The hearing was held on January 31, 2017. Ralph R. Riberich, Jr., Director of Energy and Metals within the Global Procurement Division of U.S. Steel, submitted testimony in support of the stipulation.

III. SUMMARY OF APPLICATION

{¶ 11} LTO filed its application pursuant to R.C. 4905.31 and Ohio Adm.Code 4901:1-38-05. LTO states it is a business within the U.S. Steel Seamless Tubular Operations, LLC business segment and is located in Lorain, Ohio. LTO affirms it is a producer of casing, drill pipe, standard and line pipe, and coupling stock. According to LTO, it currently employs 264 people with a significant payroll and pays approximately \$6 million in state and local taxes. (Application at 1.)

{¶ 12} In its application, LTO states it curtailed operations in March 2016 due to several factors including economic conditions, natural gas prices, and global completion on an uneven playing field. Part of its plan to reduce or eliminate the curtailment is to invest a significant amount of capital so that LTO can become a direct mercantile customer of OE. LTO avers that its delivered cost of electricity is a significant portion of its variable operating cost and that while LTO is within OE's service territory, it only currently receives electricity from OE indirectly. According to LTO, it receives electricity that is delivered to Republic Steel, an adjacent manufacturing facility. (Application at 1-2.)

{¶ 13} Accordingly, LTO requests a reasonable arrangement that will allow LTO to rationalize and invest the necessary capital to become a direct mercantile customer of OE and position its facility to expand employment and increase its productive capacity. LTO seeks an arrangement for a six-year term where it would receive generation, transmission, and distribution charge at a price per kilowatt hour (kWh) that would allow to meet its full requirements. (Application at 2-4.)

IV. STIPULATION OF THE PARTIES

{¶ 14} As noted above, on January 23, 2017, LTO and Staff filed a stipulation that, if adopted, would resolve all of the issues in the case. OE, OMAEG, and OCC signed the stipulation as non-opposing intervenors. The following is a summary of the stipulation and is not intended to supersede or replace the stipulation.

{¶ 15} The stipulation notes that since the filing of the application, LTO no longer needs to go through Republic Steel to obtain electricity. The stipulation avers that LTO invested \$17.5 million into its own substation, which became operational on January 11, 2017. At that time, LTO became a mercantile customer of OE, as defined by R.C. 4928.01. (Joint Ex. 1 at 2.)

{¶ 16} Additionally, according the stipulation, during the time that LTO received its electricity supply from Republic Steel, Republic Steel subscribed to OE's Rider ELR. Customers subscribing to Rider ELR are also able to participate in the interruptible credit provision of Rider EDR. The stipulation avers that LTO and Republic Steel would combine their demand response capabilities for purposes of participating in the riders. Thus, the stipulation states that LTO has been an historical, but indirect, demand response participant in OE's interruptible service riders. However, the stipulation asserts that, because LTO was not previously directly served by OE, LTO is not currently eligible to participate in the riders. (Joint Ex. 1 at 2-3.)

{¶ 17} Accordingly, because LTO's demand response historically and indirectly was deployed for participation in the riders, the parties agree that LTO shall be deemed eligible to subscribe to Rider ELR and in the interruptible credit provision of Rider EDR for all bills rendered by OE on or after January 1, 2017. LTO's firm demand and total firm and interruptible demand will initially be set at the levels identified by the parties in the stipulation. Additionally, the parties agree that LTO will retain a specific annual average direct employment level, as described in the stipulation, and share that information with Staff, OE, and OCC by April 30 of each year. The parties also agree that the result of this stipulation will facilitate LTO's efforts to compete in the global economy and is otherwise in accord with Ohio's state policy in R.C. 4928.02. (Joint Ex. 1 at 4-7.)

V. COMMISSION CONCLUSION

{¶ 18} Ohio Adm.Code 4901-1-30 authorizes parties to Commission proceedings to enter into a stipulation. Although not binding on the Commission, the terms of such an

agreement are afforded substantial weight. *Consumers' Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d 123, 125, 592 N.E.2d 1370 (1992), citing *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 all issues presented in the proceeding in which it is offered.

{¶ 19} The standard of review for considering the reasonableness of a stipulation has been discussed in a number of prior Commission proceedings. See, e.g., *In re Cincinnati Gas & Elec. Co.*, Case No. 91-410-EL-AIR, Order on Remand (Apr. 14, 1994); *In re Western Reserve Telephone 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 Records*, 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?

{¶ 20} 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, 629 N.E.2d 423 (1994), citing *Consumers' Counsel* 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.

{¶ 21} After applying the three-part test for evaluating the reasonableness of a stipulation, we find that stipulation should be approved and adopted. First, we find the stipulation is the product of serious bargaining among capable, knowledgeable parties. LTO witness Ralph R. Riberich, Jr. testified that the stipulation is the result of lengthy negotiations. He stated that LTO has been having discussions with Staff and other parties since before the application was filed and the terms of the agreement transformed substantially over the course of negotiations. (Joint Ex. 2 at 4-6.) We also note that LTO, Staff, and the intervening parties are represented by counsel that regularly appear before the Commission in complex proceedings. Thus, we find the first prong is satisfied.

{¶ 22} The Commission also determines that the second part of the test is satisfied as the stipulation would benefit ratepayers and the public interest. Mr. Riberich states that the agreement allows LTO to more fully utilize its productive capacity, which in turn helps keep direct and indirect jobs in Ohio. He avers this also allows LTO to make greater contributions to Ohio's economy through things like property and income taxes. (Joint Ex. 2 at 7.) Accordingly, we find the agreement would ultimately be beneficial to the public interest. First, we note that LTO's commitment to maintain a specific amount of direct employment in Ohio is beneficial to the public interest (Joint Ex. 1 at 6). Additionally, the interruptible service riders and LTO's participation make it more likely for OE to meet the needs of its other customers (LTO Ex. 1 at 7).

{¶ 23} Regarding the final part of the test, Mr. Riberich testified that he believes the stipulation is in compliance with regulatory practices and principles (Joint Ex. 2 at 8). The Commission agrees, as the agreement does not appear to violate any important regulatory principles or practices and allows LTO to participate in tariff provisions that have already been approved by the Commission.

{¶ 24} Therefore, the Commission finds that the stipulation, as proposed, is reasonable and should be adopted. The stipulation implements a unique arrangement that allows LTO to participate in OE's interruptible service riders. In approving this arrangement, we note the circumstances are unique in that LTO has historically participated in OE's interruptible service riders, albeit indirectly. Thus, LTO's previous participation supports approval of this particular arrangement. Additionally, we find that the arrangement will enable LTO to fully utilize its productive capacity, which will aid job growth and enhance Ohio's competitiveness in the global economy. Further, we find the arrangement does not violate R.C. 4905.33 or 4905.35 and is just and reasonable.

VI. MOTION FOR PROTECTIVE ORDER

{¶ 25} Finally, on January 23, 2017, LTO filed a motion for protective order, seeking to protect usage and employment related information in the stipulation filed for the Commission's approval in this case. Specifically, LTO asserts that these terms found in the stipulation constitute confidential, sensitive, and proprietary trade secret information, as defined in R.C. 1333.61(D), and as recognized by Ohio Adm.Code 4901-1-24. No memoranda contra the motion for protective order were filed.

{¶ 26} R.C. 4905.07 provides that all facts and information in the possession of the Commission shall be public, except as provided in R.C. 149.43, and as consistent with the purposes of Title 49 of the Revised Code. R.C. 149.43 specifies that the term "public records" excludes information that, under state or federal law, may not be released. The Ohio Supreme Court has clarified that the "state or federal law" exemption is intended to cover trade secrets. *State ex rel. Besser v. Ohio State*, 89 Ohio St.3d 396, 399, 732 N.E.2d 373 (2000).

{¶ 27} Similarly, Ohio Adm.Code 4901-1-24 allows the Commission to issue an order to protect the confidentiality of information contained in a filed document, "to the extent that state or federal law prohibits release of the information, including where the information is deemed * * * to constitute a trade secret under Ohio law, and where

nondisclosure of the information is not inconsistent with the purposes of Title 49 of the Revised Code.”

{¶ 28} Ohio law defines a trade secret as “information * * * that satisfies both of the following: (1) It derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use. (2) It is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.” R.C. 1333.61(D).

{¶ 29} The Commission has reviewed the information that is the subject of LTO’s motion for protective order, as well as the assertions set forth in the supportive memorandum. Applying the requirements that the information have independent economic value and be the subject of reasonable efforts to maintain its secrecy pursuant to R.C. 1333.61(D), as well as the six-factor test set forth by the Ohio Supreme Court,¹ the Commission finds that the account number, pricing, pressure, and consumption information contained in the Special Agreement constitutes trade secret information. Its release is, therefore, prohibited under state law. The Commission also finds that nondisclosure of this information is not inconsistent with the purposes of Title 49 of the Revised Code. Therefore, the Commission finds that LTO’s motion for protective order with respect to these confidential terms contained in the Special Agreement is reasonable and should be granted.

{¶ 30} Ohio Adm.Code 4901-1-24(F) provides that, unless otherwise ordered, protective orders issued pursuant to Ohio Adm.Code 4901-1-24(D) automatically expire after 24 months. Therefore, confidential treatment shall be afforded for a period ending 24 months from the date of this Opinion and Order. Until that date, the Commission’s docketing division should maintain, under seal, the information filed confidentially by LTO on January 23, 2017.

¹ See *State ex rel. the Plain Dealer v. Ohio Dept. of Ins.*, 80 Ohio St.3d 513, 524-525, 687 N.E.2d 661 (1997).

{¶ 31} Ohio Adm.Code 4901-1-24(F) requires a party wishing to extend a protective order to file an appropriate motion at least 45 days in advance of the expiration date. If LTO wishes to extend this confidential treatment, it should file an appropriate motion at least 45 days in advance of the expiration date. If no such motion to extend confidential treatment is filed, the Commission may release this information without prior notice to LTO.

VII. FINDINGS OF FACT AND CONCLUSION OF LAW

{¶ 32} LTO is a mercantile customer, as defined by R.C 4928.01(A)(19).

{¶ 33} OE is an electric light company, as defined by R.C. 4905.03(C), and a public utility, as defined by R.C. 4905.02, and, as such, is subject to the jurisdiction of this Commission.

{¶ 34} On October 13, 2016, LTO filed an application seeking approval of a unique arrangement.

{¶ 35} On January 23, 2017, a joint stipulation was filed by LTO and Staff that purports to resolve all of the issues in the case.

{¶ 36} By Entry on January 25, 2017, the attorney examiner granted the motions to intervene of OE, OCC, and OMAEG.

{¶ 37} An evidentiary hearing was held on January 31, 2017.

{¶ 38} The stipulation submitted by OE and Staff meets the criteria used by the Commission to evaluate stipulations, is reasonable, and should be adopted.

VIII. ORDER

{¶ 39} It is, therefore,

{¶ 40} ORDERED, That the stipulation be approved and adopted. It is, further,


{¶ 41} ORDERED, That the motion for protective order filed by LTO be granted to the extent set forth in this Opinion and Order. It is, further,

{¶ 42} ORDERED, That the Commission's docketing division maintain, under seal, the confidential information filed by LTO on January 23, 2017, for a period ending 24 months from the date of this Opinion and Order. It is, further.

{¶ 43} 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,

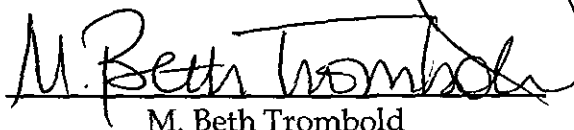
{¶ 44} ORDERED, That a copy of this Opinion and Order be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO



Asim Z. Haque, Chairman

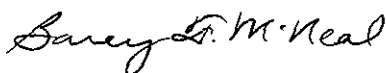
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