

THE PUBLIC UTILITIES COMMISSION OF OHIO

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

Entered in the Journal on May 2, 2018

I. SUMMARY

{¶ 1} The Commission finds that the joint application for a reasonable arrangement between Acero Junction, Inc. and Ohio Power Company is reasonable and should be approved.

II. PROCEDURAL HISTORY

{¶ 2} R.C. 4905.31 authorizes the Commission to approve reasonable unique electric services arrangements between an electric utility and a mercantile customer or group of mercantile customers. R.C. 4928.01(A)(19) defines "mercantile customer" to mean a commercial or industrial customer that consumes more than 700,000 kilowatt hours of electricity per year for nonresidential use, or the customer is part of a national account involving multiple facilities in one or more states. Ohio Adm.Code 4901:1-38-03 and 4901:1-38-05 provide rules for the filing of applications, pursuant to R.C. 4905.31, for approval of economic development and unique arrangements that further the policy of the state of Ohio embodied in R.C. 4928.02.

{¶ 3} Ohio Power Company (AEP Ohio) is an electric light company, as defined by R.C. 4905.03(A)(3), and a public utility, as defined under R.C. 4905.02 and, as such, is subject to the jurisdiction of this Commission.

{¶ 4} On October 18, 2017, Acero Junction, Inc. (Acero Junction, Customer, or Applicant) filed a joint application with AEP Ohio (Application) for approval of an economic development and unique arrangement pursuant to Ohio Adm.Code 4901:1-38-03

and 4901:1-38-05(B) (Arrangement), respectively. According to the Application, Acero Junction is a mercantile customer, as defined in R.C. 4928.01(A)(19), engaged in the making and re-rolling of steel slabs into hot rolled steel coils at the former Wheeling Pittsburgh Steel facility, located in Mingo Junction, Jefferson County, Ohio. This plant, which was shut down in 2009, is within the certified service area of AEP Ohio, and, under this Arrangement, Acero Junction would become AEP Ohio's second largest retail customer if steelmaking operations are fully resumed. The Application provides that the Arrangement will commence upon Commission approval and end on May 31, 2024 (Jt. Ex. 1 at 1-3).

{¶ 5} As the Application was originally docketed using an EL-UNC designation, the attorney examiner issued an entry on October 27, 2017 to redesignate this docket using the EL-AEC case code, and grant affected parties until November 16, 2017 to file motions to intervene, and any comments or objections to the Application, pursuant to Ohio Adm.Code 4901:1-38-05(F).

{¶ 6} Motions to intervene were filed by Industrial Energy Users-Ohio (IEU-Ohio) and the Ohio Manufacturers' Association Energy Group (OMAEG) on November 3 and 16, 2017, respectively. Comments were also filed by the Ohio Consumers' Counsel (OCC) on November 16, 2017, and the following day, OCC filed a motion for leave to intervene out of time.

{¶ 7} On February 16, 2018, a Joint Stipulation and Recommendation (Stipulation or Jt. Ex. 2) was filed by Acero Junction, AEP Ohio, and Staff, recommending approval of the Application.

{¶ 8} On February 20, 2018, IEU-Ohio filed a letter indicating that it had no objection to the Commission's adoption of the Stipulation.

{¶ 9} On March 1, 2018, the attorney examiner issued an entry granting the motions of IEU-Ohio, OMAEG, and OCC to intervene, and scheduling the matter for hearing.

{¶ 10} The hearing of this matter was held on March 14, 2018, at which time OCC submitted correspondence indicating that OCC neither supports, nor opposes, the Stipulation (OCC Ex. 1). Howard Petricoff, chief analyst for Staff, and Steven D. Guzy, general manager for Acero Junction, then testified in support of the Stipulation and the Commission's adoption of the Application.

III. SUMMARY OF THE APPLICATION

{¶ 11} In their Application, Acero Junction and AEP Ohio (collectively, Applicants) explain that the Acero Junction site (Facility), located in the town of Mingo Junction, Ohio, along the Ohio River, just south of Steubenville in Jefferson County, was once the flagship plant of Wheeling Pittsburgh Steel, but closed in 2009. The Facility includes a state-of-the-art Electric Arc Furnace and a ladle metallurgy furnace that were installed in 2004 at a cost of over \$125 million. The Facility also includes a nine-inch thick slab caster, which was modernized in 2000, and an 80-inch Hot Strip Mill, which was upgraded in 2006 at a cost of over \$20 million. This plant is situated on the Ohio River with barge loading and unloading capabilities, and is serviced by both the Norfolk Southern and the Wheeling & Lake Erie railroads. The facility is within the certified service area of AEP Ohio, and under the proposed Arrangement, Acero Junction would become AEP Ohio's second largest retail customer if steelmaking operations are fully resumed. The Arrangement essentially provides for a six-year term, which will commence upon Commission approval and end on May 31, 2024. The Application asserts that state-of-the-art environmental controls and careful maintenance of its equipment will allow Acero Junction's management group to restart the Facility and operate on a cost-competitive basis, becoming financially viable at full production (Jt. Ex. 1, at 1).

{¶ 12} According to Application, the Facility can produce steel strip over 72 inches wide and supply all of the products required by steel distributors and service centers, as well as the pipe and tube markets, including the local producers servicing the Marcellus and Utica shale drilling operations. Within three years of resuming steelmaking operations, Acero Junction expects to directly employ 270 full-time employees with annual

compensation (salary plus benefits) of at least \$22 million (\$81,481 per employee), plus an estimated 50 full-time equivalent contract employees with annual compensation of approximately \$2 million (\$40,000 per employee). The resumption of operations at the Facility is also projected to create many indirect jobs via the economic multiplier effect as Acero Junction projects approximately \$375 million in purchases from Ohio vendors. The Application estimates Acero Junction's total net annual economic impact in Ohio will create approximately 3,110 jobs with \$183 million in labor income, of which approximately 1,260 jobs and \$71.6 million in labor income will be in Jefferson County. The restart of the Acero Junction plant will also result in yearly increases in the collection of state, local, and school taxes (*Id.* at 2).

{¶ 13} The Application further notes that Jefferson County is economically depressed with 20% of residents living below the poverty level as of 2014, which was 27% higher than the state-wide rate for Ohio. In the 2010 census, the median household income in Jefferson County was \$37,527, which was 21% lower than Ohio as a whole. As of July 2017, Jefferson County's unemployment rate was 7.5%, or 36% higher than Ohio's average unemployment rate of 5.5% (*Id.* at 2).

{¶ 14} According to the Application, Acero Junction expects to restart steelmaking operations in the first half of 2018, which will require over \$60 million to prepare the furnaces and equipment for operations, hire and retrain workers, absorb initial operating losses, and begin the build-up of working capital that will approach \$100 million at planned operational levels (*Id.*).

{¶ 15} With respect to the terms of the Arrangement, the Application notes that upon Commission approval of an interruptible power (IRP) tariff for AEP Ohio's service territory in Case No. 16-1852-EL-SSO, Acero Junction will receive a monthly rate credit under AEP Ohio's IRP tariff based upon the Customer's actual interruptible demand up to a maximum of 120 MW, which is expected to be closer to 40 MW prior to restarting the Electric Arc Furnace. The costs of the Customer's IRP rate credit will be collected from customers in the

same manner as other IRP tariff costs, and such credit will be subject to any total IRP credit cap established in Case No. 16-1852-EL-SSO. Acero Junction will also have the opportunity to bid its interruptible capability into the PJM Reliability Pricing Model auctions or participate in any other PJM demand response program occurring during the term of the Arrangement, and to retain any revenue associated with that interruptible capability from PJM (*Id.* at 3).

{¶ 16} The Arrangement also specifies that if the monthly rate credit received by Acero Junction under the IRP tariff is not sufficient to completely offset 85% of the Customer's monthly transmission and distribution (collectively, wires) charges, then Acero Junction will receive an additional monthly economic development rate (EDR) credit, excluding state kilowatt hour tax charges, in an amount necessary to offset 85% of the Customer's wires charges. The costs of any EDR credit will be collected through AEP Ohio's Economic Development Rider, but Acero Junction's total EDR credit during the term of the Arrangement is capped at \$26.2 million. In order to ensure that the Customer makes some contribution to AEP Ohio's fixed costs, the Arrangement forbids any negative monthly bills for Acero Junction. If the IRP credit would otherwise result in a negative monthly bill in the absence of any EDR credit, then the IRP revenue cap established in Case No. 16-1852-EL-SSO, as it pertains to this Arrangement, will be reduced only by the amount necessary to produce a zero wires charge for Acero Junction in that month (*Id.* at 3-4).

{¶ 17} Moreover, under the terms of the Arrangement, Acero Junction commits to having a minimum of 270 full-time employees within three years of resuming steelmaking operations. Further, Acero Junction commits to a total minimum investment of at least \$60 million in the Facility within one year of resuming steelmaking operations. Acero Junction will provide annual reports to Staff on the status of its employment and capital investment levels, and if either commitment is not achieved without valid justification, the Commission may reduce the \$26.2 million EDR credit cap in proportion to the percentage of the job or capital investment commitment that was not achieved. AEP Ohio will continue to bill Acero

Junction under the terms of the approved Arrangement until otherwise directed by the Commission (*Id.* at 4).

IV. SUMMARY OF THE TESTIMONY

{¶ 18} As noted above, neither IEU-Ohio nor OCC objects to the Commission's adoption of the Stipulation.

{¶ 19} At the evidentiary hearing, Mr. Petricoff testified that Staff verified seven key facts needed to meet the criteria for economic development and unique arrangements under Ohio Adm.Code 4901:1-38-03 and 4901:1-38-05:

- (1) The Applicant's business is acutely energy intensive or has a distinct energy profile;
- (2) The Applicant has made a commitment to investing in Ohio either in a new investment or support of a new industry;
- (3) The economic impact of the Applicant's project on the region will be significant and meets the minimum requirements of Ohio Adm.Code 4901:1-38-03;
- (4) The Applicant has explored or taken advantage of other opportunities for operational savings such as a basic budgetary management, shopping for or self-generating electricity, energy efficiency, and participation in utility or regional transmission organizations' conservation or reliability programs;
- (5) The charges paid to the utility cover all incremental costs of service and contribute to the payment of fixed costs;

- (6) The benefits to the community and the project outweigh the costs imposed on other retail customers because of the reasonable arrangement; and
- (7) The application is for a set term which will allow the project to continue afterward without subsidies (Tr. at 10-13).

{¶ 20} Mr. Petricoff explained that Staff was contacted by the State's private non-profit economic development corporation, JobsOhio, which had been working with Acero Junction's management team to restart operations at the Facility. The witness testified that many of Acero Junction's executives were formerly employed at the Wheeling Pittsburgh Steel facility, which, for decades, had been a center of steel-making and an economic keystone for the surrounding area. Since electric energy is a major expense for the proposed arc furnace, JobsOhio sought to create a development package focused on AEP Ohio's tariff offerings and the arc furnace's unique usage factors if it was returned to service. (Tr. at 13-15).

{¶ 21} Mr. Petricoff also discussed Staff's review of the Application and Staff's conclusion that the arc furnace, if brought online, will be a major power consumer at a transmission level voltage, and that energy will be a significant portion of the final cost of the steel products produced. He described the Facility's distinctive energy profile as being both energy intensive and having a unique capability to quickly shut down its power use as required to participate in the interruptible power program now pending before the Commission. Staff concluded that the Facility's ability to quickly interrupt its operations in order to support firm service customers would provide a benefit to other customers and would lower the cost of providing utility service to Acero Junction (Tr. at 15-17).

{¶ 22} Mr. Petricoff also testified that the Facility has now been reopened, and that when the electric arc furnace resumes operations, Acero Junction will hire more than enough employees at wages that exceed the rule requirements. Based on its review of the Application and discovery responses, as well as the Company's proposed hires, projected

tax payments, purchase of local goods and services, and the economic multiplier effect on the surrounding area, Staff concluded that Acero Junction will have a significant economic impact in the region, and should more than cover the incremental costs of service. He also stated that Staff reviewed the impact of the proposed Arrangement on AEP Ohio's other retail customers, and determined that the benefits that will flow from the Facility will outweigh the costs of the Arrangement. Mr. Petricoff noted that the Arrangement is for a set term and does not automatically renew, and he opined that if the facts and projections in the Application come to pass, Acero Junction should be economically viable. Accordingly, Staff recommends that the Commission accept the Application as submitted (Tr. at 16-18).

{¶ 23} Testifying on behalf of Acero Junction, Mr. Guzy clarified that the Applicant has already resumed some operations at the Facility, but is currently purchasing imported steel slabs to process on their hot strip mill to produce hot bands or rolled coils. With the startup of the electric arc furnace under the Arrangement, he expects Acero Junction to reduce its purchases of imported steel, as the Facility will have the capacity to produce approximately one-and-a-half million tons of raw steel. He also testified that the Company now expects to hire 375 employees at an average cost of \$81,000 per employee, including benefits. He further stated that the Facility will generate approximately \$375 million annually in purchases, and create 1,200 additional satellite jobs in the Jefferson County area, as well as 3,100 additional jobs in the state of Ohio (Tr. at 19-24).

V. REVIEW OF THE PROPOSED ARRANGEMENT

{¶ 24} R.C. 4905.31 provides that a public utility may enter into a reasonable arrangement with one its customers and that a public utility may request recovery of costs incurred in conjunction with any economic development and job retention program of the utility. Ohio Adm.Code 4901:1-38-03 authorizes an electric utility, with one or more of its mercantile customers, to file an application for approval to enter into an economic development arrangement, and prescribes certain verifiable information to be included within the application. Ohio Adm.Code 4901:1-38-05 authorizes either an electric utility or

a mercantile customer to file an application for approval to enter into a unique arrangement, but unlike the economic development arrangement, no certain verifiable information is required of the applicant by our rules other than proof that the proposed arrangement is “reasonable” and that information is submitted detailing the rationale for the arrangement. Staff, however, conducts a significant amount of due diligence prior to recommending a unique arrangement, and Staff witness Petricoff’s stated evaluation factors are an attempt to memorialize that due diligence and evaluation that Staff undertakes.

{¶ 25} Here, Staff witness Petricoff provided credible testimony that with the restart of the electric arc furnace, the Acero Junction facility will be acutely energy intensive, as well as have a distinct energy profile (Tr. at 15-17). The evidence of record also indicates that the Facility will provide a significant economic impact on the Jefferson County areas through the creation of 270 full-time employees within three years of resuming operations, in addition to the additional jobs and benefits of increased economic activity (Jt. Ex. 1 at 2, Jt. Ex. 2 at 4, Tr. at 16, 20-22). Further, Acero Junction has already made or committed to at least \$60 million in capital investments, and will use its interruptible capacity to participate in PJM’s reliability programs (Jt. Ex. 1 at 2-4, Jt. Ex. 2 at 3-4, Tr. at 17). As noted by Staff, Acero Junction will pay at least AEP Ohio’s incremental costs of service and contribute to the payment of fixed costs, and the benefits to the community will outweigh the costs imposed on other retail customers (Jt. Ex. 1 at 4, Jt. Ex. 2 at 4, Tr. at 17-18). Finally, the Arrangement has a set term, ending on May 31, 2024, after which the Facility is expected to be viable and continue operations without subsidies (Jt. Ex. 1 at 1, 3, Jt. Ex. 2 at 2-4, Tr. at 18). The Applicant provided credible written and testimonial evidence, supporting Staff witness Petricoff’s conclusions. Additionally, we find the arrangement does not violate R.C. 4905.33 or 4905.35.

{¶ 26} Upon our review of the evidence of record, the Commission finds that the Applicant has met its burden of proof for obtaining a unique arrangement under Ohio Adm.Code 4901:1-38-05(B), and the Application should be approved. The Commission notes that the Applicant applied for both an economic development arrangement under

Ohio Adm.Code 4901:1-38-03, as well as a unique arrangement under Ohio Adm.Code 4901:1-38-05(B) within the same Application. As the Commission finds that the Applicant has carried its burden of proof under Ohio Adm.Code 4901:1-38-05(B), the Commission need not determine whether Applicant also met its burden under Ohio Adm.Code 4901:1-38-03. The result is the same whether the reasonable arrangement is granted under either section.

{¶ 27} Further, the Commission notes that it has in practice utilized Staff witness Petricoff's factors in evaluating whether to grant unique arrangements. These factors include: whether the customer's business is acutely energy intensive or has a distinct energy profile; whether the customer has expressed a commitment to investing in Ohio through new investment or support of a new industry; whether the customer's economic impact on a region is significant; whether the customer has explored other opportunities for operational savings; whether the customer's payments cover all incremental costs of service; whether the benefits to the community from the project outweigh the costs imposed on customers; and whether the term of the arrangement will allow the customer to continue operations after its expiration. *See, e.g. In re U.S. Steel Seamless Tubular Operations, LLC*, Case No. 16-2020-EL-AEC (Feb. 8, 2017); *In re Globe Metallurgical, Inc.*, Case No. 16-737-EL-AEC, Opinion and Order (Oct. 26, 2016); *In re Nature Fresh Farms*, Case No. 16-1664-EL-AEC, Opinion and Order (Sept. 29, 2016); *In re Warren Steel Holdings, LLC*, Case No. 14-1009-EL-AEC, Opinion and Order (July 23, 2014); *In re Ormet Primary Aluminum Corp.*, Opinion and Order (Oct. 2, 2013); and *In re TimkenSteel Corp.*, Case No. 10-3066-EL-AEC, Opinion and Order (Apr. 27, 2011). In the event a future Commission decides to utilize or formalize these factors in any way, it should be noted that the third factor should be amended to read only that "the economic impact of the Applicant's project on the region will be significant ~~and meets the minimum requirements of Ohio Adm.Code 4901:1-38-03.~~" Acero Junction and AEP Ohio are directed to file an executed final contract implementing the Arrangement in this docket as soon as possible.

VI. CONSIDERATION OF THE STIPULATION

{¶ 28} 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 accorded substantial weight, particularly where the stipulation is unopposed by any party and resolves all issues in the proceeding. *Consumers' Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d 123, 125, 1992-Ohio-122, 592 N.E.2d 1370, citing *Akron v. Pub. Util. Comm.*, 55 Ohio St.2d 155, 157, 378 N.E.2d 480 (1978).

{¶ 29} The Commission has established a three-prong test in considering whether a stipulation is reasonable and should be adopted:

- a. Is the settlement a product of serious bargaining among capable, knowledgeable parties?
- b. Does the settlement, as a package, benefit ratepayers and the public interest?
- c. Does the settlement package violate any important regulatory principle or practice?

{¶ 30} The Supreme Court of Ohio has endorsed the Commission's use of 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, 1994-Ohio-435, 629 N.E.2d 423, 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. In determining the reasonableness of a stipulation, the Commission should consider the agreement as a package. *In re Ohio Edison Co., et al.*, Case No. 14-1297-EL-SSO, Fifth Entry on Rehearing (Oct. 12, 2016) at 99-100.

A. *Is the settlement a product of serious bargaining among capable, knowledgeable parties?*

{¶ 31} As noted by Staff witness Petricoff, the Stipulation represents the product of negotiations between experienced and knowledgeable parties (Tr. at 9-10). Furthermore, although OMAEG, IEU-Ohio, and OCC were granted intervention in this proceeding, no party opposes the Commission's adoption of the Stipulation. Upon review of the record, the Commission finds that the first prong of the three-part test for the reasonableness of a stipulation has been met.

B. *Does the settlement, as a package, benefit ratepayers and the public interest?*

{¶ 32} As discussed above, Mr. Petricoff testified that approval of the Stipulation will benefit ratepayers and the public interest through creation of jobs and other economic development benefits in the economically depressed Jefferson County area, in accordance with Ohio Adm.Code 4901:1-38-03 and 4901:1-38-05 (Tr. at 10-11). We also note that the Arrangement includes provisions that will reduce the EDR credit on a pro rata basis if Acero Junction fails to meet its commitments (Jt. Ex. 1 at 3, Jt. Ex. 2 at 2-3). Moreover, the total EDR credit that Acero Junction can receive under the six-year term of the Arrangement is capped at \$26.2 million, and is also subject to any total IRP cap established in Case No. 16-1852-EL-SSO, thereby limiting the risk to other AEP Ohio customers (Jt. Ex. 1 at 3, Jt. Ex. 2 at 2-3). Upon review of the record, we find that the second prong of the Commission's test for stipulations has been met.

C. *Does the settlement package violate any important regulatory principle or practice?*

{¶ 33} Mr. Petricoff also stated that the Stipulation does not violate any important regulatory principle or practice, and no party has offered any evidence to dispute his testimony. Further, the witness testified that the Application meets the requirements of Ohio Adm.Code 4901:1-38-03 and 4901:1-38-05 for economic development and unique arrangements (Tr. at 10-11). Accordingly, we find that the third prong of the Commission's test of a stipulation has been met and, thus, the Stipulation should be approved.

VII. FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶ 34} AEP Ohio is an electric light company, as defined by R.C. 4905.03(A)(3), and a public utility, as defined under R.C. 4905.02 and, as such, is subject to the jurisdiction of this Commission.

{¶ 35} Acero Junction is currently AEP Ohio's customer and qualifies as a mercantile customer, as defined by R.C. 4928.01(A)(19).

{¶ 36} On October 18, 2017, Acero Junction and AEP Ohio filed an Application requesting that the Commission approve a proposed economic development and unique arrangement, pursuant to R.C. 4905.31, Ohio Adm.Code 4901:1-38-03, and Ohio Adm.Code 4901:1-38-05.

{¶ 37} On February 16, 2018, Acero Junction, AEP Ohio, and Staff filed a Stipulation recommending approval of the Arrangement proposed in the Application.

{¶ 38} By entry issued March 1, 2018, the motions of IEU-Ohio, OMAEG, and OCC to intervene were granted, pursuant to Ohio Adm.Code 4901:1-38-05(F); however no party offered any evidence opposing the Stipulation.

{¶ 39} The hearing of this matter was held on March 14, 2018, at which time Staff and Acero Junction offered credible testimony that the Stipulation is reasonable under the Commission's three-part test, and that proposed Arrangement does not violate R.C. 4905.33 or 4905.35, and constitutes a unique arrangement in accordance with R.C. 4905.31. Therefore, we find that the Stipulation is reasonable and should be adopted, and that the proposed Arrangement is reasonable and should be approved.

VIII. ORDER

{¶ 40} It is, therefore,

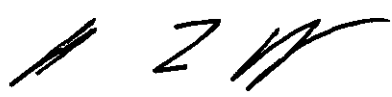
{¶ 41} ORDERED, That the Joint Application for a reasonable arrangement between Acero Junction and AEP Ohio be approved, as set forth in the Stipulation. It is, further,

{¶ 42} ORDERED, That Acero Junction and AEP Ohio file a final contract implementing the Arrangement and take all necessary steps to carry out the terms 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,

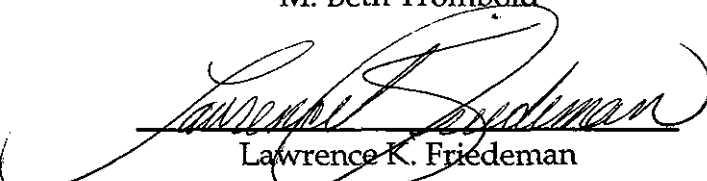
{¶ 44} ORDERED, That a copy of this Opinion and Order be served upon each party of record.

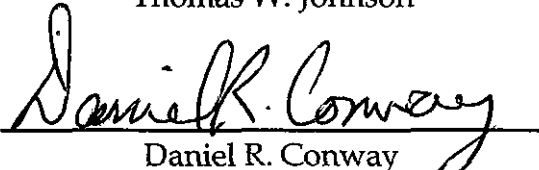
THE PUBLIC UTILITIES COMMISSION OF OHIO


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Secretary

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