

# THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE APPLICATION OF  
AK STEEL CORPORATION FOR APPROVAL  
OF A REASONABLE ARRANGEMENT WITH  
DUKE ENERGY OHIO, INC.

CASE NO. 18-450-EL-AEC

## OPINION AND ORDER

Entered in the Journal on June 28, 2018

### I. SUMMARY

{¶ 1} The Commission finds that the application of AK Steel Corporation for a unique arrangement with Duke Energy Ohio, Inc. 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 4901:1-38-05 provides 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} Duke Energy Ohio, Inc. (Duke or Utility) 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 March 15, 2018, AK Steel Corporation (AK Steel, Applicant, or Customer) filed an Application for approval of a unique arrangement with Duke pursuant to Ohio Adm.Code 4901:1-38-05(B) to replace the interruptible program approved *In re Duke Energy Ohio, Inc.*, Case No. 16-2141-EL-UNC, Entry (Dec. 14, 2016), which expired on May 31, 2018.

Under the proposed new Arrangement, AK Steel would receive a monthly rate credit in exchange for subjecting up to 110 MW of the Customer's electric load to interruption, beginning upon Commission approval and expiring on May 31, 2025 (AK Ex. 1 at ¶¶ 7-8, 12).

{¶ 5} Motions to intervene were timely filed in accordance with Ohio Adm.Code 4901:1-38-05(F) by Duke, the Ohio Consumers' Counsel (OCC), the Industrial Energy Users-Ohio (IEU-Ohio) and the Ohio Manufacturers' Association Energy Group (OMAEG); and comments were also filed by OCC.

{¶ 6} On May 11, 2018, AK Steel, Duke, and Staff filed a Joint Stipulation and Recommendation (Stipulation, AK Ex. 2) recommending approval of the Application.

{¶ 7} On May 21, 2018, an entry was issued granting each of the motions to intervene, and scheduling the hearing of this matter for June 5, 2018, at the Commission.

{¶ 8} The direct testimonies of William Don Wathen Jr., Director of Rates and Regulatory Strategy in Ohio and Kentucky for Duke Energy Business Services LLC, and Larry Schutte, Corporate Manager of Energy Optimization for AK Steel, were filed in support of the Stipulation by Duke and AK Steel on May 21 and 23, 2018, respectively.

{¶ 9} At the June 5, 2018 hearing, the testimonies of Messrs. Schutte and Wathen were admitted without objection, and counsel for IEU-Ohio, OMAEG, and OCC indicated that they are not opposing the Commission's adoption of the Stipulation (Tr. at 13).

### III. SUMMARY OF THE APPLICATION

{¶ 10} According to Application, AK Steel is the leading producer of flat-rolled carbon, stainless, and electrical steel products, and carbon and stainless tubular products, primarily for the automotive, infrastructure and manufacturing, electrical power generation and distribution markets. AK Steel's history dates back to 1899, when the American Rolling Mill Company (Armco), was incorporated in Middletown, Ohio, and the Customer now

employs approximately 9,400 personnel at its headquarters in West Chester, Ohio, and manufacturing operations across the states of Alabama, Indiana, Kentucky, Michigan, Ohio, Pennsylvania, and West Virginia, as well as in Canada and Mexico (AK Ex. 1 at ¶¶ 1-2).

{¶ 11} The Arrangement sought under this Application involves AK Steel's Middletown Facility, which is located within Duke's certified electric service area, and which the Customer asserts is the nation's most productive integrated steel operation, with annual sales approaching \$2 billion for a wide variety of steel products. The Applicant states that the Middletown Facility employs approximately 2,160 people, with an annual payroll of about \$144 million, plus \$67 million in fringe benefits, and spends approximately \$590 million in annual purchases from Ohio vendors. For 2017, AK Steel estimates that the total net annual economic impact of the Middletown Facility in Ohio was approximately 8,075 jobs with \$529 million in labor income, of which about 5,840 jobs and \$403 million of labor income was in Butler County. In addition, the Applicant calculates that operations at the Middletown Facility resulted in at least \$43.6 million in annual tax revenues for State and local Ohio governments in 2016 and 2017, of which about \$5.8 million was from local income and sales tax receipts in Butler County (AK Ex. 1 at ¶¶ 3-5).

{¶ 12} The Application points out that the Middletown Facility is Duke's largest single customer, and that the Applicant's ability to provide these economic benefits to the State depends on competitive electric service rates, given the energy-intensive nature of the steelmaking industry, and the Middletown Facility's ability to curtail its demand on short notice in the event of energy shortages, or transmission or distribution interruptions. The Application notes that in Duke's last Electric Security Plan (ESP), the Commission specifically authorized the continuation of the large customer interruptible load program even as Duke transitioned to its new role as a participant in PJM capacity and energy markets, and AK Steel, which had been a participant in Duke's interruptible tariff program, was converted to a contract provider of interruptible capacity. *In re Duke Energy Ohio, Inc.*, Case No. 14-841-EL-SSO Opinion and Order (Apr. 2, 2015) at 76. The Application also notes that the terms of AK Steel's participation in that interruptible program were approved by

the Commission in *In re Duke Energy Ohio, Inc.*, Case No. 16-2141-EL-UNC, Entry (Dec. 14, 2016) but expired with the Company's current ESP on May 31, 2018 (AK Ex. 1 at ¶¶ 6-8).

{¶ 13} The Application proposes a new Arrangement between Duke and AK Steel for the interruption of up to 110 MW of AK Steel's load, to commence immediately upon Commission approval, and ending May 31, 2025. Under this Arrangement, AK Steel will receive a rate credit for its monthly interruptible demand, not to exceed 110 MW and subject to certain conditions, with such credit equal to the Customer's monthly interruptible demand multiplied by 70 percent of the PJM Base Residual Auction (BRA) market rate. From June 1, 2021 through May 31, 2025, the annual rate credit will be capped at 70 percent of the 2018/19 RPM BRA clearing price (\$164.77/MW-day), or \$4.63 million, and the total credit over the term of the Arrangement will be capped at \$25.8 million. In no event, under the Arrangement, will the monthly interruptible rate credit received result in a negative monthly bill to the Customer for transmission and distribution service, excluding the Customer's Universal Service Rider charges (wires charges); and, if the monthly credit would otherwise exceed the wires charges in a given month, AK Steel will be permitted to bank the difference to offset future monthly wires charges during the term of the Arrangement. Finally, interruptions will be limited to emergency events, whether called by Duke or PJM, and AK Steel will not be required to interrupt on less than 120 minutes notice; but, if the Customer fails to interrupt load as requested, AK Steel will be required to refund the interruptible rate credits received under this Arrangement during the preceding 12 months (AK Ex. 1 at ¶¶ 11-12).

#### IV. REVIEW OF THE PROPOSED ARRANGEMENT

{¶ 14} R.C. 4905.31 provides that a public utility may enter into a reasonable arrangement with one of 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 4901:1-38-05 authorizes either an electric utility or a mercantile customer to file an application for approval of a unique arrangement, but does impose a list of economic development requirements. Rather, Ohio Adm.Code 4901:1-38-05 requires the

applicant to submit verifiable information to meet its burden of proving that the proposed arrangement is reasonable, and does not violate R.C. 4905.33 or 4905.35, which generally prohibit utilities from giving any undue or unreasonable preference, advantage, or special rate to one customer to the detriment of other customers. In *In re Acero Junction, Inc.*, Case No 17-2132-EL-AEC, Opinion and Order (May 2, 2018), the Commission identified the following key factors to be considered for unique arrangements under Ohio Adm.Code 4901:1-38-05:

- (1) Whether the customer's business is acutely energy intensive or has a distinct energy profile;
- (2) Whether the customer has expressed a commitment to investing in Ohio through new investment or support of a new industry;
- (3) Whether the economic impact of the customer's operations on the region will be significant;
- (4) Whether the customer has explored other opportunities for operational savings;
- (5) Whether the customer's payments cover all incremental costs of service;
- (6) Whether the benefits to the community from the project outweigh the costs imposed on customers; and
- (7) Whether the term of the arrangement will allow the customer to continue operations after its expiration.

*See, also, 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).

{¶ 15} As noted in the Application, AK Steel's load is significantly larger than any other Duke customer, and has a unique cost of service that does not fit comfortably within Duke's available tariff services. AK Steel witness Schutte testified that the Middletown Facility is the largest single-site electric customer in Ohio, and accounts for more than 6 percent of all energy delivered by Duke. Further, AK Steel is one of only two customers participating in Duke's current large interruptible load program, and the Applicant's distinct energy profile allows its interruptible load to benefit other Duke customers by providing a buffer in times of shortage to help assure service to human needs and other firm customers. Mr. Schutte also provided credible testimony regarding the Middletown Facility's significant economic impact in Ohio, and that AK Steel actively manages its PJM peak load contribution and participates in PJM demand response programs in addition to undertaking cost-effective energy efficiency projects. The witness also stated that Duke will incur no incremental costs of service or new investment in transmission or distribution facilities as a result of the proposed unique arrangement, and that AK Steel will contribute to the payment of fixed costs. Moreover, Mr. Schutte avers that the Arrangement will not result in a negative transmission and distribution bill for the facility, nor would it provide AK Steel with a discount on any transmission or distribution tariffs. Rather, any interruptible credit received by AK Steel under the unique arrangement would be in exchange for its commitment to serve as an interruptible resource on Duke's system. The witness also stated that annual benefits in jobs and labor income from the Middletown Facility vastly exceed the \$25.8 million seven-year total cost of the Arrangement, and that AK Steel is committing to \$105 million in new capital investment in Ohio over the term of

the Arrangement. The Applicant asserts that discontinuance of the current interruptible program would cause a significant increase in the cost of power to AK Steel thereby affecting AK Steel's worldwide competitiveness, as well as the benefits provided through employment, tax payments, and service purchases in Butler County and Ohio. (AK Ex. 1 at ¶¶ 9-10, AK Ex. 3 at 4-7).

{¶ 16} Upon our review of the evidence of record and consideration of the above factors, 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. AK Steel and Duke are directed to file an executed final contract implementing the Arrangement in this docket as soon as possible.

#### V. CONSIDERATION OF THE STIPULATION

{¶ 17} 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).

{¶ 18} 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?

{¶ 19} 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?***

{¶ 20} Duke witness Wathen testified that the Stipulation represents the product of negotiations between experienced and knowledgeable parties (Duke Ex. 1 at 4-5). Furthermore, although OMAEG, IEU-Ohio, and OCC were granted intervention in this proceeding, no party opposes the Commission's adoption of the Stipulation, which was endorsed by Staff. 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?***

{¶ 21} Mr. Wathen testified that approval of the Stipulation will benefit all customer groups and interested stakeholders, consistent with state policy, by enabling AK Steel to provide significant economic benefits to the Southwestern Ohio economy, including the Customer's commitment to invest at least \$105 million over the term of the Arrangement (Duke Ex. 1 at 5-6). Moreover, the total credit under the seven-year term of the proposed Arrangement is capped at \$25.8 million, and is similar to the arrangement recently approved for Ohio Power Company interruptible customers, thereby limiting the risk to other Duke customers. *In re Ohio Power Co.*, Case Nos. 16-1852-EL-SSO, et al, Opinion & Order, Apr. 25, 2018, at ¶¶ 82-86, 140 (AK Ex. 1 at ¶12). Upon review of the record in this proceeding, 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?***

{¶ 22} Duke witness Wathen also stated that the Stipulation does not violate any important regulatory principle or practice, and is consistent with Ohio energy policy through the advancement of energy efficiency and peak-demand reduction goals. Further, he asserted that the Stipulation is consistent with prior Commission rulings on large customer interruptible rate programs (Duke Ex. 1 at 5). We also note that the proposed Arrangement has a fixed expiration date of May 31, 2025, with the total credit capped at \$25.8 million, and a monthly credit arrangement similar to that recently approved by the Commission for interruptible customers in Ohio Power Company's service territory *In re Ohio Power Co.*, Case Nos. 16-1852-EL-SSO, et al, Opinion & Order, Apr. 25, 2018, at ¶¶ 82-86, 140 (AK Ex. 1 at ¶12). No party disputes these assertions and, as discussed above, the Application meets the requirements for a reasonable arrangement under Ohio Adm.Code 4901:1-38-05. 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.

**VI. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

{¶ 23} Duke 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.

{¶ 24} AK Steel is a mercantile customer, as defined by R.C. 4928.01(A)(19), served by Duke.

{¶ 25} On March 15, 2018, AK Steel filed an Application for approval of a unique arrangement with Duke pursuant to R.C. 4905.31 and Ohio Adm.Code 4901:1-38-05(B).

{¶ 26} Duke, OCC, IEU-Ohio, and OMAEG intervened in this proceeding, and on May 11, 2018, AK Steel, Duke, and Staff filed a Stipulation recommending approval of the Arrangement proposed in the Application.

{¶ 27} The hearing of this matter was held on June 5, 2018, at which time the testimonies of AK Steel witness Schutte and Duke witness Wathen were admitted without objection or opposition from IEU-Ohio, OMAEG, or OCC (Tr. at 13).

{¶ 28} Upon consideration of the evidence of record, we find that the Applicant has met its burden of proof for establishing a reasonable arrangement under R.C. 4905.31 and Ohio Adm.Code 4901:1-38-05(B), and that the proposed Arrangement does not violate R.C. 4905.33 or 4905.35. In addition, we find that the Stipulation is reasonable under the Commission's three-part test and should be adopted, and that the proposed Arrangement is reasonable and should be approved.

## VII. ORDER

{¶ 29} It is, therefore,

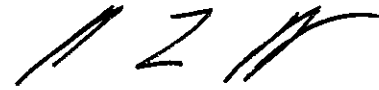
{¶ 30} ORDERED, That the Application for a reasonable arrangement between AK Steel and Duke be approved, as set forth in the Stipulation. It is, further,

{¶ 31} ORDERED, That AK Steel and Duke 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,

{¶ 32} 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,

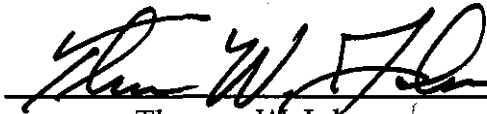
{¶ 33} ORDERED, That a copy of this Opinion and Order be served upon each party of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO



Asim Z. Haque, Chairman

M. Beth Trombold



Thomas W. Johnson



Lawrence K. Friedeman

Daniel R. Conway

RMB/mef

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Barcy F. McNeal  
Secretary