

ORIGINAL

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

PETITION OF AK STEEL)
CORPORATION FOR APPROVAL) CAUSE NO. 44064
OF THE EXTENSION OF THE)
TERM TO PARTICIPATE IN PJM) APPROVED: MAR 15 2012
LOAD RESPONSE PROGRAMS)

BY THE COMMISSION:

Kari A. E. Bennett, Commissioner

Jeffery A. Earl, Administrative Law Judge

On September 12, 2011, AK Steel Corporation ("Petitioner") filed with the Indiana Utility Regulatory Commission ("Commission") its Petition in this Cause, accompanied by its prefiled evidence in support of the Petition. The Petition seeks approval of Petitioner's continued participation in load response programs ("LRPs") offered by PJM Regional Transmission Operator ("PJM"). On November 15, 2011, the Indiana Office of Utility Consumer Counselor ("OUCC") prefiled its evidence in this Cause.

On December 2, 2011, Southern Indiana Gas and Electric Company d/b/a Vectren Energy Delivery of Indiana, Inc. ("Vectren"), Hoosier Energy Rural Electric Cooperative, Inc. ("Hoosier"), and Southern Indiana Rural Electric Cooperative, Inc. ("SIREC") (collectively "Intervenors") filed their Joint Petition to Intervene and for Modification of Procedural Schedule ("Motion"), seeking permission to intervene in this Cause and file evidence. The Presiding Officers granted the Motion through a Docket Entry dated December 19, 2011.

Pursuant to notice as required by law, proof of which was incorporated into the record by reference and placed in the office files of the Commission, an Evidentiary Hearing was held at 2:30 p.m. on February 8, 2012, in Hearing Room 222, 101 West Washington Street, Indianapolis, Indiana. Petitioner, Intervenors, and the OUCC appeared and participated at the evidentiary hearing. No members of the general public appeared at the hearing.

Based upon the applicable law and evidence the Commission now finds:

1. **Commission Jurisdiction and Notice.** Due, legal, and timely notice of the hearing in this Cause was given and published by the Commission as required by law. Petitioner is an Ohio-based corporation and operates a steel coating and finishing facility near Rockport, Indiana, with the facility straddling the service territories of Vectren and SIREC. Petitioner has submitted this case to the Commission's jurisdiction and no other party to the case has objected to the Commission's jurisdiction.

In Cause No. 40983, the Commission approved a power service contract entered into between Petitioner and Vectren, SIREC, and Hoosier. *S. Ind. Rural Elec. Coop., Inc.*, 1997 Ind. PUC LEXIS 338 (IURC Dec. 23, 1997). The Commission subsequently approved Petitioner's

request to directly participate in the LRPs offered by PJM in Cause No. 43503. *AK Steel Corp.*, 2008 Ind. PUC LEXIS 369 (IURC Sept. 3, 2008). In addition, the Commission asserted jurisdiction over Indiana retail customers' direct participation in the LRPs of transmission providers in Cause No. 43566. *Commission's Investigation into Any and All Matters Related to Commission Approval of Participation by Indiana End-Use Customers in Demand Response Programs Offered by the Midwest ISO and PJM Interconnection*, 2010 Ind. PUC LEXIS 255 (IURC July 28, 2010) ("43566 Order"). The Commission has continuing jurisdiction to supervise the implementation of its prior orders. Therefore, the Commission has jurisdiction over the parties and the subject matter of this Cause.

2. Background and Relief Requested. Petitioner's Rockport manufacturing plant utilizes large amounts of electricity in making and finishing steel products, and this load is capable of being interrupted on short notice. In May 2008, Petitioner filed a petition in Cause No. 43503 for approval to directly participate in LRPs offered by PJM. After a hearing in which the OUCC participated, the Commission granted Petitioner's request for an initial period of three years, subject to reporting and curtailment conditions recommended by the OUCC. In this Cause, Petitioner seeks approval to continue participating in PJM's LRPs for another five years under the same conditions approved in Cause No. 43503.

3. The Parties' Evidence. Stephen R. Etsler, Petitioner's Manager of Purchasing -- Electric, Gas and Water, testified regarding the effect that the unique site and operational characteristics of the Rockport facility have on the procurement of electric power for the plant. The facility straddles the service territory of Vectren and SIREC. Vectren, SIREC, and Hoosier formed a Joint Operating Group ("JOG"), which is not a separate legal entity and is not under the jurisdiction of the Commission, which then entered into a power service contract with Petitioner.

Mr. Etsler explained the power service contract provides that Petitioner is responsible for procuring its own power, which it does through PJM's same-day and day-ahead markets and also through some bi-lateral contracts. Power is transmitted through I&M's transmission lines, which are managed by PJM, and then through JOG facilities to the Rockport plant. The power service contract and transmission arrangement were approved by this Commission in Cause No. 40983.

Mr. Etsler further testified that because Rockport's load is interruptible, this flexibility has provided more pricing options for the delivery of electricity during the initial three-year period. These benefits have not imposed any costs on the JOG or retail customers. Mr. Etsler indicated Petitioner agrees to abide by the four reporting and curtailment conditions placed on it in the previous order in Cause No. 43503.

Ronald L. Keen, a Senior Analyst for the OUCC, testified regarding the applicability of the 43566 Order. Based upon Mr. Keen's understanding of that Order, he recommended the Commission approve a twenty-four month extension of Petitioner's current arrangement. He testified that in Cause No. 43566, the Commission ordered Respondent Indiana utilities that were PJM or MISO members to file a tariff or rider authorizing their retail customers to participate in their respective transmission operators' demand response programs. Accordingly, Mr. Keen recommended a shorter extension period that would allow time for Petitioner and the JOG to

work together to develop a tariff that would allow Petitioner's participation in PJM's LRP.

Mike Mooney, Manager of Corporate Planning for Hoosier, testified on behalf of the JOG. He testified that the JOG supported Petitioner's request for continued participation in PJM's LRP. Although Petitioner's Rockport facility is located in the service territories of SIREC and Vectren, electric service is not provided under the retail tariffs of either utility. Instead, the power requirements are met by wholesale power purchases arranged for Petitioner and the JOG under a special contract approved by the Commission in Cause No. 40983.

Mr. Mooney further testified that, in his opinion, the 43566 Order is inapplicable to Petitioner's request in this Cause. Mr. Mooney noted that the 43566 Order dealt with Indiana utilities that were load serving entities ("LSE") to retail customers. Mr. Mooney observed that the JOG is not an LSE for the Rockport facility, and opined that if any entity served this function it would be Petitioner because it establishes and schedules the transmission of its own power needs.

Mr. Mooney further testified that certain characteristics of the JOG and its members also make the 43566 Order inapplicable to this proceeding. First, because Hoosier and SIREC withdrew from Commission jurisdiction, they were not respondent utilities in Cause No. 43566, and therefore not subject to the 43566 Order. In addition, because Hoosier is exclusively a wholesale provider of electricity to its cooperative members and the 43566 Order applied to Indiana retail electricity providers, the 43566 Order is inapplicable to Hoosier. Similarly, Mr. Mooney opined that because the JOG is not a separate legal entity or a public utility, the 43566 Order is also inapplicable to the JOG. Additionally, because the Rockport facility is located on a split site, neither Vectren nor SIREC individually has the legal authority to provide retail service to Petitioner. The JOG, via the special power contract, was established and received Commission authority to obtain power on behalf of Petitioner. Because the terms of service are governed by the Commission-approved special power contract, neither Vectren nor SIREC has the right or authority to separately provide retail electric service to Petitioner. Based upon these observations, Mr. Mooney concluded that the OUCC's request that the JOG file a tariff or rider, allowing Petitioner to participate in PJM's LRP was unnecessary and incorrect.

The rebuttal testimony of Mr. Etsler on behalf of Petitioner also focused on the OUCC's recommendation that the Commission link approval of an extension to participate in PJM's LRP with the JOG filing a tariff or rider pursuant to the 43566 Order. Mr. Etsler testified that the OUCC's recommendation was inappropriate for three reasons. First, the JOG is not a separate legal entity and is outside general Commission jurisdiction. Second, Mr. Etsler testified that upon being informed by JOG members, it is his understanding that the JOG is not an LSE, and accordingly, Order 43566 is inapplicable. Third, the concerns raised by the Commission in the 43566 Order regarding retail customer participation in LRPs do not exist in Petitioner's circumstances.

Mr. Etsler noted the two major concerns raised in Cause 43566 were that direct participation by retail customers in a RTO's load response programs could affect the provision of a utility's electric service and the potential for cost shifting among retail customer classes. Regarding the affect on a utility's provision of electric service, Mr. Etsler stated that this concern

does not exist in Petitioner's case since the JOG is not required to file bi-annual integrated resource planning reports with the Commission. Regarding the concern with cost shifting, Mr. Etsler testified there is no risk of this happening because the contract between the JOG and Petitioner provides for reimbursement of all costs incurred by the JOG. This includes reimbursement for operating and maintenance costs for metering and power quality reviews, as well as a service fee to cover the JOG's business and financial expenses.

OUCG witness Keen filed responsive testimony to Mr. Mooney's direct testimony. Mr. Keen testified that although nothing in Mr. Mooney's testimony would cause him to change his recommendation, he acknowledged that continuation of the current arrangement under the facts of Petitioner's circumstances, did not appear likely to have any adverse impacts on any other retail ratepayer.

4. Discussion and Findings. Pursuant to Ind. Code § 8-1-2-24, a public utility may enter into any reasonable arrangement with a customer that is practicable and advantageous to the parties interested, provided the Commission finds the arrangement is reasonable, just, and not inconsistent with the purpose of Ind. Code ch. 8-1-2. In addition, Ind. Code § 8-1-2-24 provides that such an arrangement shall be under the supervision and regulation of the Commission.

The facts of this case are not in dispute. In Cause No. 43503, the Commission approved Petitioner's direct participation in PJM's LRPs for an initial period of three years. As a condition of that approval, the Petitioner was required to file quarterly reports containing information related to curtailments, if any, and other requested data. Petitioner has timely filed those reports. The evidence submitted indicates that Petitioner has benefited during the three year period from having more pricing options available to choose for the delivery of electric service to its Rockport facility. In addition, the evidence supports a finding that no other party, whether they be a retail customer, wholesale supplier, local utility, or transmission provider has been or will be adversely affected by the Petitioner's direct participation in PJM's LRPs.

The only disputed issue is the applicability of the 43566 Order to the specific facts of this case. The OUCG recommended a twenty-four month period in order to allow Petitioner to work with the JOG "to make a filing to resolve its status with the IURC relative to the mandated requirements of IURC Cause No. 43566." Petitioner and the Intervenor assert that the 43566 Order does not apply here and request approval of a five-year extension.

The circumstances in this case are unique. The JOG is composed of Hoosier and SIREC, both of whom have withdrawn from IURC jurisdiction to the extent allowed by law,¹ and Vectren, over whom the Commission exercises jurisdiction. However, pursuant to the terms of the JOG, Vectren does not have legal authority to provide separate retail service to Petitioner. Hence, we are dealing with a limited purpose entity, which is composed partly of a jurisdictional utility subject to the 43566 Order and partly of utilities that are outside the general jurisdiction of the Commission. In addition, although the JOG transmits electric service to Petitioner, Petitioner chooses the supplier and negotiates the wholesale price for the electricity either through market

¹ Pursuant to Ind. Code § 8-1-13-18.5(i), the Commission continues to exercise limited jurisdiction over rural electric membership corporations that have withdrawn from Commission jurisdiction.

purchases or through bi-lateral contracts.

In the 43566 Order, the Commission stated:

“Until the LSE has a Commission approved tariff or rider for the participation of retail customers in RTO demand response programs or provisions, the Commission will continue to consider any petitions of retail customers to participate in such programs as set forth in the Commission’s Order on Requests for Interim Relief issued on February 24, 2009 in this Cause.”²

2010 Ind. PUC LEXIS 255, at *140 n. 7. Although this provision is not directly applicable to the facts in this case, we find it instructive to our consideration of Petitioner’s proposal. Petitioner is not a retail customer of any single electric utility. As such, Petitioner does not have the opportunity to participate in PJM’s LRPs pursuant to a particular utility’s tariff or rider. Therefore, we find that it is proper, under these specific, unique circumstances, for Petitioner to request Commission approval of its direct participation in PJM’s LRPs.

We find the evidence submitted in this Cause satisfies us that Petitioner’s participation in PJM’s Load response program meets the requirements of Ind. Code § 8-1-2-24. The testimony of both Petitioner’s and the JOG’s witnesses indicate that Petitioner as well as the public will benefit from Petitioner’s participation in PJM’s LRPs. In addition, the evidence demonstrates that no other retail customer has or would be negatively impacted by Petitioner’s continued participation in PJM’s LRPs.

Accordingly, the Commission finds Petitioner’s participation in PJM’s LRPs to be reasonable and advantageous to Petitioner, and not inconsistent with the purposes of the Public Service Commission Act. Finally, in as much as Petitioner has agreed to abide by the same reporting and curtailment requirements that were made a condition of our Order in Cause 43503, the Commission finds these recommendations to be reasonable, relevant and of value, and should be made a part of this order.

IT IS THEREFORE ORDERED BY THE INDIANA UTILITY REGULATORY COMMISSION that:

1. Petitioner, AK Steel Corporation, is hereby approved to participate in PJM’s LRP for an additional period of five years. The Commission’s approval shall expire at the end of the five-year term, unless Petitioner obtains Commission approval to further extend the term.

2. During the five-year term, Petitioner shall file a quarterly report within thirty days of the end of each quarter with the Commission and the OUCC, containing the following data for the just-ended quarter: the time and date of each curtailment incurred by Petitioner, the kWh

² In *Commission’s Investigation into Any and All Matters Related to Commission Approval of Participation by Indiana End-Use Customers in Demand Response Programs Offered by the Midwest ISO and PJM Interconnection*, Cause No. 43566, 2009 Ind. PUC LEXIS 97 (IURC Feb. 25, 2009), the Commission prohibited Indiana end-use customer participation in RTO demand response programs without a final order of the Commission authorizing such participation. 2009 Ind. PUC LEXIS 97, at *18.

reduction of the curtailment, the monetary charges assessed, and the amount of energy and capacity payments received. If no curtailments occur within a twelve-month period, then Petitioner shall file an annual report, due within thirty days of the close of the twelve-month period, with the Commission and the OUCC providing the applicable data required for the quarterly reports and the capacity revenues received for the period. To the extent these filings contain information considered to be confidential, Petitioner may seek confidential treatment for such filings in accordance with 170 IAC 1-1.1-4.

3. During the five-year extension, Petitioner shall notify the Commission and the OUCC of any changes in PJM's LRPs that the Federal Energy Regulatory Commission has approved. Upon notice, the Commission may initiate its own review of such changes, or any interested party may petition the Commission to review the changes.

4. This Order shall be effective on and after the date of its approval.

ATTERHOLT, BENNETT, LANDIS, MAYS AND ZIEGNER CONCUR:

APPROVED: MAR 15 2012

**I hereby certify that the above is a true
and correct copy of the Order as approved.**

A handwritten signature in cursive script, reading "Brenda A. Howe", is written over a horizontal line.

**Brenda A. Howe
Secretary to the Commission**