BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Staff Proposal for An Economic Development Tariff Template	))	Case No. 11-4304-EL-UNC

MOTION TO INTERVENE, MEMORANDUM IN SUPPORT AND COMMENTS OF THE OMA ENERGY GROUP

Lisa G. McAlister
Matthew W. Warnock
BRICKER & ECKLER LLP
100 South Third Street
Columbus, OH 43215-4291
Telephone: (614) 227-2300
Facsimile: (614) 227-2390
E-mail: lmcalister@bricker.com
mwarnock@bricker.com

On Behalf of The OMA ENERGY GROUP

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Staff Proposal for An Economic Development Tariff Template	))	Case No. 11-4304-EL-UNC

MOTION TO INTERVENE AND COMMENTS OF THE OMA ENERGY GROUP

Pursuant to Section 4903.221, Ohio Revised Code ("ORC"), Rule 4901-1-11, Ohio Administrative Code ("OAC"), and the Attorney Examiner's Entry dated February 9, 2011, the OMA Energy Group ("OMAEG") hereby respectfully moves for leave to intervene in the above-captioned proceedings.

The Public Utilities Commission of Ohio (the "Commission") should grant the motion to intervene because the OMAEG has a real and substantial interest in these proceedings, and the Commission's disposition of these proceedings may impair or impede the OMAEG's ability to protect that interest. The OMAEG believes that its participation will not unduly prolong or delay these proceedings and that the OMAEG will significantly contribute to the full development and equitable resolution of the issues in these proceedings. Additionally, the OMAEG's interests will not be adequately represented by other parties to this proceeding. Accordingly, for these reasons and as set forth in the Memorandum in Support attached hereto and incorporated herein, OMAEG respectfully requests that the Commission grant this Motion to Intervene.

Respectfully submitted on behalf of
OMA ENERGY GROUP

Matt W

Lisa G. McAlister
Matthew W. Warnock

BRICKER & ECKLER LLP
100 South Third Street
Columbus, OH 43215-4291
Telephone: (614) 227-2300
Facsimile: (614) 227-2390
E-mail: lmcalister@bricker.com
mwarnock@bricker.com

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Staff Proposal for An Economic Development Tariff Template.	))	Case No. 11-4304-EL-UNC

MEMORANDUM IN SUPPORT

On July 15, 2011, the Public Utilities Commission of Ohio (the "Commission") issued a proposed "Economic Development Tariff" and requested that interested parties file initial comments on their proposal by August 5, 2011, with reply comments due by August 15, 2011.

The OMAEG is a non-profit entity created by the Ohio Manufacturers' Association for the purpose of educating and providing information to energy consumers, regulatory boards and suppliers of energy; advancing energy policies to promote adequate, reliable and efficient supply of energy at reasonable prices; and, advocating in critical cases before the Commission. As a subgroup within the Ohio Manufacturers' Association, the OMAEG specifically supports the energy needs of the only statewide association exclusively serving manufacturers. The OMAEG's members are all members of the Ohio Manufacturers' Association. The OMAEG members purchase electric power services from electric distribution utilities ("EDUs"), as well as electric cooperatives and municipal utilities in Ohio and will be affected by the Commission's determination in these matters. Accordingly, the OMAEG should be permitted to intervene in the above-captioned proceedings.

Consistent with the requirements of R.C. 4903.221, and OAC Rule 4901-1-11(B), the OMAEG submits that: it is a real party in interest herein; its interest is not now represented, or adequately addressed, by existing parties; it will contribute to the just and expeditious resolution of the issues and concerns set forth in this proceeding; and its participation in this proceeding will not cause undue delay or unjustly prejudice any existing party. The OMAEG's participation will enhance the effectiveness of the above proceeding, and ensure that the proceeding is fair to its membership. Accordingly, the OMAEG respectfully requests the Commission grant its Motion to Intervene pursuant to R.C. 4903.221 and OAC Rule 4901-1-11.

INITIAL COMMENTS

I. INTRODUCTION

It is important to note that, particularly as a customer group, the OMAEG appreciates that the Commission is concerned with economic development in Ohio. The Commission's commitment to Ohio's manufacturing community is nowhere more apparent than its sua sponte effort to promote economic development through its proposed Economic Development Effort. The OMAEG commends the Commission for the time and effort spent on this fundamentally important initiative.

Governor Kasich has stated numerous times that it is his top priority to create jobs and revive Ohio's economy. The OMAEG supports this mission and strives to protect and grow Ohio manufacturing. Anecdotally, the OMAEG regularly hears that part of the problem in attracting new business to Ohio is the lack of predictability and certainty in Ohio's electric rates. The inability to identify a forward electric rate with any certainty for any length of time creates a deterrent to investment in the State (whether from new or existing manufacturers), thereby driving manufacturers to other states with more predictable pricing mechanisms.

Given the volatility in the electric market, lack of predictable and certain electric rates, and the current legal structure under which the Commission, EDUs, customers and other stakeholders must operate, the OMAEG views the Economic Development Tariff as a critical piece not only of Ohio's economic development efforts, but also the retention of existing manufacturers and existing jobs.

The OMAEG views this case as the starting point for a much larger discussion on the efforts to sustain Ohio's manufacturing community. The OMAEG looks forward to additional discussions with key stakeholders going forward. With this in mind, and pursuant to the Commission's July 15, 2011 Entry, the OMAEG respectfully submits its comments for the Commission's consideration--comments that represent feedback from numerous manufacturers across Ohio and various industry sectors.

II. COMMENTS AND RECOMMENDATIONS

The Entry states that the goals of Staff's proposal are to facilitate economic development, increase job retention and job procurement, and mitigate transaction costs related to reasonable arrangements. The OMAEG enthusiastically supports these goals. However, it is not clear that the proposal will achieve any of these goals.

A. Eligibility Criteria

The OMAEG believes that in order for the economic development and retention program to be sustainable into the future, the population of customers eligible under the Economic Development Tariff must strike a fair balance. On the one hand, the group of eligible customers should not be overly broad. On the other hand, the group of eligible customers must be broad enough to provide economic development and retention support to the customers who will provide the "biggest bang for the buck" for Ohio.

Manufacturing jobs drive Ohio's economy. In 2009, Ohio's 16,401 manufacturing companies employed 629,200 Ohioans and provided above average wages. In 2009, the average compensation for manufacturing jobs was $67,344 (or a 33% percent premium over the average compensation of the rest of Ohio's workforce). In addition, U.S. businesses pay the bulk of all state and local taxes. Among major industries, manufacturers rank a close second behind the much larger services sector in terms of tax payments. Of the more than $580 billion in business tax revenues collected by local and state governments in Fiscal Year 2008, nearly $90 billion was derived from manufacturing firms. That is more than the tax revenues collected from the retail trade and communications sectors combined. Moreover, manufacturing jobs support the jobs in other sectors. Specifically, roughly one in six U.S. private sector jobs depends on the U.S. manufacturing base (amounting to approximately 18.6 million jobs in 2009).[1]

However, Ohio is losing manufacturing jobs and manufacturing companies as it struggles to compete with other states. As Governor Kasich recently noted, Ohio has lost more jobs over the last 10 years than any other state, except for California and Michigan. In order to remedy the exodus of Ohio manufacturers, the OMAEG believes that it is more important to provide additional support to manufacturers who, unlike other groups of customers, are subject to national and international competition. In the context of the Economic Development Tariff, this means expanding the group of eligible

---

[1] *See,* "The Facts About Modern Manufacturing, Eighth Edition," The Manufacturing Institute, available at http://www.nam.org/Statistics-And-Data/Facts-About-Manufacturing/~/media/0F91A0FBEA1847D087E719EAAB4D4AD8.ashx.

customers to capture those non-residential customers who are energy intensive and trade exposed.

To accomplish this task, the OMAEG believes that it is worthwhile to conduct Ohio-specific research in order to accurately assess the existing manufacturing base in Ohio and the types of companies that Ohio wants to attract in the future. In fact, the Ohio Manufacturers' Association has solicited, and is working to undertake, a study for this very purpose. It is not clear from the Staff proposal that Staff has any information or data required to estimate the number of customers that would be eligible for the proposal based upon the stated criteria. Consequently, there is not any information about how many customers may be eligible for this proposal. Without such sufficient supporting data, any proposal developed by the Commission will be little more than a stab in the dark with potentially significant ramifications on the future of Ohio's manufacturing communities. Significantly more research and data is necessary to get a better picture of how the Commission's proposal can and should work.

B. The Economic Development Incentive

The first proposal under the tariff (the Economic Development Incentive provision) allows either existing or new customers to receive a discount off the otherwise applicable tariff rate of the incumbent electric distribution utility ("EDU"). The applicable discount varies over a five (5) year period, and is entirely dependent on: (i) the number of jobs and amount of new payroll created; or (ii) the level of capital investment in Ohio plus certain job retention commitments. To be eligible for any discount whatsoever, customers must also receive funding or incentives from a state or local government, or an economic development agency.

4698550v4

More specifically, eligibility for the lowest discount amount of two percent (2%) requires that a customer make at least a $50 million capital investment. In contrast, the highest discount available to existing customers (20% off the tariff rate) requires a customer to make a minimum $200 million capital investment **AND** increase payroll by $17.5 million **AND** add 125 new jobs.

In order for this program to effectively retain existing business and attract new business, the groups of eligible customers must be clear and the eligibility criteria must be specifically designed to target only those customers. However, the Commission's proposed Economic Development Tariff seems applicable to only the very largest of customers; and, even then, only those who are also adding new jobs and/or making significant capital investments. While this may be the goal of the Commission's proposal, and may be useful in attracting a handful of large energy users to Ohio, it effectively excludes most existing and new businesses, and could result in longstanding Ohio manufacturing employers subsidizing their newly sited competition.

The concept of job retention is an important, yet often overlooked, feature of economic development. Further, the OMAEG notes that jobs follow capital investment. Designing the Economic Development Tariff to focus on capital investment, regardless of whether it is at new or existing facilities, will create jobs and not unduly limit the usefulness of the proposal. For these reasons, the OMAEG does not believe that the eligibility criteria are reasonable.

The first modification should be made to the job creation threshold. Simply stated, the jobs creation threshold is too high and appears limited to new jobs. For existing customers, the minimum threshold requires a $5 million increase in annual payroll (for existing customers) or the creation of at least $5 million in annual payroll (for new customers), plus the addition of 75 new, permanent, full-time employees (or full-time employee equivalents). These numbers are simply unrealistic. The OMAEG recommends that the threshold be reduced to 25 new jobs or retained jobs.

The second major modification should be made to the capital investment requirement. Even for the lowest discounts available under the tariff, the level of capital investment required ($50 million) is too high. To remedy this problem, the OMAEG recommends the following:

- The definition of "capital investment" should be expanded to explicitly include capital invested in ongoing maintenance and repair (to benefit existing customers), as well as the other investments described.
- The determination of whether the threshold investment amount has been satisfied should include any investments made (or expected to be made) during the discount period. For example, assuming a five (5) year discount period, proposed annual investments of $10 million per year (for a five year total of $50 million) should entitle a customer for the 2% discount.
- At a minimum, if $50 million remains the minimum level of capital investment, the corresponding discount should be adjusted upwards to an amount much greater than two percent (2%).

C. The Energy Intensive High Load Factor Provision

Under the option limited solely to new customers (the proposed Energy Intensive High Load Factor Provision), a matrix sets forth varying levels of all-in electric rates (which includes distribution, transmission and generation costs) rather than a percent off the applicable tariff rate. To be eligible for the all-in rate, a new customer must add at least 75 new, permanent Ohio employees; have a minimum monthly demand of at least five (5) megawatts ("MW"); have an annual average load factor of at least 60 percent; and, have an electric cost that is at least four percent (4%) of its total operations and maintenance costs.

To be eligible for the highest price in the matrix of $0.055/kWh (the least discounted rate), a customer must have a load factor of 60-70% and electricity must account for 4-9% of total operating costs. To be eligible for the lowest price on the matrix of $0.045/kwh (the highest discount available), customers must have a load factor over 80% and electricity must account for more than 40% of total operating costs.

The eligibility criteria set forth above also are unworkable, and unduly prejudice existing Ohio customers. To truly accomplish the Commission's goals, the OMAEG recommends the following changes:

- The high load factor provision should be expanded to include all customers, not just "new" economic development mercantile customers. Already, the Economic Development Tariff places too much emphasis on new economic development initiatives to the detriment of existing manufacturers and job retention. As previously stated, the proposal as written may result in longstanding members of the Ohio manufacturing community subsidizing competitors.
- The first criterion is too limited and should be expanded to include either jobs created or, more importantly, jobs retained. As previously stated, retained jobs are as worthy a goal as new jobs.

- Allowing the fourth criterion comparing the customer's total electric cost to its total operations and maintenance costs runs the risk of data manipulation. More specificity, the proposal fails to define exactly which costs are eligible for the comparison. Knowing which specific costs can be included in the comparison would be useful.

- Perhaps more importantly, the fourth criterion requires an eligible customer's total electric cost to be at least 4% of the customer's total operations and maintenance costs. Based upon feedback from manufacturers in a variety of industries, the OMAEG suggests the 4% number is too high of a threshold.

D. Delta Revenue

In addition to comments on the proposed Economic Development Tariff, the Commission requested comments on the issue of the recovery of delta revenue. As part of its proposal, the Commission proposed to recover the difference between the discounted rates and the otherwise applicable tariff rates (the "Delta Revenue") from both EDUs and customers. The recovery would be split 20/80, with the customers paying 80% of the Delta Revenue and the EDUs' shareholders picking up the remaining 20%.

In this context, the Commission specifically requested comments on: (i) whether there should be a differential in the amount of delta revenue recovered by EDUs depending upon whether they own generation assets or provide generation service through a competitive bid process; (ii) whether the absence of such a differential would create a disincentive to electric utilities to procure generation through a competitive bid process and stifle further development of competitive markets; and (iii) whether the

Commission should explore eliminating EDU-specific delta revenue recovery mechanisms and create a uniform rate recovery mechanism applicable across the state.

Before responding to the specific questions posed by the Commission's issues, it is important to highlight a number of issues regarding delta revenue.

First, it is important to note that the OMAEG recognizes that Ohio businesses are not alone in their financial struggles due in large part to the economic recession. The OMAEG is keenly aware of the departure or closures of significant employers in Ohio and the resulting layoffs, un- and under-employment. The OMAEG is very sensitive to the fact that Ohio's families are struggling to make ends meet and make difficult decisions regarding income, assuming there is income. Accordingly, the OMAEG believes that any nonresidential economic development and retention program that relies on delta revenue cost recovery from other ratepayers must be reasonable, balanced and not harm ratepayers.

There are inherent limitations involved in using a Commission-approved tariff to achieve the Commission's noted goals. Tariffs apply to specific EDUs, and the cost recovery mechanisms are limited to those EDUs. Thus, if the Commission's proposal does attract new or expanding business in one particular EDU's service territory, and the result is a substantial delta revenue amount, the EDU customers paying the delta revenue, and even potentially the EDU, could suffer serious financial harm.

Consequently, the OMAEG strongly recommends that the Commission and interested stakeholders pursue a legislative change that would permit cost recovery from the broadest population of customers possible. This makes sense because economic development benefits the entire state. Accordingly, the rates set forth in the

Economic Development Tariff should be opened (through legislation) to all eligible customers regardless of whether they are served by an EDU or a cooperative; and, the cost recovery mechanism should apply to customers of all EDUs and cooperatives throughout the state.

Further, because of the "home rule" provision in the Ohio Constitution, a legislative change cannot require municipal electric utilities to participate. However, there should at least be the option for municipal electric utilities to participate in such an economic development program. In other words, it is the OMAEG's recommendation that the Commission and interested stakeholders take the time to conduct the necessary research to develop a very specific plan that supports both economic retention and development for those customers that will provide the most benefits to the state—in particular, pursuing legislation that accomplishes the Commission's goals of economic development without harming existing ratepayers.

Similarly, all ratepayers, even those under the Economic Development Tariff, should pay a portion of the delta revenue. The proposal states that 80 percent of the delta revenue associated with the discounted rates would be covered by customers, while the remaining 20 percent would be covered by the utilities. However, "customers" is not defined, so it is not clear which customer classes will be paying for the delta revenue. Thus, the OMAEG recommends defining "customers" as all ratepayers.

That said, the recovery mechanisms must also be balanced, fair and reasonable. As the Commission noted, the EDUs do have different delta revenue recovery mechanisms. An energy only or kilowatt hour recovery mechanism would be counter-productive by collecting a greater portion of the delta revenue from the types of customers that the proposal seeks to support. Accordingly, the OMAEG recommends a per customer charge that is uniform across the state. The OMAEG is not opposed to a reasonably graduated charge for the various customer classes. That is not to say that the charge itself must be the same for each customer class. Again, this should be achieved through a legislative change. In answer to the Commission's question, yes, the Commission should eliminate EDU-specific rate recovery mechanisms and create a uniform, state-wide mechanism.

In response to the Commission's questions regarding whether there should be a differential in the amount of delta revenue recovered by EDUs depending upon whether they own generation assets or provide generation service through a competitive bid process and whether the absence of such a differential would create a disincentive to EDUs to procure generation through a competitive bid process, the OMAEG believes that the EDUs are in the best position to respond.

E. Reasonable Arrangements

It is the OMAEG's understanding that the Staff's proposal would be in addition to, and not instead of, the reasonable arrangement tool. As difficult as it can sometimes be to use the reasonable arrangement option, the OMAEG believes it is necessary to maintain a tool for highly customized arrangements that do not fit into an "off the shelf" product like the Economic Development Tariff. That said, as the Entry states, this statutory tool "may involve significant transactions costs, including costs related to the negotiation of rates and other terms and conditions as well as costs related to seeking Commission approval of the proposed reasonable arrangement." The OMAEG agrees.

However, while Staff's proposal offers an alternative to reasonable arrangements, it does not address the transaction costs associated with reasonable arrangements.

The OMAEG believes that the Commission and Staff have made strides in streamlining the reasonable arrangement process since it became available to mercantile customers to file on a unilateral basis, as can be demonstrated from the reduced time between the filing of an application and the issuance of a final Commission order. However, it is still a resource- and time-intensive process that is impractical for many customers, as can be demonstrated by the very few applications filed to date. In addition to the high transaction costs associated with reasonable arrangements, substantial time gets invested in negotiations and litigation, and the public nature of the process does not lend itself to the reasonable protection of confidential and proprietary business information.

Therefore, in addition to the proposed Economic Development Tariff, and to enhance the likelihood of success for the Commission's economic development program, the OMAEG recommends that the Commission further streamline the reasonable arrangement process by adding a deadline by which the Commission must act upon an application.

III. CONCLUSION

The OMAEG appreciates the consideration and effort that the Commission and Staff have put into developing this Economic Development proposal. Additionally, the OMAEG is grateful to have had the opportunity to provide input into the process. While the OMAEG understands and strongly supports Staff's desire to have an electricity price and product that it can offer to companies who may locate in Ohio, the OMAEG believes that it is worth the time and effort to develop a more comprehensive and better supported legislative proposal that supports energy intensive trade exposed customers who provide the most significant benefit to the state. Additionally, the OMAEG believes that limiting cost recovery to a single EDU has the potential to cause serious financial harm to the customers in that service territory if the program is successful. A legislative proposal should expand the population of customers from which the delta revenue will be recovered to help alleviate this concern.

Respectfully submitted on behalf of
OMA ENERGY GROUP

Matthew W. Warnock

Lisa G. McAlister
Matthew W. Warnock
BRICKER & ECKLER LLP
100 South Third Street
Columbus, OH 43215-4291
Telephone: (614) 227-2300
Facsimile: (614) 227-2390
E-mail: lmcalister@bricker.com
mwarnock@bricker.com

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served upon the following parties of record via regular U.S. mail this 5th day of August 2011.

Matthew W. Warnock

Samuel C. Randazzo
Joseph E. Oliker
MCNEES WALLACE & NURICK LLC
21 East State Street, 17th Floor
Columbus, Ohio 43215
Counsel for industrial Energy Users-Ohio

William Wright
Public Utilities Commission of Ohio
180 E. Broad Street, 6th Floor
Columbus, Ohio 43215