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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

FILE

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

COMMENTS OF OHIO PARTNERS FOR AFFORDABLE ENERGY

INTRODUCTION

On July 15, 2011, the Commission issued an Entry requesting comments on a proposed template to be used to file for 'reasonable arrangements' which provide lower rates to business customers while transferring responsibility for the recovery of the delta revenue – the amount of the bill that the utility would collect under approved tariffs less the amount agreed to under the special contract – to all other customers. Section 4905.31, O.R.C., specifically authorizes these special contracts to allow mercantile and industrial customers to commit energy efficiency and demand reduction to the utility for purposes of complying with Section 4928.66, and retain or increase jobs. The justification for the proposed template is to facilitate economic development and reduce transaction costs of implementing Section 4905.31, O.R.C.

There is no doubt that Ohio's economy has been wracked by recession. Job growth in Ohio has lagged the national average for most of the past 15 years.[1] Ohio has lost over 315,607 manufacturing jobs since 2000 (33.6%), more than most states

[1] http://www.georgezeller.com/ohusajob0711.pdf

have.[2] Overall, 583,593 jobs have disappeared in Ohio (10.9%).[3] Total annual earnings between 2000 and 2010 declined by $17.72 billion, or 8.4%.[4] The poverty rate in Ohio has gone from 10.6% in 1999 to 13.6% in the 2005-2009 timeframe.[5]

Ohio Partners of Affordable Energy ("OPAE") and its members have witnessed this economic disruption firsthand. The number of customers using the Percentage Income Payment Plan has grown from ______ in 2000 to ______ in May of this year. The number of clients receiving benefits under the Home Energy Assistance Program ("HEAP") exceeded 440,000 this year, an increase of _____ % from the prior year. Our food pantries are bare and demand for other services continues to exceed resources.

Utility rates have not helped this situation. Rates in The Dayton Power and Light Company service territory have increased 56% since 2008. (DP&L's unregulated affiliated recently offered customers a 15% from standard service offer rates.) Rates of the operating companies of American Electric Power, at one time among the lowest in the nation, now exceed the state average having increased over 50% over the past several years. Only FirstEnergy's distribution companies are providing power at a cost lower than its legacy rates. Most importantly, the competitive market operating in FirstEnergy service territory has resulted in significant price reductions for all customers, including residential customers who are usually the last to benefit if they benefit at all. In the past year, competition in the Duke service territory has also brought customers relief from continuous bill increases.

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[2] http://www.georgezeller.com/gew3q0010.pdf
[3] http://www.georgezeller.com/gew3q0010.pdf
[4] http://www.georgezeller.com/gew3q0010.pdf
[5] This percentage is based on 100% of the federal poverty line. 30.9% of Ohioans have incomes below 200% of the federal poverty, which is generally considered to be the level of income adequate to sustain a family. http://www.development.ohio.gov/Research/files/p700000003.pdf

Ohio's state government has responded to this economic decline in a number of ways. It has reduced taxes, particularly on business. It has provided an array of grants, loans, and tax breaks to business.[6] It has reduced income taxes on individuals and families. It has eliminated regulatory barriers. Despite these well intentioned efforts, the state has continued to hemorrhage jobs.

SB 221 included the language of Section 4905.31, O.R.C., to add another level of subsidy to Ohio remaining large energy consumers. To be fair, industrial and large mercantile energy users have long benefited from customized rates commonly referred to as 'special contracts.' Some utilities handed these out like candy, while others were positively miserly in granting reduced rates through special contracts. Under cost of service regulation, the special contract rates were justified as promoting the efficient operation of generation assets and the utility system. Under today's hybrid regulatory-competitive approach, these special arrangements are available simply to reduce the cost of energy for large customers. The key is whether these reduced rates result in increased employment or investment or merely reduce costs and increase profits for large electric users. OPAE would add an additional question; do these special arrangements reduce rates more than a free market for generation services – capacity and energy – can provide?

[6] For a complete listing of economic development programs managed by the Ohio Department of Development see: http://13e69210f681c6aaccd58f3236e68ba31d3b4942.gripelements.com/pdf/ohio_economic_development_incentives_overview.pdf

COMMENTS

The Template and the Competitive Market

The proposed template and the program it embodies erect yet another barrier to the development of the competitive market for electric service in Ohio. The tariff template binds large customers to the incumbent utility. This takes the large customer out of the competitive market. In a sense, the proposed tariff presupposes that negotiation in a competitive market will not produce a lower price, but there is no way to confirm that assumption. Streamlining the process through the template makes it less likely that large customers will even test the competitive waters. Speaker Batchhelder recently noted his support for the competitive market elements of SB 221. (See Attachment 1.) This proposal also allows utility companies to erect barriers to shopping, and to be able quiet discontent among its industrial customers by offering them economic development discounts in lieu of the opportunity to shop. The template clearly undermines the competitive market.

Delta Revenue

The Commission entry implies that utilities received a greater benefit under cost of service regulation from special contracts than an electric distribution utility ("EDU") may receive now under a special arrangement. This may well be a distinction without a difference. Special contracts increased sales while recovering the lost revenue from customers; the amount of lost revenue not paid by customers and thus absorbed by the utility was unknown. Special arrangements increase sales while recovering, under this proposal, 80% of the lost revenue from other customers. The utility absorbs the remaining 20%. Whether the 80/20 arrangement adequately compensates the utility is unclear because it depends on how the utility obtains it's generation. If the EDU has to go to market to buy the generation, it is losing money from the 80/20 split. If the EDU continues to own generation, the question is what that generation is worth on the market because there would be foregone sales at market prices.

What is clear is that the reasonable arrangement, like special contracts, will cost other customers more. Ormet will cost American Electric Power customers as much as $350 million over 10 years. Eramet will cost those same customers up to $40 million over 10 years. The V&M Star contract will cost customers as much as $42 million per year. It is unclear what the amount of delta revenue – bill increases – the template will cause for residential and other customers. We will not know from the contracts if they are not masked by confidentiality arrangements. The totally of the cost shift will be observable through whatever the utility choses to name its economic development rider at the time it is reviewed.

Transparency and Accountability

Currently, reasonable arrangements are determined through applications, many of them litigated. While this increases transaction costs, those costs are a very small percentage of the $350 million Ormet will save (and other ratepayers will pay) over ten years. The advantage of the current approach is that customers or their representatives have the opportunity to scrutinize the costs and the benefits. In addition, this process permits the special arrangement to be tailored to the unique characteristics and needs of the customer as opposed to the 'one size fits all' approach of the template. The Entry does not provide any details on what information would be made available to the ratepayers who will pay for 80% of the rate subsidy. This should be clarified.

Accountability also appears to be lacking. The PUCO recently saw its budget level reduced with a commensurate reduction in staff. OPAE is not aware that the PUCO currently has adequate staff trained in monitoring economic development contracts; given budget cuts the opportunity to hire this type of employee is slim. Expertise in monitoring contract compliance is not something someone is born with; it is a skill learned on the job. Whether it is a skill set that is resident at the Commission now is unclear.

The skills necessary to manage economic development programs do exist in the Ohio Department of Development and the new JobsOhio. The former manages the numerous economic development programs referred to above. The latter is made up of business professionals. These people have experience at judging whether the subsidy is instrumental in job retention or creation, or whether the investment would or would not occur. JobsOhio was set up to actively seek out and coordinate economic development opportunities. There is nothing in the template to indicate that either the Department of Development or JobsOhio will be consulted when the Commission considers awarding subsidies under the template.

Accountability is concern. The proposed template indicates that if the large customer fails to meet its commitments for new jobs or investments, rate reductions will only be eliminated prospectively. This is curious given that Governor Kasich has recently discussed the need to 'clawback' economic development grants provided to companies that subsequently fail to deliver the new jobs and investment promised. The methodology proposed for determining compliance with job production commitments – comparing payrolls – seems a fairly blunt measuring stick. Payrolls change for a host of reasons from pay cuts to temporary shut downs. Even counting noses has its drawbacks. The template lacks a mechanism to tailor compliance measurement to the individual customer situation.

The template also appears to reward companies for making investments or increasing hiring that the companies are doing regardless of the subsidy. Ohio law related to existing economic development programs has a 'but,for' standard – the investment would not have occurred 'but for' the subsidy. Section 122.0816, O.R.C. While this standard is subject to gaming, the template proposal lacks any criteria for determining whether or not the grant of the subsidy is appropriate. There are advantages to simplicity and the reduction of transaction costs, but the customers paying for these subsidies are better served by adequate review and enforcement *mechanisms; put another way, those granting the subsidies should treat the transaction* as though the delta revenue would be paid out of their own pocket. Are we going to get what we are paying for? This is the operative question.

A MODEST PROPOSAL

Over the past two years, OPAE's sixty-four member nonprofits have created more than 1,000 new jobs using funding from the American Reinvestment and Recovery Act (ARRA) of $267 million over two years. This is a huge increase over the 550 weatherization positions supported by federal, state, and utility funds prior to the legislation. These 1700 employees now weatherize 2,000 homes per month and will complete a total of 40,000 by the end of the program. The point of this is not to tout the stimulus; that is far too political for OPAE. The point is that 1,700 jobs can be supported by an expenditure of $10 million per month in weatherization funding.[7] Increasing utility funding for comprehensive weatherization services can retain large numbers of decent jobs providing health care and retirement benefits – jobs that can support a family.[8] In addition, the riders that fund residential efficiency are paid for by residential customers. Unlike the cost of special contract, the costs of energy efficiency programs are not shifted to other customers or customer classes. On a competitive basis, charging residential customers to weatherize residential homes may be more cost-effective than subsidizing large companies. Small business creates far more jobs in this economy than large industrials, but this type of job creation does not lend itself to press releases.

CONCLUSION

The Commission has the authority to provide reasonable arrangements to encourage economic development. The proposed template appears a blunt instrument for achieving this purpose. There is little assurance that the jobs or investment will accrue and no penalty if they do not. Any economic development activities undertaken by the Commission should be coordinated with JobsOhio and the Department of Development which have expertise in this area. Most important, in the utility industry the policy of the State of Ohio is to utilize competitive markets to drive down the cost of energy. Large consumers are best positioned to take advantage of the market. The Commission should focus on eliminating the barriers to competition. Using this

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[7] Currently, the House of Representatives has eliminated funding for the FY'12 Weatherization Assistance Program. State and utility funds currently provide approximately $42 million for low-income weatherization activities.

[8] Good examples of these jobs and what they mean to our employees and clients can be seen in two videos on the weatherization program managed by Kno-Ho-Co-Ashland Community Action Commissions: http://www.youtube.com/watch?v=jNyW52B7RVc and http://www.youtube.com/watch?v=E-vgWPwpVJU.

approach will eliminate the need for other customers to pay higher bills to offset the revenue lost by utilities. Finally, the Commission should consider expanding weatherization opportunities for residential and small commercial customers. Those types of programs create jobs and new small businesses, reducing customer utility bills while not shifting costs to other customer classes.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Objections was served electronically upon the parties of record identified below in this case on this 5th day of August 2011.

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