**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

|  |  |  |
| --- | --- | --- |
| In the Matter of the Joint Application for Approval of an Economic Development Arrangement between Ohio Power Company and Acero Junction, Inc. | )  )  )  ) | Case No. 17-2132-EL-UNC |

**COMMENTS**

**BY**

**THE OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

# I. INTRODUCTION

On behalf of the 1.3 million residential utility consumers of Ohio Power Company (“AEP” or “Utility”), who already are paying the highest electric bills among AEP consumers in the other states where AEP serves, the Office of the Ohio Consumers’ Counsel (“Consumers Counsel" or "OCC”) makes the following recommendations to the Public Utilities Commission of Ohio (“PUCO”) for considering the joint application of Acero Junction, Inc. (“applicant” or “mercantile customer.”) and AEP. The mercantile customer seeks a discount (rate credit) on its electric bill from AEP for economic development for the next seven years (through the end of AEPs' proposed electric security plan --May 31, 2024). This discount is paid (subsidized) by other customers, including residential customers.

Notably the mercantile customer commits to have a minimum of 270 new full time employees, and will be investing $60 million in the facility within a year of resuming its steelmaking operations.[[1]](#footnote-2) The mercantile customer has also submitted, as a public document, an economic impact analysis showing total net annual economic

impacts in Ohio of about 3,110 jobs and $183 million in labor income.[[2]](#footnote-3) The mercantile customer will thus be significantly and positively contributing to Ohio's economy. In exchange, under the proposed arrangement, the mercantile customer would receive discounted rates through various mechanisms.

In this type of case, the PUCO considers various factors including a balance between the positive benefits of economic development and the cost (subsidy) charged to other Ohioans who the utility (here, AEP) asks to fund its rate discount. We note our longstanding position that utilities such as AEP should pay a share (along with a share paid by consumers) of the costs of programs to bring to Ohio the benefits of economic development. The Consumers’ Counsel appreciates the courtesy and helpfulness of Acero in discussing with us its application.

# II. COMMENTS

The PUCO has adopted rules addressing “reasonable arrangements.”[[3]](#footnote-4) Under the rules, if it appears to the PUCO that the Application may be unjust or unreasonable, the PUCO may order a hearing.[[4]](#footnote-5) The PUCO may also change, alter, or modify the unique arrangement.[[5]](#footnote-6)

The Consumers’ Counsel’s recommendations are, in general, applicable not only to this application, but to essentially any application for programs and funding for economic development. In the typical economic development arrangement considered by the PUCO, the discount to the mercantile customer is applied to the mercantile customer's total bill. And that discount creates so-called “delta revenue” (being the revenue the utility forgoes collecting as a result of the rate discount) that the PUCO has allowed utilities to collect from other customers through an economic development rider.

## A. In balancing economic development program benefits with costs, the PUCO should quantify the total costs of an application’s economic development programs and ensure that Ohio utility consumers pay the least subsidy to their utility that is needed for the economic development.

Under the proposed unique arrangement, the revenue that AEP receives from the mercantile customer for transmission and distribution service is less than it would otherwise receive under tariffed rates. The reduced revenues AEP would collect from the mercantile customer occur because the mercantile customer would pay a reduced rate for certain tariffed charges below what other similarly situated customers are charged. As noted economist Milton Friedman famously remarked "there's no such thing as a free lunch" -- and AEP can be expected to seek higher charges from other customers to make up its reduced revenues from charging less to the mercantile customer.

Under the proposed economic development arrangement, the mercantile customer would receive a monthly rate credit under the interruptible power tariff of 85% of its monthly transmission and distribution charges. This discount is estimated to be approximately $12 million through 2021. Further discounts (through 2024) under the interruptible power tariff are not known at this time because the discounts are tied to PJM capacity prices, which are known only through 5/31/2021. The mercantile customer also will be receiving a discount in the form of an Economic Development rate credit of up to $26.2 million.[[6]](#footnote-7) And the mercantile customer may also receive other revenues from PJM because it will have the opportunity to bid its interruptible capacity into the PJM auctions or participate in any other PJM demand response program and retain any revenue from PJM associated with that interruptible capacity.[[7]](#footnote-8)

These eventual additional costs (and opportunities) will increase the monetary benefits to the mercantile customer of the proposed economic development arrangement. The cost of the discounts provided will ultimately add to the charges other customers must pay.

AEP can be expected to seek to collect from other customers the revenue shortages from the discounts offered to the mercantile customer, including residential consumers. These particular costs to consumers should be identified and considered, in total, as part of the PUCO’s balancing of program benefits to be paid by customers to their utility for subsidizing economic development programs. As stated above, this recommendation applies to any applicant’s proposal for economic development.

## B. The PUCO should establish caps (limits) on what customers would be charged by their utility annually and in total to subsidize economic development programs.

Currently, AEP Ohio's Economic Development Cost Recovery Rider is set at 2.81125% of a customer's distribution charges.[[8]](#footnote-9) For an average residential customer using 1,000 kWh per month, that charge equals roughly $0.75 per month.[[9]](#footnote-10) The subsidy charges vary over time according to applications and PUCO approvals, and AEP Ohio has had much higher monthly charges to customers for economic development, at times.[[10]](#footnote-11) The subsidies charged add up to almost $12 million per year for AEP Ohio's residential customers. If this application is approved, the subsidies paid by residential customers will further increase. These subsidy charges, whether called delta revenue or interruptible credits, would further increase the rates paid by AEP’s Ohio customers that are already the highest rates paid by AEP customers in its 11-state service territory in 2016.[[11]](#footnote-12)

To protect customers, the PUCO should consistently impose an overall cap (limit) on what consumers could be charged by their utility to subsidize all economic development programs in their service territory. Doing so is consistent with the PUCO's practice of establishing a limit on what customers can be asked to pay in reasonable arrangement cases, given that customers have limited resources.[[12]](#footnote-13)

For individual economic development arrangements there should be established caps for each year of an individual program. And there should be a cap on the total cost of the arrangement that can be charged over the entire period the arrangement is in effect. The caps should include all the utility subsidies available to an applicant that are paid by other consumers, including subsidies such as those in this case that reflect credits on the economic development rider paid by the mercantile customer and interruptible rate credits.

Here, the mercantile customer does propose a cap on the economic development credits. There is a cap proposed ($22 million) on the discounts provided under the interruptible credit rider. We appreciate the substantial new jobs to be created and that the mercantile customer seeks to limit what other customers would pay to subsidize the mercantile customer's discount.

Additionally, the PUCO should establish a limit on the total amount of money paid by all Ohio utility customers to subsidize economic development programs resulting from requests to the PUCO. The subsidies that consumers are asked to pay to electric utilities for all economic development should not exceed, in total, a certain low percentage of consumers’ electric bills. This cap should be established by the PUCO.

## C. The PUCO should determine a reasonable sharing of the costs of economic development between AEP and its customers.

The PUCO’s original policy for economic development, which dates back more than 30 years, included a sharing of payment for the delta revenue subsidy, between utilities and consumers.[[13]](#footnote-14) Under that policy approach, the PUCO should provide for a reasonable split of the economic development costs between the utility and customers.

AEP is benefitting from the mercantile customer’s expansion in the service territory through increased distribution and transmission revenue from serving the new load associated with the mercantile customer's steelmaking operations, which have been shut down since 2009. Given this benefit, Ohio Power should not be permitted to charge other customers for 100 percent of its subsidy for the economic development program.

In the past the PUCO has held “that a 50/50 split properly recognizes that both the company and its customers benefit from the company’s policy of providing economic incentive rates to certain customers to attract new business in the utility’s service territory.”[[14]](#footnote-15) Furthermore, this 50/50 sharing of the delta revenue is consistent with other decisions that addressed the issue years ago.[[15]](#footnote-16)

The PUCO’s original policy complements the provisions in S.B. 221 that address economic development arrangements. S.B. 221 does allow a utility to seek to charge other customers for “revenues foregone” as a result of an economic development

arrangement.[[16]](#footnote-17) But the PUCO’s rules,[[17]](#footnote-18) along with the permissive statutory language,[[18]](#footnote-19) make it clear that the collection of delta revenues from other customers is a matter within the discretion of the PUCO.[[19]](#footnote-20) Indeed, the PUCO acknowledged, in an appeal to the Ohio Supreme Court, that it can approve a unique arrangement without allowing the utility to

collect any amount from other customers to pay the utility for lowering its rates to the mercantile customer.[[20]](#footnote-21)

# 

# III. CONCLUSION

The Ohio Consumers’ Counsel appreciates this opportunity to comment. Our recommendations are directed to assisting the PUCO with finding the balance between the benefits of economic development and the costs (charges) to families and other Ohio businesses who fund (subsidize) the economic development programs.

Respectfully submitted,

BRUCE WESTON (0016973)

OHIO CONSUMERS’ COUNSEL

*/s/ Maureen R. Willis*

Maureen R. Willis, Counsel of Record

(0020847)

Senior Regulatory Counsel

Assistant Consumers’ Counsel

**Office of the Ohio Consumers’ Counsel**

10 West Broad Street, Suite 1800

Columbus, Ohio 43215-3485

Telephone: [Willis] (614) 466-9567 [Maureen.willis@occ.ohio.gov](mailto:Maureen.willis@occ.ohio.gov)

(Will accept service via email)

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing Comments have been served upon the below-named persons via electronic transmission this 16th day of November 2017.

*/s/ Maureen R. Willis*

Maureen R. Willis

Senior Regulatory Counsel

Assistant Consumers’ Counsel

**SERVICE LIST**

|  |  |
| --- | --- |
| Steven T. Nourse  AEP Service Corporation  1 Riverside Plaza, 29th Floor  Columbus, OH 43215  [stnourse@aep.com](mailto:stnourse@aep.com)  *Counsel for Ohio Power*  Michael L. Kurtz  Jody Kyler Cohn  Boehm, Kurtz & Lowry  36 East Seventh Street, Suite 1510  Cincinnati, OH 45202  [mkurtz@BKLlawfirm.com](mailto:mkurtz@BKLlawfirm.com)  [jkylercohn@BKLlawfirm.com](mailto:jkylercohn@BKLlawfirm.com)  *Counsel for Acero Junction Inc.*  Attorney Examiner:  [Richard.Bulgrin@puc.state.oh.us](mailto:Richard.Bulgrin@puc.state.oh.us) | William Wright  Attorney General’s Office  Public Utilities PUCO of Ohio  30 E. Broad St., 16th Fl.  Columbus, OH 43215  [William.wright@ohioattorneygeneral.gov](mailto:William.wright@ohioattorneygeneral.gov) |

1. See Joint Application at 4. [↑](#footnote-ref-2)
2. Joint Application, Economic Impact Study at 2. [↑](#footnote-ref-3)
3. Ohio Admin. Code 4901:1-38. [↑](#footnote-ref-4)
4. Ohio Admin. Code 4901:1-38-05(A)(2). [↑](#footnote-ref-5)
5. See Ohio Rev. Code 4905.31; Ohio Admin. Code 4901:1-38-05(B)(4). [↑](#footnote-ref-6)
6. Joint Application at 3 (Oct. 18, 2017). [↑](#footnote-ref-7)
7. Joint application at 3. [↑](#footnote-ref-8)
8. Ohio Power Company Standard Tariffs 8th Revised Sheet No. 482-1. [↑](#footnote-ref-9)
9. Ohio Power Company - Columbus Southern Power Rate Zone Bill Calculation Spreadsheet found at https://aepohio.com/account/bills/rates/aepohioratestariffsoh.aspx. [↑](#footnote-ref-10)
10. As an example in the Ohio Power Company Tariffs issued on April 15, 2011 the Economic Development Cost Recovery Rider was set at 7.53678% of customers' distribution charges. This equated to $1.97 per month for a residential customer using 1,000 kWh. [↑](#footnote-ref-11)
11. American Electric Power 2016 Fact Book presented at the 50th EEI Financial Conference November 6-9, 2016. http;//www.aep.com/investors/EventsPresentationsAnd Webcasts. [↑](#footnote-ref-12)
12. See *In the Matter of the Application of Ormet Primary Aluminum Corporation for Approval of a Unique Arrangement with Ohio Power Company and Columbus Southern Power Company,* Case No. 09-119-EL-AEC, Opinion and Order at 10 (July 15, 2009). [↑](#footnote-ref-13)
13. See *Ohio Electric Innovative Rates Program*, page 5 of 11 (June 28, 1983). (Attachment A). [↑](#footnote-ref-14)
14. *In the Matter of the Application of Columbus Southern Power Company for Authority to Amend its Filed Tariffs to Increase the Rates and Charges for Electric Service,* Case No. 91-418-EL-AIR. Opinion and Order at 110. (May 12, 1992). [↑](#footnote-ref-15)
15. See *Ohio Edison Company,* Case No. 89-1001-EL-AIR, Opinion and Order at 40-41. (August 16, 1990), at 40-41 and *Cleveland Electric Illuminating Co*., Case No. 88-170-EL-AIR, Opinion and Order at 18-19 (January 31, 1989). [↑](#footnote-ref-16)
16. R.C. 4905.31(E). [↑](#footnote-ref-17)
17. *In the Matter of the Application of Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code in the Form of an Electric Security Plan*, Case No. 08-935-EL-SSO. [↑](#footnote-ref-18)
18. Under R.C. 4905.31(E) a utility is not prohibited from seeking an arrangement that includes a “financial device” that “may include a device to recover costs incurred in conjunction with any economic development and job retention program of the utility within its certified territory, including recovery of revenue foregone.” The arrangement must then be approved by the PUCO and are subject to change, alteration, or modification by the Application. [↑](#footnote-ref-19)
19. Ohio Admin. Code 4901:1-38-08(A)(1). [↑](#footnote-ref-20)
20. See *In the Matter of the Application of Ormet Primary Aluminum Corporation for Approval of a Unique Arrangement with Ohio Power Company and Columbus Southern Power Company*, Supreme Ct. Case No. 09-2060, Brief of the Public Utilities at 12 (Mar. 3, 2010). “Appellant [CSP/OP] mistakenly believes that it is entitled to receive specific amounts from all customers, reasoning that money it doesn’t get from one customer it must get from another. This is not now, and never was, the law. As discussed above, R.C. 4905.31 requires no adjustment at all.” [↑](#footnote-ref-21)