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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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In the Matter of the Application for)
Approval of a Contract for Electric)
Services Between Ohio Power Company)
and Globe Metallurgical, Inc.)

Case No. 08-884-EL-AEC

PUCO

**MOTION TO INTERVENE
MOTION FOR HEARING
AND OBJECTIONS
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

The Office of the Ohio Consumers' Counsel ("OCC"), on behalf of residential utility consumers, moves the Public Utilities Commission of Ohio ("PUCO" or "Commission") to grant the OCC's intervention in the above-captioned case.¹ The application ("Application") was filed in the case by Ohio Power Company ("OPC"), on July 16, 2008, for authority to discount the tariffed rate (effective January 1, 2009) for a certain customer, Globe Metallurgical, Inc. ("Globe"). OPC "conditioned" the proposed 10 percent discount on the requirement that the PUCO approve a rider that gives OPC "full recovery" of the discount.² In the parlance of utility ratemaking, OPC's request for full recovery means it is requesting that the PUCO order other customers to pay OPC a rider charge to subsidize the proposed 10 percent discount for Globe, in addition to the other customers paying their usual rate.

OPC also includes terms in the contract -- unrelated to the provision of a

¹ This motion is supported by R.C. Chapter 4911, R.C. 4903.221, Ohio Adm. Code 4901-1-11 and 4901-1-12.

² Application, Exhibit A at page 2 of 4.


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discounted rate and its collection of the discounted revenues from other customers – that have the effect of impeding or eliminating competitive curtailment services in Ohio. Moreover, the contract's granting of sole discretion to American Electric Power ("AEP") to determine whether Globe can participate in PJM's demand response programs is ill-advised policy and deprives Ohioans of the benefits of Ohio load participating in the wholesale demand response markets. Such restrictions on wholesale market participation through OPC's proposed contract, if approved by the PUCO, may run afoul of the explicit instruction of Congress to the Federal Energy Regulatory Commission ("FERC") to implement such programs through regional transmission organizations ("RTOs"), such as PJM, because the contract language is far more restrictive than the federal requirements.

The reasons for granting OCC's motions to intervene and for hearings, and for ruling consistent with OCC's objections, are further set forth in the attached Memorandum in Support, where OCC addresses the proposed economic development rates, sharing of the subsidy (delta revenues) between the Company's shareholders and customers, and the language prohibiting customer participation in PJM demand response markets.

Respectfully submitted,

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and Globe Metallurgical, Inc.)	

MEMORANDUM IN SUPPORT AND COMMENTS

I. INTRODUCTION

The OCC moves to intervene in the above-captioned docket in order to represent the interests of approximately 610,000 residential electric customers³ of Ohio Power Company ("OPC" or "Company"). These customers are among those that OPC proposes will to pay its 10 percent discount for Globe.⁴

On July 11, 2008, OPC and Globe reached an agreement where OPC agreed to provide Globe's Wells Road facility in Beverly, Ohio, Standard Service Offer ("SSO") generation service at a reduced rate, subject to PUCO approval.⁵ As part of the agreement, Globe would receive a 10 percent discount off the SSO generation service provided by OPC. The Agreement is conditioned on the Commission approving a mechanism that allows OPC full recovery of its SSO – meaning the difference between the full price and the discount price that OPC is proposing Globe must pay ("delta revenue") will be borne by OPC's customers and not OPC. The Agreement proposes a ten-year period for the discounted rate contract and subsidy that start on January 1, 2009.

³ 2006 Company Annual Reports to the PUCO-FERC Form No. 1, pages 300 and 301.

⁴ *Application*, at 2.

⁵ Globe has been operating a facility in Beverly, Ohio since 1953 and manufactures silicon metal, specialty alloys, and ferroalloys at its plant.

The proposed Application and attached agreement are related to Columbus Southern Power Company's Application for approval of a similar -- but larger (60%) -- discounted SSO generation service for Solsil Inc., also filed on July 16, 2008.⁶ Globe and Solsil are subsidiaries of Globe Specialty Metals, Inc., though there are no references to the relationship between Globe and Solsil in the Applications that the AEP operating companies filed in this case and Case 08-883. Globe would receive a 10 percent discount on SSO generation service for economic development purposes despite the fact it has been operating a facility in Beverly, Ohio since 1953 and does not appear to be expanding or changing its operations to work with Solsil. Again, the parties conditioned the agreement on the Commission approving a mechanism that allows OPC full recovery of its SSO.

The ten-year period of the Agreement is five years longer than the typical contracts and is without any periodic reviews to verify that economic benefits have materialized or that the discounted rate is not set below the incremental costs of providing the service to the customer.⁷ Customers who are paying for these subsidies are entitled to be assured that the alleged benefits occur. Nor is there any quantification of exactly how great the subsidy will be. The small customers who are being asked to subsidize these big corporations are entitled to know what the price tag is.

⁶ *In the Matter of the Application for Approval of a Contract for Electric Service Between Columbus Southern Power Company and Solsil, Inc.*, Case No. 08-883-EL-AEC (July 16, 2008).

⁷ Special contract rates should be designed to recover all incremental costs associated with each special contract customer, while providing a contribution to the utility's fixed costs, thereby benefiting all customers. Pricing the services using the incremental cost approach guarantees that the special contract does not require other customer classes to subsidize the customer under special contract, because the incremental price reflects current market prices and are thus sufficient to the utility's marginal cost of service to serve the customer's need.

In addition, the contracts' limitations on the participation of Globe and Solsil in the PJM demand response markets should be rejected. OPC's proposal concerning the economic development rate and assessing 100 percent of delta revenues to other customers to pay should be reduced so that other customers are not paying more than 50 percent of the discount, consistent with the PUCO's past precedent. One-hundred percent recovery from customers is bad public policy. Without the utility company shouldering a portion of the burden for the subsidy, there is no incentive for the utility to exercise due diligence in entering into these contracts and there is every incentive for the utility to use these types of contracts as an anti-competitive response. This should not be tolerated.

Allowing the Company a straight pass through of the delta revenue costs would result in a disincentive for the Company to negotiate a fair deal as discussed in Section II below. Further, it signals a shift in the wrong direction by increasing the burden to customers who are struggling in a challenged economic climate with increased costs in so many sectors. Customers are ill able to take on these subsidies as their private battles to make ends meet intensifies in this stressed economy. The utilities have historically shared this burden in recognizing the benefit to the utility of retaining its customer base. Beyond this, before swiftly deciding to upset years of precedent, recognition should be given to the fact that utilities exist first and foremost to provide a public service. They exist to serve the public and as good corporate citizens, they ought to share in the burden of supporting the businesses that can demonstrate a need for a subsidy on economic development grounds. They should do so as a community service.

II. ARGUMENT

A. Intervention

OCC moves to intervene under its legislative authority to represent residential utility consumers in Ohio, pursuant to R.C. Chapter 4911. R.C. 4903.221 provides, in part, that any person “who may be adversely affected” by a PUCO proceeding is entitled to seek intervention in that proceeding. The interests of Ohio’s residential consumers may be “adversely affected” by this case, especially if the consumers are unrepresented in a proceeding to approve OPC’s proposed special contract with Globe that allows the Company full recovery of the proposed discount off the cost of generation service at the expense of the residential customers. It also creates policy that would diminish the viability of service curtailment providers and participation on the PJM demand response markets – both of which would provide benefits to customers. Thus, this element of the intervention standard in R.C. 4903.221 is satisfied.

R.C. 4903.221(B) requires the Commission to consider the following criteria in ruling on motions to intervene:

- (1) The nature and extent of the prospective intervenor’s interest;
- (2) The legal position advanced by the prospective intervenor and its probable relation to the merits of the case;
- (3) Whether the intervention by the prospective intervenor will unduly prolong or delay the proceeding; and
- (4) Whether the prospective intervenor will significantly contribute to the full development and equitable resolution of the factual issues.

First, the nature and extent of OCC’s interest lies in ensuring that OPC’s residential customers are not charged SSO generation rates and charges that are unjust and unreasonable at any point in time. Such unjust and unreasonable rates would result if

residential customers are required to pay the entire amount of the 10-year 10 percent discount OPC offered to Globe. This interest is different than that of any other party, and is especially different than that of the utility whose advocacy includes the financial interest of the Company's stockholders.

Second, OCC's advocacy for consumers will include advancing the position that residential SSO generation rates should be no more than what is reasonable and permissible under Ohio law and should not discourage competition. In fact, approving the elimination of customers' participation in PJM's demand response programs would be harmful to customers. As more fully explored in the next portion of this pleading, the Company's proposals violate Ohio law and Commission policy, and should be rejected. OCC's position is therefore directly related to the merits of this case that is pending before the PUCO.

Third, OCC's intervention will not unduly prolong or delay the proceeding. OCC, with its longstanding expertise and experience in PUCO proceedings, will duly allow for the efficient processing of the case with consideration of the public interest.

Fourth, OCC's intervention will significantly contribute to the full development and equitable resolution of the factual issues. In the event the Commission entertains the Company's Application, OCC will develop and present its recommendations for a resolution of the case that is lawful and reasonable.

OCC also satisfies the intervention criteria in the Ohio Administrative Code, which are subordinate to the criteria that OCC satisfies in the Ohio Revised Code. To intervene, a party should have a "real and substantial interest" according to Ohio Adm. Code 4901-1-11(A)(2). As the residential utility consumer advocate, OCC has a real and

substantial interest in this case where the outcome could have the effect of increasing the rates paid by residential customers.

In addition, OCC meets the criteria of Ohio Adm. Code 4901-1-11(B)(1)-(4). These criteria mirror the statutory criteria in R.C. 4903.221(B) that OCC has already addressed, and that OCC satisfies.

Ohio Adm. Code 4901-1-11(B)(5) states that the Commission shall consider the “extent to which the person’s interest is represented by existing parties.” While OCC does not concede the lawfulness of this criterion, OCC satisfies this criterion because OCC has been uniquely designated as the statutory representative of the interests of Ohio’s residential utility consumers.⁸ That interest is different from, and not represented by, any other entity in Ohio.

The Supreme Court of Ohio recently confirmed OCC’s right to intervene in PUCO proceedings, in ruling on an appeal in which OCC claimed the PUCO erred by denying its intervention. The Court found that the PUCO abused its discretion in denying OCC’s intervention and that OCC should have been granted intervention.⁹

OCC meets the criteria set forth in R.C. 4903.221, Ohio Adm. Code 4901-1-11, and the precedent established by the Supreme Court of Ohio for intervention. On behalf of OPC’s residential consumers, the Commission should grant the OCC’s Motion to Intervene.

⁸ R.C. Chapter 4911.

⁹ *Ohio Consumers’ Counsel v. Public Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶18-20.

B. Comments: The Contract Violates Federal Law, Ohio Law And Is Bad Public Policy.

1. OPC Bears the Burden of Proof and Has Offered No Evidence Supporting the Discounted Rates.

OPC bears the burden of proving to the PUCO that its Application should be approved. OCC bears no burden of proof in this case.¹⁰ OCC does not bear any burden of proof regarding the Application. The Application does not contain sufficient information to satisfy OPC's burden of proof that other customers should be made to pay for a discounted rate for Globe.

2. The Contract Terms Concerning PJM Should be Rejected.

The contract states, "Under no circumstances will the customer be allowed to participate in PJM demand response programs¹¹ unless it is at the direction of AEP Ohio."¹² First, AEP is not even a party to the Contract between OPC and Globe. Both the Contract and Addendum are executed by OPC. It is implausible that OPC would propose contract terms that can be determined in the sole discretion of a non-party to the Contract. This is particularly true when the Contract term is not relevant to, nor necessary for, an economic development special contract -- it is simply a term AEP desires in its self-interest. The very terms of the contract demonstrate a lack of concern for the Commission's own rules on corporate separation and should not be permitted. The limitation on participation in PJM demand response markets compromises the

¹⁰ R.C. 4909.18 provides that, in the circumstance where a proposal "may be unjust or unreasonable, the commission shall set the matter for hearing" and "the burden of proof to show that the proposals in the application are just and reasonable shall be upon the public utility."

¹¹ The PJM market provides opportunities for demand resources to realize value for demand reductions in the Energy, Capacity, Synchronized Reserve, and Regulation markets. PJM's demand response programs are programs intended by PJM to allow for demand responsive pricing and a reduction in the need for generation resources. In offering such programs as part of its regional energy strategy, it is intended by PJM that all customers will benefit from reductions in demand.

¹² *Application*, Exhibit A (Addendum) at 2 of 3 (paragraph 2).

benefits to customers paying for the contract discounts and further harms customers by eliminating potential competition in the market from curtailment service providers.¹³

The Commission, respectfully, should not approve such a severe limitation on the participation in demand response programs. The Contract leaves the decision of whether customers, such as Globe, will be allowed to participate in PJM's programs in the sole discretion of AEP for 10 years. Does AEP intend to bid Globe's load into PJM's markets for its own benefit? The Application is silent on this point. Does Globe understand the benefits available to it through its own participation in PJM's demand response markets? The Application is silent on this. Is the Globe load capable of being interrupted which is in part, justification of its discount? The Application is silent on this point as well.

Should the PUCO grant OCC's Motion for Hearing, OCC anticipates offering an expert witness to provide testimony about OPC's attempt to limit Globe's participation in PJM demand response markets. The expert can be expected to address, among other matters:

- PJM demand response programs are well-established mechanisms that provide benefits to all market participants by lowering prices during peak load or high-priced hours ¹⁴
- PJM demand response programs are well-established mechanisms that provide benefits to all market participants by lowering prices during peak load or high-priced hours ¹⁵
- A review of the letters and applications filed in PUCO Case Nos. 08-884-EL-AEC and 08-883-EL-AEC seeking the approval of special contracts between AEP operating companies and both Solsil, Inc. and Globe Metallurgical Inc.

¹³ Curtailment service providers are market participants that aggregate load for bidding into the PJM demand response markets.

¹⁴ Brattle Report, <http://www.pjm.com/documents/ferc/documents/2008/20080630-er05-1410-000pdf>

¹⁵ Id.

- The language¹⁶ that appears to give AEP – not even a party to the contract filed in the Applications -- the discretion to allow or prohibit customer load reductions that participate in PJM demand response programs.
- That AEP could prohibit customer participation in PJM demand response programs even if such participation would provide benefits to that customer and to other customers in Ohio.
- There is no language in the Contract that describes the criteria that AEP would apply to allow or prohibit customer participation in PJM demand response programs.
- That the PUCO should not be delegating this authority even to OPC (instead of AEP) without clear standards and guidance on how such authority should be exercised.

The demand response programs Globe will be prohibited from participating in are summarized in Attachment A.

The OCC's motion for a hearing should be granted. This would permit evidence to be presented about all of OCC's contested issues, including this ill-advised demand response policy for Ohio. In the alternative, the PUCO should at a minimum disapprove and require removal of the sentence in the Contract "Under no circumstances will the customer be allowed to participate in PJM demand response programs unless it is at the direction of AEP Ohio," and make other modifications as necessary to set good public policy and balance the economic development efforts with the protection of consumers.

3. The Contract Language Proposed by OPC is Preempted by the Federal Energy Regulatory Commission's approval of PJM's Demand Response Programs

The Energy Policy Act of 2005 delegated to FERC the responsibility and authority to ensure that regional transmission organizations ("RTOs") adopted demand response programs for the benefit of consumers specifically and the public interest in

¹⁶ *Application*, Exhibit A (Addendum) at 2 of 3 (paragraph 2).

general.¹⁷ In this Application, OPC proposes to allow AEP to eliminate the very same benefits that Congress required PJM to implement. As recently as July 29, 2008, AEP made the argument that AEP should have sole discretion over what customers in Ohio are permitted to take advantage of the congressionally-mandated programs.¹⁸ However, the PUCO is without the authority, under the doctrine of federal preemption, to authorize these contract terms.¹⁹

Any approval of the Application, original or as modified by PUCO directive, should also contain a Commission statement that the ruling “does not constitute state action for the purposes of antitrust laws. It is not our intent to insulate companies from the provisions of any state or federal laws that prohibit the restraint of trade.” In re SBC/AT&T Merger, Case No. 05-269-TP-ACO, Order at 82 (November 4, 2005); also In re Verizon/MCI Merger, Case No. 05-497-TP-ACO, Order at 77 (November 29, 2005).

4. OPC’s Proposed Tariff is Discriminatory, in Violation of Ohio Law.

OPC’s Application proposes to discount rates in favor of one select owner, Globe. OPC seeks to discriminate against the rest of the Company’s customer base, and apparently intends to increase its charges to its larger base of customers to recover the costs of the discounted Globe rates. OPC’s proposal is discriminatory, and should be rejected.

OPC’s proposed tariff revision violates both R.C. 4905.33 and R.C. 4905.35 by providing reduced charges to a select few eligible customers. R.C. 4905.33(A) states:

¹⁷ PUCO Entry, , Paragraph 2, page 5, Docket No. 05-1500 EL-COI dated December 14m 2005.

¹⁸ PJM Demand response Steering Committee, July 29, 2008, presentation to the Committee.

¹⁹ *Narragansett Electric Co. v. Burke*, 119 R. I. 559, 381 A.2d 1358 (1977), *cert. denied*.

No public utility shall *directly or indirectly*, or by any special rate, rebate, drawback, or other device or method, *charge, demand, collect, or receive from any person, firm, or corporation a greater or lesser compensation for any services rendered, or to be rendered*, except as provided in Chapters 4901., 4903., 4905., 4907., 4909., 4921., and 4923. of the Revised Code, than it charges, demands, collects, or receives from any other person, firm, or corporation *for doing a like and contemporaneous service under substantially the same circumstances and conditions.*²⁰

R.C. 4905.35 prohibits the Company from giving “undue or unreasonable preference or advantage to any ... corporation” Specifically with regard to the electric industry, it is the policy of the State of Ohio to “[e]nsure the availability to consumers . . .

nondiscriminatory retail electric service.”²¹ Furthermore, the Commission’s corporate separation rules provide that an “electric utility shall provide comparable access to products and services . . . and . . . shall be prohibited from unduly discriminating in the offering of its products and/or services.”²²

The Company proposes to provide discounts to only an SSO generation service customers, discriminating against other customers whose service characteristics are similar to those favored by OPC. The Company also proposes to discriminate between similarly situated SSO generation customers, favoring the two subsidiaries of Globe Metallurgical, Inc. over similarly situated customers.²³ The proposed tariffs are therefore discriminatory, in violation of R.C. 4905.33, 4905.35, 4928.02(A), and the corporate separation requirements contained in the Commission’s rules.

²⁰ Emphasis added.

²¹ R.C. 4928.02(A) (emphasis added).

²² Ohio Adm. Code 4901:1-20-16(G)(4)(i) (“Code of Conduct”).

²³ *Application*, Exhibit A, Original Sheet No. D37, Page 1 of 2.

5. OPC's Proposed Tariff Fails to Comply with PUCO Policy and Precedent Regarding Economic Development Riders.

The PUCO policy regarding economic development special contracts and the subsequent delta revenues²⁴ has been in place for over 25 years.²⁵ Before a special contract can be recommended for approval as an economic development project that residential and other customers will be required to subsidize, the contract must go through a comprehensive analysis by the PUCO staff²⁶ and that analysis and other parties' positions should be considered by the PUCO in its order.²⁷ In addition, the PUCO policy provides that the Application must provide for a reasonable split of the delta revenue costs that takes into consideration that both OPC and its customers will equally receive benefits from the Agreement and accordingly should share the associated costs. OPC's Application as proposed does not meet the criteria for a reasonable incentive rate proposal nor does it fairly account for the delta revenue costs as discussed below.

a. OPC's Application Does Not Comply with PUCO's Economic Development Policy.

The PUCO has a written policy on the criteria that economic recovery initiatives must meet. The PUCO's policy lists at least eight basic criteria that must be met:

²⁴ Delta revenues have typically been the difference between the tariffed rate offered to customers and the discounted rate proposed in a contract for a particular customer. But this contract is not typical and would create the rate to be discounted as a market rate, which presumably would increase the amount of delta revenue to be paid to OPC by its other customers.

²⁵ See *Ohio Electric Innovative Rates Program*, page 5 of 11 (June 28, 1983). (Attachment B).

²⁵ *Application*, Exhibit A, page 1 of 2.

²⁶ *Ohio Electric Innovative Rates Program*, page 5 of 11 (June 28, 1983). (Attachment B).

²⁷ R.C. 4903.09.

- i. The term of the rate initiative is short-term; i.e. five years.
- ii. The short run marginal revenue derived from the application of the rate incentive is greater than the short run marginal cost of providing service.
- iii. The rate incentive applies primarily to increases in usage and load from that which occurred on historical, or base level.
- iv. Incremental usage and load occurs in combination with increased short-term customer production, and corresponding increases employment and local economic activity.
- v. The proposing utility reasonably satisfies utility specific regulatory reporting requirements for identifying and quantifying the short-term effects of the specific proposed initiative.
- vi. The application of a rate incentive does not discriminate against other customers and does not adversely affect other customer services and rates.
- vii. The rate initiative, terms and conditions of the proposal are understandable and is administratively convenient to apply.²⁸
- viii. The economic recover rate program contract revenue deficiency should be recovered on a shared or "split" basis.²⁹

To review all of these criteria OCC (and the PUCO Staff) will need time to complete discovery and conduct a thorough analysis. That would be more time than provided since the OPC filing a mere two weeks ago. At a minimum, this analysis will include a review

²⁸ *Ohio Electric Innovative Rates Program*, page 5 of 11 (June 28, 1983). (Attachment B).

²⁹Id 6 of 11.

of any discriminatory treatment this Application provides to Globe as opposed to similarly situated companies. In addition, the relationship of the proposed 10 percent discount to the increased productivity of Globe – if any – should be reviewed. As a final example of the information that OCC would like to review prior to the Commission's ruling on this Application, OCC would like to evaluate how OPC's Application will affect the rates other customers will pay.

In accordance with the stated PUCO criteria for Economic Development Initiatives, there are at least two criteria that OPC's Application violates. Simply by reviewing the face of the contract it is evident that the length of the contract is too long and that OPC's decision to get full recovery of the delta revenue costs is not equitable.

First, the PUCO Staff's policy requires the initiative be rewarded for a short time period "i.e. five years."³⁰ OPC's proposal doubles that time frame, to ten years. Adding an additional five years to the program that does not include any review of the increase in load and jobs created throughout the life of the agreement does not comply with the Commission's policy.³¹ For example, the Company should be required to maintain a payroll of at least 180 employees over the life of the agreement.

b. OPC's Application Does Not Comply with PUCO's Stated Ohio Economic Recovery Initiatives Policy Because the Agreement Requires Customers to Reimburse OPC in Full for this Program.

In conjunction with reducing the length of the contract, the PUCO should not allow OPC to retain more than half the delta revenues from its agreement with Globe based on PUCO's stated policy. The Staff policy states:

³⁰ *Ohio Electric Innovative Rates Program*, page 5 of 11 (June 28, 1983). (Attachment B).

³¹ *Id.*

Staff recommends that the Economic Recovery Rate Program contract revenue deficiency **be recovered on a shared or "split" basis; a portion to be recovered by the general customers and remainder contributed by the utility.** In the Staff's opinion, it is equitable that both the benefits and the costs of the economic recovery be distributed to both customers and the company.³²

OPC's proposal does not comply with the PUCO's policy on delta revenue and Commission precedent. OPC's proposal is conditioned on the full recovery by OPC of the delta revenue over the ten-year period of the contract.³³ The PUCO has not allowed utilities to collect more than half of the delta revenues costs from customers in the past.

In regards to allocating delta revenues, the Commission 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."³⁴ Furthermore, this 50/50 sharing of the delta revenues is consistent with other decisions which addressed the issue.³⁵

OPC's request for full recovery has policy and ratemaking ramifications aside from the fact that the PUCO would violate Ohio law were the Commission to grant the Application. OPC negotiated a deal with Globe that will provide the Company a substantial new revenue base while not incurring any additional costs. In this type of negotiation, OPC can give substantial -- unwarranted -- discounts to customers and the effects of those deals will be borne only by its customers. OPC has no incentive to

³² Ohio Electric Innovative Rates Program, page 6 of 11 (June 28, 1983). (Emphasis added) (Attachment B).

³³ Application at 2.

³⁴ *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*, 91-418-EL-AIR. Opinion and Order at 110 (May 12 1992).

³⁵ 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).

negotiate a fair rate with a company in this situation. In fact, it is in OPC's interest to give whatever discount is necessary to get the deal done -- if OPC does not have to pay any part of the delta revenue costs. By striking a deal, the Company gets the revenue and the customers have to bear the full costs that are not contemplated by PUCO policy or precedent.

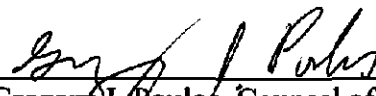
III. CONCLUSION

OCC satisfies the criteria set forth in R.C. 4903.221 and should be granted intervention in this case to represent OPC's approximately 610,000 residential electric customers. OCC's motion for hearing should be granted so that the facts and rationale for this Contract can be subjected to an open, fair and transparent process. OCC's participation will contribute to a just resolution of the serious issues involved in this proceeding and will not cause undue delay.

Finally, the Application should be rejected on both legal and policy grounds. OPC's proposed tariff is discriminatory and would result in unlawful subsidies that violate the Commission's policies. At the minimum, OPC has not met its burden of proof under R.C. 4909.18 and the Application must be placed on a hearing schedule and the parties provided the appropriate time to complete discovery and review OPC's compliance with the Commission's economic development policies. Finally, the prohibition against Globe and Solsil participating in PJM's demand response program must be rejected.

Respectfully submitted,

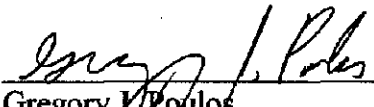
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing The Office of the Ohio Consumers' Counsel's *Motion to Intervene, Motion for Hearing, and Objections* has been served upon the below-stated counsel, via regular U.S. Mail, postage prepaid, this 30th day of July, 2008.



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Attachment A
PJM demand response programs

PJM offers the following demand response programs:

Demand Response Programs

The PJM market provides opportunities for demand resources to realize value for demand reductions in the Energy, Capacity, Synchronized Reserve, and Regulation markets. The FERC authorized PJM to provide these opportunities as permanent features of these markets in early 2006. PJM completed the systems modifications required to enhance or implement these opportunities on June 1, 2006. This effort integrates demand response into the PJM wholesale market and provides symmetrical treatment for generation and demand resources..

CAMERA OPERATOR D. J. H. A.DATE: 11/11/11

ATTACHMENT II

POLICY PRECEDENT FILE

TITLE Ohio Electric Innovative Rates Program Page 1 of 11Ohio Economic Recovery Initiatives Approved by J. D. Horrows, D. R. MaaElectric Rate Incentives Date Effective 6 / 28 / 83

<u>1.0 Staff Treatment</u>	<u>2.0 Legal Authority</u>	<u>3.0 Applied Treatment</u>
<u>1.1 Current</u>	<u>2.1 Statute</u>	<u>3.1 Methodology</u>
<u>1.2 Alternative Approaches -</u> <u>Not Current Treatment</u>	<u>2.2 PUCU Rule</u>	<u>3.2 Adjustments</u>
<u>1.3 Rationale</u>	<u>2.3 Commission Orders</u>	<u>3.3 Staff Report</u>
<u>1.4 Background</u>	<u>2.4 Appellate Decisions</u>	<u>Language</u>

1.0

STAFF TREATMENT1.1 Current Staff Treatment

The Staff policy is to recommend Commission approval of reasonable utility proposals as short-term electric rate economic recovery incentives. Approved incentives are of two types;

- Individualized service and rate agreements between a utility and a customer, pursuant to Section 4905.31, Ohio Revised Code (Reasonable Arrangements Allowed; Variable Rate), and
- Modifications to Tariff rate schedule provisions, providing for waiver of minimal bills pursuant to Section 4909.18 Ohio Revised Code (Application for Tariff Approval, Not For An Increase In Rates).

Staff recommended rate incentives apply to customers with the following characteristics;

- New customers and corresponding new load, which otherwise would not have occurred, resulting in marginal revenue, not otherwise received, or
- Existing customers with load which otherwise would not have occurred, resulting in marginal revenue, not otherwise received, or
- Maintenance of existing customers and load which otherwise would be lost.

1.2 Alternative Approaches - Not Current Treatment

Alternative treatment of the unrecovered cost of service, resulting from sales attrition, is to allocate it among all classes of customer rates.

1.3 Rationale

The Electric Economic Recovery Rate Program is designed only to recapture sales attrition, incrementally improve efficiency or use of existing facilities and thereby contribute to the maintenance of all customer class rate levels.

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Significant attrition of electric, industrial and commercial sectors sales occurred from 1979 through 1983. Such sales attrition significantly reduced revenue coverage of the embedded cost of service, reduced the efficiency of existing facilities used and reduced load factor by three percent. Based on the short run definition, sales and load attrition results in less efficient use of facilities, currently included in established rates. Such revenue attrition requires that the unrecovered cost of service and the less efficient use of existing facilities be allocated to other customer class rates.

1.4 History of Program

Industrial and commercial customer sales and load statistics for the period 1979 through 1983 showed significant sales attrition and revenue erosion. On June 20, 1983, the Commission solicited electric utility comments and proposals to spur short-term industrial production opportunities. On June 28, pursuant to the Commission Chairman's solicitation, the Commission, Staff and utility representatives met at the Commission offices and exchanged economic development incentives. The result is the current Commission and Staff electric economic recovery rate program. The attachments document this program's evolution.

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2.0 LEGAL AUTHORITY

2.1 Statute

Applicable Sections: 4905.31 O.R.C., 4909.18 O.R.C .

Section 4905.31 O.R.C. specifies that a public utility may enter into any reasonable arrangement with its customers providing for any financial device that may be practicable or advantageous to the parties interested. No such arrangement is lawful unless it is filed with and approved by the PUCU and under the supervision and regulation of the Commission. The Ohio Electric Innovative Rates Program, with the authority of §4905.31, is not violative of O.R.C. §4905.33, which prohibits a public utility from furnishing free service or service for less than actual cost.

Section 4909.18, O.R.C., requires a public utility desirous of modifying any existing rates to file a written application with the PUCU according to the specifications under that and other applicable statutes.

2.2 PUCU Rule - None Specifically Applicable

2.3 Commission Orders

The Opinion & Order issued by the Commission for the consolidated cases 83-1342-EL-ATA/83-1343-HT-ATA, comments on §4905.31 O.R.C. as follows:

"Thus ... arrangements must be reviewed and approved by the Commission before it becomes effective so as to ensure that it is just and reasonable and to ensure that it will not adversely affect the balance of the company's customers."

The Commission also recognized that "so long as the company does not provide this service at a loss, it is better off with some revenue than it is with no revenue, the situation which would obtain if a given customer was not on the system at all. In general, the balance of the company's customers benefit from this maximization of revenues, for it tends to forestall the company's next general rate application."

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Although the Commission denied CEI's request to amend its filed schedules for electric service and steam service in this case, it did so because:

1. CEI wished to provide electric and steam service to certain customers without regard to cost of service considerations in order to be competitive with other energy sources (possibly causing the existing customers to subsidize this service).
2. CEI wished to use its own discretion for each individual case, violative of O.R.C. §4905.31 and 4909.18.

2.4 Appellant Decisions - None Specifically Applicable

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3.0

APPLIED TREATMENT

3.1 Methodology

Staff determines reasonable incentive rate proposals based on a combination of the following criteria:

- The term of the rate initiative is short-term; i.e. five years.
- The short run marginal revenue derived from application of the rate incentive is greater than the short run marginal cost of providing the service.
- The rate incentive applies primarily to increases in usage and load from that which occurred on a historical, or base level.
- Incremental usage and load occurs in combination with increased short-term customer production, and corresponding increases employment and local economic activity.
- The proposing utility reasonably satisfies utility specific regulatory reporting requirements for identifying and quantifying the short-term effects of the specific proposed initiative.
- The application of a rate incentive does not discriminate against other customers and does not adversely affect other customer services and rates.
- The rate initiative, terms and conditions of the proposal are understandable and is administratively convenient to apply.

3.2 Adjustments

Appropriate treatment of the Economic Recovery Rate contract customers will require modification of traditional cost of service methodology and rate treatment. In order that all customers receive benefits and that no customers be adversely affected, it is necessary to distinctly identify the special contract customers as a separate rate class. The creation of a separate customer class will assure equitable treatment for all ratepayers.

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Special attention is directed towards treatment of the revenue difference between that actually recovered under the Economic Recovery Rate and what would have been recovered had the sales been made at the applicable standard rate. This difference is the "Delta Revenue".

If not recovered, this "Delta Revenue" would constitute a shortfall, or deficiency, in the utility's proposed or Commission authorized revenue. There are a number of methods by which the deficiency could be recovered.

Staff recommends that the Economic Recovery Rate Program contract revenue deficiency be recovered on a shared or "split" basis; a portion to be recovered by the general customers and the remainder contributed by the utility. In the Staff's opinion, it is equitable that both the benefits and the costs of economic recovery be distributed to both customers and the company. The short run marginal sales in revenue from the Economic Recovery Rate Program contracts are a benefit to both the general ratepayers and the utility. The additional sales and revenue help to utilize the system more efficiently, provide increased coverage of fixed costs, incrementally improve the utility's operating income and result in a lesser cost of service by reducing the level of capacity which otherwise would be allocated to all customer classes.

The following chart is a hypothetical example to show the magnitude of revenue and deficiency under the Economic Recovery Rate Program contracts compared to the otherwise applicable tariffed rate revenue.

ECONOMIC RECOVERY RATE PROGRAM CONTRACT COMPARISONS*

	Average Tariffed Rates	Average Contract Rates	Contract Revenue Deficiency
Revenue	\$ 600	\$ 500	\$ 100
Rate Base	\$1,000	\$1,000	N.A.
Operating Income	\$ 138	\$ 38	\$ 100
Rate of Return	13.8%	3.8%	10%

* This example is not reflective of any tax effects.

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The Economic Recovery Rate Program contracts earned a 3.8% rate of return compared with the tariffed schedule rates (13.8%), resulting in a revenue deficiency of \$100 in the form of operating income. The operating income deficiency should be distributed among the individual class rates and the utility as a contribution to the economic recovery effort. Staff recommends that half of the deficiency be borne by the utility as its contribution and half of the revenue deficiency be distributed to customers in accordance with the Staff recommended interclass revenue distribution. The following chart shows a hypothetical example of the manner in which the Economic Recovery Rate Program contract revenue deficiency should be recovered.

ECONOMIC RECOVERY RATE PROGRAM DEFICIENCY RECOVERY

	<u>Residential</u>	<u>General Service</u>	<u>Other</u>	<u>Utility</u>	<u>Total</u>
Revenue	\$ 4,000	\$3,000	\$3,000	N.A.	\$10,000
Percent Revenue	40%	30%	30%	N.A.	100%
Economic Recovery Rate Program Contributions	\$ 20.00	\$15.00	\$15.00	\$50.00	\$ 100

3.3 Staff Report Language

The Economic Recovery Rate Program is designed such that each contract is evaluated separately. The individual utilities are providing information on a contract by contract basis. The review process by the Staff is evolutionary. The following is an excerpt from a recent Staff Report. This information must be looked upon as specifically tailored to Ohio Edison Company and its contract customers. Subsequent Staff Report language may be modified to appropriately address existing circumstances.

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1.4 Background		

Ohio Electric Innovative Rate Programs - Ohio Edison Company
Case No. 84-1359-EL-AIR

On September 25, 1981, Staff issued its document entitled "Ohio Electric Innovative Rate Programs". The document represents an effort on the part of the Commission to separate the topics of rate levels from rate design in order to better understand utility pricing policies, philosophies and related operations. The study was prepared by the Staff and representatives of the state's investor-owned electric utilities. The participants met regularly over the course of fifteen months during 1980 and 1981 with the intention of elaborating on specific rate design objectives and activities which are conducted to support and encourage innovations. The resulting report was directed at initiating a better structure for identifying innovative rate opportunities.

Staff finds that the individual electric utility submittals to the Innovative Rate Program are beneficial to the Staff and Commission. Utility statements of rate design philosophy, policies, objectives and corresponding implementation activities provide an additional basis for better evaluating specific utility rates and rate schedule proposals. In the Staff's opinion, utility rationale of this nature should be relatively consistent with respect to desired longer term achievements and may add elements of integrity and credibility to rate proposals beyond that which may exist in case specific applications. Such a presentation by the utility may help to minimize the resources required by the Staff and Commission to evaluate rate proposals. And, Staff finds that the Innovative Rate Document could provide a basis for establishing an additional level of utility accountability, particularly with respect to authorized innovations.

Continued emphasis should be placed on promoting economic efficiencies. This can be achieved by promoting the use of the product (electricity) which will create increases in revenues and lessen the need for continual rate increase requests. It must be stressed that the goal is to more efficiently utilize existing facilities rather than creating a worse situation whereby additional facilities will need to be built to overcome a deteriorating system load factor.

Staff recommended in Case No. 83-1130-EL-AIR that within forty-five days subsequent to the issuance of the Commission's Opinion and Order, the Applicant submit to the Staff a document updating and revising the contents of its

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1.4 Background		

Electric Innovative Rate Program. Applicant submitted the requested information after the filing of the above case, in the format requested. Applicant also appropriately filed the up-date to incorporate any additions or revisions which included the Special Arrangements for Economic Development Program (SAED).

The SAED Program incorporates limited term billing demand discounts, as an incentive to new industrial customers to locate in Applicant's service area, and also encourages existing customers to expand their operations. In both instances exist the possibility for new or retained jobs in addition to increased revenue from sales.

Applicant has filed with the Commission, on a case by case basis, applications for Special Arrangements for Economic Development approval. Applicant is actively encouraging industrial load growth by this program to better utilize the capital investment in plant facilities and to add jobs in its service territory.

Staff believes that Applicant, prudently, is attempting to better its financial position and also the economic well-being of its customers by offering programs that will encourage the recovery of revenue from investment in plant, thereby bringing stability to its service area.

Staff finds that in each SAED filing, Applicant represented to the Commission that the approval would not operate to the detriment of any of its customers. In the instant case, Applicant did not consider the annualized impact of the loads of the customers (SAED) coming on line nor did Applicant introduce the revenue effect experienced by Applicant through the demand discount incentive. Staff has found in its investigation that, to date, the SAED customers coming on Applicant's system represent a load addition of less than 2/10 or 1% related to total system load.

In answer to Staff's Data Request, Applicant stated that "all demand and KWH data in the [instant] case has been projected without regard to these programs". Applicant will propose a methodology to adjust for and appropriately split benefits when they experience a significant impact.

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Not Current Treatment	2.3 Commission Orders	3.3 Staff Report
1.3 Rationale	2.4 Appellate Decisions	Language
1.4 Background		

Staff recommends that, within 60 days subsequent to the issuance of the Commission's Opinion and Order, the Commission order Applicant to submit to the Staff a report demonstrating the following:

- (1) All probable benefits, direct and indirect, to each specific customer class.
- (2) All possible detriments, direct and indirect, to each specific customer class.
- (3) A case study of an actual SAED customer, measuring and detailing, with specificity, the revenue and expense differences between the regular rate and SAED rate and the effect it has on the following:
 - (a) Applicant's corporate structure
 - (i) Financial
 - (ii) Production and reserve balances
 - (iii) Transmission and distribution systems
 - (b) Inter class effect
 - (c) Intra class effect
 - (d) Jurisdictional service area economic impact study demonstrating the effect on, but not limited to, the following:
 - (i) Company revenue and expense
 - (ii) Property tax base
 - (iii) New Jobs
 - (iv) New housing starts

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(v) Support systems (i.e., new commercial development)

(vi) Other

- (4) Case studies of various load levels (i.e., 25MW, 50MW, 100MW, 200MW) employing the average load factor for the GS-Large Customer Class, and, where appropriate, using the data developed in No. 3 above as a model.
- (5) Specifically detail the criteria upon which Applicant will determine if the revenue and expense effect is significant enough to apply a methodology of treatment.
- (6) Applicant's methodology(ies) for treatment of the revenue and expense effect, caused by the program, in future rates cases.