

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Commission's Review)
of Chapter 4901:1-38 of the Ohio) Case No. 18-1191-EL-ORD
Administrative Code.)

**COMMENTS ON RULES TO PROTECT CONSUMERS FROM PAYING
CHARGES FOR UNREASONABLE ARRANGEMENTS
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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I. INTRODUCTION

The Public Utilities Commission of Ohio (“PUCO”) seeks comments on its proposal to modify rules related to “reasonable arrangements” that are subsidized by other customers.¹ The PUCO, when adopting rules, should seek balanced solutions to promote economic development while maintaining reasonable rates for Ohio consumers. It is these Ohio consumers who are being asked to reimburse electric utilities for millions of dollars in discounts (subsidies) to mercantile customers. A balance can only be achieved if, among other things, the subsidies that customers must bear are reasonable.

While OCC supports economic development in Ohio, residential customers of utilities should be protected from unjust and unreasonable rate increases to cover the costs of economic development or energy efficiency. At a time when many Ohioans have to make choices about which bills to pay, adding more costs onto their utility bills to cover discounts and subsidies to other customers may be unreasonable. The PUCO’s rules should protect consumers from paying for special contract arrangements that unreasonably subsidize some

¹ Ohio Adm.Code 4901:1-38.

customers at the expense of others. The Office of the Ohio Consumers' Counsel ("OCC") submits these comments regarding the PUCO's reasonable arrangement rules on behalf of all of Ohio's residential utility consumers.

II. RECOMMENDATIONS

A. The PUCO should amend Ohio Adm.Code 4901:1-38-01 to add a definition for the term "reasonable arrangement."

The PUCO should add a definition in Ohio Adm.Code 4901:1-38-01 of a "reasonable arrangement." The Ohio Revised Code, at R.C. 4905.31, states that it does not prohibit a public utility from filing a schedule or establishing or entering into any reasonable arrangement. There is no mention of a so-called "Unique Arrangement" in R.C. 4905.31, or anywhere in the Ohio Revised Code, and its inclusion in the PUCO's rules should be rescinded. And while the current version of Ohio Adm.Code 4901:1-38 addresses economic development arrangements, energy efficiency arrangements, and so-called unique arrangements, there is no definition of the term "reasonable arrangement" in Ohio Adm.Code 4901:1-38-01. Accordingly, OCC proposes the PUCO adopt the following amendments to Ohio Adm.Code 4901:1-38-01:

- (H) "Reasonable Arrangement" means an economic development arrangement or energy efficiency arrangement pursuant to section 4905.31 of the Revised Code.

Adoption of a definition for the term "reasonable arrangement" would align the Ohio Administrative Code with the terminology used in the Ohio Revised Code, as well as clarify any confusion around the difference between a "reasonable arrangement" and a Unique Arrangement.

B. The PUCO should amend Ohio Adm.Code 4901:1-38-02 to provide a procedural overview and give parties additional time to file Comments on an application for a proposed reasonable arrangement.

Current rules in Ohio Adm.Code 4901:1-38 give parties just 20 days to file comments from the date of filing of an application for a reasonable arrangement.² This time period is unreasonably short and does not allow for discovery, particularly given the twenty-day turnaround for discovery under PUCO rules. Thus, thorough review is prevented and due process is lacking. The PUCO should amend Ohio Adm.Code 4901:1-38-03(E), 4901:1-38-04(D), 4901:1-38-05(F), and 4901:1-38-08(C) to allow parties 60-days to file comments after the date of the filing of an application, unless otherwise amended by the PUCO. The sixty day period should be coupled with an expedited discovery process allowing for seven days for discovery responses. A 60-day comment period with expedited discovery would allow for a more thorough review by the parties and make a better record for the PUCO.

And instead of stating the intervention and comment process in four separate places, the PUCO should delete each of these requirements and amend Ohio Adm.Code 4901:1-38-02 to indicate the intervention, comment, and discovery process, as follows:

4901:1-38-02 Purpose and Scope

...

- (C) Parties may file a motion to intervene and file comments and objections to any application for a Reasonable Arrangement under this Chapter within sixty days of the date of the filing of the application, unless otherwise ordered by the Commission.

² See, e.g., OAC 4901:1-38-03(E); 4901:1-38-04(D); 4901:1-38-05(F); 4901:1-38-08(C).

(D) Discovery may begin immediately after an application for a Reasonable Arrangement is filed. Unless otherwise ordered by the Commission, responses to discovery shall be provided within seven calendar days.

The PUCO should adopt these proposed amendments to provide parties sufficient due process to review an application for a reasonable arrangement.

C. The PUCO should amend Ohio Adm.Code 4901:1-38-03 regarding Economic Development Arrangements to include additional mandatory criteria for the mercantile customer to comply with for such an Arrangement.

OCC generally supports the proposed amendments to Ohio Adm.Code 4901:1-38-03 regarding Economic Development Arrangements. The draft proposed rule addresses additional criteria that the Commission will consider when analyzing applications for economic development arrangements. In general, OCC supports Staff's additional criteria, and agrees that applicants should be required to meet all of the criteria. However, the Entry requesting Comments states that "applicants will not be required to meet all of the criteria"³, while the draft rule does not contain this limiting language. This limiting language contained in the Entry *should not* be added to the rule or applied by the PUCO.

Additionally, OAC 4901:1-38-03(A)(2)(g) requires that the "benefits to the community accruing from the project outweigh the cost imposed on the other retail customers." The words "quantitative" or "monetary" should be added before the words "benefits" and "costs." This modification is needed to give meaning to the cost/benefit test proposed under this particular criterion. Otherwise the test will not protect customers from having to unreasonably fund arrangements whose costs exceed the benefits derived

³ Entry at 3.

therefrom. This same modification should be made to Ohio Adm.Code 4901:1-38-03(B)(2)(g) and 4901:1-38-04(A)(2)(f).

The draft rule retains the criterion requirement that “The customer shall identify any other local, state, or federal assistance sought and/or received in order to maintain its current operations” (now labeled criterion (k)). The customer should also be required to demonstrate that it attempted to take advantage of such other opportunities before filing an application for a reasonable arrangement. In other words, the applicant should be required to not only identify the assistance sought, but also that the customer affirmatively took advantage of these opportunities. This same recommendation and reasoning applies to Ohio Adm.Code 4901:1-38-03(B)(2)(k) and 4901:1-38-04(A)(2)(d).

Moreover, draft criterion (2)(h) requires the arrangement to be for a “set term.” While a “set term” is better than leaving the issue of the length of economic development arrangements unaddressed, OCC proposes a more explicit rule that provides “a term of no more than five years.” This is to avoid situations where the economic development arrangement becomes a long-term charge to consumers to subsidize an individual mercantile customer’s operations. Additionally, any renewal of an Arrangement must be done by a separate application to prevent the situation where an applicant files an arrangement for an initial term of three years, to be renewed for an additional three years by consent of the customer and the utility. This same recommendation and reasoning applies to Ohio Adm.Code 4901:1-38-03(B)(2)(h) and 4901:1-38-04(A)(2)(g).

Further, the proposed rule should not eliminate the requirement that at least 25 jobs be created. The mercantile customer and the utility should be required to demonstrate that the Arrangement promotes job growth and retention in Ohio. A

minimum of 25 new jobs is not unreasonable and should be required for any Arrangement. Based on these recommendations to more adequately protect consumers, OCC makes the following specific suggested changes to the rules:

4901:1-38-03 Economic Development Arrangements

- (A) An electric utility, mercantile customer, or group of mercantile customers of an electric utility may file an application for commission approval for an economic development arrangement between the electric utility and a new or expanding customer or group of customers. The application shall include a copy of the proposed arrangement and provide information on all associated incentives, estimated annual electric billings without incentives for the term of the incentives, and annual estimated delta revenues for the term of the incentives.
 - (1) Each customer requesting to take service pursuant to an economic development arrangement with the electric utility shall describe the general status of the customer in the community and how such arrangement furthers the policy of the state of Ohio embodied in section 4928.02 of the Revised Code.
 - (2) The commission will consider the following criteria when analyzing an application under this section. Each customer requesting to take service pursuant to an economic development arrangement with the electric utility shall ~~at a minimum,~~ meet the following criteria; and submit to the electric utility and the commission verifiable information detailing how the following criteria are met and provide an affidavit from a company official as to the veracity of the information provided;
 - (a) The customer's business is acutely energy intensive or has a distinct energy profile.
 - (b) The customer has made a commitment to investing in Ohio either in a new investment or support of a new industry.
 - (c) Eligible projects shall be for non-retail purposes.

- ~~(b)~~ (d) At least twenty-five new, full time or full-time equivalent jobs shall be created within three years of initial operations.
- (e) The economic impact of the customer's project on the region will be significant and will create or retain jobs. The average hourly base wage rate of the new, full-time or full-time equivalent jobs shall be at least one hundred fifty per cent of the federal minimum wage.
- (f) The customer has explored or taken advantage of other opportunities for both nonenergy related operational savings such as basic cost management and energy related operational savings such as shopping for or self-generating electricity, energy efficiency, and participation in utility or regional transmission organizations' conservation or reliability programs.
- (g) The charges paid to the utility cover all incremental quantitative monetary costs of service and contribute to the payment of fixed costs.
- (h) The benefits to the community accruing from the project outweigh the costs imposed on the other retail customers because of the Reasonable Arrangement.
- (i) The economic development arrangement is for a set term not exceeding sixty months.
- ~~(d)~~(j) The customer shall demonstrate financial viability.
- ~~(e)~~(k) The customer shall identify local (city, county), state, or federal support in the form of tax abatements or credits, jobs programs, or other incentives.
- ~~(f)~~(l) The customer shall identify potential secondary and tertiary benefits resulting

from its project including, but not limited to, local/state tax dollars and related employment or business opportunities resulting from the location of the facility.

~~(g)~~(m) The customer shall agree to maintain operations at the project site for the term of the incentives.

...

OCC's proposed amendments to Ohio Adm.Code 4901:1-38-03 will protect consumers from paying charges that unreasonably subsidize unwarranted Economic Development Arrangements.

D. The PUCO should amend Ohio Adm.Code 4901:1-38-04 regarding Energy Efficiency Arrangements to include additional mandatory criteria for the mercantile customer to comply with for such an Arrangement.

Much like OCC's comments and the proposed amendments to Ohio Adm.Code 4901:1-38-03, OCC generally supports Staff's proposed amendments to Ohio Adm.Code 4901:1-38-04 regarding Energy Efficiency Arrangements. OCC makes the same recommendations to Ohio Adm.Code 4901:1-38-04 as delineated above regarding Economic Development Arrangements in Ohio Adm.Code 4901:1-38-03. The PUCO should adopt the following amendments to Ohio Adm.Code 4901:1-38-04:

4901:1-38-04 Energy Efficiency Arrangements

(A) . . .

- (2) The commission will consider the following criteria when analyzing an application under this section. Each customer requesting to take service pursuant to an energy efficiency arrangement with the electric utility shall meet the following criteria and submit to the electric utility verifiable information detailing how the following criteria are met, and provide an affidavit from a company official as to the veracity of the information provided:

- (a) The customer shall be an energy efficiency production facility as defined in this chapter.
- (b) At least-ten new, full time or full time equivalent jobs shall be created within three years of initial operations.
- (c) The average hourly base wage rate of the new, full-time, or full-time equivalent jobs shall be at least one hundred fifty per cent of federal minimum wage.
- (d) The customer shall demonstrate financial viability.
- (e) The customer shall identify local (city, county), state, or federal support in the form of tax abatements or credits, jobs programs, or other incentives.
- (f) The customer shall agree to maintain operations at the project site for the term of the incentives.
- (g) The benefits to the community accruing from the project outweigh the costs imposed on the other retail customers because of the Reasonable Arrangement,
- (h) The energy efficiency arrangement is for a set term not exceeding sixty months.

OCC's proposed amendments to Ohio Adm.Code 4901:1-38-04 will protect consumers from paying charges to subsidize unreasonable Energy Efficiency Arrangements.

E. The PUCO should rescind Ohio Adm.Code 4901:1-38-05 regarding Unique Arrangements because it is superfluous and lacks statutory authority under Section 4905.31 of the Revised Code.

The Ohio Revised Code makes no mention of so-called Unique Arrangements.

While R.C. 4905.31(E) contemplates reasonable arrangements for “economic development and job retention” or the “development and implementation of peak demand reduction and energy efficiency programs,” there is no such generally applicable Unique Arrangement statute. And since any so-called Unique Arrangement requires (or should require) a demonstration of the same criteria as an Economic Development Arrangement or Energy Efficiency Arrangement, Ohio Adm.Code 4901:1-38-05 regarding Unique Arrangements is superfluous.

~~———— 4901:1-38-05 Unique Arrangements~~

~~(A) Notwithstanding rules 4901:1-38-03 and 4901:1-38-04 of the Administrative Code, an electric utility may file an application pursuant to section 4905.31 of the Revised Code for commission approval of a unique arrangement with one or more of its non-mercantile customers, consumers, or employees.~~

- ~~(1) — An electric utility filing an application for commission approval of a unique arrangement with one or more of its customers, consumers, or employees bears the burden of proof that the proposed arrangement is reasonable and does not violate the provisions of sections 4905.33 and 4905.35 of the Revised Code, and shall submit to the commission verifiable information detailing the rationale for the arrangement.~~
- ~~(2) — Upon the filing of an application for a unique arrangement, the commission may fix a time and place for a hearing if the application appears to be unjust or unreasonable.~~
- ~~(3) — The unique arrangement shall be subject to change, alteration, or modification by the commission.~~

(B) — ~~If a mercantile customer, or a group of mercantile customers, of an electric utility is not eligible for an arrangement under rule 4901:1-38-03 or 4901:1-38-04, the customer may file an application for Commission approval apply to the commission for of a unique arrangement with the electric utility.~~

(1) — ~~Each customer requesting to take service pursuant to a unique arrangement with the electric utility shall bear the burden of proof that it, at a minimum, meets the following criteria:~~

(a) — ~~the customer and/or electric utility is not eligible for an economic development arrangement under rule 4901:1-38-03.~~

(b) — ~~the customer and/or electric utility is not eligible for an energy efficiency arrangement under rule 4901:1-38-04.~~

(c) — ~~the arrangement is in the public interest.~~

~~Further, the customer shall submit to the electric utility verifiable information detailing how the criteria are met, and provide an affidavit from a company official as to the veracity of the information provided. Each customer applying for a unique arrangement bears the burden of proof that the proposed arrangement is reasonable and does not violate the provisions of sections 4905.33 and 4905.35 of the Revised Code, and shall submit to the commission the electric utility verifiable information detailing the rationale for the arrangement.~~

(2) — ~~A mercantile customer filing an application for commission approval of a unique arrangement bears the burden of proof that the proposed arrangement is reasonable and does not violate the provisions of sections 4905.33 and 4905.35 of the Revised Code, and shall submit to the commission and the electric utility verifiable information detailing the rationale for the arrangement. The customer shall provide an affidavit from a company official as to the veracity of the information provided.~~

(3) — ~~Upon the filing of an application for a unique arrangement, the commission may fix a time and place for a hearing if the application appears to be unjust or unreasonable.~~

Rescinding Ohio Adm.Code 4901:1-38-05 will protect consumers from overpaying for arrangements that do not provide system-wide benefits and align the Ohio Administrative Code with the plain language, meaning, and intent of the Ohio Revised Code.

F. The PUCO should amend Ohio Adm.Code 4901:1-38-06 to provide transparency regarding whether consumer charges are being properly used, and to protect consumers from paying charges for Arrangements that become unreasonable.

The PUCO should amend Ohio Adm.Code 4901:1-38-06 to require additional reporting requirements to protect consumers from paying charges to subsidize Arrangements that become unreasonable. An annual report should be filed by the mercantile customer in the docket in which its Arrangement was approved by the PUCO. Further, any notion that a mercantile customer does not fall under the PUCO's jurisdiction is without merit because a mercantile customer submits to the PUCO's jurisdiction when it agrees to accept money from the public for a discount on its public utility service.

Additionally, any concern about confidential or proprietary information is readily resolved by the PUCO's rules for the filing of protective orders. A mercantile customer should be required to publicly demonstrate compliance with the Revised Code and the Ohio Administrative Code when accepting public money for a discount/subsidy for its public utility service. The PUCO should amend Ohio Adm.Code 4901:1-38-06 regarding Reporting Requirements as follows:

4901:1-38-06 Reporting Requirements

- (A) ~~Each electric utility shall require each of its customers~~ A mercantile customer served under any reasonable arrangement established pursuant to this chapter ~~to submit~~ shall file an annual report with the commission to the

~~electric utility and staff~~ no later than April thirtieth of each year. The format of that report shall be determined by staff such that a determination of the compliance with the eligibility criteria can be determined, the value of any incentives received by customer(s) is identified, and the potential impact on other customers can be calculated.

- (B) The burden of proof to demonstrate ongoing compliance with the Ohio Revised Code, Ohio Administrative Code, and the commission's Order approving the reasonable arrangement lies with the mercantile customer~~customer(s)~~. ~~The electric utility shall summarize the reports provided by customers under paragraph (A) of this rule and submit such summary to staff for review and audit no later than June fifteenth of each year.~~

Amending Ohio Adm.Code 4901:1-38-06 as proposed here will provide transparency to arrangements that customers are required to subsidize.

- G. The PUCO should amend Ohio Adm. Code 4901:1-38-08(A) to allow utilities to only charge delta revenues from other customers for Economic Development Arrangements and Energy Efficiency Arrangements, but not so-called Unique Arrangements.**

Rule 4901:1-38-08(A) should be modified to allow utilities to seek collection of delta revenues from other customers for Economic Development Arrangements and Energy Efficiency Arrangements, but not Unique Arrangements. This result is compelled by the plain language of R.C. 4905.31(E).

Under R.C. 4905.31(E), the PUCO may allow a utility to charge customers for the delta revenues that result from a reasonable arrangement. But this ability to charge customers is not unlimited. R.C. 4905.31(E) states that the utility may only charge customers for costs incurred in conjunction with (i) “any economic development and job retention program ..., including recovery foregone as a result of any such program,” (ii) “any development and implementation of peak demand reduction and energy

efficiency programs under section 4928.66 of the Revised Code,” (iii) “any acquisition and deployment of advanced metering,” and (iv) “compliance with any government mandate.” If costs incurred do not fall into one of these four categories, there is no statutory basis for the PUCO to approve charges to customers for delta revenues.⁴

Under the PUCO’s rules, a Unique Arrangement under Ohio Adm. Code 4901:1-38-05 is not required to fall under one of these four categories: it is not required to include economic development or job retention, is not required to include energy efficiency or peak demand reduction, is not required to include deployment of advanced metering, and is not required to involve government mandates. Thus, there is no statutory basis for the PUCO to allow a utility to charge customers for delta revenues resulting from a unique arrangement, as opposed to an Economic Development or Energy Efficiency Arrangement.⁵

Further, when a mercantile customer receives a reasonable arrangement, the electric utility should share the costs with customers. Under R.C 4905.31, an arrangement "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 as a result of any such program."⁶ This permissive statutory language means that the PUCO has the authority to determine whether the utility should be authorized to collect costs from customers, and if so, how

⁴ *In re Ohio Power Co.*, 144 Ohio St. 3d 1, 9 (2015) (“Fundamentally, the PUCO, as a create of statute, has no authority to act beyond its statutory powers.”) (citation and quotation omitted); *State ex rel. Ganoom v. Franklin County Bd. of Elections*, 148 Ohio St. 3d 339, 342 (“[W]e may not include language in a statute that the General Assembly omitted. Rather, when construing a statute, we must give effect to all the enacted language, and we may not enlarge the statutory language.”).

⁵ See *supra* footnote [1].

⁶ R.C. 4905.31.

much. Indeed, the PUCO has recognized that it can deny the collection of costs from customers for the utility altogether: "[The utility] 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. R.C. 4905.31 requires no adjustment at all."⁷ As the PUCO has previously stated: "The Commission believes 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 retain load, encourage expansion, or attract new development in the company's service territory."⁸ The PUCO Staff has similarly recommended a 50/50 cost split in the past.

To comply with R.C. 4905.31(E), the PUCO should modify Ohio Adm. Code 4901:1-38-08 as follows:

4901:1-38-08 Revenue Recovery

- (A) Each electric utility that is serving customers pursuant to approved ~~reasonable~~ economic development or energy efficiency arrangements, may apply for a rider for ~~the~~ recovery of certain costs associated with its delta revenue for serving those customers pursuant to ~~reasonable~~ such arrangements in accordance with the following:
 - (1) The approval of the request for revenue recovery, including the level of such recovery, shall be at the commission's discretion, but such revenue recovery will not exceed one half of the cost of the arrangement.

⁷ See *In re Application of Ormet Primary Aluminum Corp.*, Ohio Supreme Court Case No. Ohio-2009-260, Brief of the Public Utilities Commission at 12 (March 3, 2010).

⁸ *In re Application of Ohio Edison Co. for Authority to Change Certain of its Filed Schedules Fixing Rates & Charges for Elec. Serv.*, Case No. 89-1001-EL-AIR, Opinion & Order at 40-41 (Aug. 16, 1990). See also, *In re Application of Columbus S. Power Co. for Authority to Amend its Filed Tariffs to Increase the Rates & Charges for Elec. Serv.*, Case No. 91-418-EL-AIR, Opinion & Order at 48 (May 12, 1992).

- (2) The electric utility may request recovery of direct incremental administrative costs related to the programs as part of the rider. Such cost recovery shall be subject to audit, review, and approval by the commission.
 - (3) For ~~reasonable~~ economic development and energy efficiency arrangements in which incentives are given based upon cost savings to the electric utility (including, but not limited to, nonfirm arrangements, on/off peak pricing, seasonal rates, time-of-day rates, real-time-pricing rates), the cost savings shall be an offset to the recovery of the delta revenues.
 - (4) The amount of the revenue recovery rider shall be spread to all customers in proportion to the current revenue distribution between and among classes, subject to change, alteration, or modification by the commission. The electric utility shall file the projected impact of the proposed rider on all customers, by customer class.
 - (5) The rider shall be updated and reconciled, by application to the commission, semiannually. All data submitted in support of the rider update is subject to commission review and audit.
- (B) If it appears to the commission that the proposals in the application may be unjust and unreasonable, the commission shall set the matter for hearing.
- (1) At such hearing, the burden of proof to show that the revenue recovery rider proposal in the application is just and reasonable shall be upon the electric utility.
 - (2) The revenue recovery rider shall be subject to change, alteration, or modification by the commission.
 - (3) The staff shall have access to all customer and electric utility information related to service provided pursuant to the ~~reasonable~~ economic development and energy efficiency arrangements that created the delta revenue triggering the electric

utility's application to recover the costs associated with said delta revenue.

~~(C) — Affected parties may file a motion to intervene and file comments and objections to any application filed under this rule within twenty days of the date of the filing of the application.~~

The PUCO should adopt these proposed amendments to Ohio Adm.Code 4901:1-38-08 because there is no statutory basis for the PUCO to allow a utility to charge customers for delta revenues resulting from a Unique Arrangement, as opposed to an Economic Development or Energy Efficiency Arrangement.⁹

H. The PUCO should amend Ohio Adm.Code 4901:1-38-09 to protect consumers by ending the utility's charges for a reasonable arrangement when the mercantile customer has failed to comply with Ohio Adm.Code 4901:1-38 or the PUCO's Order approving the Arrangement.

The PUCO should amend Ohio Adm.Code 4901:1-38-09(B) to require that if a mercantile customer fails to comply with the Ohio Revised Code, Ohio Administrative Code, or PUCO Order, such failure will result in the money charged to consumers being returned to consumers. When a mercantile customer is provided the benefit of a reasonable arrangement but fails to comply with the eligibility criteria or reporting requirements, the mercantile customer should be required to refund to consumers the money that was charged to them for the program. Accordingly, Ohio Adm.Code 4901:1-38-09 should be amended as follows:

4901:1-38-09 Failure to Comply

(A) If the customer being provided with service pursuant to a reasonable arrangement established pursuant to this chapter fails to substantially comply with any of the criteria for eligibility or fails to substantially comply with reporting

⁹ See *supra* footnote [1].

requirements, the electric utility, after reasonable notice to the customer, shall terminate the arrangement unless otherwise ordered by the commission.

- (B) ~~The commission may also direct the electric utility to~~ shall charge the customer for all or part of the incentives previously provided by the electric utility.
- (C) If the customer is required to return for all or part of the incentives previously provided, the recovered amounts shall be reflected in the calculation of the revenue recovery rider as a credit established pursuant to rule 4901:1-38-08 of the Administrative Code.

The PUCO should adopt these proposed amendments to Ohio Adm.Code 4901:1-38-09 to protect consumers from being charged for reasonable arrangements when the mercantile customer fails to comply with the necessary requirements.

I. The PUCO's Business Impact Analysis fails to quantify the adverse impact of the regulation on small businesses or consumers, or explain why any adverse impact is justified (BIA Questions 14 & 15).

A reasonable arrangement is a mechanism where the PUCO authorizes an electric utility to charge consumers (including residential, commercial, and industrial consumers) and then gives that money to a mercantile customer as a discount on its electric bill. This necessarily results in a cost to residential, commercial, and industrial customers to support the operations of another business. To qualify, a business must use more than 700,000 kw/h per year. Accordingly, the statute and the PUCO's implementation of it has an adverse impact on small businesses that do not have a reasonable arrangement or the opportunity for one. To remedy the deficient Business Impact Analysis, the PUCO should identify the cost of compliance with the rule, including the amounts paid by consumers for reasonable arrangements on a utility-by-utility basis.

III. CONCLUSION

The PUCO should amend or rescind parts of Ohio Adm.Code 4901:1-38 to protect consumers from paying for special contract arrangements that unreasonably subsidize some customers at the expense of others.. While OCC supports economic development in Ohio, residential customers of utilities should be protected from unjust and unreasonable rate increases to cover the costs of economic development or energy efficiency. As the name states, reasonable arrangements should be reasonable. Customers should not be charged for a reasonable arrangement if the mercantile customer cannot satisfy the necessary criterion. Mercantile customers that accept money from consumers should be required to demonstrate that they are properly using that money and are in compliance with all Ohio laws, PUCO rules and orders.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of these Comments were served on the persons stated below via electronic transmission, this 3rd day of May 2019.

/s/ Amy Botschner O'Brien
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Summary: Comments Comments on Rules to Protect Consumers from Paying Charges for Unreasonable Arrangements by the Office of the Ohio Consumers' Counsel electronically filed by Ms. Deb J. Bingham on behalf of Botschner-O'Brien, Amy