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**Via E-File**

September 9, 2016

Public Utilities Commission of Ohio  
PUCO Docketing  
180 E. Broad Street, 10th Floor  
Columbus, Ohio 43215

***In re: Case No. 16-1664-EL-AEC***

Dear Sir/Madam:

Please find attached the JOINT STIPULATION AND RECOMMENDATION for filing in the above-referenced matter.

Copies have been served on all parties on the attached certificate of service. Please place this document of file.

Respectfully yours,



Michael L. Kurtz, Esq.  
Jody Kyler Cohn, Esq.  
**BOEHM, KURTZ & LOWRY**

MLKkew  
Encl.

Cc: William Wright, Chief, Public Utilities Section  
Thomas McNamee, Assistant Attorney General  
Attorney Examiner Nicholas Walstra

**BEFORE THE  
PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Nature Fresh Farms for Approval of a Reasonable Arrangement.	: : :	Case No. 16-1664-EL-AEC
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**JOINT STIPULATION AND RECOMMENDATION**

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**I. Introduction**

This proceeding was initiated by Nature Fresh Farms ("Nature Fresh"), an independent greenhouse produce grower and a "mercantile customer" as defined by R.C. §4928.01, on August 1, 2016 in its Application for Approval of a Reasonable Arrangement ("Application") pursuant to Ohio Adm. Code Chapter §4901:1-38. The Application was properly filed pursuant to R.C. §4905.31.

Ohio Adm. Code §4901:1-38-05 provides that interested parties may file comments regarding an application for approval of a Reasonable Arrangement. Pursuant to that rule, such comments must be filed within twenty (20) days following the date on which an application is filed. Motions to Intervene were filed by The Toledo Edison Company ("Toledo Edison" or "Company") and The Ohio Manufacturers' Association Energy Group ("OMAEG"). OMAEG also filed Comments in this proceeding.

Ohio Adm. Code §4901-1-30 provides that any two or more parties to a proceeding may enter into a written stipulation covering the issues presented in such a proceeding. This document sets forth the understanding and agreement of the Parties who have signed below ("Signatory Parties") and jointly recommends that the Public Utilities Commission of Ohio ("Commission") approve and adopt this Joint Stipulation and Recommendation ("Stipulation") as part of its Opinion and Order in this proceeding without modification, in order to resolve all of the issues that have been or could have been raised in this proceeding. This Stipulation is supported by adequate data and information, represents a just and reasonable resolution of issues in this proceeding, violates no regulatory principle or precedent, and is the product of lengthy, serious bargaining among knowledgeable parties in a cooperative process. The Stipulation represents an accommodation of the diverse interests represented by the

Parties, and it is entitled to careful consideration by the Commission. For purposes of resolving the issues raised by this proceeding, the undersigned Parties further stipulate, agree and recommend as set forth below.

## **II. Signatory Parties**

The Stipulation is entered into by and among:

Nature Fresh Farms  
Staff of the Public Utilities Commission of Ohio

The Signatory Parties agree to fully support adoption of the Stipulation without modification in this proceeding.

## **III. Commission Authority for Approval of Reasonable Arrangement**

R.C. §4905.31 permits the Commission to approve and authorize a reasonable schedule or arrangement between a mercantile customer and an Electric Distribution Utility ("EDU") or a public utility electric light company upon application by a mercantile customer. More specifically, R.C. §4905.31 provides for non-tariff reasonable arrangements, including arrangements to recover the costs incurred in connection with economic development and job retention programs. Nature Fresh is seeking approval and authorization of a schedule or arrangement in order to receive an electric rate which will allow it to expand its operations in the United States by building a 181-acre production facility in Delta, Ohio that is expected to employ over 350 full-time direct employees and to bring an additional 150 support jobs to the State by 2023.

Nature Fresh consumes more than 700,000 kilowatt hours of electricity annually and is therefore a "mercantile customer" as defined by R.C. §4928.01. Nature Fresh is within the certified service territory, and is a retail customer of Toledo Edison, which is a public utility as defined by R.C. §4905.02 and an electric distribution utility as defined in R.C. §4928.01.

#### **IV. Economic Development Commitments**

Nature Fresh is currently expanding its operations into the United States by building a production facility in Delta, Ohio, and planning for future growth of that facility. Upon completion, the 181-acre Ohio facility would be the largest greenhouse facility in North America and would be built in 12 phases over the next 7 years. Building the expanded production facility will require substantial capital investment by Nature Fresh. The capital investment required for all 12 phases over 7 years is currently estimated at approximately \$181 million. Once its expanded production facility is established, Nature Fresh would become a driver of economic activity in the Fulton County region. In addition to its workforce of over 350 employees with an annual payroll of \$12 million, Nature Fresh expects to indirectly support an estimated minimum of 150 jobs that are tied to the success of Nature Fresh. The average wage for full-time employees is expected to be \$17/hour. Nature Fresh will receive a municipal tax abatement for 15 years. Nature Fresh would pay taxes to the State of Ohio based on produce sales within the State. At full production, the total annual impact of the Nature Fresh operations in Ohio will be over 500 jobs, an annual payroll just for the direct jobs of \$12 million, and tax revenues, charitable contributions, and purchases from Ohio vendors.<sup>1</sup>

Approval of this Stipulation will not prejudice other customers since no delta revenue will be created as a result of Nature Fresh's requested exemption. Other customer rates will not increase or decrease at all as a result of this Reasonable Arrangement. Approval of this Stipulation is also revenue neutral to Toledo Edison. The minor modification to the Company's rates sought herein is a zero cost method to help secure a major new economic development project.

#### **V. Recommended Findings**

The Parties hereby agree that the following statements of fact and law are true and accurate and recommend that they be adopted by the Commission as the "Reasonable Arrangement" for purposes of resolving any issues raised by the Application:

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<sup>1</sup> Nature Fresh respectfully submits that this information satisfies the requirements of Ohio Adm. Code §4901:1-38-05(C).

Nature Fresh and Toledo Edison shall enter into a Reasonable Arrangement contract similar in form to that which is attached hereto as "Exhibit 1." The Reasonable Arrangement, consistent with the terms approved by the Commission as part of this Application, will provide electric service at a cost that allows Nature Fresh to expand its operations in Ohio.

## **VI. Request for Approval**

This Reasonable Arrangement benefits Nature Fresh, the State of Ohio, consumers as a whole, and local governments. Approval of this Application will advance state policy as set forth in R.C. §4928.02. Specifically, approval of the Reasonable Arrangement will facilitate Ohio's effectiveness in the global economy by facilitating the creation of over 350 new jobs and at least 150 support jobs in the State. At full production, the total annual impact of the Nature Fresh operations in Ohio will be over 500 jobs, an annual payroll just for the direct jobs of \$12 million, and tax revenues, charitable contributions, and purchases from Ohio vendors.<sup>2</sup>

Ohio Adm. Code §4901:1-38-05 requires a demonstration that a proposed Reasonable Arrangement does not violate R.C. §§4905.33 and 4905.35. Nature Fresh represents that the proposed Reasonable Arrangement is not anti-competitive, discriminatory, or unduly preferential and does not disadvantage any CRES provider. Under the Reasonable Arrangement, Nature Fresh is free to purchase electric generation service from a CRES provider. Nature Fresh proposes this Reasonable Arrangement solely for purposes of facilitating the construction and operation of an expanded production facility in Ohio.

In order to create a viable and sustainable business model for Nature Fresh as soon as possible, Nature Fresh requests that the Commission approve this Joint Stipulation and Recommendation before September 28, 2016. Expedited approval by the Commission is necessary in order to secure Nature Fresh's proposed electric pricing prior to the beginning of its growing season.

Through the Application, Nature Fresh submits that it has met its burden of proof to demonstrate that the proposed Reasonable Arrangement is just and reasonable. Further, Nature Fresh avers that Toledo Edison and OMAEG do not oppose this Stipulation.

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<sup>2</sup> Nature Fresh respectfully submits that this information satisfies the requirements of Ohio Adm. Code §4901:1-38-05(C).

## **VII. Conclusion & Request for Expedited Consideration**

This Stipulation is a product of lengthy, serious, arm's-length bargaining among the Signatory Parties, which negotiations were undertaken by the Signatory Parties to settle this proceeding. This Stipulation is supported by adequate data and information; as a package, the Stipulation benefits customers and the public interest; represents a just and reasonable resolution of all issues in this proceeding; violates no regulatory principle or practice; and complies with and promotes the policies and requirements of Title 49 of the Ohio Revised Code. This Stipulation represents an accommodation of the diverse interests represented by the Signatory Parties and, though not binding, is entitled to careful consideration by the Commission.

Except for enforcement purposes or to establish that the terms of the Stipulation are lawful, neither this Stipulation nor the information and data contained herein or attached hereto shall be cited as a precedent in any future proceeding if the Commission approves the Stipulation. Nor shall the acceptance of any provision within this Stipulation be cited by any party or the Commission in any forum so as to imply or state that any Signatory Party agrees with any specific provision of the Stipulation. More specifically, no specific element or item contained in or supporting this Stipulation shall be construed or applied to attribute the results set forth in this Stipulation as the results that any Signatory Party might support or seek, but for this Stipulation in these proceedings or in any other proceeding. This Stipulation contains a combination of outcomes that reflects an overall compromise involving a balance of competing positions, and it does not necessarily reflect the position that one or more of the Signatory Parties would have taken on any individual issue. Rather the Stipulation represents a package that, taken as a whole, is acceptable for the purposes of resolving all contested issues without resorting to litigation. The Signatory Parties believe that this Stipulation, taken as a whole, represents a reasonable compromise of varying interests.

This Stipulation is conditioned upon adoption of the Stipulation by the Commission in its entirety and without material modification. If the Commission rejects or materially modifies all or any part of this Stipulation, any Signatory Party shall have the right within thirty (30) days of issuance of the Commission's order to apply for rehearing. The Signatory Parties agree that they will not oppose or argue against any other Party's application for rehearing that seeks to uphold the original unmodified Stipulation. If the Commission does not adopt the

Stipulation without material modification upon any rehearing ruling, then within thirty (30) days of such Commission rehearing ruling any Signatory Party may terminate and withdraw from the Stipulation by filing a notice with the Commission. If the Commission does not act upon the application(s) for rehearing in support of the Stipulation as filed within forty five (45) days of the filing of the application(s) for rehearing, then any Signatory Party may terminate and withdraw from the Stipulation by filing a notice with the Commission. Upon the filing of either of these notices, the Stipulation shall immediately become null and void. No Signatory Party shall file a notice of termination and withdrawal without first negotiating in good faith with the other Signatory Parties to achieve an outcome that substantially satisfies the intent of the Stipulation. If a new agreement is reached, the Signatory Parties will file the new agreement for Commission review and approval. If the discussions to achieve an outcome that substantially satisfies the intent of the Stipulation are unsuccessful, the Commission will convene an evidentiary hearing to afford the Signatory Parties the opportunity to present evidence through witnesses, to cross-examine witnesses, to present rebuttal testimony, and to brief all issues that the Commission shall decide based upon the record and briefs as if this Stipulation had never been executed. If the discussions to achieve an outcome that substantially satisfies the intent of the Stipulation are successful, some, or all, of the Signatory Parties shall submit the amended Stipulation to the Commission for approval after a hearing if necessary.

Unless the Signatory Party exercises its right to terminate its Signatory Party status or withdraw as described above, each Signatory Party agrees to and will support the reasonableness of this Stipulation before the Commission, and to cause its counsel to do the same, and in any appeal it participates in from the Commission's adoption and/or enforcement of this Stipulation. The Signatory Parties also agree to urge the Commission to accept and approve the terms hereof before September 28, 2016.

This Stipulation and Recommendation has been signed by the authorized agents of the undersigned Parties as of this 9<sup>th</sup> day of September, 2016.

Respectfully submitted,



Michael L. Kurtz, Esq.

Jody Kyler Cohn, Esq.

**BOEHM, KURTZ & LOWRY**

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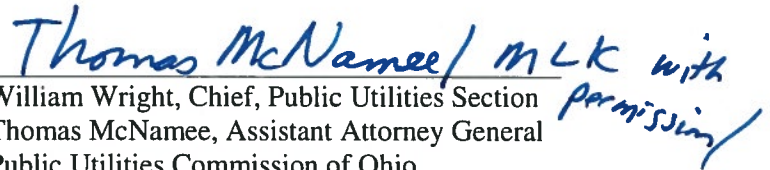
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**COUNSEL FOR THE STAFF OF THE PUBLIC  
UTILITIES COMMISSION OF OHIO**



## **Exhibit 1**

### **REASONABLE ARRANGEMENT**

This Reasonable Arrangement ("Agreement") is between Nature Fresh Farms which is authorized to conduct business in the State of Ohio and its successors and assigns ("Nature Fresh"), and The Toledo Edison Company ("Toledo Edison" or "Company"), an electric utility duly organized and validly existing under the laws of Ohio and its successors and assigns.

WHEREAS, on August 1, 2016, Nature Fresh submitted an Application for Approval of a Reasonable Arrangement to the Public Utilities Commission of Ohio ("Commission") pursuant to R.C. §4905.31 and Ohio Adm. Code §4901-1-38-05. Nature Fresh is a mercantile customer as defined by R.C. §4928.01.

WHEREAS, Nature Fresh is the largest independent greenhouse produce grower in Canada, as well as the largest greenhouse pepper grower in North America.

WHEREAS, Nature Fresh is currently expanding its operations into the United States by building a production facility in Delta, Ohio, and planning for future growth of that facility. Upon completion, the 181-acre Ohio facility would be the largest greenhouse facility in North America and would be built in 12 phases over the next 7 years.

WHEREAS, Nature Fresh's production facility is located within the certified service area of Toledo Edison. Toledo Edison is an electric distribution utility as defined in R.C. §4928.01.

WHEREAS, building the expanded production facility will require substantial capital investment by Nature Fresh. The capital investment required for all 12 phases over 7 years is currently estimated at approximately \$181 million.

WHEREAS, Nature Fresh's expanded production facility is expected to employ over 350 full-time direct employees with an annual payroll of \$12 million by 2023. The average wage is expected to be \$17/hour.

WHEREAS, once its expanded production facility is established, Nature Fresh would become a driver of economic activity in the Fulton County region. In addition to its workforce of over 350 employees, Nature Fresh expects to indirectly support an estimated minimum of 150 jobs that are tied to the success of Nature Fresh. Construction of all 12 phases of the Nature Fresh production facility is contingent upon approval of this Reasonable Arrangement and State incentives, at a level acceptable to Nature Fresh.

WHEREAS, Nature Fresh will receive a municipal tax abatement for 15 years. Nature Fresh would pay taxes to the State of Ohio based on produce sales within the State.

WHEREAS, the total electric demand at the Ohio production facility is currently estimated to start at 8 MW in 2016 and grow to 93 MW by 2023. Nature Fresh will use electricity primarily for plant growth lighting. Due to the unique nature of its business, almost all of Nature Fresh's energy usage will occur during off-peak evening/nighttime hours. Energy usage for plant growth lighting will begin in September, increasing during the winter months, and decreasing through April. There would be no lighting load during the summer months.

WHEREAS, Nature Fresh must secure an electric service rate arrangement that recognizes its almost entirely off-peak energy usage. This requires one modification to Toledo Edison's rates - an exemption from the General Service-Transmission (Rate GT) Provision of Toledo Edison's Economic Development Rider such that Nature Fresh neither pays any charges nor receives any revenue under that provision.

WHEREAS, exemption from this portion of the Company's rates will create no delta revenue and is revenue neutral to Toledo Edison. The requested exemption is a zero cost method to help secure a major new economic development project.

WHEREAS, R.C. §4905.31 permits the Commission to approve a Reasonable Arrangement between a mercantile customer and an electric distribution utility or a public utility electric light company.

NOW, THEREFORE, Nature Fresh and Toledo Edison enter into this Reasonable Arrangement setting forth the provisions of a power and energy supply agreement to facilitate the expansion of Nature Fresh's operations in the certified service territory of Toledo Edison for the duration of this Agreement.

**A) Term and Effective Date**

The term of this Reasonable Arrangement shall commence when the Commission approves this Application and commercial operations using plant growth lighting have begun at Nature Fresh's Ohio production facility. The term of this Reasonable Arrangement shall end on the later of May 31, 2019 or when the Toledo Edison Electric Security Plan resulting from Case No. 14-1297-EL-SSO, expires. Beginning on the effective date of the Reasonable Arrangement and no later than thirty (30) days after the Commission issues an order approving this Reasonable Arrangement, Toledo Edison and Nature Fresh will enter into a written contract ("Agreement") that is consistent with the Application approved by the Commission in this proceeding.

**B) Distribution and Transmission Service Pricing**

i. General Terms and Conditions.

1. Customer will take distribution service, including all current and future nonbypassable riders, from the Company under Rate GT or another applicable rate.
2. Customer shall be exempt from the General Service–Transmission (Rate GT) Provision of Toledo Edison's Economic Development Rider for the term of this Reasonable Arrangement.
3. Customer commits to pay its account(s) with Toledo Edison in full and to remain in good standing prior to commencement of the Reasonable Arrangement and Agreement. If Customer's account(s) with Toledo Edison are not paid in full and in good standing at any time during the term of the Agreement, the Agreement will be suspended until the account(s) are paid in full and returned to good standing.

ii. Assignment. The Agreement, including all rights and obligations hereunder, shall be fully assignable by Nature Fresh to any new owner or operator of the Ohio production facility with the prior written consent of Toledo Edison, which consent shall not be unreasonably withheld, and with the prior approval of the Commission. Except as provided herein, all standard terms and conditions of service of Toledo Edison will be applicable.

iii. Termination Rights. Any time during the term of the Agreement, Nature Fresh can elect to terminate the Agreement with prior written notice to Toledo Edison. Such termination may not take affect at the earliest until the first day of the billing period following written notice to Toledo Edison.

### CERTIFICATE OF SERVICE

I hereby certify that true copy of the foregoing was served via electronic mail (when available) or ordinary mail, unless otherwise noted, this 9<sup>TH</sup> day of September, 2016 to the following:

A handwritten signature in blue ink, appearing to read "M. L. Kurtz", is written over a horizontal line.

Michael L. Kurtz, Esq.

Jody Kyler Cohn, Esq.

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**Case No(s). 16-1664-EL-AEC**

Summary: Stipulation Joint Stipulation and Recommendation electronically filed by Mr. Michael L. Kurtz on behalf of Nature Fresh Farms