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**Via E-FILE**

May 20, 2019

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

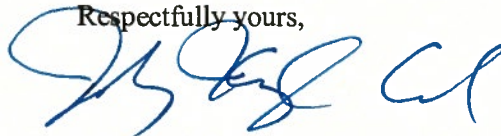
**In re: Case No. 18-1191-EL-ORD**

Dear Sir/Madam:

Please find attached the REPLY COMMENTS OF THE OHIO ENERGY GROUP e-filed today 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,

A handwritten signature in blue ink, appearing to be "Michael L. Kurtz", with a stylized flourish at the end.

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

MLKkew  
Attachment

**BEFORE THE  
PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Commission's Review of Chapter 4901:1-38 of the Ohio Administrative Code.	:	Case No. 18-1191-EL-ORD
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**REPLY COMMENTS OF THE OHIO ENERGY GROUP**

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The Ohio Energy Group ("OEG") hereby submits its Reply Comments regarding the proposed rule changes to Ohio Adm. Code Chapter 4901:1-38 in the above-captioned proceeding.<sup>1</sup> OEG continues to support adoption of Staff's proposed rule changes either as set forth in the Attorney Examiner's April 3, 2019 Entry or with the slight modifications submitted by Industrial Energy Users-Ohio. While OEG recognizes the intent of other parties seeking significant modifications to the rules submitted by Staff, many of their proposed changes are either unreasonable, unnecessary, or unduly burdensome.

**I. The Commission Should Not Impose Unreasonable and Unnecessary Limitations on the Structure of Reasonable Arrangements.**

Ohio Edison Company, The Cleveland Electric Illuminating Company, and the Toledo Edison Company (collectively, "FirstEnergy") suggest that all reasonable arrangement customers should be required to pay 100% of their utility's base distribution charges and distribution-related rider charges.<sup>2</sup> The Commission should reject this proposal, which would unduly limit the flexibility of potential arrangements in contravention of R.C. 4905.31. That statute provides that a customer and a utility may establish a reasonable arrangement providing for: 1) the division of surplus profits; 2) a sliding scale of charges; 3) a minimum charge for service to be rendered; 4) a classification of service based upon usage characteristics and any other reasonable consideration; or 5) "*[a]ny other financial device that may be practicable or advantageous to the parties interested.*" Thus, the statute grants the Commission, eligible customers, and utilities considerable discretion in crafting reasonable arrangements that could work under a wide variety of circumstances. FirstEnergy's proposal would unnecessarily undercut this broad statutory flexibility. Moreover, FirstEnergy's proposed limitation would conflict with the terms of approved reasonable

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<sup>1</sup> OEG's decision not to respond to an argument raised in the initial Comments should not be interpreted as agreement with that argument.

<sup>2</sup> FirstEnergy Comments at 1-2.

arrangements that are currently in effect.<sup>3</sup> While FirstEnergy's alternative recommendation (regarding assurance that the utility will recover any delta revenue resulting from a reasonable arrangement) may have merit, the Commission should reject any recommendation that hinders potential reasonable arrangement rate structures.

Similarly, Ohio Manufacturers' Association Energy Group ("OMAEG") and the Office of the Ohio Consumers' Counsel ("OCC") recommend that the Commission restrict the term of all reasonable arrangements to no more than five years, or to no more than five years with limited exceptions.<sup>4</sup> Again, such unnecessary and arbitrary limitations unduly constrict the broad flexibility granted by R.C. 4905.31 and may discourage capital investment in Ohio by companies that need arrangements longer than five years to justify that investment. And again, such limitations conflict with the terms of currently effective reasonable arrangements.<sup>5</sup>

Additionally, OCC suggests that the Commission change the rules to require reasonable arrangement customers to refund all or part of the incentives received for failure to comply with the Ohio Adm. Code provisions governing their arrangement.<sup>6</sup> This requirement is unnecessary given that many reasonable arrangements already provide for the possibility of refunds in the event of violations of the law, fraud, or misrepresentation.<sup>7</sup> OCC's suggestion is also punitive since it would require a refund even in circumstances where the customer could demonstrate good cause for its lack of compliance with a particular requirement of its reasonable arrangement. Accordingly, OCC's proposed revision should be rejected.

## **II. The Commission Should Not Impose Unduly Burdensome Requirements on Reasonable Arrangement Customers.**

OMAEG seeks to impose additional vague rules on reasonable arrangement customers that would significantly increase the time and costs associated with reasonable arrangement proceedings. For instance, OMAEG proposes that reasonable arrangement customers provide verifiable information substantiating any claims

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<sup>3</sup> See e.g. *In the Matter of the Application of Acero Junction, Inc. and Ohio Power Company for Approval of a Reasonable Arrangement*, Opinion and Order, Case No. 17-2132-EL-AEC (May 2, 2018) ("Acero Junction Order") at 5.

<sup>4</sup> OMAEG Comments at 9; OCC Comments at 5.

<sup>5</sup> Acero Junction Order at 3; *In the Matter of the Application of AK Steel Corporation for Approval of a Reasonable Arrangement with Duke Energy Ohio, Inc.*, Opinion and Order (June 28, 2018) at 8; *In the Matter of the Application of PRO-TEC Coating Company, LLC for the Approval of a Reasonable Arrangement for Its Leipsic, Ohio Plant*, Case No. 19-124-EL-AEC ("PRO-TEC Order").

<sup>6</sup> OCC Comments at 17-18.

<sup>7</sup> See *In the Matter of the Application of Acero Junction, Inc. and Ohio Power Company for Approval of a Reasonable Arrangement*, Case No. 17-2132-EL-AEC; *In the Matter of the Application of PRO-TEC Coating Company, LLC for the Approval of a Reasonable Arrangement for Its Leipsic, Ohio Plant*, Case No. 19-124-EL-AEC.

that an applicant could possibly relocate and the feasibility of doing so.<sup>8</sup> This could require production of what is likely to be detailed and highly sensitive trade secret information about not only a customer's Ohio operations, but also about the operations of its other national and international facilities. Moreover, it is unclear what degree of information would satisfy OMAEG's suggested burden of proof. Other OMAEG proposals involve similarly vague standards of review. For example, OMAEG suggests that the Commission should ensure that energy efficiency arrangements provide positive benefits to customers.<sup>9</sup> It is unclear whether OMAEG's standard would require mere references to the generic market price reduction benefits that result from energy efficiency measures or if a more detailed analysis would be necessary. Further, OMAEG's concern already appears to be addressed by Staff's proposed new criterion under Ohio Adm. Code 4901:1-38-04 that *"the benefits to the community accruing from the project outweigh the costs imposed on the other retail customers because of the reasonable arrangement."*

OCC requests that the reasonable arrangement rules be modified to give parties sixty days to file comments, rather than the current twenty-day period.<sup>10</sup> While it may be reasonable to give interested parties some additional time to review and comment on reasonable arrangement applications, many reasonable arrangement cases need to be resolved expeditiously in order to facilitate the capital investments contemplated by the proposed arrangement. Accordingly, OEG recommends that the Commission either retain the current twenty-day deadline for intervention and comments or establish a deadline no more than thirty days after the filing of the application.

### **III. The Commission Should Not Redefine the Terms "*Reasonable Arrangement*" And "*Delta Revenue*."**

FirstEnergy proposes that the Commission modify the definition of "*delta revenue*" in the Ohio Adm. Code to account for a reasonable arrangement customer's "*operational savings*" and that any "*operational savings*" should be deducted from the level of incentive received by the customer pursuant to the arrangement.<sup>11</sup> The term "*operational savings*" is vague and could be open to a host of interpretations. For instance, Staff's proposed changes to Ohio Adm. Code 4901:1-38-03 refer to several types of "*operational savings*," including basic cost management, shopping or self-generating electricity, energy efficiency, and participation in RTO programs. Given

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<sup>8</sup> OMAEG Comments at 10.

<sup>9</sup> OMAEG Comments at 11.

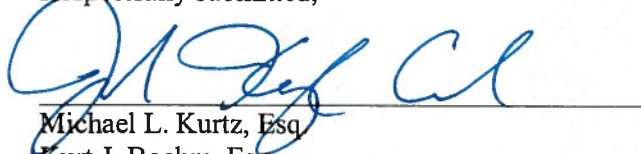
<sup>10</sup> OCC Comments at 3.

<sup>11</sup> FirstEnergy Comments at 2 and 8.

this lack of specificity, enforcement of FirstEnergy's proposed revision could be highly complicated and contentious. The proposed revision should therefore be rejected.

Additionally, OCC recommends changing the definition of "*reasonable arrangement*" in order to completely eliminate "*unique arrangements*."<sup>12</sup> But OCC fails to recognize the purpose of providing for such arrangements. As Staff noted in its proposed rule changes, R.C. 4905.31 does not apply solely to mercantile customers. Although "*economic development arrangements*" and "*energy efficiency arrangements*" are only for mercantile customers, Staff's proposed revisions to Ohio Adm. Code 4901:1-38-05 expressly provide non-mercantile customers an option for pursuing an arrangement under R.C. 4905.31. Providing that option to mercantile customers as well simply evens the playing field by applying the same "*unique arrangement*" criteria to both groups. It would therefore be contrary to the plain language of R.C. 4905.31 to completely eliminate "*unique arrangements*" under Ohio Adm. Code 4901:1-38-05.

Respectfully submitted,



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May 20, 2019

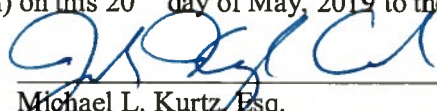
**COUNSEL FOR THE OHIO ENERGY GROUP**

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<sup>12</sup> OCC Comments at 2.

## CERTIFICATE OF SERVICE

In accordance with Rule 4901-1-05, Ohio Administrative Code, the PUCO's e-filing system will electronically serve notice of the filing of this document on the parties referenced on the service list of the docket card who have electronically subscribed to this case. In addition, the undersigned certifies that a courtesy copy of the foregoing document is also being served (via electronic mail) on this 20<sup>TH</sup> day of May, 2019 to the following:



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**This foregoing document was electronically filed with the Public Utilities**

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Summary: Comments Ohio Energy Group (OEG) Reply Comments electronically filed by Mr. Michael L. Kurtz on behalf of Ohio Energy Group