

**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

REPLY COMMENTS OF OHIO EDISON COMPANY, THE CLEVELAND ELECTRIC
ILLUMINATING COMPANY, AND THE TOLEDO EDISON COMPANY

Respectfully submitted,

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I. Introduction

On May 3, 2019, Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, the “Companies”), filed initial Comments on the Commission Staff’s proposed revisions to O.A.C. Chapter 4901:1-38. The Companies’ Comments explained that O.A.C. Chapter 4901:1-38 must allow electric utilities with reasonable arrangements to be made financially whole through a combination of charges to the reasonable arrangement customers and full recovery of delta revenue from its other customers.

The Companies now reply to the comments of The Ohio Manufacturers’ Association Energy Group (“OMAEG”), the Office of the Ohio Consumers’ Counsel (“OCC”), and Industrial Energy Users-Ohio (“IEU-Ohio”). As explained below, the Commission should reject OCC’s proposal that “when a mercantile customer receives a reasonable arrangement, the electric utility should share the costs with customers.”¹ This recommendation is unsupported by law, out of sync with the economic and business realities of electric distribution utilities operating in Ohio today, and would cause serious financial harm to electric distribution utilities in Ohio, including the Companies. The Companies incorporate their initial Comments by reference in their entirety and urge the Commission to adopt the proposed changes set forth therein.²

II. Reply Comments

A. Utilities must be made financially whole through a combination of charges to the reasonable arrangement customers and full recovery of delta revenue from its other customers.

The Commission should reject OCC’s argument that “when a mercantile customer receives a reasonable arrangement, the electric utility should share the costs with customers” and

¹ OCC Comments at 14.

² The Companies’ lack of response to certain comments should not be interpreted as the Companies’ agreement with or acquiescence to those comments.

recommendation of a 50/50 delta revenue cost-sharing mechanism.³ This recommendation is unsupported by law and is out of sync with the economic and business realities of electric distribution utilities operating in Ohio today.

In support of this proposal, OCC relies on outdated cases from before R.C. 4905.31 was enacted.⁴ These cases provide no justification for splitting the delta revenue impacts between the Companies and their customers. In fact, the Commission recently rejected OCC's proposed 50/50 delta revenue cost-sharing mechanism in a unique arrangements case where OCC relied on this very case law.⁵ OCC's cases also precede the restructuring of Ohio's electric industry. Consequently, OCC's arguments that electric distribution utilities realize economic development benefits from reasonable arrangements fail to account for changing business realities. Many of the economic development benefits realized by vertically integrated regulated utilities that could make a profit on generation are no longer realized by distribution-only utilities. Electric distribution utilities like the Companies simply pass transmission and generation costs through to their customers, and charge customers the costs of supplying distribution service.

OCC also relies on the Commission's brief to the Ohio Supreme Court in *In re Ormet Primary Aluminum Corp.*, in support of its argument that utilities should split the cost of delta revenue 50/50 with their customers.⁶ But *Ormet* suffers from the same defect as OCC's other

³ OCC Comments at 14.

⁴ *Id.* (citing *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); *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)).

⁵ *In the Matter of the Application of Globe Metallurgical, Inc. for Approval of a Unique Arrangement between Ohio Power Company and Globe Metallurgical, Inc.* (“*In re Globe*”), PUCO Case No. 16-737-EL-AEC, Opinion and Order at ¶20 (Oct. 26, 2016) (“The Commission has approved numerous unique arrangements authorizing the utility to recover delta revenue from customers. We reject OCC's assertion that the unique arrangement violates important regulatory principles or practices simply because it does not include a 50/50 cost sharing mechanism.”).

⁶ OCC Comments at 15 (citing *In re Ormet Primary Aluminum Corp.*, Ohio Supreme Court Case No. 2011-Ohio-2377).

referenced cases, because the utility in *Ormet* owned generation and was Ormet's exclusive generation supplier under the terms of the proposed arrangement.⁷ Further, the disputed delta revenue in *Ormet* consisted of the utility's risk-related charges associated with providing generation to Ormet, which electric distribution utilities like the Companies do not charge today. Therefore, OCC's reliance on *Ormet* is misplaced. Importantly, neither the Commission nor the *Ormet* court required AEP to split its delta revenue costs 50/50 with customers, or even suggested that as the standard going forward.⁸

OCC has proposed no valid rationale for limiting a utility's delta revenue recovery to 50%. OCC's proposal would harm electric distribution utilities in Ohio, and raises legal concerns as a violation of the filed rate doctrine as well as a utility's constitutional Due Process rights. Accordingly, the Commission should reject OCC's proposal and ensure electric utilities with reasonable arrangements are made financially whole through a combination of charges to the reasonable arrangement customers and full recovery of delta revenue.

OCC also proposes amending O.A.C. 4901:1-38-09 so that mercantile customers who fail to comply with the eligibility criteria or reporting requirements in Chapter 4901:1-38 "be required to refund to consumers the money that was charged to them for the program."⁹ However, a mercantile customer that fails to meet its reporting or eligibility obligations may be struggling financially, and may be unable to refund the benefits received from a reasonable arrangement to the electric distribution utility. While the Companies are not recommending amendments that could create uncertainty or reduce flexibility for applicants, if the Commission adopts this

⁷ *In the Matter of the Application of Ormet Primary Aluminum Corp. for Approval of a Unique Arrangement with Ohio Power Company and Columbus Southern Power Company*, PUCO Case No. 09-119-EL-AEC, Opinion and Order at 13 (Jul. 15, 2009).

⁸ *Id.*; *In re Ormet Primary Aluminum Corp.*, 2011-Ohio-2377 at ¶19. *See also In re Globe*, Opinion and Order at ¶¶ 17, 20 (Oct. 26, 2016) (rejecting OCC's proposed 50/50 cost sharing mechanism despite the Ohio Supreme Court's holding in *Ormet*).

⁹ OCC Comments at 17.

amendment, the Commission should ensure that before a utility is required to refund customers for the benefits a noncompliant reasonable arrangement customer, the arrangements customer has *first* repaid those funds to the electric distribution utility.

B. Any definition of “Incremental costs” and “fixed costs” must include 100% of the base distribution charges and all distribution-related riders that are otherwise applicable to the reasonable arrangements customer.

Among the criteria Staff proposed for evaluating an application for an economic development or energy efficiency arrangement, Staff proposed consideration of whether “the charges paid to the utility cover all incremental costs of service and contribute to the payment of fixed costs.”¹⁰ IEU-Ohio notes that Staff does not propose to define “incremental costs” or “fixed costs.”¹¹ The Companies urge the Commission to ensure that any definition of the incremental and fixed costs included in the charges in these criteria include 100% of the base distribution charges and all distribution-related riders that are otherwise applicable to the customer requesting to take service pursuant to a reasonable arrangement with the utility. Electric utilities must be made financially whole for any reasonable arrangement through a combination of charges to the reasonable arrangement customer and full recovery of delta revenue from its customers.¹²

C. Commission Staff should be permitted to terminate reasonable arrangements when a customer fails to substantially comply with O.A.C. Chapter 4901:1-38.

OMAEG proposes that the Commission establish “strict penalty provisions” under Rule 4901:1-38-09 to “provide for the possibility of reducing or eliminating the incentives provided to a customer through an economic development arrangement in the event that the recipient of such

¹⁰ See Entry at 3, 4 (Staff’s proposed changes to O.A.C. Section 4901:1-38-03(A)(2)(f) and (B)(2)(f)).

¹¹ IEU-Ohio Comments at 2.

¹² Incorporating the Companies’ proposal would also solve IEU-Ohio’s concern that the amount of these incremental and fixed costs is information that is held by the utility and may be out of reach for mercantile customers applying for an Economic Development Arrangement without utility support. See IEU-Ohio Comments at 2-3.

an arrangement is not meeting its commitments.”¹³ The Companies note that this objective will be achieved if the Commission adopts the revisions to O.A.C. 4901:1-38-09 proposed in the Companies’ comments. Those revisions will allow Commission Staff to terminate reasonable arrangements when a customer fails to substantially comply with the eligibility criteria and reporting requirements in O.A.C. Chapter 4901:1-38.¹⁴

III. Conclusion

The Companies appreciate the opportunity to provide Reply Comments. The Companies urge the Commission to adopt the Companies’ recommendations as set forth in the Companies’ Initial Comments and Reply Comments.

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¹³ *Id.* at 13.

¹⁴ *See* Companies’ Initial Comments at 10.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was filed electronically through the Docketing Information System of the Public Utilities Commission of Ohio on this 20th day of May, 2019. The PUCO's e-filing system will electronically serve notice of the filing of this document on counsel for all parties.

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Cleveland Electric Illuminating Company,
and The Toledo Edison Company*

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Summary: Comments Reply Comments electronically filed by Mr. Scott J Casto on behalf of The Ohio Edison Company and The Cleveland Electric Illuminating Company and The Toledo Edison Company