

**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.)

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

I. INTRODUCTION

Rules of the Public Utilities Commission of Ohio (“PUCO”) allow mercantile customers to enter into “reasonable arrangements” with their electric distribution utility for discounted rates depending on whether certain criteria are met.¹ While the PUCO Staff draft rules represent a movement in the correct direction for codifying criteria and requirements for these arrangements, the Office of the Ohio Consumers’ Counsel (“OCC”) recommends that the PUCO adopt the additional consumer protections detailed in OCC’s comments filed in this proceeding.² 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 are asked to bear are reasonable.

¹ Ohio Adm.Code 4901:1-38.

² OCC Comments, Case No. 18-1191-EL-ORD, May 3, 2019.

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. As OCC explained in its Initial Comments, the PUCO's rules should protect consumers from paying for special contract arrangements that unreasonably subsidize some customers at the expense of others. OCC submits these Reply Comments regarding the PUCO's reasonable arrangement rules on behalf of all of Ohio's residential utility consumers.

II. RECOMMENDATIONS

A. The PUCO should make mandatory the criteria that all applicants must meet in order to receive an economic development arrangement under Rule 4901:1-38-03 or an energy efficiency arrangement under Rule 4901:1-38-04.

In initial comments, OCC and the Ohio Manufacturers' Association Energy Group (OMAEG) each recommended that the PUCO maintain mandatory standards under Rule 4901:1-38-03 that all applicants for economic development arrangements must meet in order to ensure fairness and that all customers benefit from reasonable arrangements.³ With other customers funding the incentives obtained through the reasonable arrangements, the PUCO should be clear about what does and does not qualify as economic development under its rules and how much of a rate discount or incentive the PUCO will provide to each applicant and over what period.

³ OCC Comments at 4; OMAEG Comments at 3.

OCC and OMAEG also each supported a requirement that all customers be limited to one economic development arrangement for a defined period of up to five years, and that renewals of the same agreement be prohibited so that applicants could not receive an endless subsidy at the expense of other customers. OCC generally agrees with the spirit and content of OMAEG's comments, which would require greater scrutiny over reasonable arrangements to safeguard that they are applied consistently and fairly for all customers.

B. The PUCO should reject the recommendations made by FirstEnergy that the utility always be made whole for any "delta revenue" resulting from PUCO-approved reasonable arrangements.

FirstEnergy's proposal that the rules should require 100% compensation to utilities for delta revenues should be rejected.⁴ That is because the utility also benefits from a reasonable arrangement. If after determining that an applicant fulfills the mandatory minimum requirements for a defined term (maximum five-year) reasonable arrangement, the PUCO should require the utility to share equally with its customers the costs of the unique arrangement. Cost-sharing between the utility and its customers is consistent with the law governing these types of mercantile customer arrangements. Under the law, 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."⁵ This permissive statutory language means that the PUCO has the authority to determine whether the utility should be authorized to collect costs from

⁴ FirstEnergy Comments at 9.

⁵ R.C. 4905.31.

customers, and if so, how 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."⁶

It makes sense for the utility to share the costs because the utility benefits in these types of arrangements. Because the utility benefits from the reasonable arrangement, customers and the utility should equally share responsibility for the costs of providing the discount to the mercantile customer. 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."⁷ The PUCO Staff has similarly recommended a 50/50 split in the past.⁸

Given the utility benefits from these arrangements, the utility should not be authorized to pass all costs resulting from this arrangement on to its customers but instead

⁶ 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).

⁷ *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).

⁸ *In re Application of the Cincinnati Gas & Elec. Co. for an Increase in its Rates for Gas Serv. to all Jurisdictional Customers*, Case No. 95-656-GA-AIR, Opinion & Order at 28 (Dec. 12, 1996) ("For economic development contracts in electric cases, the staff has traditionally recommended a 50/50 sharing of identified delta revenues between the company and customers.").

should share those costs. The PUCO should instead conclude that a 50/50 split of the delta revenue is more equitable than asking consumers to pay 100% of the subsidy.⁹

C. The PUCO should reject IEU’s ambiguous proposal to eliminate an applicant’s showing of economic impact in order to receive an economic development arrangement.

Under proposed rule 4901:1-38-03(A)(2)(d), the applicant for the subsidy must provide evidence that the economic impact of its project on the region will be significant, which OCC supports.

Industrial Energy Users-Ohio (IEU) proposes that this rule be revised for “smaller” customers, that the applicant demonstrate “through a means that is appropriate for that applicant, that the reasonable arrangement will have a positive economic effect.”¹⁰ OCC discounts IEU’s concern regarding the cost of an economic impact study. If customers want a subsidy, they should be willing to foot the bill for a study. IEU’s proposal to use imprecise language such as demonstrating via a means “appropriate for that applicant” is too vague as to be meaningless. There is no definition of “smaller.” There is no definition of “through a means that is appropriate for the applicant.” There must be some showing that the costs of the agreement are exceeded by the economic development benefits of the agreement and that, indeed, there is some positive economic benefit.

Economic development rules should not provide for a simple process for the applicant such that a potential “barrier to filing an application” should be a concern.

⁹ OCC does support FirstEnergy’s position that economic development arrangement customers should be responsible for 100% of base distribution charges and distribution-related riders. If distribution charges are allowed to be discounted for customers with reasonable arrangements, those customers could end up paying nothing (or even be credited) for taking electric service.

¹⁰ IEU Comments at 2.

Consumer-funded subsidies are not intended to support the ability for a mercantile customer to simply act in its own best interest. Rules should protect all customers paying the subsidy from applications that are not in the public interest and do not enhance economic development.

D. The PUCO should consider defining incremental costs of service under the Rules.

Under proposed Rule 4901:1-38-03(A)(2)(f) the applicant must provide information demonstrating that charges paid to the utility cover all incremental costs of service and contribute to the payment of fixed costs. However, IEU is correct in recognizing that that the rule does not define the incremental and fixed costs that are to be considered. OCC agrees that the rules should have a basic definition of what the PUCO considers to be the incremental costs of service and that incremental cost of service data that complies with that definition must be provided by the utility which is providing the service that is part of the application.

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, and also adopt the procedural safeguards discussed in OCC's Comments. 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 criteria. Mercantile customers that accept money from consumers

should be required to demonstrate that they are properly using that money and comply with all Ohio laws, PUCO rules and orders.

Changes proposed by FirstEnergy and IEU that are discussed in these Reply Comments would diminish consumer protection. The PUCO should reject them. The recommendations in OCC's Comments and Reply Comments will give millions of residential electric consumers in Ohio the protection they need to maintain reasonable rates while promoting economic development.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of these Reply Comments were served on the persons stated below via electronic transmission, this 20th day of May 2019.

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