

**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 OF
THE OHIO MANUFACTURERS' ASSOCIATION ENERGY GROUP**

I. INTRODUCTION

In this proceeding, the Public Utilities Commission of Ohio (Commission) seeks comments from interested parties regarding proposed revisions to the rules governing economic development arrangements, energy efficiency arrangements, and unique arrangements. On May 3, 2019, the Commission received comments from several stakeholders regarding its proposed rules. The Ohio Manufacturers' Association Energy Group (OMAEG) submitted comments urging the Commission to consider additional proposals in establishing these rules.¹ The comments of other stakeholders draw the Commission's attention to similar issues. Below, OMAEG discusses those comments and again calls upon the Commission to adopt OMAEG's suggestions for implementing rules that ensure predictability and fairness for all customers in the process of approving special arrangements. OMAEG hereby files these reply comments on the proposed rules pursuant to the Commission's April 3, 2019 Entry soliciting comments.²

¹ See Comments of the Ohio Manufacturers' Association Energy Group (May 3, 2019) (OMAEG Comments).

² See Entry at ¶ 15 (April 3, 2019).

II. REPLY COMMENTS

A. The Commission Should Ensure Fairness, Predictability, and Benefits to All Customers by Requiring that Specified Criteria Be Met by the Applicant Before a Special Arrangement is Approved.

Given that special arrangements for specific customers that are approved by the Commission are funded by other customers, the Commission should ensure that the rules it establishes through this process guarantee that those customers receive benefits for having done so. Moreover, the Commission should require applicants for special arrangements to meet minimum criteria so that the process is fair and predictable.

The Office of the Ohio Consumers' Counsel (OCC) joined OMAEG in calling for the Commission to make the criteria listed in Rule 4901:1-38-03 mandatory.³ OCC further proposed language for Rule 4901:1-38-03(A)(2) that states that "[e]ach customer requesting to take service pursuant to an economic development arrangement with the electric utility *shall meet* the following criteria."⁴ OMAEG supports OCC's language because it unambiguously requires applicants to meet the criteria established by the Commission, rather than allowing for an uncertain, discretionary process where these criteria are considered but not mandatory.

The Ohio Energy Group (OEG) also acknowledges the benefits of requiring the Commission to consider these criteria, stating that by considering these criteria, the Commission will ensure that any approved arrangements are in the public interest.⁵ OMAEG concurs that the criteria contained in the proposed rule, if met, would help to ensure that economic development arrangements approved by the Commission would serve the public interest. While OEG does

³ See Comments on Rules to Protect Consumers from Paying Charges for Unreasonable Arrangements by The Office of the Ohio Consumers' Counsel at 4 (May 3, 2019) (OCC Comments)

⁴ OCC Comments at 6.

⁵ See Motion to Intervene, Memorandum in Support, and Comments of the Ohio Energy Group at 3 (May 3, 2019) (OEG Comments).

not suggest any changes to the rules proposed by the Commission,⁶ OMAEG submits that changing the proposed rules to require these criteria to be met would better ensure that the public interest served than the proposed rule, which only requires the Commission to consider the criteria.

Mandatory criteria provide additional safeguards beyond a general requirement that the benefits of the arrangement outweigh the costs. For example, when customers are ensured that employment or capital investment commitments will be met, they can trust that quantifiable benefits will spring from such an arrangement. Similarly, when the Commission verifies that an applicant has sought other forms of cost relief, customers can feel confident that they are not being charged more than what is truly necessary for the promised benefits to result. These benefits of mandatory criteria outweigh any perceived downside that mandatory compliance would be too burdensome for applicants.

The Commission should also provide a fair process by ensuring that customers are protected by strong Commission oversight and provisions that protect customers from the possibility that they are left funding an arrangement that never provides benefits. While it may seem harsh to reduce or eliminate incentives for arrangement recipients that are not meeting their commitments, the Commission should also consider that it is unjust and unreasonable for customers to fund special arrangements under the guise that certain commitments will be met only to be left with no recourse in the event that the recipient does not meet those commitments. While recipients of special arrangements may not be able to control for market conditions that prevent them from meeting commitments, the customers who fund the arrangements also lack control over such conditions and should not be punished because a recipient cannot meet its

⁶ See id.

obligations. This is particularly important when competing customers are asked to fund the rate discounts or incentives of their competitors. To be clear, OMAEG is not necessarily advocating a strict liability rule that would completely end an arrangement for any level of noncompliance, but a commensurate reduction in incentives or rate discounts should occur for an applicant's failure to meet its commitments. OMAEG opposes the idea that arrangements are funded at their full, approved level even when the assumptions underlying that approval have changed.

B. OMAEG Supports Various Comments Submitted by Other Stakeholders.

a. OMAEG Supports the FirstEnergy Companies' Suggested Corrections of Possible Typographical Errors and Comments Suggesting that the Commission Add Greater Consistency to the Rules.

In their comments, the Toledo Edison Company, the Ohio Edison Company, and the Cleveland Electric Illuminating Company (collectively, FirstEnergy) suggest minor revisions to address a possible typographical error and to ensure consistency in the provision of information to utilities and the Commission across the rules.⁷ While OMAEG certainly advocates that the Commission go further in these rules to protect customers and ensure a fair process, OMAEG does support these minor changes suggested by FirstEnergy as well, as those changes would improve the clarity of the process.

b. OMAEG Supports IEU-Ohio's Request to Clearly Define Key Terms in the Rules.

Through comments, the Industrial Energy Users-Ohio (IEU-Ohio) asked the Commission to define the "incremental and fixed costs" to provide clarity for parties.⁸ OMAEG agrees, and urges the Commission to, in addition to making the criteria it considers mandatory, provide definitions of the key terms underlying those criteria so that all parties are able to ascertain

⁷ See Comments of Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company at 2-7 (May 3, 2019) (FirstEnergy Comments).

⁸ See Initial Comments of Industrial Energy Users-Ohio at 2 (May 3, 2019) (IEU-Ohio Comments).

exactly what requirements need to be met. As OMAEG has advocated at length, the Commission should not leave these rules governing special arrangements open to interpretation, as clear, appropriate definitions best protect customers and ensure that only just and reasonable arrangements that are in the public interest are approved.

C. OMAEG Opposes Comments Submitted by Other Stakeholders that Suggest Less Transparency in the Process for Monitoring Special Arrangements that Have Been Approved by the Commission.

OMAEG supports fairness and accountability throughout the process, as evidenced by its initial comments supporting the inclusion of strong oversight and penalty provisions in these rules. Suggestions by FirstEnergy and IEU-Ohio, however, run counter to that interest. Thus, OMAEG urges the Commission to reject those suggestions.

FirstEnergy asks the Commission to remove a provision from Rule 4901:1-38-06 that requires the utility to summarize reports from customers receiving special arrangements and submit the summary for audit by the Staff of the Commission by June 15th each year.⁹ OMAEG opposes this proposal because this requirement provides Staff with additional information from the utility's perspective in reviewing ongoing compliance with regard to arrangements that the Commission has already approved. Given that Ohio's electric customers pay charges to utilities to fund these arrangements, the Commission should not be removing oversight provisions that help to ensure that the arrangements ultimately provide the benefits they purport to provide.

Similarly, OMAEG opposes IEU-Ohio's suggestion that Rule 4901:1-38-03(A)(2)(d), as proposed by the Commission, creates a barrier to appropriate economic development arrangements. As proposed by the draft rules, this provision requires customers seeking economic development arrangements to show that the project that is the subject of the

⁹ See FirstEnergy Comments at 7.

arrangement would have a significant economic impact on the region and will create or retain jobs. IEU-Ohio argues that, because the cost of an economic impact study is several thousand dollars, smaller consumers will have difficulty meeting this requirement. IEU-Ohio supports revising the rule such that it allows the applicant to demonstrate a “positive economic impact” through means appropriate to the applicant.¹⁰ OMAEG appreciates IEU-Ohio’s concern, but does not believe that the proposed rule requires an economic impact study and does not foreclose other means of demonstrating compliance with the requirement. An applicant could choose to conduct such a study, but the rule does not require it. Second, IEU-Ohio’s proposed alternative does not ensure sufficient benefits to justify approval of an economic development arrangement. IEU-Ohio appears to be suggesting that the requirement of job creation or retention be removed and that “significant economic impact” be changed to “positive economic impact.” These changes would temper the rules, making it easier for customers to obtain incentives and rate discounts, and reduce the benefits received by customers who fund economic development arrangements.

It appears that some comments seek to have the Commission establish rules designed to ensure a hassle-free process for smaller customers to seek arrangements from utilities. The focus on ensuring the availability of arrangements, however, loses sight of the reality that these arrangements are paid for by other customers. While OMAEG agrees that reasonable arrangements should be available to all sizes of customers who can meet the requirements in a non-discriminatory fashion, other customers (including their competitors) should not be subjected to increased charges to fund arrangements that cannot satisfy minimum requirements and provide system or state benefits. In other words, customers who pay for arrangements

¹⁰ See IEU-Ohio Comments at 2.

should get commensurate benefits in return. All customers do not have a right to enter into special arrangements with their utilities purely to receive a revenue stream as part of their balance sheet and business model, but customers do have a right to be charged only just and reasonable rates.¹¹ If the Commission is faced with a choice of denying a customer that can only demonstrate minimal benefits or cannot otherwise comply with Commission-mandated criteria for a special arrangement or increasing the charges to other customers to fund such an arrangement, the Commission should choose to deny the special arrangement. The rules governing arrangements should not sacrifice fairness and just and reasonable rates to all other customers in pursuit of the goal of allowing special arrangements to a select few customers that cannot demonstrate significant positive benefits.

¹¹ See R.C. 49

III. CONCLUSION

The Commission should balance the interests of all customers to ensure that its rules governing special arrangements provide a predictable, fair, non-discriminatory process for applicants while also protecting customers who fund the special arrangements. OMAEG urges the Commission to establish mandatory, minimum requirements that are just and reasonable and that provide predictability for all parties to ensure that customers are not left funding special arrangements that do not deliver on the benefits that they purport to provide.

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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was served upon all parties of record via electronic mail on May 20, 2019.

/s/ Brian W. Dressel
Brian W. Dressel

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Summary: Comments Reply Comments of the Ohio Manufacturers' Association Energy Group electronically filed by Mr. Brian W Dressel on behalf of The Ohio Manufacturers' Association Energy Group