

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke )  
Energy Ohio, Inc., for Approval of its ) Case No. 20-599-GE-UNC  
Temporary Plan and Waiver of Tariffs and )  
Rules Related to the COVID-19 State of )  
Emergency. )

In the Matter of the Application of Duke )  
Energy Ohio, Inc., Under the Commission’s )  
Proceedings During the Declared State of )  
Emergency, for a Reasonable Arrangement ) Case No. 20-0856-EL-AEC  
with Customers Served Under Rates DS, DP, )  
and TS. )

In the Matter of the Application of Duke )  
Energy Ohio to Modify its Economic ) Case No. 20-0857-EL-RDR  
Competiveness Fund Rider and Request for )  
Waivers. )

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**MOTION TO INTERVENE AND COMMENTS  
BY  
THE OHIO MANUFACTURERS’ ASSOCIATION ENERGY GROUP**

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Pursuant to R.C. 4903.221, Ohio Adm. Code 4901-1-11, and Ohio Adm. Code Chapter 4901:1-38, the Ohio Manufacturers’ Association Energy Group (OMAEG) moves to intervene in the above-captioned proceeding before the Public Utilities Commission of Ohio (Commission). On March 19, 2020, Duke Energy Ohio, Inc. (Duke) filed a plan in response to the Commission’s Entry in Case No. 20-591-AU-UNC,<sup>1</sup> proposing to “Suspend Certain Requirements for the

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<sup>1</sup> *In the Matter of the Proper Procedures and Processes for the Commission’s Operations and Proceedings During the Declared State of Emergency and Related Matters*, Case No. 20-591-AU-UNC, Entry at ¶ 1 (March 12, 2019) (State of Emergency Proceeding).

Duration of the State of Emergency Declared in Executive Order 2020-01D.”<sup>2</sup> On April 16, 2020, as supplemented on April 17, 2020, Duke filed its Application for a reasonable arrangement pursuant to R.C. 4905.31(E).<sup>3</sup> Specifically, Duke proposed to temporarily reduce the minimum billing provisions for certain non-residential customers through the September 2020 billing cycle.<sup>4</sup> Duke’s proposal was expressly conditioned on the Commission’s approval of Duke’s proposal to defer and recover the amount of foregone revenue, as well as its requested waivers.<sup>5</sup>

Through the reasonable arrangement, Duke proposed to defer delta revenue resulting from the reasonable arrangement and fully recover it through its Economic Competitiveness Fund Rider (Rider ECF) from those customers who benefitted from the demand ratchet reduction.<sup>6</sup> Due to the alleged burden on Duke for the temporary reduction in cash revenue, Duke further proposed to charge manufacturers, which are and will be struggling during and after the COVID-19 emergency, interest on the unrecovered balance of the delta revenue until the foregone revenue is fully recovered from customers.<sup>7</sup> Lastly, Duke sought waivers of certain rules to implement its proposal.<sup>8</sup>

The Commission Staff filed its review and recommendation of Duke’s Application on

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<sup>2</sup> *In the Matter of the Application of Duke Energy Ohio, Inc., for Approval of its Temporary Plan and Waiver of Tariffs and Rules Related to the COVID-19 State of Emergency*, Case No. 20-599-GE-UNC, Motion of Duke Energy Ohio, Inc. to Suspend Certain Requirements for the Duration of the State of Emergency Declared in Executive Order 2020-01D (March 19, 2020) (COVID-19 Plan).

<sup>3</sup> *In the Matter of the Application of Duke Energy Ohio, Inc., for approval of a Reasonable Arrangement*, Case No. 20-0856-EL-AEC, et al., Application at ¶¶ 13, 22 (April 16, 2020) as supplemented (April 17, 2020) (Application).

<sup>4</sup> Id. at ¶¶ 16-17.

<sup>5</sup> Id. at ¶ 16.

<sup>6</sup> Id. at ¶¶ 21, 23-24.

<sup>7</sup> Id. at ¶ 26.

<sup>8</sup> Id. at ¶¶ 31-32.

April 24, 2020, as corrected on April 28, 2020.<sup>9</sup> On April 27, 2020, the Commission directed stakeholders to file motions to intervene and comments by May 7, 2020.<sup>10</sup> On May 4, 2020, Duke filed a supplement to its COVID-19 Plan.<sup>11</sup>

As demonstrated in the attached Memorandum in Support, OMAEG has a real and substantial interest in the proceeding which may be adversely affected by the outcome and which cannot be adequately represented by any other party. Further, OMAEG's participation will not unduly delay the proceedings or prejudice any other party. Accordingly, OMAEG satisfies the standard for intervention set forth in Ohio statutes and regulations. OMAEG respectfully requests that this Commission grant its motion to intervene for these reasons and those set forth in more detail in the attached Memorandum in Support. In addition, as directed by the Commission's April 27, 2020 Entry and for the Commission's consideration, OMAEG also submits comments on Duke's Application.

Respectfully submitted,

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<sup>9</sup> See Staff Review and Recommendation (Staff Report) (April 24, 2020), as corrected (April 28, 2020) (Please note that the Staff Report does not include page numbers. Thus, for purposes of this filing, we have manually numbered the page numbers, beginning with the page containing case numbers and the title "Summary." The cover page filed with the Staff Report is excluded from the numbering).

<sup>10</sup> Entry at ¶ 13 (April 27, 2020).

<sup>11</sup> *In the Matter of the Application of Duke Energy Ohio, Inc., for Approval of its Temporary Plan and Waiver of Tariffs and Rules Related to the COVID-19 State of Emergency*, Case No. 20-599-GE-UNC, Second Motion of Duke Energy Ohio, Inc. to Suspend Certain Limitations on Payment Plan Offerings in Ohio Administrative Code Section 4901:1-18-05 (May 4, 2020) (COVID-19 Plan Supplement).

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke Energy Ohio, Inc., for Approval of its Temporary Plan and Waiver of Tariffs and Rules Related to the COVID-19 State of Emergency.	)	)	Case No. 20-599-GE-UNC
	)	)	
In the Matter of the Application of Duke Energy Ohio, Inc., Under the Commission’s Proceedings During the Declared State of Emergency, for a Reasonable Arrangement with Customers Served Under Rates DS, DP, and TS.	)	)	Case No. 20-0856-EL-AEC
	)	)	
In the Matter of the Application of Duke Energy Ohio to Modify its Economic Competiveness Fund Rider and Request for Waivers.	)	)	Case No. 20-0857-EL-RDR

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**MEMORANDUM IN SUPPORT  
AND COMMENTS**

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**I. INTRODUCTION**

On March 9, 2020, Governor Mike DeWine declared a state of emergency in response to the COVID-19 crisis.<sup>12</sup> On March 12, 2020, the Commission directed public utilities to establish plans to reduce social contact and undue burdens on customers during the state of emergency.<sup>13</sup> Duke responded to the Entry on March 19, 2020 by filing its COVID-19 Plan to “Suspend Certain Requirements for the Duration of the State of Emergency Declared in Executive Order 2020-01D”

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<sup>12</sup> Ohio Executive Order 2020-01D, (March 9, 2020), <https://governor.ohio.gov/wps/portal/gov/governor/media/executive-orders/executive-order-2020-01-d>.

<sup>13</sup> State of Emergency Proceeding, Entry at ¶ 1 (March 12, 2019).

and supplemented its COVID-19 Plan on May 4, 2020.<sup>14</sup> Duke explained that it would start waiving late fees, returned-check charges, and, for residential customers, credit- and debit-card fees.<sup>15</sup> On April 16, 2020, as supplemented on April 17, 2020, Duke filed its Application for a reasonable arrangement pursuant to R.C. 4905.31(E).<sup>16</sup> Specifically, Duke proposed to temporarily reduce the minimum billing provisions for Rate Schedules DS, DP, and TS such that the applicable demand ratchet is lowered from 85% to 50% of the summer peak for 2019.<sup>17</sup> The demand ratchet reduction would be effective through the September 2020 billing cycle.<sup>18</sup> Duke stated that its proposal to adjust the minimum billing demand provisions is “expressly conditioned on Commission approval to defer and recover the amount of the delta revenue and of all waivers requested herein.”<sup>19</sup>

Through Duke’s proposed reasonable arrangement, Duke requested to defer the difference between amounts actually billed to customers using the reduced ratchet and the amounts that would have been billed using the currently applicable ratchet and fully recover the delta revenue through its Rider ECF.<sup>20</sup> Duke proposed to recover the delta revenue accumulated for bills rendered from May 1, 2020 through September 30, 2020, over a period not to exceed twelve months, beginning January 1, 2021.<sup>21</sup> Due to the alleged burden on Duke for the temporary reduction in cash revenue,

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<sup>14</sup> See COVID-19 Plan (March 19, 2020).

<sup>15</sup> See COVID-19 Plan and COVID-Plan Supplement.

<sup>16</sup> *In the Matter of the Application of Duke Energy Ohio, Inc., for approval of a Reasonable Arrangement*, Case No. 20-0856-EL-AEC, et al., Application at ¶¶ 13, 22 (April 16, 2020) as supplemented (April 17, 2020) (Application).

<sup>17</sup> Id. ¶ 16.

<sup>18</sup> Id. at ¶ 17.

<sup>19</sup> Id. at ¶ 16.

<sup>20</sup> Id. at ¶¶ 21, 23-24.

<sup>21</sup> Id. at ¶ 25

Duke proposed to charge manufacturers interest on the unrecovered balance of the delta revenue.<sup>22</sup> Duke proposes that such carrying cost be calculated using its long-term debt rate approved in its last rate case.<sup>23</sup> Duke further sought waivers of Ohio Adm. Code 4901:1-38-06 and 4901:1-38-08(A)(4) to forego required annual reports and to recover the delta revenue deferred with interest from commercial and industrial customers who benefit from the demand ratchet reduction.<sup>24</sup>

The Commission Staff filed its Staff Report regarding Duke's Application on April 24, 2020, as corrected on April 28, 2020.<sup>25</sup> On April 27, 2020, the Commission directed stakeholders to file motions to intervene and comments by May 7, 2020, to assist the Commission in its review of Duke's proposed reasonable arrangement.<sup>26</sup> Accordingly, OMAEG hereby files its motion to intervene and comments to Duke's Application for a reasonable arrangement, as well as Duke's deferral and cost recovery proposals.

## **II. INTERVENTION**

R.C. 4903.221, Ohio Adm. Code 4901-1-11, and Ohio Adm. Code Chapter 4901:1-38 establish the standards for intervention in Commission proceedings. R.C. 4903.221 provides, in pertinent part, that any person "who may be adversely affected" by a Commission proceeding is entitled to seek intervention in that proceeding. R.C. 4903.221(B) further requires the Commission to consider the nature and extent of the prospective intervenor's interest, the legal position advanced by the prospective intervenor and its probable relation to the merits of the case, whether the intervention by the prospective intervenor will unduly prolong or delay the proceeding, and

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<sup>22</sup> Id. at ¶ 26.

<sup>23</sup> Id.

<sup>24</sup> Id. at ¶¶ 31-32.

<sup>25</sup> See Staff Recommendation (Staff Report) (April 24, 2020).

<sup>26</sup> Entry at ¶ 13 (April 27, 2020).

the prospective intervenor's potential contribution to a just and expeditious resolution of the issues involved. Ohio Adm. Code 4901-1-11 permits intervention to a party who demonstrates a real and substantial interest in the proceeding and who is so situated that the disposition of the proceeding may impair or impede its ability to protect that interest and whose interest is not adequately represented by an existing party. Various provisions of Ohio Adm. Code Chapter 4901:1-38 authorize a party affected by a reasonable arrangement to intervene and file comments and objections to the reasonable arrangement application.

OMAEG is a non-profit entity that strives to improve business conditions in Ohio and drive down the cost of doing business for Ohio manufacturers. OMAEG members and their representatives work directly with elected officials, regulatory agencies, the judiciary, and the media to provide education and information to energy consumers, regulatory boards and suppliers of energy; advance energy policies to promote an adequate, reliable, and efficient supply of energy at reasonable prices; and advocate in critical cases before the Commission. OMAEG is a non-profit entity created by the Ohio Manufacturers' Association (OMA) for these purposes. OMAEG's members are all members of the OMA. OMAEG members purchase electric services from Duke and are subject to Rider ECF and other cost recovery mechanisms of Duke. OMAEG has been a participant in other cases before the Commission involving Duke, Duke's rates charged to customers, and other costs recovered from Duke customers.<sup>27</sup>

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<sup>27</sup> See e.g., *In the Matter of the Application of Duke Energy Ohio, Inc. for Approval to Continue Cost Recovery Mechanism for Energy Efficiency Programs through 2016*, Case No. 14-1580-EL-RDR; *In the Matter of the Application of the Duke Energy Ohio for Authority to Establish a Standard Service Officer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Service Plan, Accounting Modifications and Tariffs for Generation Service et al.*, Case Nos. 14-841-EL-SSO et al.; and *In the Matter of the Application of Duke Energy Ohio, Inc. for a Waiver to File a New Energy Efficiency and Peak Demand Reduction Portfolio Application*, Case No. 16-576-EL-WVR.

OMAEG has also been a participant in other cases involving reasonable arrangements,<sup>28</sup> and has an interest in ensuring that any benefits accruing to Duke or other customers through a reasonable arrangement, and the resultant discounted rates are just and reasonable.<sup>29</sup> OMAEG also has an interest in ensuring that all arrangements approved by the Commission further the policy of the State of Ohio prescribed by R.C. 4928.02.<sup>30</sup> Additionally, OMAEG has an interest in ensuring that no unreasonable or anticompetitive effects arise from reasonable arrangements.

OMAEG has a direct, real, and substantial interest in the issues raised in this proceeding and is so situated that the disposition of the proceeding may, as a practical matter, impair or impede its ability to protect that interest. OMAEG is regularly and actively involved in Commission proceedings and, as in previous proceedings, OMAEG's unique knowledge and perspective will contribute to the full development and equitable resolution of the issues in this proceeding. OMAEG's interest will not be adequately represented by other parties to the proceeding and its timely intervention will not unduly delay or prolong the proceeding.

Accordingly, OMAEG satisfies the criteria for intervention set out in R.C. 4903.221, Ohio Adm. Code 4901-1-11, and Ohio Adm. Code Chapter 4901:1-38. OMAEG, therefore, respectfully

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<sup>28</sup> See, e.g., *In the Matter of the Application for Establishment of a Reasonable Arrangement Between Presrite Corporation and The Cleveland Electric Illuminating Company*, Case No. 17-1981-EL-AEC, Entry at 1 (granting OMAEG's Motion to Intervene); *In the Matter of the Joint Application of Vadata, Inc. and Ohio Power Company for Approval of a Unique Economic Development Arrangement for Ohio Data Center Campuses*, Case No. 17-1827-EL-AEC, Motion to Intervene and Comments of the Ohio Manufacturers' Association Energy Group (September 21, 2017); *In the Matter of the Application of Globe Metallurgical, Inc. for Approval of a Unique Arrangement Between Ohio Power Company and Globe Metallurgical, Inc.*, Case No. 16-737-EL-AEC, Entry at 1 (August 4, 2016) (granting OMAEG's Motion to Intervene).

<sup>29</sup> Ohio Adm. Code 4901:1-38-03(A)(3) ("An electric utility and/or mercantile customer or group of mercantile customers filing an application for commission approval of an economic development arrangement bears the burden of proof that the proposed arrangement is reasonable and does not violate the provisions of sections 4905.33 and 4905.35 of the Revised Code, and shall submit to the commission verifiable information detailing the rationale for the arrangement."); R.C. 4905.35 ("No public utility shall give any undue or unreasonable preference or advantage to any . . . firm . . . or subject any . . . firm to any undue or unreasonable prejudice or disadvantage.").

<sup>30</sup> Ohio Adm. Code 4901:1-38-03(B)(1).

requests that the Commission grant this motion, allow OMAEG to intervene with the full powers and rights granted by the Commission to intervening parties, and make OMAEG a full party of record.

### III. COMMENTS

#### A. OMAEG Commends the Commission for its Actions During the State of Emergency.

OMAEG applauds the Commission for its quick response to the Governor's declared emergency in directing the utilities to consider the impact of COVID-19 on Ohio's customers.<sup>31</sup> OMAEG also thanks Duke and other utilities for responding with proposals to assist businesses during this difficult time.<sup>32</sup> Without such action, the public health and economic impact on Ohioans likely would be more severe during the COVID-19 state of emergency.

In response to the COVID-19 emergency, OMA has become a repository of information for manufacturers seeking to protect employees from the virus.<sup>33</sup> In addition, OMA has united with the Ohio Hospital Association, Ohio Manufacturing Extension Program, nursing homes, and Jobs Ohio to combat COVID-19 as the Ohio Manufacturing Alliance.<sup>34</sup> As a key member of the alliance, OMA is responsible for reaching out to manufacturing companies to promote the repurposing of operations to produce in-demand products, especially products related to healthcare to protect Ohioans. Since early April, the Alliance has worked with OMA's members to manufacture critical and essential products. Governor Mike DeWine recently stated, "the Ohio

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<sup>31</sup> Emergency Proceeding, Entry at ¶ 7.

<sup>32</sup> See Application at ¶ 4.

<sup>33</sup> See *OMA's COVID-19 Resource Page*, <https://www.ohiomfg.com/covid-19-resources/> (last accessed April 27, 2020).

<sup>34</sup> *Ohio Manufacturing Alliance Helps Company Repurpose to Produce COVID-19 Testing Swabs*, <https://repurposingproject.com/pdfs/04-24-2020-alliance-press-release.pdf> (April 24, 2020).

Manufacturing Alliance is playing a critical role in helping our manufacturing companies connect with the resources needed to keep Ohioans safe as we fight COVID-19.”<sup>35</sup> Going forward, the Alliance will continue to play a critical role in Ohio’s fight against COVID-19. OMA’s members have acted not because their revenue would cover these new COVID-19 expenses or because they would maintain the same profit margins that they had before COVID-19, but because these actions were beneficial for Ohioans. OMAEG would expect Duke and the other utilities to respond in kind and to similarly shoulder some of the burden of the emergency, especially with regard to discretionary revenues that the utility does not rely upon and routinely chooses to forego recovery of or waive. To this end, OMAEG applauds Duke for not requesting deferral authority and recovery of discretionary revenues that it has proposed to forego during this difficult time, such as late fees and certain customer charges.<sup>36</sup>

While OMAEG agrees with Staff that actions need to be taken to suspend disconnections and remove financial barriers to reconnection or continuity of service and to expand customer assistance programs,<sup>37</sup> OMAEG has concerns about Duke’s request to recover forgone revenues from customers and the potential for utility rate increases during and after the emergency. The financial pressure being applied to customers is great. Many manufacturers have also incurred unique expenses and foregone revenue during the declared emergency without a guarantee that those expenses and foregone revenue will be able to be recovered from their customers during or after the emergency. While utilities have an opportunity to earn up to an established rate of return on their investments, utilities are not guaranteed to receive such returns. Customers should not be expected to guarantee utilities’ profits and the Commission should not authorize utilities to

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<sup>35</sup> Id.

<sup>36</sup> Application at ¶ 26.

<sup>37</sup> See Staff Report at 2.

increase charges to do just that. Passing all of the utilities' costs and/or foregone revenues associated with the utilities' proposals on to customers will further harm customers who are economically vulnerable during this difficult time. Therefore, any proposals that will cause manufacturers to incur increased costs during and after the declared emergency should be scrutinized, including proposals to defer for subsequent recovery delta revenue that is created from implementing Duke's reasonable arrangement plus carrying charges.<sup>38</sup>

**B. Duke's Proposed Reasonable Arrangement Application and Cost Recovery through Rider ECF Should be Denied.**

In its Application, Duke proposed to temporarily reduce the minimum billing provisions for Rate Schedules DS, DP, and TS such that the applicable demand ratchet is lowered from 85% to 50% of the summer peak for 2019, effective through the September 2020 billing cycle.<sup>39</sup> Duke requested to defer the difference between amounts actually billed to customers using the reduced ratchet and the amounts that would have been billed using the currently applicable ratchet and fully recover the resulting delta revenue through its Rider ECF.<sup>40</sup> Duke also proposed to recover the delta revenue accumulated for bills rendered from May 1, 2020 through September 30, 2020, over a period not to exceed twelve months, beginning January 1, 2021.<sup>41</sup> Duke further proposed to recover carrying charges on the unrecovered balance of the delta revenue until it is fully recovered from customers.<sup>42</sup>

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<sup>38</sup> Application at ¶¶ 23-26.

<sup>39</sup> Id. at ¶¶ 16-17.

<sup>40</sup> Id. at ¶¶ 21, 23-24.

<sup>41</sup> Id. at ¶ 25

<sup>42</sup> Id. at ¶ 26.

Duke further sought waivers of Ohio Adm. Code 4901:1-38-06 and 4901:1-38-08(A)(4) to forego required annual reports and to recover the delta revenue deferred with interest from commercial and industrial customer classes who benefit from the demand ratchet reduction.<sup>43</sup> It is not clear from Duke’s proposal whether the delta revenue will be collected from all customers served pursuant to Rate Schedules DS, DP, and TS or only those individual customers who will directly benefit from the reduction in the minimum demand provision that creates the delta revenue.

Lastly, Duke expressly conditioned its proposal to adjust the minimum billing demand provisions on approval to defer and recover the amount of the delta revenue from the demand ratchet reduction, as well as approval of all waivers requested by Duke.<sup>44</sup>

OMAEG agrees with Duke’s assertion that “it is undeniable that the pandemic will...inflict substantial harm, including harm to those businesses that have been forced to close or have seen their production significantly reduced as a result of the state of emergency.”<sup>45</sup> However, Duke’s proposed reasonable arrangement does not just reduce antiquated demand ratchets to assist struggling manufacturers during the declared emergency. Rather, it also includes a request to recover the resulting delta revenue through Rider ECF.<sup>46</sup> OMAEG would support a proposal by Duke to forego revenues associated with reducing or even eliminating antiquated demand ratchets during the stated emergency. OMAEG, however, questions the prudence and reasonableness of Duke’s proposal to reduce minimum demand charges and collect any resulting delta revenue through a reasonable arrangement rider. Additionally, OMAEG does not support a request (if it is

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<sup>43</sup> Id. at ¶¶ 31-32.

<sup>44</sup> Id. at ¶ 16.

<sup>45</sup> Id. at ¶ 7.

<sup>46</sup> Id. at ¶ 25.

in fact Duke's request) to defer and recover from certain classes of customers the delta revenue created by providing the relief requested herein to certain individual customers within those classes through Rider ECF.

Furthermore, OMAEG does not support increasing customers' costs who have been affected by COVID-19 emergency and who are struggling by adding carrying charges to the deferred amount. Adding carrying charges until the unrecovered balance is fully recovered will only exacerbate the situation in these difficult times. Any alleged burden on Duke for the temporary reduction in cash flow is outweighed by the revenues that these customers have already lost and will continue to lose during and after the COVID-19 emergency. Unlike the utilities, these customers will not be able to defer for future recovery expenses or lost revenue associated with COVID-19.

Consistent with Commission precedent,<sup>47</sup> Duke's proposal for approval of a reasonable arrangement to recover delta revenue through Rider ECF should be denied. Duke's proposal to recover delta revenue resulting from its COVID-19 Plan is not a typical reasonable arrangement under R.C. 4905.31. Allowing Duke to use a reasonable arrangement and associated rider under R.C. 4905.31 to collect an unknown level of delta revenue associated with the COVID-19 emergency is inconsistent with the accounting standards for the deferral of foregone revenues, would create bad precedent and public policy, and could open the statute and Commission's rules up for abuse. The unknown, undefined foregone revenue created by Duke's COVID-19 Plan is not the type of revenue intended to be recovered under reasonable arrangements in Ohio Adm. Code Chapter 4901:1-38.<sup>48</sup>

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<sup>47</sup> *In the Matter of the Application of Ohio Power Company for Approval of its Temporary Plan for Addressing the COVID-19 State of Emergency*, Case No. 20-602-EL-UNC, et al., Opinion and Order at ¶ 40 (May 6, 2020).

<sup>48</sup> See Ohio Adm. Code 4901:1-38-02(A) ("The purpose of this chapter is to facilitate the state's effectiveness in the global economy, to promote job growth and retention in the state, to ensure the availability of reasonably priced

Given that Duke’s proposal is not a typical reasonable arrangement, there may be other recovery options that are more appropriate, as Staff recognized, including a repayment of the benefit received by customers who were provided relief.<sup>49</sup> The Commission recognized the benefits of such alternatives when it denied Ohio Power Company’s proposal for a reasonable arrangement for forgone revenue associated with its COVID-19 plan and instead ordered the company to initiate an optional extended payment plan mechanism for commercial and industrial customers.<sup>50</sup> There may also be other government assistance specifically related to COVID-19 that may not require other customers to face more or increased costs during the COVID-19 emergency or during the recovery phase of the emergency.

In its application for a reasonable arrangement, Duke has not projected or estimated the level of delta revenue associated with the demand ratchet reduction or the amount of carrying charges that it anticipates deferring for future recovery from customers. Ohio Adm. Code Chapter 4901:1-38 requires that an application for approval of a reasonable arrangement include certain verifiable information about the terms and conditions of the proposed arrangement, including rationale for the arrangement and/or information on all associated incentives, estimated billings without incentives, and annual estimated delta revenues for the term of the incentives. An economic development arrangement filed pursuant to Ohio Adm. Code 4901:1-38-03 requires additional information:

(B) An electric utility, mercantile customer, or group of mercantile customers of an electric utility may file an application for an economic development arrangement between the electric utility and its customer or group of customers for the retention

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electric service, to promote energy efficiency and to provide a means of giving appropriate incentives to technologies that can adapt successfully to environmental mandates in furtherance of the policy of the state of Ohio embodied in section 4928.02 of the Revised Code.”).

<sup>49</sup> Staff Report at 3.

<sup>50</sup> *In the Matter of the Application of Ohio Power Company for Approval of its Temporary Plan for Addressing the COVID-19 State of Emergency*, Case No. 20-602-EL-UNC, et al., Opinion and Order at ¶ 40 (May 6, 2020).

of an existing customer(s) likely to cease, reduce, or relocate its operations out of state. The application shall include a copy of the proposed arrangement and provide information on all associated incentives, estimated annual electric billings without incentives for the term of the incentives, and annual estimated delta revenues for the term of the incentives.

(1) Each customer requesting to take service pursuant to an economic development arrangement with the electric utility shall describe the general status of the customer in the community and how such arrangement furthers the policy of the state of Ohio embodied in section [4928.02](#) of the Revised Code.

(2) Each customer requesting to take service pursuant to an economic development arrangement with the electric utility shall, at a minimum, meet the following criteria, submit to the electric utility verifiable information detailing how the criteria are met, and provide an affidavit from a company official as to the veracity of the information provided:

(a) Eligible projects shall be for non-retail purposes.

(b) The number of full-time or full-time equivalent jobs to be retained shall be at least twenty-five.

(c) The average billing load (in kilowatts to be retained) shall be at least two hundred fifty kilowatts.

(d) The customer shall demonstrate that the cost of electricity is a major factor in its decision to cease, reduce, or relocate its operations to an out-of-state site. In-state relocations are not eligible. If the customer has the potential to relocate to an out-of-state site, the site(s) shall be identified, along with the expected costs of electricity at the site(s) and the expected costs of other significant expenses including, but not limited to, labor and taxes.

(e) The customer shall identify any other local, state, or federal assistance sought and/or received in order to maintain its current operations.

(f) The customer shall agree to maintain its current operations for the term of the incentives.

Duke has failed to provide in its Application the information required for approval of an economic development arrangement or any other type of reasonable arrangement. Duke's application is, therefore, insufficient and additional information is necessary to determine the reasonableness of Duke's proposal prior to Commission approval.

Finally, the Commission should consider whether the reasonable arrangement is just and reasonable,<sup>51</sup> furthers the policy of the state of Ohio prescribed by R.C. 4928.02,<sup>52</sup> and whether any unreasonable or anticompetitive effects arise from the arrangement. A Commission-approved reasonable arrangement should balance any purported benefits to individual customers with the costs required to achieve such benefits. The cost-benefit analysis should consider the amount and level of the delta revenue that will be paid for by other customers and the impact on all customers' bills during the COVID-19 emergency and during the subsequent recovery period. The Commission should ensure there is proper alignment between benefits received under the reasonable arrangement by customers and the cost of Duke's proposed program to other customers.

**C. The Uncertainty of the Deferral Amounts is Problematic.**

OMAEG has concerns regarding the uncertainty of the deferral amounts. The level of delta revenue plus carrying charges that Duke is seeking deferral authority, and how the delta revenue will be allocated and recovered from customers in the future is unknown and uncertain. The uncertainty associated with the level of delta revenue that Duke proposes to recover from customers in the future is concerning as many customers will be struggling to recover for several months or possibly years from the economic crisis that occurred as a result of COVID-19. OMAEG has concerns about the implications of Duke's deferral requests on customers' rates in the future. To help limit the level of delta revenue deferred if deferral authority is granted, OMAEG recommends that Duke's Application be limited initially to a ninety-day period.

Accordingly, if the Commission approves deferral authority, the Commission should limit the time period over which delta revenue is created, disallow the collection of carrying charges,

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<sup>51</sup> Ohio Adm. Code 4901:1-38-03(A)(3).

<sup>52</sup> Ohio Adm. Code 4901:1-38-03(B)(1).

and ensure that any costs recovered from customers are just, reasonable, and were prudently incurred. The foregone revenues authorized to be deferred should be limited and should only be authorized if absolutely necessary to prevent harm to Duke.

#### **IV. CONCLUSION**

For the reasons stated herein, OMAEG satisfies the standards set forth in R.C. 4903.221, Ohio Adm. Code 4901-1-11, and Ohio Adm. Code Chapter 4901:1-38, and is authorized to intervene with the full powers and rights that the Commission grants to intervening parties. Accordingly, OMAEG respectfully requests that the Commission grant its motion to intervene, allow OMAEG to intervene with the full powers and rights granted by the Commission to intervening parties, and make OMAEG a full party of record. OMAEG further requests that the Commission give due consideration to the comments articulated herein.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

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Summary: Motion Motion To Intervene And Comments By The Ohio Manufacturers' Association Energy Group electronically filed by Ms. Cheryl A Smith on behalf of The Ohio Manufacturers' Association Energy Group