

In the Matter of the Application for)
Establishment of a Unique Arrangement)
Between the Northeast Ohio Regional) Case No. 21-0715-EL-AEC
Sewer District and The Cleveland Electric)
Illuminating Company.)

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1. The Northeast Ohio Regional Sewer District (“District” or “NEORS”) submits this Application for Approval of a Unique Arrangement (“Arrangement”) to the Public Utilities Commission of Ohio (“Commission”) pursuant to Ohio Revised Code (“R.C.”) 4905.31 and Ohio Adm. Code 4901:1-38-05(B). Through this application, the District seeks Commission authorization to participate in a pilot program offered by its electric utility that will allow it to lower its transmission costs through prudent energy management, without any direct subsidy for those costs from other ratepayers.

2. The District is a public utility district, organized under Ohio Revised Code Chapter 6119, which was created in 1972 in order to provide regional wastewater treatment and sewer services in Cleveland and surrounding communities.¹ It qualifies as a mercantile customer pursuant to R.C. 4928.01(A)(19).

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3. The District manages stormwater flows in the Cleveland region and treats more wastewater than any other wastewater treatment system in the State of Ohio. It owns and operates three wastewater treatment plants: the Westerly and Easterly plants in Cleveland, and the Southerly plant in Cuyahoga Heights.

4. The Southerly plant is within the certified service area of The Cleveland Electric Illuminating Company (“CEI”). CEI is an electric light company as defined by R.C. 4905.03(A)(3), and a public utility as defined by R.C. 4905.02, and is therefore subject to the jurisdiction of the Commission.

5. The District’s treatment plants process tens of billions of gallons of wastewater every year, reducing pollution and improving water quality. The District also manages the regional sewer system conveying wastewater from local communities to its treatment plants.

6. The District serves approximately 305,000 residential accounts and 14,000 non-residential accounts, representing approximately one million individual customers.

7. Of the District’s residential accounts, over 22,000 currently participate in its Homestead and Affordability programs, which offer a 40% rate reduction for eligible customers. The Homestead program is open to customers who are 65 and older or who are disabled, with total household income of less than \$34,500 per year. The Affordability program is open to homeowners with an annual income at or below 200% of the poverty level. The District is evaluating expanding this program to those with an annual income at or below 250% of the poverty level, as well as including renters.

8. This significant level of participation in the District’s cost-saving programs for income-eligible customers reflects the fact that its service territory suffers high rates of poverty.

A full 40% of District households earn less than 200% of the federal poverty level, compared to 28.9% in the United States overall.

9. The District has a long history of improving and protecting the environment and public health. As part of its strategic plan, it has focused on customer and community connections by investing almost \$40 million in local sewer system evaluation studies (“SSES”) since 2016 to assist member communities with technical support to address their wastewater management issues, including basement back-ups, sanitary sewer overflows, illicit discharges and failing septic systems. Building on local SSES findings, the District also provides annual funding through the Member Community Infrastructure Program (“MCIP”) for communities to design and/or construct sewer infrastructure to address water quality and water quantity issues that adversely impact human health and the environment. Since 2017, the District has provided \$32.5 million in funding and has committed another \$75 million in the next rate cycle. The District also partnered with the Cleveland Metroparks to construct the Watershed Stewardship Center in Parma, OH to expand watershed and environmental education efforts.

10. The District also seeks to support economic development in conjunction with environmental protection. In 2013, the District implemented the Good Neighbor Ambassador program to further connect with the communities it serves—and to integrate community outreach with career opportunities for unemployed and underemployed individuals in neighborhoods impacted by District construction projects. The Good Neighbor Ambassadors act as liaisons between the District and general public and participate in educational and professional development opportunities to prepare them for full-time employment. The District also participates and sponsors educational programming throughout its service area. It is a lead

sponsor in the Architecture Construction Engineering Mentor Program of Cleveland at Collinwood High School and it sponsors the Louis Stokes Scholarship at Central State University to specifically target future wastewater professionals through the school's water resources program.

PROJECT CLEAN LAKE

11. As part of carrying out its federal Clean Water Act compliance obligations and pursuant to a federally enforceable consent decree, the District is undertaking major capital investments to address discharges from its regional sewer system during major rainfall events through "Project Clean Lake."² The City of Cleveland and older inner-ring suburbs in areas served by the District have combined sewers, in which one pipe conveys both stormwater and sanitary sewage. A combined sewer overflow, or CSO, occurs when these large sewers are filled beyond capacity (typically due to storms causing significant volumes of stormwater runoff), and stormwater mixed with untreated raw sewage discharges through outfalls to Lake Erie or a nearby waterway. The District's investments in its sewer system are intended to prevent or mitigate these CSO events, reducing discharge of untreated sewage to open waters and improving water quality for the region. Many of the areas where the District seeks to reduce sewer system overflows have been identified as Environmental Justice areas based on low-income and high-minority demographics by the Northeast Ohio Areawide Coordinating Agency.

12. Project Clean Lake involves a program of construction to build new sewer storage tunnels and increase treatment plant capacity, along with "green infrastructure" investments in

² NEORS, About Project Clean Lake, <https://www.neorsd.org/community/about-the-project-clean-lake-program> (last visited April 27, 2021).

community measures to control stormwater and prevent it from reaching the sewer system in the first place. These efforts, which will cost approximately \$3 billion over the course of 25 years, are designed to reduce the total volume of raw sewage discharges from 4.5 billion gallons each year to just 494 million gallons. Over 98% of wet weather flows in the District's combined sewer system will be captured and treated when the program is complete in 2036.

13. As a result of Project Clean Lake, there will be a significant reduction in untreated CSO discharged to Lake Erie and the receiving waters of Euclid Creek, Doan Brook, Dugway Brook, Big Creek, Rocky River, Mill Creek and the Cuyahoga River, which will improve the water quality of these water bodies and improve recreation at Edgewater and Euclid/Villa Angela Beaches. The District's Water Quality department has conducted water chemistry and biological sampling of these water bodies to quantify historical improvements in water quality and will continue to monitor improvements due to Project Clean Lake and other District initiatives. Improvements to water quality directly benefit the most vulnerable communities, including in Environmental Justice Areas, that live near and recreate in or near these water resources and the Northeast Ohio region.

14. The District sets its sewer rates every five years following a comprehensive study of anticipated expenditures, including infrastructure investments like Project Clean Lake.

15. The costs of Project Clean Lake have contributed significantly to large increases in the District's cost of service and its rates, and are projected to result in further rate increases over the next decade, as summarized in Table 1 below. The District estimates that, by 2031, its residential rates will have increased by over 1000% from 1997 levels. In recent years, the District instituted an annual rate increase of 8.3% for 2017 through 2021, increasing the average

residential sewer bill by about \$4 per month. The District has proposed annual rate increases for its Board of Trustees’ consideration of 4.2% for 2022 to 2026, which would increase a typical customer’s bill by approximately \$3.20 per month on average. The estimated monthly wastewater bill in 2022 for a typical customer is \$71 and in 2026 it is projected to be \$84 – compared to just \$52 for a typical customer as recently as 2016.

Table 1

Year		Typical Monthly Residential Wastewater Bill	Typical Annual Residential Wastewater Bill
2016		\$52.31	\$627.72
2017	Current Rate Cycle	\$56.48	\$677.76
2018		\$60.95	\$731.40
2019		\$65.76	\$789.12
2020		\$70.92	\$851.04
2021		\$76.45	\$917.40
2022	Proposed Rate Cycle	\$70.90	\$850.80
2023		\$73.90	\$886.80
2024		\$77.02	\$924.24
2025		\$80.24	\$962.88
2026		\$83.63	\$1,003.56

16. As part of its efforts to address affordability concerns resulting from these past and anticipated rate increases, the District is seeking to expand eligibility in its Affordability Program to allow more low-income customers to enroll, in parallel with aggressively seeking out cost savings across its operations.

THE DISTRICT’S COST-SAVING EFFORTS

17. The District has undertaken extensive, effective steps over the last several years to reduce its operating and capital costs in order to mitigate potential rate increases for its

customers. These have included refinancing of bonds for sewer construction, value engineering on awarded construction projects, and a range of operational savings initiatives, producing total cost reductions of over \$600 million. Overall, these efforts have allowed the District to propose an annual rate increase of 4.2% for 2022-2026 rather than the 9% anticipated in the District's 2016 rate study.

18. The District's wastewater treatment functions are acutely energy intensive, with electricity costs representing the second highest category of operating costs, after labor, for the Southerly plant.

19. With respect to these significant energy costs, the District has similarly sought cost savings at every available opportunity. It has long shopped for energy in order to reduce supply costs. It has also obtained permits for non-emergency use of back-up generators at the Southerly plant, and invested in required upgrades of air pollution control equipment for those generators, in order to allow their use in management of the District's demand to reduce its electricity bills.

20. In fall 2019, the District entered into a five-year agreement with a third-party energy services company, Enel X, to use the generators to achieve generation cost savings through the PJM Interconnection, LLC ("PJM") Emergency Load Reduction Program and overall management of its peak demand to reduce its Peak Load Contribution.

21. The District is currently unable to use these back-up generators to effectively reduce transmission costs under CEI's Non-Market-Based Services Rider ("Rider NMB"), through which CEI recovers charges including Network Integration Transmission Service ("NITS") charges imposed by the Federal Energy Regulatory Commission or PJM.

22. CEI bills the Southerly plant as a General Transmission (“GT”) customer. Rider NMB charges for GT customers are based on the customer’s kilovolt-amps (“kVa”) of Billing Demand, relevantly defined as the highest thirty (30) minute integrated kVa per month, regardless of when that occurs. The District projects Rider NMB costs of approximately \$650,000 for 2021/2022.

23. Rider NMB’s rate design does not reflect PJM’s methodology for determining NITS charges applicable to CEI customers in the American Transmission System, Inc. (“ATSI”) transmission zone. PJM calculates a customer’s NITS “tag” for ATSI based on kilowatt (“kW”) consumption during the five highest peak hours (“5 CP”) for the ATSI transmission zone in a given year.

24. Enel X has offered to assist the District in reducing its NITS tag through participation in Enel X’s Predictive Alerting Services program, which uses predictive modeling capabilities to alert the District to reduce its demand during potential windows that will set the relevant 5 CP transmission system peaks. However, even if the District utilizes the Southerly back-up generators to lower its kW consumption during anticipated 5 CP hours and decrease its NITS tag accordingly, it would not reduce its actual billed transmission charges under Rider NMB because its monthly Billing Demand would simply be calculated based on its kVa demand during a 30-minute period outside those on-peak hours. Therefore, if the District continues to receive transmission service from CEI under Rider NMB, it will not have any appreciable incentive to lower its NITS tag because doing so would not lower its Rider NMB charges enough to offset the costs and effort of running the Southerly Plant’s back-up generators.

25. The windows of time that are likely to set zonal peaks for the ATSI zone and form a basis for the District's NITS tags often do not overlap with the overall PJM peaks on which the District's capacity charges are based. Therefore, the District's ongoing efforts to manage its peak demand to lower its capacity costs are unlikely to result in lower NITS tags.

26. To the extent the District does successfully reduce its demand during anticipated peak times on the transmission grid, the need for additional investment in transmission facilities will be decreased. The cost of such transmission investments is generally socialized across all ratepayers in the relevant transmission zone.

THE RIDER NMB OPT-OUT PILOT

27. In the most recent Electric Security Plan case for CEI and its affiliate FirstEnergy distribution utilities, Ohio Edison Company and The Toledo Edison Company, the Commission approved consolidated stipulation documents ("Stipulations") that provide for a pilot program under which certain specific customers are permitted to opt out of Rider NMB and instead obtain all transmission and ancillary services through a retail supplier ("Rider NMB Opt-Out Pilot").³ The Commission explained that this program would further Ohio's policy of facilitating the state's effectiveness in the global economy, in accordance with R.C. 4928.02(N), by allowing industrial customers to pursue "substantial savings by obtaining certain transmission services outside of Rider NMB without imposing significant costs on other customers."⁴

³ ("*FirstEnergy ESP IV Case*"), Case No. 14-1297-EL-SSO, Opinion and Order (Mar. 31, 2016) at 18-19, 73-74, 94, 112.

⁴ *Id.* at 94.

28. In its Fifth Entry on Rehearing in the *FirstEnergy ESP IV Case*, the Commission noted that:

[a]lthough the Stipulations provide one avenue for customer participation in the Rider NMB pilot program, the Stipulations do not provide the only avenue. Customers who may benefit from participation in the Rider NMB pilot program should work with Staff and the Companies to determine if the customers' participation is appropriate, and the customer may then file an application with the Commission under R.C. 4905.31 for permission to participate in the Rider NMB pilot program, and the Commission will determine if such participation is in the public interest.⁵

29. Accordingly, through this Application, the District seeks approval from the Commission to participate in the Rider NMB Opt-Out Pilot. Participation in the Pilot would allow the District to obtain transmission services through a third party, with the District billed for those services based on its actual 5 CP demand. This would enable the District to effectively reduce its transmission charges through demand management utilizing its back-up generation capabilities, producing significant savings for the District and consequently its ratepayers.

TERMS AND CONDITIONS OF THE UNIQUE ARRANGEMENT

30. The District seeks participation in the Rider NMB Opt-Out Pilot under the same terms and conditions applicable to customers already participating pursuant to the Stipulations approved by the Commission in the *FirstEnergy ESP IV Case*.⁶ All other terms and conditions of service would be governed by the applicable provisions of the CEI tariffs.

⁵ *FirstEnergy ESP IV Stipulation Case*, Fifth Entry on Rehearing (Oct. 12, 2016) at 139; *see also FirstEnergy ESP IV Stipulation Case*, Eighth Entry on Rehearing (Aug. 16, 2017) at 42.

⁶ In accordance with the FirstEnergy ESP IV Case Order, the District contacted CEI and Commission Staff regarding this Application. CEI has indicated to the District that it takes a neutral position at this time, and Staff has not raised any objection to the filing of the Application.

31. Upon approval of this Application and execution of an agreement with CEI, the District would be authorized to participate in the Rider NMB Opt-Out Pilot and would be exempt from standard Rider NMB rates as of January 1, 2022.

32. The term of the arrangement would be the full duration of the Rider NMB Opt-Out Pilot, including any successor program approved by the Commission in future cases.

33. Within this proposed term, the District also requests that it be permitted to seek modification of the arrangement so that it can be altered, with Commission approval, as circumstances and conditions may warrant. No modification shall become effective without the Commission's prior approval.

34. Upon reasonable notice to CEI, the District may terminate this arrangement before the end date of the term as approved by the Commission.

35. The proposed arrangement would not include any delta revenue in the traditional sense. The Rider NMB Opt-Out Pilot provides for the District to be billed for transmission service separately from CEI customers. Thus, approval of the District's participation in the Pilot will not increase any costs billed by PJM to CEI. At the retail level, this unique arrangement aligns the allocation of transmission costs with the PJM wholesale allocation methodology. Therefore, to the extent it results in the reassignment of costs within the District's customer class, it will simply represent a reversal of the existing intra-class cost subsidization that exists under the standard non-bypassable Rider NMB. Moreover, to the extent the District is not able to reduce its electricity costs through participation in the Rider NMB Opt-Out Pilot, the continuing costs charged to the District under Rider NMB will be incorporated into rates for the District's customers going forward.

36. The proposed arrangement would be subject to such other terms and conditions as are customary. For example and for illustration purposes only, there should be standard provisions to address default and insolvency by either party, provisions to facilitate the confidential exchange of information between the parties, provisions regarding documentation and mutual cooperation to address regulatory or other requirements including the duty to provide annual reports to CEI as required by Commission rule, provisions to address resolution of any conflicts between the arrangement and any otherwise applicable schedule, and provisions designed to facilitate the resolution of any disputes.

CONSISTENCY OF THE ARRANGEMENT WITH OHIO LAW AND POLICY

37. The District's Application meets the applicable criteria for a unique arrangement under R.C. 4905.31 and Ohio Adm. Code 4901:1-38-05(B).⁷

⁷ On April 30, 2021, and as revised on May 18, 2021, the Commission filed new versions of the rules in Ohio Administrative Code Chapter 4901:1-38 as updated in Case No. 18-1191-EL-ORD for review by the Joint Committee on Agency Rule Review. Among other proposed revisions, the filing would provide that a mercantile customer may only file a unique arrangement under Rule 4901:1-38-05 if it is not eligible for an economic development arrangement under Rule 4901:1-38-03 or an energy efficiency arrangement under Rule 4901:1-38-04. The proposed revisions would also include changing the current mandatory minimum criteria for an economic development arrangement under Rule 4901:1-38-03 – which the District's proposed arrangement does not currently satisfy with respect to job creation requirements – to instead be non-required factors that the Commission "will consider" as relevant to its review. To the extent these rule changes take effect while this Application is pending, the District respectfully requests that the Commission consider approving the proposed arrangement pursuant to either Rule 4901:1-38-03 or Rule 4901:1-38-05, whichever it deems applicable. Under either rule, the merits of the proposed arrangement remain just and reasonable, in the public interest, and consistent with Ohio policy under R.C. 4928.02.

38. The proposed arrangement is reasonable and does not violate the provisions of R.C. 4905.33 and 4905.35. The District's participation in the Rider NMB Opt-Out Pilot on equal footing with existing Pilot participants is not anti-competitive or discriminatory.

39. Approval of the proposed arrangement would further a number state policies under R.C. 4928.02 by:

- Ensuring the availability of reasonably priced retail electric service for the District consistent with R.C. 4928.02(A);
- Providing the District with the ability to effectively choose a third-party supplier that meets its needs, consistent with R.C. 4928.02(B) and (C);
- Facilitating market access for the demand-side management services provided by the District's vendor Enel X consistent with R.C. 4928.02(D);
- Implementing flexible regulatory treatment that accommodates the continuing emergence of competitive electricity markets, consistent with R.C. 4928.02(G); and
- Perhaps most importantly, facilitating the state's effectiveness in the global economy consistent with R.C. 4928.02(N). In the case of this Application, this impact does not come in the form of lowering the District's costs for purposes of vying with out-of-state competitors. Rather, it comes through enabling cost savings that will help mitigate significant affordability issues for the District's customer base within Ohio, potentially saving them millions of dollars going forward that they will then be able to spend in support of Ohio's economy and their own well-being.

40. The proposed arrangement also fulfills the majority of the criteria considered as relevant by the Commission in its decision in *In the Matter of the Application of North Star BlueScope Steel LLC for Approval of a Reasonable Arrangement with Toledo Edison Company* ("*BlueScope*"), including "[w]hether the applicant's business is acutely energy intensive or has a distinct energy profile"; "[w]hether the applicant has made a commitment to investing in Ohio either in a new investment or support of a new industry"; "[w]hether the economic impact of the

applicant's project on the region will be significant and meets the minimum requirements of Ohio Adm.Code 4901:1-38-03"; "[w]hether the applicant has explored or taken advantage of other opportunities for operational savings such as a basic budgetary management, shopping for or self-generating electricity, energy efficiency, and participation in utility or regional transmission organizations' conservation or reliability programs"; and "[w]hether the benefits to the community of the project outweigh the costs imposed on other retail customers because of the reasonable arrangement."⁸ Of particular note:

- The District's operations are acutely energy intensive in part due to the significant electricity consumption of its Southerly wastewater treatment plant, which also offers a distinct energy profile given its ability to reduce its demand on the grid by operating its back-up generators.
- Through Project Clean Lake, the District is undertaking an investment of billions of dollars in Ohio to provide significant water quality benefits, along with positive economic impact through employment and local procurement.
- The District has already made best efforts to achieve cost savings through other measures such as bond refinancing, operational changes, and other energy management measures.
- Although the arrangement will not produce traditional economic development benefits in the form of creating new jobs or retaining existing jobs, as explained above it will produce substantial cost savings for the District that will help mitigate continuing rate affordability concerns resulting from the need to undertake Project Clean Lake to comply with the federal Clean Water Act. The District has over 20,000 low-income households currently participating in its Homestead and Affordability programs, and anticipates increased enrollment if it is able to expand eligibility as planned. To the extent the District is able to help control rate increases for these customers, as well as the rest of its ratepayers, through cost savings realized under the proposed arrangement, the budgets of hundreds of thousands of households and businesses in northern Ohio will face less strain. Those District customers will then be in a better position to contribute

⁸ *BlueScope*, Case No. 19-950-EL-AEC, Finding and Order (June 5, 2019) at 3-4.

positively to the local economy and the community at large, including in CEI's service territory.

41. The proposed arrangement is also consistent with Commission precedent approving a similar proposal for a customer of Ohio Power Company, Earth 'N Wood, a waste-to resource company that manufactures and distributes landscape materials.⁹

42. For all of the reasons stated above, the proposed arrangement will serve the public interest, consistent with the Commission's statements in the *FirstEnergy ESP IV Case* Fifth Entry on Rehearing regarding the Rider NMB Opt-Out Pilot.¹⁰

43. To the extent that the relief requested in this Application requires a waiver of any filing requirements of Ohio Adm. Code Chapter 4901:1-1-38, the District requests such a waiver.

44. Through the attached Affidavit, the District submits that it has met its burden of proof to demonstrate that the proposed Arrangement is just and reasonable, consistent with Ohio law, and in the public interest.

45. Because the proposed arrangement is just and reasonable, the District request that the Commission approve this application without a hearing.

REQUEST FOR EXPEDITED RULING

46. The District requests that the Commission approve this Application on an expedited basis, *i.e.*, within sixty days.

⁹ *In the Matter of the Application for Establishment of a Reasonable Arrangement Between Earth 'N Wood Company and Ohio Power Company*, Case No. 19-2098-EL-AEC, Finding and Order (Jan. 29, 2020).

¹⁰ *FirstEnergy ESP IV Stipulation Case*, Fifth Entry on Rehearing (Oct. 12, 2016) at 139.

47. Expedited consideration is critical because, in order to manage its 5 CP demand and lower its NITS tag to produce future bill savings through the Rider NMB Opt-Out Pilot, the District must incur fuel costs over summer 2021 when transmission system peaks are likely to occur. The District seeks a decision from the Commission regarding its participation in the Pilot as soon as possible to minimize unneeded expenditures.

CONCLUSION

48. For the foregoing reasons, the District urges the Commission to:
- A. Find that the arrangement proposed in this Application is just, reasonable, and in the public interest;
 - B. Promptly authorize and approve a unique arrangement between CEI and the District on the terms and conditions generally described herein; and
 - C. Grant such additional relief as is appropriate.

June 18, 2021

Respectfully submitted,

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CERTIFICATE OF SERVICE

The e-filing system of the Public Utilities Commission of Ohio will electronically serve notice of the filing of this document on the parties referenced in the service list of the docket card who have electronically subscribed to this case. In addition, the undersigned certifies that a copy of the foregoing document is also being served upon the persons listed below via electronic mail on June 18, 2021.

/s/ Madeline Fleisher
Madeline Fleisher

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Summary: Application Application for Unique Arrangement electronically filed by Ms. Madeline Fleisher on behalf of Northeast Ohio Regional Sewer District