

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE APPLICATION
FOR ESTABLISHMENT OF A UNIQUE
ARRANGEMENT BETWEEN THE
NORTHEAST OHIO REGIONAL SEWER
DISTRICT AND THE CLEVELAND
ELECTRIC ILLUMINATING COMPANY.

CASE NO. 21-715-EL-AEC

FINDING AND ORDER

Entered in the Journal on October 6, 2021

I. SUMMARY

{¶ 1} The Commission finds that the application for a reasonable arrangement between Northeast Ohio Regional Sewer District and the Cleveland Electric Illuminating Company is reasonable and should be granted.

II. PROCEDURAL HISTORY

{¶ 2} R.C. 4905.31 authorizes the Commission to approve reasonable electric services arrangements between an electric utility and a mercantile customer or group of mercantile customers. R.C. 4928.01(A)(19) defines "mercantile customer" to mean a commercial or industrial customer that consumes more than 700,000 kilowatt hours of electricity per year for nonresidential use, or the customer is part of a national account involving multiple facilities in one or more states. Ohio Adm.Code 4901:1-38-03 and 4901:1-38-05 provide rules for the filing of applications, pursuant to R.C. 4905.31, for approval of economic development and unique arrangements that further the policy of the state of Ohio embodied in R.C. 4928.02.

{¶ 3} The Cleveland Electric Illuminating Company (CEI) is an electric light company, as defined by R.C. 4905.03(A)(3), and a public utility, as defined under R.C. 4905.02 and, as such, is subject to the jurisdiction of this Commission.

{¶ 4} On June 18, 2021, Northeast Ohio Regional Sewer District (the District or Applicant) filed an application for approval of a unique arrangement with CEI pursuant to

Ohio Adm.Code Chapter 4901:1-38-05 (Arrangement). According to the application, the District is a mercantile customer, as defined in R.C.4928.01(A)(19). Applicant processes tens of billions of gallons of wastewater every year, reducing pollution and improving water quality, and it manages the regional sewer system conveying wastewater from local communities to its treatment plants. One of the District's facilities, the Southerly plant (Facility), is within the certified service area of CEI. (Application at 1-2.)

{¶ 5} Under the proposed Arrangement, the District, during a term commencing on January 1, 2022, seeks relief from CEI's Rider NMB charges through participation in the Rider NMB Opt-Out Pilot (NMB Pilot), 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. Applicant seeks participation in the NMB Pilot under the same terms and conditions applicable to customers already participating pursuant to the Stipulations approved by the Commission. *In re the Application of Ohio Edison Co., The Cleveland Elec. Illum. Co., and The Toledo Edison Co. for Authority to Provide for a Standard Service Offer Pursuant to R.C. 4928.143 in the Form of an Electric Security Plan*, Case No. 14-1297-EL-SSO (*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. The District asks that the term of the arrangement be the full duration of the NMB Pilot, including any successor program approved by the Commission in future cases. Applicant also notes that approval of the Arrangement will not increase any costs billed by PJM to CEI. (Application at 9-11.)

{¶ 6} Pursuant to Ohio Adm.Code 4901:1-38-05(B)(2), on June 18, 2021, counsel for the District filed an affidavit executed by the Applicant's Executive Chief Operating Officer, James Bunsey, verifying the accuracy of the information included in the application.

{¶ 7} On September 15, 2021, Staff filed a report of its review of the proposed Arrangement (Staff Report). Staff's opinion is that the application is consistent with the

Commission's rules governing approval of unique arrangements and, therefore, recommends that the Commission approve the application, with the term of the Arrangement to begin on January 1, 2022. Staff notes however, that as a pilot, the number of customers participating in the NMB Pilot should be limited until the NMB Pilot has been fully reviewed and a determination has been made by the Commission that the program is in the best interest of all customers. Staff notes that they recommend approval for this application only because of the unique combination of factors demonstrated by the District, including the benefits that will be passed on to the Applicant's customers, the future benefits to other CEI customers as a result of reduced peak demand, the furthering of state policies, and numerous other criteria.

III. REVIEW OF THE PROPOSED ARRANGEMENT

{¶ 8} R.C. 4905.31 provides that a public utility may enter into a reasonable arrangement with one of its customers and that a public utility may request recovery of costs incurred in conjunction with any economic development and job retention program of the utility. Ohio Adm.Code 4901:1-38-03 authorizes an electric utility, with one or more of its mercantile customers, to file an application for approval to enter into an economic development arrangement and prescribes certain verifiable information to be included within the application. Ohio Adm.Code 4901:1-38-05 authorizes either an electric utility or a mercantile customer to file an application for approval to enter into a unique arrangement, but unlike the economic development arrangement, no certain verifiable information is required of the applicant by our rules other than proof that the proposed arrangement is "reasonable" and that information is submitted detailing the rationale for the arrangement. Additionally, the arrangement must not violate R.C. 4905.33 or R.C. 4905.35, which prohibit the utility from providing service at discriminatory rates, or for free, or less than actual cost for the purpose of destroying competition.

{¶ 9} The District is a mercantile customer served by CEI in its certified service territory. Applicant processes tens of billions of gallons of wastewater every year and manages the regional sewer system conveying wastewater from local communities to its treatment plants. The District's wastewater treatment functions are acutely energy intensive, with the Facility's electricity costs representing the second highest category of operating costs, after labor. Notably, 40% of households served by the Applicant earn less than 200% of the federal poverty level, as compared to 28.9% in the United States overall. The District currently offers an Affordability Program, which offers a 40% rate reduction for eligible homeowners with an annual income at or below 200% of the poverty level. Additionally, the Applicant has invested almost \$40 million in local sewer system evaluation studies to address wastewater management issues and has provided \$32.5 million and committed an additional \$75 million to design and/or construct sewer infrastructure to address water quality and water quantity issues that adversely impact human health and the environment. (Application at 1-3, 7.)

{¶ 10} As part of carrying out its federal Clean Water Act compliance obligations, the District is undertaking major capital investments to address discharges from its regional sewer system during major rainfall events. The City of Cleveland and other suburbs served by the District have combined sewers, in which one pipe conveys both stormwater and sanitary sewage. A combined sewer overflow (CSO) occurs when these large sewers are filled beyond capacity, typically due to storms, and stormwater mixed with untreated raw sewage discharges through outfalls to Lake Erie or a nearby waterway. Applicant'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. These efforts will cost approximately \$3 billion over the course of 25 years and are designed to reduce the total volume of raw sewage discharges from 4.5 billion gallons each year to just 494 million gallons per year. These costs 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. Applicant estimates that, by 2031, its residential rates

will have increased by over 1000% from 1997 levels. 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. In an effort to address affordability concerns, the District is seeking to expand its Affordability Program and implement cost savings across its operations. Recent cost saving efforts have allowed the Applicant to propose an annual rate increase of 4.2% for 2022-2026 rather than the 9% anticipated in its 2016 rate study. (Application at 4-7.)

{¶ 11} The District has also sought cost savings of energy costs by purchasing back-up generators for the Facility, but Applicant states that it is currently unable to use the generators to reduce transmission costs under CEI's Non-Market-Based Services Rider (Rider NMB). Rider NMB charges the District based on the highest 30-minute integrated kilovolt-amps (kVa) per month, regardless of when that occurs. Applicant projects Rider NMB costs of approximately \$650,000 for 2021/2022. In 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. However, this program would not reduce the District's actual billed transmission charges under Rider NMB because it is simply calculated based on its kVa demand during a 30-minute period outside those on-peak hours. Applicant states that if it continues to receive transmission service from CEI under Rider NMB, reducing its demand during anticipated peak times would not lower its Rider NMB charges enough to offset the costs and effort of running the generators. Applicant also states that to the extent it successfully reduces its demand during anticipated peak times on the transmission grid, the need for additional investment in transmission facilities will be decreased, which would reduce costs across all ratepayers in the transmission zone. (Application at 7-9.)

{¶ 12} The Commission notes the unique facts and circumstances of this case, including the District's commitment to undertake major capital investments to reduce CSO

events thereby improving water quality in the region, the District's ongoing efforts to reduce costs and thereby minimize rate increases for its customers, as well as other unique circumstances detailed in the application and Staff Report.

{¶ 13} The Commission finds that, in light of the unique facts and circumstances of this case, Staff's recommendation for approval, no comments being filed opposing the Arrangement, and the convincing detailed rationale for the Arrangement, the Applicant has met its burden of proof for obtaining a reasonable arrangement under Ohio Adm.Code Chapter 4901:1-38. Therefore, the Arrangement should be approved. However, the Commission notes that consideration of future applications to participate in the NMB Pilot will be carefully scrutinized to ensure there are no adverse impacts to non-pilot customers.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶ 14} CEI is an electric light company, as defined by R.C. 4905.03(A)(3), and a public utility, as defined under R.C. 4905.02 and, as such, is subject to the jurisdiction of this Commission.

{¶ 15} The District is currently CEI's customer and qualifies as a mercantile customer, as defined by R.C. 4928.01(A)(19).

{¶ 16} On June 18, 2021, the District filed an application pursuant to Ohio Adm.Code Chapter 4901:1-38, for approval of a reasonable arrangement, pursuant to R.C. 4905.31.

{¶ 17} On June 18, 2021, and pursuant to Ohio Adm.Code 4901:1-38-05(B)(2), counsel for the Applicant filed an affidavit executed by the District's Executive Chief Operating Officer, James Bunsey, verifying the accuracy of the application.

{¶ 18} No comments were filed opposing the approval of the application.

{¶ 19} On September 15, 2021, Staff filed its report recommending that the Commission approve the Arrangement.

{¶ 20} The proposed Arrangement has met the burden of proof for obtaining a reasonable arrangement under Ohio Adm.Code Chapter 4901:1-38. Furthermore, the proposed Arrangement does not violate R.C. 4905.33 or 4905.35 and constitutes a unique arrangement in accordance with R.C. 4905.31. Therefore, we find that the proposed Arrangement is reasonable and should be approved.

V. ORDER

{¶ 21} It is, therefore,

{¶ 22} ORDERED, That the application for the District for a reasonable arrangement with CEI be approved. It is, further,

{¶ 23} ORDERED, That Applicant file an executed contract implementing the Arrangement and take all necessary steps to carry out the terms of this Finding and Order. It is, further,

{¶ 24} ORDERED, That nothing in this Finding and Order shall be binding upon the Commission in any future proceeding or investigation involving the justness or reasonableness of any rate, charge, rule, or regulation. It is, further,

{¶ 25} ORDERED, That a copy of this Finding and Order be served upon each party of record.

COMMISSIONERS:

Approving:

Jenifer French, Chair
M. Beth Trombold
Lawrence K. Friedeman
Dennis P. Deters

JWS/mef

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10/6/2021 2:30:44 PM

in

Case No(s). 21-0715-EL-AEC

Summary: Finding & Order finding that the application for a reasonable arrangement between Northeast Ohio Regional Sewer District and the Cleveland Electric Illuminating Company is reasonable and should be granted. electronically filed by Ms. Mary E. Fischer on behalf of Public Utilities Commission of Ohio