BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application for Establishment of a Reasonable Arrangement Between Arkon Energy USA, LLC and Ohio Power Company	))))	Case No. 23-0546-EL-AEC

REPLY COMMENTS OF ARKON ENERGY USA, LLC

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In the Matter of the Application for	)	
Establishment of a Reasonable	)	
Arrangement Between Arkon Energy	)	Case No. 23-0546-EL-AEC
USA, LLC and Ohio Power Company	)	

REPLY COMMENTS OF ARKON ENERGY USA, LLC

Arkon Energy USA, LLC ("Arkon") respectfully requests that the Public Utilities Commission of Ohio ("Commission") approve its unopposed Application for a Reasonable Arrangement. Arkon is prepared to invest more than $50 million and hire more than 50 full-time employees in the state of Ohio. However, in order to move forward with this investment and hiring, Arkon needs the rate certainty and stability that is provided under the billing methodology utilized for customers participating in the Ohio Power Company ("AEP Ohio") Basic Transmission Cost Rider Pilot ("BTCR Pilot") program. Arkon's filing is consistent with the Commission's prior directive that customers like Arkon should seek Commission approval through the reasonable arrangement process to obtain access to the transmission pilot billing outcome.[1]

While AEP Ohio indicates that it does not oppose Arkon gaining access to the transmission pilot billing outcome, AEP Ohio seeks to unduly delay this proceeding until the results of litigation or settlement and a Commission decision occur in its pending

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[1] *See In re Ohio Edison Company, The Cleveland Electric Illuminating Company, and the Toledo Edison Company*, Case No. 14-1297-EL-SSO, Eighth Entry On Rehearing (Aug. 16, 2017) at P. 95-97 (rejecting FirstEnergy's argument that the Commission expanded the Rider NMB Opt-Out pilot program when it directed that customers who may benefit from participation may file an application under R.C. 4905.31.).

electric security plan ("ESP") proceeding.[2] Such a delay is unnecessary and unreasonable. AEP Ohio's proposed ESP V will not affect rates until June 1st of 2024. Moreover, AEP Ohio has proposed to continue the BTCR Pilot program and retain the transmission pilot billing outcome for the duration of the proposed ESP.[3] This is consistent with other Ohio service territories. The Dayton Power and Light Company ("AES Ohio") has a pending, and unopposed, settlement provision that would expand its transmission pilot billing outcome.[4] Likewise, FirstEnergy has proposed to expand its transmission pilot billing outcome in its currently pending ESP application.[5] All signs point to the retention and expansion of the transmission pilot billing outcome across the state of Ohio, including the AEP Ohio service territory. Therefore, it is not clear why this proceeding should be unduly delayed.

Finally, in the event that the Commission were to reverse course on the transmission pilot billing outcome at some point in the future, the Commission would still retain continuing oversight over this reasonable arrangement.[6] Accordingly, Arkon respectfully requests that the Commission expeditiously approve its Application for a

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[2] AEP Ohio Motion to Intervene and Comments (June 2, 2023).

[3] *In re Ohio Power Company for Authority to Establish a Standard Service Offer*, Case No. 23-23-EL-SSO, et al., Direct Testimony of Jaime L. Mayhan (Jan. 6, 2023) at 24 ("The Company also proposes to continue the *** Basic Transmission Cost Rider Pilot through the end of the ESP V period.").

[4] *In re Application of The Dayton Power and Light Company d/b/a AES Ohio, Case No. 22-900-EL-SSO, et al.*, Stipulation and Recommendation (Apr. 10, 2023) at 29 ("AES Ohio will bill all non-residential customers taking service at primary voltage and above, and any non-residential customers taking service at secondary voltage that opt-in, for all TCRR demand charges on the basis of their Network Service Peak Load (NSPL).").

[5] *In re Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company*, Case No. 23-301-EL-SSO, Direct Testimony of Juliette Lawless (Apr. 5, 2023) at 10 ("The Rider NMB Pilot is no longer needed since the proposed changes to Rider NMB are designed to essentially replace the current Rider NMB Pilot and apply to an expanded group of customers.").

[6] *See, e.g., In re Earth 'N Wood*, Case No. 19-2098-EL-AEC, Reasonable Arrangement Agreement (Feb. 10, 2020) at 4 ("The parties understand and agree that the Commission shall have continuing jurisdiction."), approved by Finding and Order (Jan. 19, 2020).

Reasonable Arrangement to secure the investment and jobs outlined in Arkon's application.

I. It Would Be Unreasonable To Delay A Decision In This Case Until AEP Ohio's Next ESP Begins In June 2024.

The Commission should deny AEP Ohio's request to hold this case in abeyance. AEP Ohio recommends that this case be held in abeyance pending the outcome of the ESP V case because the timing is awkward and could become problematic.[7] However, Arkon has not intervened in the ESP V case but is instead separately seeking to be billed based on its NSPL demand pursuant to a reasonable arrangement. The reasonable arrangement would result in a billing outcome consistent with customers on the BTCR Pilot program, but without delaying the rate certainty until the BTCR Pilot enrollment window or the start of AEP Ohio's next ESP. The Commission should review Arkon's application consistent with Commission precedent that "each reasonable arrangement application . . . should be evaluated on its own merits, in light of the benefits received by the parties to the arrangement, the electric utility's ratepayers, and the state of Ohio."[8]

As noted above, Arkon is seeking to be billed based on its demand during the AEP Transmission Zone 1 Coincident Peak (*i.e*., based on its NSPL demand). This will align cost incurrence with the billing methodology and send the appropriate pricing signal for Arkon to reduce its consumption during times of system constraints (that is, during peak demand hours). Rate design that sends a price signal to curtail during the system peak, *i.e.* the transmission pilot billing outcome, produces system-wide benefits in the form of avoided utility investment as customers curtail usage during the system peaks.

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[7] AEP Ohio Motion to Intervene and Comments (June 2, 2023).

[8] *In re Ohio Power Company for Authority to Establish a Standard Service Offer*, Case No. 13-2385-EL-SSO, Opinion and Order (Feb. 25, 2015), *citing In re Ohio Edison Company and V&M Star*, Case No. 09-80-EL-AEC, Opinion and Order (Mar. 4, 2009) at 7; see also,

Further, while AEP Ohio alleges that Arkon's application could be mooted if the BTCR Pilot program is extended through 2030, the pending ESP application does not affect the transmission pilot over essentially the next 12 months. This is because ESP V is not scheduled to begin until June 1, 2024. In any event, Arkon is not a participant in the ESP V case and cannot dictate the outcome of that case (in fact, the intervention deadline in the ESP V case had passed before Arkon had opened an account with AEP Ohio). AEP Ohio does not oppose Arkon gaining access to the transmission pilot billing outcome and has not offered any reasonable basis to unduly delay the date by which Arkon could begin to be billed consistent with the transmission pilot billing outcome.

II. The Status Of AEP Ohio's BTCR Pilot Program Does Not Affect Arkon's Application Because The Commission Maintains Continuing Statutory Authority Under R.C. 4905.31 To Approve A Reasonable Arrangement.

The Commission does not need to wait for the results of litigation or settlement in AEP Ohio's ESP V before ruling on Arkon's application. The Commission retains independent statutory authority under R.C. 4905.31 to approve reasonable arrangements.[9] Arkon has filed its application consistent with Ohio law and Commission precedent which allow for mercantile customers to obtain rate certainty to support economic development and job retention in the state of Ohio.

Even if AEP Ohio's ESP V were to theoretically result in termination of the BTCR Pilot program, Ohio law and Commission precedent would still authorize mercantile customers to file applications for reasonable rate arrangements. And the Commission would still have authority to approve these reasonable arrangements. R.C. 4905.31 provides that a public utility may enter into a reasonable arrangement with one of its

[9] *In re Ohio Edison Company, The Cleveland Electric Illuminating Company, and the Toledo Edison Company*, Case No. 14-1297-EL-SSO, Eighth Entry On Rehearing (Aug. 16, 2017) at P. 97 ("The Commission has broad authority under R.C 4905.31 to approve reasonable arrangements between electric distribution utilities and mercantile customers ***.").

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. Likewise, 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. Further, 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. 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. These statutes and rules provide that mercantile customers like Arkon may file applications to establish reasonable rate arrangements, regardless of the outcome of a separate ESP proceeding.

Moreover, the Commission retains ongoing oversight over reasonable arrangements. Therefore, if something were to change regarding Arkon's reasonable arrangement or the BTCR Pilot program, the Commission could still address these unforeseen issues at a later date. Numerous mercantile customers have applied for arrangements like the one requested by Arkon. And, when an application demonstrates benefits to the state of Ohio such as capital investment and hiring, the Commission often approves these types of arrangements.[10] Arkon's application is just and reasonable,

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[10] *See, e.g., In re Nestle Purina PetCare Co*., Case No. 22-932-EL-AEC, Finding and Order (Dec. 14, 2022); *In re Toshi CMC, LLC*, Case No. 21-1205-EL-AEC, Finding and Order (June 1, 2022); *In re Campbell Soup Supply Company, LLC,* Case No. 21-1047-EL-AEC, Opinion and Order (June 1, 2022); In re Northeast Ohio Regional Sewer District, Case No. 21-715-EL-AEC, Finding and Order (Oct. 6, 2021); *In re Earth 'N*

consistent with Ohio law, and has demonstrated benefits to AEP Ohio, its customers, and the state of Ohio. Therefore, Arkon requests that the Commission expeditiously approve its application just like the Commission has approved arrangements for other mercantile customers across the state of Ohio.

III. Conclusion

Arkon respectfully requests that the Commission expeditiously approve its Application for a Reasonable Arrangement. The reasonable arrangement will provide Arkon with the rate certainty necessary to proceed with making capital investment and hiring decisions. AEP Ohio does not oppose the substance of Arkon's application, and Arkon requests that the Commission deny AEP Ohio's request to hold this case in abeyance.

Wood Company, Case No. 19-2098-EL-AEC, Finding and Order (Jan. 28, 2020); In re PRO-TEC Coating Company, LLC, Case No. 19-124-EL-AEC, Finding and Order (Feb. 27, 2019).

CERTIFICATE OF SERVICE

In accordance with Ohio Adm.Code 4901-1-05, the Commission's e-filing system will electronically serve notice of the filing of this document upon the interested parties, this 15th day of June 2023. The following parties were provided by electronic mail a copy of this document:

/s/ Matthew Pritchard
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