

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE APPLICATION FOR
ESTABLISHMENT OF A REASONABLE
ARRANGEMENT BETWEEN OHIO POWER
COMPANY AND NEW ALBANY DATA
CENTER, LLC.

CASE NO. 23-891-EL-AEC

FINDING AND ORDER

Entered in the Journal on February 7, 2024

I. SUMMARY

{¶ 1} The Commission finds that the application for a reasonable arrangement between Ohio Power Company and New Albany Data Center, LLC is reasonable and should be approved.

II. DISCUSSION

{¶ 2} R.C. 4905.31 authorizes the Commission to approve reasonable electric service 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 4901:1-38-05 provides rules for the filing of applications, pursuant to R.C. 4905.31, for approval of reasonable arrangements that, among other things, further the policy of the state of Ohio embodied in R.C. 4928.02.

{¶ 3} Ohio Power Company d/b/a AEP Ohio (AEP Ohio) is an electric light company as defined in R.C. 4905.03(C), and a public utility as defined in R.C. 4905.02 and, therefore, is subject to the Commission's jurisdiction. New Albany Data Center, LLC (NADC) is a mercantile customer as defined by 4928.01.

{¶ 4} On September 28, 2023, AEP Ohio and NADC¹ (Joint Applicants) filed an application, pursuant to R.C. 4905.31, seeking approval of a reasonable arrangement (Application). The Application states that NADC is developing the Silicon Heartland Data Center Campus, a state-of-the-art data center project located in New Albany, Ohio. The data centers on campus will provide up to 1.5 million square feet of purpose-built data center space explicitly designed for hyperscale companies and other major operators in the Columbus, Ohio area. Lincoln Rackhouse is currently estimated to invest over \$500 million in the project. Construction of the site will employ hundreds of workers from multiple industries. When completed, the data centers will support 25-50 highly skilled, full-time employees in high-paying positions. (Application at 2-3.)

{¶ 5} According to the Application, the proposed arrangement would allow the Joint Applicants to enter into a lease agreement permitting NADC to receive and pay for transmission service based on a modified electric service charge during the term of the lease. Joint Applicants state all parties and stakeholders will benefit from the arrangement. Specifically, NADC will benefit from AEP Ohio's expertise in building and maintaining substations, and the financial flexibility that comes from the lease's financing structure. AEP Ohio will benefit because the lease payments will cover its entire capital investment during the lease period, including its return on equity and costs of maintaining equipment. Further, AEP Ohio's other customers will benefit because NADC will pay 50 percent of the difference between transmission and primary voltage service, allowing AEP Ohio to realize a substantial portion of the revenue differential between the two types of service to offset costs for customers. (Application at 8.)

{¶ 6} Specifically, Joint Applicants propose the following terms for the arrangement:

¹ NADC is a joint venture owned by two companies, Lincoln Property Company (Lincoln Rackhouse) and Harrison Street Real Estate Capital LLC (Harrison Street).

- a. Upon Commission approval of the arrangement, Joint Applicants will enter into an equipment lease agreement in which NADC will lease substation equipment from AEP Ohio. The equipment that is the subject of the lease agreement will be excluded from plant in service.
- b. Under the lease agreement, AEP Ohio will construct, own, and operate and maintain a dedicated 300 MVA, N+1 substation that will serve both the NADC load and other customer load in the area – specifically, NADC will lease two 50 MVA 138/34.5 kV LTC transformers; two 2000A, 38 kV circuit breakers; and two retail meters.
- c. Under the lease agreement, NADC will make payments to AEP Ohio to compensate AEP Ohio for its full cost of capital (including depreciation, taxes and return on equity) on the substation equipment and for its maintenance of the leased equipment during the term of the lease.
- d. If NADC's load grows beyond the capacity of the initially leased equipment, the parties will update NADC's service agreement contract capacity, and the formula lease charge, if needed, to account for added equipment and changes to AEP Ohio's weighted average cost of capital.
- e. The initial term of the lease will be eight years, and the Joint Applicants may agree to one or more eight-year renewals of the lease.
- f. In addition to the lease agreement, the agreement will allow NADC to pay a modified electric service charge during the term of the lease. Specifically, NADC will take service from AEP Ohio's general service transmission schedule rate during the first year of the lease. During the remaining term and any renewal terms, NADC will pay a discounted rate that is calculated as the general transmission schedule rate plus the mid-point (arithmetic mean) between (i) NADC's base distribution charge under AEP Ohio's general

service transmission voltage rate and (ii) NADC's base distribution charge under AEP Ohio's general service primary voltage rate. NADC will pay general service transmission schedule rider rates.

- g. This arrangement will not produce delta revenue.
- h. If the lease terminates without renewal, AEP Ohio will place the depreciated net book value of the leased equipment in its plant in service to be used to serve all customers, and NADC will take service under AEP Ohio's standard general service primary voltage rate.

(Application at 3-6.)

{¶ 7} No comments were filed in opposition to the proposed arrangement.

{¶ 8} On December 7, 2023, Staff filed its review and recommendation regarding the Application. Staff stated its opinion that the arrangement proposed in the Application adheres to the requirements for a reasonable arrangement and recommends approval, subject to the following modifications:

- a. Should NADC and AEP Ohio terminate this arrangement, Staff recommends that Joint Applicants be required to file notice in the docket no later than 30 days before the effective date of such termination. The arrangement shall be deemed to be terminated on the proposed date in the notice (provided that such date is at least 30 days after the notice is filed) unless the Commission rules otherwise.
- b. Joint Applicants propose that the lease agreement be subject to renewal by the parties. Staff recommends that this reasonable arrangement be approved for the initial eight-year term of the lease agreement. Any continuation beyond that initial term would require a new application and subsequent Commission approval.

- c. Staff recommends that approval of this reasonable arrangement should not predetermine the equipment's inclusion in plant in service, including whether it is used and useful.

{¶ 9} No correspondence was filed in response to Staff's recommended modifications.

{¶ 10} 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 4901:1-38-05 authorizes an electric utility, with one or more of its mercantile customers, to file an application for approval to enter into a reasonable arrangement, and prescribes certain verifiable information to be included within the application. This rule further provides that an applicant prove that the proposed arrangement is reasonable and submit information 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.

{¶ 11} NADC is a mercantile customer served by AEP Ohio in its certified service territory (Application at 6). The Application notes that the operation of the Silicon Heartland Data Center Campus will be extremely energy-intensive and reliable electric service was an important factor in NADC's decision to locate the data center in Central Ohio (Application at 9). Absent Commission approval of the reasonable arrangement, Joint Applicants claim NADC could construct its own dedicated substation and take lower-cost service under AEP Ohio's transmission voltage tariff; however, the reasonable arrangement offers an alternative to benefit all parties involved, as well as AEP Ohio's other customers. Namely, according to the Application, AEP Ohio's other customers benefit because NADC will pay 50 percent of the difference between transmission and primary voltage service, allowing AEP Ohio to realize a substantial portion of the revenue differential between the two types of service to offset costs for customers. (Application at 7-9.)

{¶ 12} The Joint Applicants entered into the proposed reasonable arrangement to take advantage of the notable benefits identified in the Application, as discussed above. Furthermore, the proposed arrangement also achieves the goal of further economic development in the local community and Ohio by providing the community with an estimated 25-50 skilled workers and by maintaining Lincoln Rackhouse's \$500 million investment in the community (Application at 3).

{¶ 13} The Commission finds that the Joint Applicants provided the information required by R.C. 4905.31 and Ohio Adm.Code 4901:1-38-05, and that, in light of Staff's conditioned recommendation for approval, no comments being filed opposing the Application, and the convincing detailed rationale for the reasonable arrangement, the Joint Applicants have met their burden of proof for obtaining a reasonable arrangement under Ohio Adm.Code Chapter 4901:1-38. However, we agree with Staff's recommended conditions, including that our approval of this arrangement will not predetermine the equipment's inclusion in plant in service or whether it is used and useful, and, thus, adopt Staff's recommended conditions. Finally, we also agree that the arrangement does not violate R.C. 4905.33 or R.C. 4905.35.

{¶ 14} For the reasons explained above, we find that AEP Ohio and NADC's proposed arrangement is reasonable and should be approved, as modified by Staff.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶ 15} AEP Ohio is an electric light company as defined in R.C. 4905.03(C), and a public utility as defined in R.C. 4905.02 and, therefore, is subject to the Commission's jurisdiction.

{¶ 16} NADC is a mercantile customer as defined by 4928.01.

{¶ 17} On September 28, 2023, AEP Ohio and NADC jointly filed an application, pursuant R.C. 4905.31, seeking approval of a reasonable arrangement.

{¶ 18} On December 7, 2023, Staff filed its review and recommendation regarding the Application. Staff stated its opinion that the arrangement proposed in the Application adheres to the requirements for a reasonable arrangement and recommends its approval, subject to conditions and modifications summarized above.

{¶ 19} The proposed arrangement meets 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. Therefore, we find that the proposed arrangement, as modified by Staff, is reasonable and should be approved.

IV. ORDER

{¶ 20} It is, therefore,

{¶ 21} ORDERED, That AEP Ohio and NADC's joint application for a reasonable arrangement be approved as modified by Staff. It is, further,

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

{¶ 23} ORDERED, That a copy of this Finding and Order be served upon all parties of record.

COMMISSIONERS:

Approving:

Jenifer French, Chair
Daniel R. Conway
Lawrence K. Friedeman
Dennis P. Deters
John D. Williams

JWT/dr

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Case No(s). 23-0891-EL-AEC

Summary: Finding & Order that the Commission finds that the application for a reasonable arrangement between Ohio Power Company and New Albany Data Center, LLC is reasonable and should be approved electronically filed by Ms. Donielle M. Hunter on behalf of Public Utilities Commission of Ohio.