

Chapter 4901:1-38

Reasonable Arrangements

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4901:1-38-01 **Definitions.**

- (A) "Affidavit" means a written declaration made under oath before a notary public or other authorized officer.
- (B) "Commission" means the public utilities commission of Ohio.
- (C) "Delta revenue" means the deviation resulting from the difference in rate levels between the otherwise applicable rate schedule and the result of any reasonable arrangement approved by the commission.
- (D) "Electric utility" shall have the meaning set forth in division (A)(11) of section 4928.01 of the Revised Code.
- (E) "Energy efficiency production facilities" means any customer that manufactures or assembles products that promote the more efficient use of energy (i.e., increase the ratio of energy end use services (i.e., heat, light, and drive power) derived from a device or process to energy inputs necessary to derive such end use services as compared with other devices or processes that are commonly installed to derive the same energy use services); or, any customer that manufactures, assembles or distributes products that are used in the production of clean, renewable energy.
- (F) "Mercantile customer" shall have the meaning set forth in division (A)(19) of section 4928.01 of the Revised Code.
- (G) "Nonfirm electric service" means electric service provided pursuant to a schedule filed under section 4905.30 or 4928.141 of the Revised Code, or pursuant to an arrangement under section 4905.31 of the Revised Code, which schedule or arrangement includes conditions that may require the customer to curtail or interrupt electric usage during nonemergency circumstances upon notification by the electric utility.
- (H) "Staff" means the staff of the commission or its authorized representative.

4901:1-38-02 Purpose and scope.

- (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 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.
- (B) The commission may waive any requirement of Chapter 4901:1-38 of the Administrative Code for good cause shown.

4901:1-38-03 **Economic development arrangements.**

- (A) An electric utility, mercantile customer, or group of mercantile customers of an electric utility may file an application for commission approval for an economic development arrangement between the electric utility and a new or expanding customer or group of customers.
- (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 and the commission 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) At least twenty-five new, full-time or full-time equivalent jobs shall be created within three years of initial operations.
 - (c) The average hourly base wage rate of the new, full-time or full-time equivalent jobs shall be at least one hundred fifty per cent of the federal minimum wage.
 - (d) The customer shall demonstrate financial viability.
 - (e) The customer shall identify local (city, county), state, or federal support in the form of tax abatements or credits, jobs programs, or other incentives.
 - (f) The customer shall identify potential secondary and tertiary benefits resulting from its project including, but not limited to, local/state tax dollars and related employment or business opportunities resulting from the location of the facility.
 - (g) The customer shall agree to maintain operations at the project site for the term of the incentives.
 - (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 as to the reasonableness of the arrangement requested and shall submit to the commission verifiable information detailing the rationale for the arrangement.
- (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 of an existing customer(s) likely to cease, reduce, or relocate its operations out of state.

- (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.
 - (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 as to the reasonableness of the arrangement requested and shall submit to the commission verifiable information detailing the rationale for the arrangement.
- (C) Upon the filing of an economic development application, the commission may fix a time and place for a hearing if the application appears to be unjust or unreasonable.
- (1) The economic development arrangement shall be subject to change, alteration, or modification by the commission.

- (2) The staff shall have access to all customer and electric utility information related to service provided pursuant to the economic development arrangements.
- (D) Customer information provided to demonstrate eligibility under paragraphs (A) and (B) of this rule shall be treated by the electric utility as confidential.

4901:1-38-04 Energy efficiency arrangements.

- (A) An electric utility, mercantile customer, or group of mercantile customers of an electric utility may file an application for commission approval for an energy efficiency arrangement between the electric utility and its customer or group of customers that have new or expanded energy efficiency production facilities.
- (1) Each customer requesting to take service pursuant to an energy efficiency 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 energy efficiency arrangement with the electric utility shall 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) The customer shall be an energy efficiency production facility as defined in this chapter.
 - (b) At least ten new, full-time or full-time equivalent jobs shall be created within three years of initial operations.
 - (c) The average hourly base wage rate of the new, full-time, or full-time equivalent jobs shall be at least one hundred fifty per cent of federal minimum wage.
 - (d) The customer shall demonstrate financial viability.
 - (e) The customer shall identify local (city, county), state, or federal support in the form of tax abatements or credits, jobs programs, or other incentives.
 - (f) The customer shall agree to maintain operations at the project site for the term of the incentives.
 - (3) An electric utility and/or mercantile customer or group of mercantile customers filing an application for commission approval of an energy efficiency arrangement bears the burden of proof as to the reasonableness of the arrangement requested and shall submit to the commission verifiable information detailing the rationale for the arrangement.
- (B) Upon the filing of an energy efficiency application, the commission may fix a time and place for a hearing if the application appears to be unjust or unreasonable.
- (1) The energy efficiency arrangement shall be subject to change, alteration, or modification by the commission.

- (2) The staff shall have access to all customer and electric utility information related to service provided pursuant to the energy efficiency arrangements.
- (C) Customer information provided to demonstrate eligibility under paragraph (A) of this rule shall be treated by the electric utility as confidential.

4901:1-38-05 **Unique arrangements.**

- (A) Notwithstanding rules 4901:1-38-03 and 4901:1-38-04 of the Administrative Code, an electric utility may file an application pursuant to section 4905.31 of the Revised Code for commission approval of a unique arrangement with one or more of its customers, consumers, or employees.
- (1) An electric utility filing an application for commission approval of a unique arrangement with one or more of its customers, consumers, or employees bears the burden of proof as to the reasonableness of the arrangement and shall submit to the commission verifiable information detailing the rationale for the arrangement.
 - (2) Upon the filing of an application for a unique arrangement, the commission may fix a time and place for a hearing if the application appears to be unjust or unreasonable.
 - (3) The unique arrangement shall be subject to change, alteration, or modification by the commission.
- (B) A mercantile customer, or a group of mercantile customers, of an electric utility may apply to the commission for a unique arrangement with the electric utility.
- (1) Each customer applying for a unique arrangement bears the burden of proof as to the reasonableness of the arrangement and shall submit to the commission and the electric utility verifiable information detailing the rationale for the arrangement.
 - (2) The customer shall provide an affidavit from a company official as to the veracity of the information provided.
 - (3) Upon the filing of an application for a unique arrangement, the commission may fix a time and place for a hearing if the application appears to be unjust or unreasonable.
 - (4) The unique arrangement shall be subject to change, alteration, or modification by the commission.
- (C) Each applicant applying for approval of a unique arrangement between an electric utility and one or more of its customers, consumers, or employees shall describe how such arrangement furthers the policy of the state of Ohio embodied in section 4928.02 of the Revised Code.
- (D) Unique arrangements shall reflect terms and conditions for circumstances for which the electric utility's tariffs have not already provided.

4901:1-38-06 Reporting requirements.

- (A) Each customer served under any reasonable arrangement established pursuant to this chapter shall submit an annual report to the electric utility and staff no later than April thirtieth of each year. The format of that report shall be determined by staff such that a determination of the compliance with the eligibility criteria can be determined, the value of any incentives received by the customer(s) is identified, and the potential impact on other customers can be calculated.
- (B) The burden of proof to demonstrate ongoing compliance with the reasonable arrangement lies with the customer(s). The electric utility shall summarize the reports provided by customers under paragraph (A) of this rule and submit such summary to staff for review and audit no later than June fifteenth of each year.

4901:1-38-07 **Level of incentives.**

- (A) The level of the incentives associated with any reasonable arrangement established pursuant to this chapter shall be determined as part of the commission's review and approval of the applications filed pursuant to this chapter. Incentives shall only be applicable to the service(s) taken from the electric utility by the customer receiving the incentives.
- (B) Incentives may be based on, but not limited to:
- (1) Demand discounts.
 - (2) Percentages of total bills, or portions of bills.
 - (3) Direct contributions.
 - (4) Reflections of cost savings to the electric utility.
 - (5) Shared savings.
 - (6) Some combination of the required criteria.
- (C) Upon commission approval of an application, the reasonable arrangement, as approved, shall be:
- (1) Posted on the commission's docketing information system.
 - (2) Accessible through the commission's web site.
 - (3) Under the supervision and regulation of the commission, and subject to change, alteration, or modification by the commission.

4901:1-38-08 **Revenue recovery.**

- (A) Each electric utility that is serving customers pursuant to approved reasonable arrangements, may apply for a rider for the recovery of certain costs associated with its delta revenue for serving those customers pursuant to reasonable arrangements in accordance with the following:
- (1) The approval of the request for revenue recovery, including the level of such recovery, shall be at the commission's discretion.
 - (2) The electric utility may request recovery of direct incremental administrative costs related to the programs as part of the rider. Such request shall be subject to audit, review, and approval by the commission.
 - (3) For reasonable arrangements in which incentives are given based upon cost savings to the electric utility (including, but not limited to, nonfirm arrangements, on/off peak pricing, seasonal rates, time-of-day rates, real-time-pricing rates), the cost savings shall be an offset to the recovery of the delta revenues.
 - (4) The amount of the revenue recovery rider shall be spread to all customers in proportion to the current revenue distribution between and among classes, subject to change, alteration, or modification by the commission. The electric utility shall file the projected impact of the proposed rider on all customers, by customer class.
 - (5) The rider shall be updated and reconciled, by application to the commission, semiannually. All data submitted in support of the rider update shall be subject to commission review and audit.
- (B) If it appears to the commission that the proposals in the application may be unjust and unreasonable, the commission shall set the matter for hearing.
- (1) At such hearing, the burden of proof to show that the revenue recovery rider proposal in the application is just and reasonable shall be upon the electric utility.
 - (2) The revenue recovery rider shall be subject to change, alteration, or modification by the commission.
 - (3) The staff shall have access to all customer and electric utility information related to service provided pursuant to the reasonable arrangements that created the delta revenue triggering the electric utility's application to recover the costs associated with said delta revenue.

4901:1-38-09 Failure to comply.

- (A) If the customer being provided with service pursuant to a reasonable arrangement established pursuant to this chapter fails to substantially comply with any of the criteria for eligibility, the electric utility, after reasonable notice to the customer, shall terminate the arrangement unless otherwise ordered by the commission.
- (B) The commission may also direct the electric utility to charge the customer for all or part of the incentives previously provided by the electric utility.
- (C) If the customer is required to pay for all or part of the incentives previously provided, the recovered amounts shall be reflected in the calculation of the revenue recovery rider established pursuant to rule 4901:1-38-08 of the Administrative Code.