BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of PCC Airfoils, LLC and Ohio Edison Company for Approval of a Special Arrangement with a Mercantile Customer.	))))	Case No. 09-1200-EL-EEC

FINDING AND ORDER

The Commission finds:

(1) On July 28, 2009, Ohio Edison Company (Ohio Edison) filed a joint application with PCC Airfoils, LLC (PCC Airfoils) (collectively, Applicants) for an exemption from Rider DSE2 for PCC Airfoils (Joint Application). Rider DSE2 is the mechanism by which Ohio Edison recovers from customers the costs associated with compliance with the energy efficiency and demand reduction requirements set forth in Section 4928.66, Revised Code.

(2) Section 4928.66, Revised Code, requires electric utilities to implement energy efficiency programs that achieve certain energy efficiency and demand reduction savings from established benchmarks. Section 4928.66(A)(2)(c), Revised Code, allows an electric utility to include, for purposes of compliance with said benchmarks, "mercantile customer-sited energy efficiency and peak demand reduction programs."

(3) Rule 4901:1-39-05(G), Ohio Administrative Code (O.A.C.), authorizes a mercantile customer to file, either individually or jointly with an electric utility, an application to commit the customer's demand reduction, demand response, or energy efficiency programs for integration with the electric utility's demand reduction, demand response, and energy efficiency programs, pursuant to Section 4928.66(A)(2)(d), Revised Code.

(4) An application filed pursuant to Rule 4901:1-39-05(G), O.A.C., shall:

(a) Address coordination requirements between the electric utility and the mercantile customer with regard to voluntary reductions in load by the mercantile customer, which are not part of an

electric utility program, including specific communication procedures.

(b) Grant permission to the electric utility and staff to measure and verify energy savings and/or peak-demand reductions resulting from customer-sited projects and resources.

(c) Identify all consequences of noncompliance by the customer with the terms of the commitment.

(d) Include a copy of the formal declaration or agreement that commits the mercantile customer's programs for integration, including any requirement that the electric utility will treat the customer's information as confidential and will not disclose such information except under an appropriate protective agreement or a protective order issued by the Commission pursuant to Rule 4901-1-24, O.A.C.

(e) Include a description of all methodologies, protocols, and practices used or proposed to be used in measuring and verifying program results, and identify and explain all deviations from any program measurement and verification guidelines that may be published by the Commission.

(5) An application to commit a mercantile customer program for integration pursuant to Rule 4901:1-39-05, O.A.C., may also include a request for an exemption from the cost recovery mechanism set forth in Rule 4901:1-39-07, O.A.C. See Rule 4901:1-39-08, O.A.C. To be eligible for this exemption, the mercantile customer must consent to providing an annual report on the energy savings and electric utility peak-demand reductions achieved in the customer's facilities in the most recent year.

(6) Further, under Section 4928.66, Revised Code, if a mercantile customer makes an existing or new demand response, energy efficiency, or peak demand reduction capability available to an electric utility pursuant to Section 4928.66(A)(2)(c), Revised Code, the electric utility's baseline must be adjusted to exclude

the effects of all such demand-response, energy efficiency, or peak demand reduction programs that may have existed during the period used to establish the baseline.

(7) Ohio Edison is a public utility as defined in Section 4905.02, Revised Code, and, as such, is subject to the jurisdiction of this Commission.

(8) PCC Airfoils is a mercantile customer as defined in Section 4928.01(A)(19), Revised Code.

(9) The Joint Application explains that, on December 12, 2008, May 11, 2009, and May 22, 2009, respectively, PCC Airfoils installed a compressed air conservation system, replaced a 300 horsepower compressor with a 200 horsepower compressor, and implemented a T8 lamp retrofit project. In addition, the Joint Application contains a request for a mercantile commitment pursuant to Rule 4901:1-39-05, O.A.C., and a request for a mercantile rider exemption, as set forth in Rule 4901:1-39-08, O.A.C.

(10) On August 13, 2009, the Office of the Ohio Consumers' Counsel (OCC) filed a motion to intervene in this proceeding, stating that the interests of Ohio's residential consumers may be adversely affected by this case, in the event that PCC Airfoils' energy savings are not sufficient under the requirements set forth in Section 4928.66, Revised Code, and consumers have to pay additional costs toward Rider DSE2.

(11) On August 28, 2009, Ohio Edison filed a memorandum contra OCC's motion to intervene, alleging that residential customers will not be adversely affected by the outcome of this proceeding, and that OCC's concerns regarding the actual savings achieved through mercantile projects generally should be addressed in a proceeding in which a compliance demonstration is a component.

(12) On August 31, 2009, the Ohio Environmental Council (OEC) filed a motion to intervene, asserting that there is a danger that if the energy savings justifying PCC Airfoils' exemption from Rider DSE2 are insufficient, Ohio Edison will not meet the energy savings requirements under Section 4928.66, Revised Code.

(13) On September 8, 2009, OCC filed a reply to Ohio Edison's memorandum contra. Ohio Edison filed its memorandum contra OEC's motion to intervene, which echoed the concerns it expressed in its memorandum contra OCC's motion for intervention, on September 14, 2009. OEC filed a reply to Ohio Edison's memorandum contra on September 24, 2009.

(14) The Commission finds that OCC and OEC have set forth reasonable grounds to intervene in this proceeding. Accordingly, their motions to intervene should be granted.

(15) On February 5, 2010, Commission Staff (Staff) filed a letter recommending approval of the Joint Application. Staff noted that the Applicants provided the following items in support of their Joint Application: (1) annual energy baseline consumption data; (2) an accounting of incremental energy saved; (3) a description of projects implemented and measures taken; (4) a description of the methodologies, protocols, and practices used to measure and verify the energy savings; (5) an accounting of expenditures to demonstrate the cost-effectiveness of the project; and (6) supporting documents to verify the timeline and in-service dates of the project. In its evaluation of the Joint Application, Staff reviewed the items listed above, as well as further supporting documentation provided by Ohio Edison, including internal calculations and graphs showing metered usage of energy consumption, both pre-installation and post-installation of PCC Airfoils' compressor. PCC Airfoils also provided documentation showing results of the inspection program, itemizing the number of leaks, diameter of orifice and pressure, leakage rates, and corresponding kWh savings associated with each leak repair.[1] Staff confirmed that the methodology the Applicants used to calculate energy savings conforms to the general principles of the International Performance Measurement Verification Protocol. Staff also found that the length of the exemption sought, which Ohio Edison and PCC Airfoils propose to last through 2013, is reasonable.

(16) Upon review of the Joint Application and supporting documentation provided by the Applicants, as well as Staff's

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[1] The basis for estimated kWh savings is the U.S. Department of Energy, Energy Tips – Compressors, Compressed Air Tip Sheet #3, August 2004, Industrial Technologies Program.

recommendation, the Commission finds that the requirements related to the Joint Application, as delineated above, have been met. The Commission finds that the request for a mercantile commitment pursuant to Rule 4901:1-39-05, O.A.C., and for a mercantile exemption from Rider DSE2 pursuant to Rule 4901:1-39-08, O.A.C.,[2] do not appear to be unjust or unreasonable, and thus, a hearing on the matter is unnecessary. Accordingly, we find that the Joint Application should be approved. As a result of such approval, we find that Ohio Edison should adjust its baseline according to each project's installation date, pursuant to Section 4928.66(A)(2)(c), Revised Code, and Rule 4901:1-39-05, O.A.C. However, we note that although these projects are approved, they are subject to evaluation, measurement, and verification in the portfolio status report proceeding initiated by the filing of Ohio Edison's portfolio status report on March 15 of each year, as set forth in Rule 4901:1-39-05(C), O.A.C.

(17) The Commission also notes that every arrangement approved by this Commission remains under our supervision and regulation, and is subject to change, alteration, or modification by the Commission.

It is therefore,

ORDERED, That the motions to intervene filed by OCC and OEC be granted. It is, further,

ORDERED, That the Joint Application filed by Ohio Edison and PCC Airfoils be approved. It is, further,

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2 The Commission notes that our Entry on Rehearing revised Rule 4901:1-39-08, O.A.C., and indicated that we expected that "exemptions, where appropriate, will buy down the cost of cost-effective mercantile customer efficiency programs to a simple two-year payback." *In the Matter of the Adoption of Rules for Alternative and Renewable Energy Technology, Resources, and Climate Regulations, and Review of Chapters 4901:5-1, 4901:5-3, 4901:5-5, and 4901:5-7 of the Ohio Administrative Code, Pursuant to Amended Substitute Senate Bill No. 221*, Case No. 08-888-EL-ORD, Entry on Rehearing at 13-14 (October 15, 2009). Given that the agreement between the mercantile customer and the electric utility was entered into prior to the effective date of this rule, the Commission believes that it is both equitable and reasonable to recognize the existing mercantile customer-sited capabilities and investments that relied upon the previously adopted rule's methodology.

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

THE PUBLIC UTILITIES COMMISSION OF OHIO

Alan R. Schriber, Chairman

Paul A. Centolella

Ronda Hartman Fergus

Valerie A. Lemmie

Cheryl L. Roberto

RLH/vrm

Entered in the Journal

FEB 11 2010

Reneé J. Jenkins
Secretary

BEFORE

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In the Matter of the Application of PCC Airfoils, LLC and Ohio Edison Company for Approval of a Special Arrangement with a Mercantile Customer.	))))	Case No. 09-1200-EL-EEC

CONCURRING OPINION OF COMMISSIONER PAUL A. CENTOLELLA

In this and similar cases for reasonable arrangements resulting in mercantile exemptions based on pre-2009 historical investments, the Commission is seeking to apply its decision that adopts the relevant efficiency rules. In Case No. 08-888-EL-ORD, the Commission stated:

> In all cases, a mercantile customer must demonstrate why ratepayer funded support for its historical investment decision is appropriate. The Commission expects exemptions, where appropriate, will buy down the cost of cost-effective mercantile customer efficiency programs to a simple two-year payback. Thus, the filing of cost data is appropriate both to ensure that cost-effective investments are being supported by ratepayer funded exemptions and to determine whether the exemption may be full or partial or may continue for more than one year. We have deleted from the rule, requirements for mercantile customer baseline energy use and peak demand because we do not anticipate basing exemptions on whether a particular mercantile customer has or has not achieved a percentage of energy savings equivalent to the electric utility's annual benchmark.

In the Matter of the Adoption of Rules for Alternative and Renewable Energy Technology, Resources, and Climate Regulations, and Review of Chapters 4901:5-1, 4901:5-3, 4901:5-5, and 4901:5-7 of the Ohio Administrative Code, Pursuant to Amended Substitute Senate Bill No. 221, Case No. 08-888-EL-ORD, Entry on Rehearing at 13-14 (October 15, 2009). Immediately preceding this passage, our Entry states that:

> To qualify for ratepayer funded support through an exemption from an otherwise applicable program cost recovery mechanism, a mercantile customer will need to demonstrate that energy savings and peak-demand reductions associated with the customer's programs are the result of investments that meet the TRC test, as defined in Rule 4901:1-39-01(Y), in order for the mercantile customer to be granted an exemption from the cost recovery mechanism under Rule 4901:1-39-07. We recognize that with respect to historical programs implemented prior to the adoption of these

> rules, there may be a need for greater flexibility and the consideration of waivers.

Id. at 13. Thus, the Commission indicated that greater flexibility would be required for historical programs with respect to the application of cost tests under our rules.

The application in this and similar cases, viewed as a whole, would have us extend such flexibility beyond what was discussed in our October 15 decision. I am concerned that circumstances could arise in which failing to set some limit on the total amount and duration of such exemptions could damage the long-term interests of the very mercantile consumers that Section 4928.66(A)(2)(c), Revised Code, is intended to protect.

I support the granting of mercantile customer exemptions for historical projects as a means of recognizing laudable past actions and creating a culture that will support implementing standards and programs to improve the productivity and competitiveness of the Ohio economy and reduce the energy intensity of Ohio businesses and industry prior to what is likely to be a period of rising energy prices. We should encourage mercantile customer efficiency programs and efficiency programs delivered by third parties in mercantile customer facilities.

When we consider the potential extent of exemptions based on existing, pre-2009 mercantile customer-sited programs, we need to proceed in a balanced manner, consider potential future implications, and avoid undue discrimination. We need to balance our recognition of past performance with the reality that an exemption is a form of incentive and our ability to provide incentives for incremental efficiency improvements will have limits. To the extent that a historical efficiency investment is one that would have occurred in the absence of receiving an incentive, the added efficiency produced by providing such an incentive could be minimal. We need to allocate efficiency incentives in an overall manner which is reasonable. Moreover, the reasonable allocation of costs for electric utility programs that are designed to mitigate the market failures related to energy efficiency should not be based entirely on the efficiency measures which individual consumers would implement on their own.[1] The Commission needs to ensure that adequate funds are available to implement cost-effective efficiency programs.

I am concerned that approving these applications as filed, and without limitations, could have an unduly discriminatory impact. One customer could receive a long

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[1] Market failures related to energy efficiency are described more fully in the concurring opinion, and the sources cited therein, issued in *In the Matter of the Application of Vectren Energy Delivery of Ohio, Inc. for Approval, Pursuant to Revised Code Section 4929.11, of a Tariff to Recover Conservation Expenses and Decoupling Revenues Pursuant to Automatic Adjustment Mechanisms and for Such Accounting Authority as May Be Required to Defer Such Expenses and Revenues for Future Recovery Through Such Adjustment Mechanisms*, Case No. 05-1444-GA-UNC, Supplemental Opinion and Order (June 27, 2007) (Centolella and Lemmie, Comm'rs, concurring).

exemption because the percentage reduction from their prior usage in the targeted time period was large, while a larger facility making the identical investment would qualify for only a minimal exemption, and a third facility that makes the same investment after our rules went into effect might receive no exemption because the measures have a very short payback period and could be cost effectively implemented without any incentive or exemption.

The Commission should review the totality of mercantile customer exemptions for existing, pre-2009 programs in each electric utility's portfolio plan proceeding, set a ceiling on the total amount of such exemptions, and phase out such exemptions over a transitional period. As stated in the majority opinions, the agreements we are asked to approve in these cases, remain, "under our supervision and regulation, and [are] subject to change, alteration, or modification by the Commission." I would approve the proposed exemptions subject to the reexamination of the total exemptions approved and subject to modification in the electric utility's portfolio plan proceedings.

Paul A. Centolella, Commissioner

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DISSENTING OPINION OF COMMISSIONER CHERYL L. ROBERTO

Today the Commission considers the first eight mercantile commitment and rider exemption applications to come before it. See Case Nos. 09-595-EL-EEC, 09-1100-EL-EEC, 09-1101-EL-EEC, 09-1102-EL-EEC, 09-1200-EL-EEC, 09-1201-EL-EEC, 09-1400-EL-EEC, 09-1500-EL-EEC. Because of concerns that I have, many of which are common to all eight cases, I write in dissent.

S.B. 221 mandates that electric utilities work with Ohioans to reduce the aggregate and peak amount of electricity that we use, without reducing our quality of life, while we grow our economy. By reducing energy usage, we expect that our overall power costs will be lower and investment in Ohio industry – both existing and new green businesses – will be encouraged, making existing Ohio businesses more competitive and growing new Ohio green businesses. We know that achieving this energy savings is quite possible because any study from any viewpoint, which has considered this possibility, has identified significant potential to achieve it.[1] Individual customers deploying energy efficiency measures will save money. All customers will benefit from the overall reduction in the cost of power – both financially and environmentally.

A cornerstone to our success in achieving significant energy savings in the aggregate will be actively engaging mercantile customers in identifying and implementing all cost-effective energy savings available to them within their operations. We know that approximately 40 percent of the potential savings can be found within the mercantile

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1 "Assessment of Achievable Potential from Energy Efficiency and Demand Response Programs in the U.S." (2010-2030), Woodrum, Amanda, Technical Report, January 2009, Electric Power Research Institute; "Greening Ohio Industry: A Report From Policy Matters Ohio, November, 2009; Granade, Hannah Choi, et al., ""Unlocking Energy Efficiency in the U.S. Economy," McKinsey Global Energy and Materials, July 2009; "Shaping Ohio's Energy Future: Energy Efficiency Works," American Council for an Energy-Efficient Economy, ACEEE Report No. E092, March 2009; "Ohio Edison Company, The Toledo Edison Company, and The Cleveland Illuminating Company Market Potential Study Report: Energy Savings and Demand Reduction," Black & Veatch, September 1, 2009 (filed as Amended Application, Appendix D), December 16, 2009, in Case Nos. 09-580-EL-EEC, et al.; "AEP Ohio 2009-2028 Energy Efficiency/Peak Demand Reduction Potential Study," Midwest Energy Efficiency Alliance, November 5, 2009 (filed as Volume 2 of Jon F. Williams Testimony on behalf of Columbus Southern Power and Ohio Power Company), November 12, 2009, in Case No. 09-1090-EL-POR.

customers' facilities.[2] While success in this effort will, of course, include swapping out lighting, it must include far, far more. True, deep savings will only be achieved when businesses implement the savings they find after holistic reviews of their operations – including potential process changes – in order to achieve the same or better results with less energy usage. This presents an obvious question: if energy savings will reduce power costs and make businesses more competitive, why wouldn't businesses implement these measures without government intervention? There are entire books, treatises, conferences, and consulting firms devoted to identifying the myriad of barriers to deploying energy efficiency measures. Anyone interested in understanding what those barriers may be need only ask a facilities' manager and then settle in for a few hours of listening. They know what needs to be done and they have ideas for successfully accomplishing it. If we are going to see wide-scale deployment of cost-effective energy efficiency measures by mercantile customers, our role has to be to design a regulatory framework that supports and empowers mercantile customers to deploy those measures.

So, what does this framework look like? I suggest that it must be predictable so that investments may be planned with confidence. It should offer statewide consistency so that businesses with multiple Ohio locations know what to do despite being served by different electric utilities. It should ensure that the door is open to engaging the creativity and innovation of a competitive marketplace. It should not be reliant upon an electric utility's ability to design and implement programs, but it must still provide electric utilities with the opportunity to receive compliance credit for S.B. 221 benchmarks. It must be efficient to administer, taking into account the resources of time and money expended by mercantile customers, electric utilities, stakeholders, and the Commission and its staff. While it, of course, must promote investment in all cost-effective energy efficiency projects, it should do so at the least possible cost. It must protect the confidentiality of information sensitive to preserving the competitive advantage of a participating mercantile customer. It should support mercantile customers in addressing barriers to implementation, including access to capital investment funds. It must provide an opportunity for interested parties to understand and to participate. By these measures, the actions taken today by the majority of the Commission to approve mercantile commitments and exemptions miss the mark. Further, it is simply not possible, from the record before us, to determine that the mercantile commitments and exemptions, as presented, meet, in letter or spirit, the requirements of the statute, regulations, and adopted Commission policies.

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2 Id.

Mercantile Commitment Requests

A mercantile customer may file an application to commit its energy efficiency programs for integration with the electric utility's energy efficiency programs. Rule 4901:1-39-05(G), O.A.C. To measure the contribution a mercantile customer's program provides to the electric utility, a mercantile customer's energy savings "shall be presumed to be the effect of a demand response, energy efficiency, or peak-demand reduction program to the extent they involve the early retirement of fully functioning equipment, or the installation of new equipment that achieves reductions in energy use and peak demand that exceed the reductions that would have occurred had the customer used standard new equipment or practices where practicable." Rule 4901:1-39-05(F), O.A.C. However, "[a]n electric utility shall not count in meeting any statutory benchmark the adoption of measures that are required to comply with energy performance standards set by law or regulation." Rule 4901:1-39-05(H), O.A.C.

The Commission has found that, for purposes of calculating compliance with statutory benchmarks for programs other than those targeting early retirement of functioning equipment, the baseline should be set at the higher of federal or state minimum efficiency standards, or, if data is readily available for the measures at issue on the Department of Energy's Energy Information Administrator (DOE EIA) website, efficiency levels for current market practices for those measures. "For purposes of calculating energy savings for programs targeting early equipment retirement, the Commission [found] that the as-found method should be used until the remaining useful life of the existing equipment would have expired. Subsequent to the expiration of the existing equipment's useful life, the baseline should be calculated at the higher of federal or state minimum efficiency standards, or, if data is readily available on the DOE EIA website, efficiency levels for current market practices for that equipment." *In the Matter of Protocols for the Measurement and Verification of Energy Efficiency and Peak Demand Reduction Measures*, Case No. 09-512-GE-UNC, Finding and Order at paragraph 27 (October 15, 2009). If a mercantile customer does commit its programs, the electric utility's baseline is required to be adjusted to exclude the effects of all such programs that may have existed during the period used to establish the baseline. Section 4928.66(A)(2)(c), Revised Code.

Thus, in order to account for the contribution a mercantile customer's program provides to the electric utility, the Commission must have before it information sufficient to answer these questions: (1) do these projects involve early retirement of fully functioning equipment; (2) if so, what was the remaining useful life; (3) or was the equipment replaced at the end of useful life with equipment that exceeds standard issue new equipment; and (4) was the measure installed as a result of an energy performance standard. In order to know whether and how an electric utility's baseline must be adjusted, the Commission must have before it the beginning and ending dates of the

commitment as well as the amount of savings achieved during any individual year within that period. Neither the material in the docket nor the majority opinion appears to contain the answers to these questions. I would suggest that findings and orders accepting a commitment should answer the following questions, with clarity: (1) how many kWhs of energy savings have been committed; (2) when does the commitment begin; (3) when does it conclude; and (4) for historical projects, what is the appropriate adjustment to the electric utility's baseline and during what period of time must the baseline be adjusted. The orders adopted today by the majority do not provide this information.

As adopted, these orders appear to establish either a bifurcated process, whereby the mercantile customer is granted a rider exemption, but the electric utility is left to demonstrate in a future proceeding the energy savings committed by its agreement to forbear collection of the rider; or alternatively, that the projects are "deemed approved" such that, pursuant to previous Commission action,[3] the only challenge available to the energy savings attributed to the electric utility's compliance is whether the measures were installed and remain in place. If it is the former, then the majority opinion leaves open the question: what level of commitment is necessary to support a rider exemption? Since an exemption is only available as part of a commitment request pursuant to Rule 4901:1-39-08, O.A.C., the Commission would appear to be establishing a standard by which the mere potential of a finding of energy savings at any level during a future portfolio status report proceeding is enough to warrant a rider exemption. If this is the case, I am unable to discern how this result supports the state policies enumerated in S.B. 221. If it is the latter, then the process embarked upon today causes me concern regarding the limited opportunity for interested parties to participate.

Mercantile Exemption Requests

Section 4928.66(A)(2)(c), Revised Code, provides, in part: "Any mechanism designed to recover the cost of energy efficiency and peak demand reduction programs

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3 "In determining the reasonableness of program cost recovery and compliance with energy efficiency and peak demand reduction benchmarks, estimates for cost, energy, and demand savings are to be based on the best information available at the time the estimates or calculations are derived, (i.e., ex ante). If ex post cost and energy savings estimates for efficiency measures vary from the previous year's ex ante estimates, ex post estimates should be used for future programs, installations, and investments. For compliance purposes, deemed and deemed calculated cost and energy savings are not to be adjusted retroactively for program investments made during the current year. As reflected in the provisional recommendation, custom projects or programs, where savings are to be determined ex post using agreed-upon protocols, would use these ex post values as the credited savings. As for the question of whether ex post or ex ante estimates should be used for the remaining useful life of a measure installed in the current and prior year, the Commission finds that, for compliance purposes and in order to provide certainty and predictability, as well as to simplify the administrative burden for the utilities, stakeholders, and the Commission, ex ante estimates should be used for the life of the investment." *In the Matter of Protocols for the Measurement and Verification of Energy Efficiency and Peak Demand Reduction Measures*, Case No. 09-512-GE-UNC, Finding and Order at paragraph 32 (October 15, 2009).

under division (A)(1)(a) and (b) of this section may exempt mercantile customers that commit their demand-response or other customer-sited capabilities . . . if the commission determines that that exemption *reasonably* encourages such customers to commit those capabilities to those programs" (emphasis added). Rule 4901:1-39-08(A), O.A.C., establishes that in order for a mercantile customer to be eligible for a rider exemption it must provide: "A demonstration that energy savings . . . associated with the mercantile customer's program are the result of investments that meet the total resource cost test, or that the electric utility's avoided cost exceeds the cost to the electric utility for the mercantile customer's program." In adopting this rule, the Commission found: "[T]his provision is being revised to recognize those circumstances where the cost to the electric utility for incorporating the mercantile customer's program is less than the electric utility's incremental cost of energy. We also observe that the cost to the electric utility includes the administrative costs and any incentives paid, including the value of an exemption from the energy efficiency rider." *In the Matter of the Adoption of Rules for Alternative and Renewable Energy Technology, Resources, and Climate Regulations, and Review of Chapters 4901:5-1, 4901:5-3, 4901:5-5, and 4901:5-7 of the Ohio Administrative Code, Pursuant to Amended Substitute Senate Bill No. 221,* Case No. 08-888-EL-ORD, Entry at paragraph 8 (October 28, 2009). To make this demonstration successfully, the mercantile customer and/or electric utility would need to provide the electric utility's avoided incremental cost of energy, the administrative costs to obtain the commitment, and the value of the rider that would not be paid. The joint applications before the Commission do not appear to contain this information.

For purposes of this discussion, however, I will assume that the mercantile cases before us meet the cost effective tests. Once the Commission determines that the mercantile customer's program investment meets the cost test, the question becomes what is the appropriate amount and length of the exemption. The majority opinions seem to adopt at least two distinctly different and unequal standards. In all eight cases , it appears that the majority of the Commission is finding that a 100 percent rider exemption is appropriate for so long as the mercantile customer demonstrates energy savings at its own facility or facilities equal to or greater than the electric utility's benchmark requirement (hereinafter, the Benchmark Comparison Method). However, in two cases,[4] the majority of the Commission adopts a standard whereby the appropriate exemption appears to be calculated in the same manner that an electric utility-sponsored incentive has been traditionally calculated. Historical programs under this method receive a reduced incentive. In the absence of any discussion or explanation as to why different and unequal standards are appropriate, I find it difficult to conclude that both or either are reasonable.

More troubling, however, is adoption of the Benchmark Comparison Method at all. This methodology bears no relationship to statutory requirements or goals or to the

4 Case Nos. 09-1400-EL-EEC and 09-1500-EL-EEC.

practical reality of energy efficiency programs. Electric utilities are directed to achieve energy savings of "at least" the prescribed annual statutory benchmarks described as a percentage of their "total" kWh sales. Section 4928.66(A)(1)(a), Revised Code. In no manner does the statute equally allocate this benchmark to an individual customer or even to a customer class's load. The benchmark percentage reduction must be achieved within the totality of sales. In fact, it would make no sense to allocate this benchmark to individual customers. Studies conducted to identify where Ohio will find its energy savings also identify potential savings at varying levels dependent upon the customer class.[5] Each of those studies includes an assumption that no program will achieve 100 percent participation.[6] As such, successful energy efficiency programs rely upon a few participating customers to produce energy savings at rates in excess of the electric utility's benchmark to, in the aggregate or total, achieve the benchmark across its entire load. Thus, while it may be reasonable to excuse a customer from participating in an electric utility's rider for energy efficiency programming when it, on its own accord and with its own resources, achieves its "fair share" of the needed reductions, an individual customer's "fair share" of energy reductions is unrelated to the electric utility's benchmark.[7]

By way of explication, when a mercantile customer reduces its energy usage to a degree equal to the electric utility's benchmark and then seeks exemption from the rider, the remaining compliance burden shifts to the remaining customers despite the fact that additional cost-effective energy efficiency measures may still be available within the exempted customer's facility. The result is that, in order for the energy savings benchmarks to be met, more of the remaining customers must choose to participate and, of

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5 Supra note 1.

6 Id.

7 In answering the question of what is an individual customer's "fair share," a review of self-direct programs in at least nine other jurisdictions reveals that none have chosen the path that compares the customer's energy reduction to the benchmark. We learn from this review that other states have decided that a customer's fair share is met when the mercantile customer has implemented all cost-effective energy efficiency available within its facility. Further, those demonstrations must be refreshed on a regular basis in order for the customer to preserve their exemption from the rider. For example, New Mexico allows a mercantile exemption of seventy percent of the rider if the customer demonstrates that it has exhausted all cost-effective energy efficiency measures. N.M. STAT. § 62-17-9(B). Pursuant to N.M. ADMIN. CODE tit. 17, § 17.7.2.11(C), an exemption is valid for 24 months, and the customer may request approval to extend the exemption by demonstrating that it has exhausted all cost effective energy efficiency in its facility. Oregon law contains similar provisions with the exemption being fifty four percent of the public purpose charges. Or. REV. STAT. § 757.612(5)(d)(A). Finally, Rocky Mountain Power's tariff in Wyoming and Utah, Original Sheet No. 192-5, provides for a fifty percent credit. P.S.C. Wyoming No. 11 and P.S.C.U. No. 47 available at http://www.rockymountainpower.net/content/dam/rocky_mountain_power/doc/About_Us/Rates_and_Regulation/Wyoming/Approved_Tariffs/Rate_Schedules/Self_Direction.pdf and http://www.rockymountainpower.net/content/dam/rocky_mountain_power/doc/Business/Save_Energy_Money/Self_Direction_Credit_9.pdf.

those who do, they must contribute even higher savings levels. By eliminating available cost-effective energy efficiency, the electric utilities may be forced to seek more expensive, albeit still cost-effective, energy efficiency from other customers. Thus, the Benchmark Comparison Method fails to integrate energy efficiency as a resource on a least cost basis. Finally, even if every mercantile customer achieved reductions in its own facilities equal to the statutory benchmark, then the mercantile customers as a class would only meet their fair share of the necessary reductions if we assume that each customer class has the equal potential to contribute cost-effective energy efficiency. There is simply no reason to believe that to be true. Thus, not only is the Benchmark Comparison Method unreasonable in that it is unrelated in any manner to the statute or to reality, it is also deleterious to achieving statutory mandated levels of energy savings.

If I were more persuasive, my colleagues and I would today be directing staff to undertake, within six weeks, a technical workshop, the purpose of which would be to develop a regulatory framework that would meet our common goal of fully engaging mercantile customers in the deployment of all cost-effective energy efficiency. That process might include a common application that provides transparent answers for the questions the Commission must ask. That process could recommend that, once a complete application is filed, a mercantile customer and electric utility could be assured that it will be automatically approved within sixty days, absent suspension by the Commission. The process might also recommend that an opportunity for interested parties to participate be provided though objections filed within thirty days of the mercantile customer and electric utility filing the application. The process could describe a reasonable methodology, much like that proposed by Ohio Power in Case No. 09-1500-EL-EEC and Columbus Southern Power in Case No. 09-1400-EL-EEC as Option 1, which prescribes an appropriate and meaningful incentive level that is based upon recognized traditional energy efficiency program design strategies and that is adjusted to reflect the difference in value between commitments for historical projects and for projects to be undertaken in the future. We would also direct that the staff assimilate the information gathered at the technical workshop together with information gleaned from the experience of other jurisdictions, which have already embarked upon mercantile self-direct programs,[8] to prepare and file a

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[8] We do not need to reinvent the wheel. There is much to learn from the experience and choices which other states have found essential to creating a successful program. One feature common amongst a number of mercantile self-direct programs is that they are based on *actual* customer expenditures credited against all, or a portion of, the system benefit charge/rider. For example, Rocky Mountain Power in Utah and Wyoming permit a mercantile customer to submit projects which, once approved, entitle the customer to receive credits against the system benefit charge, equal to 80 percent of the customer's eligible costs. See P.S.C. Wyoming No. 11 and P.S.C.U. No. 47, schedule No. 192 as referenced in n.2. New Mexico offers credits for energy efficiency expenditures that may be used to offset up to seventy percent of the tariff rider until the credit is exhausted. N.M. STAT. § 62-17-9(A). Oregon laws provide for a similar regime. See Or. REV. STAT. § 757.612(5)(a). Puget Sound Energy in Washington permits customers to respond to RFPs and receive funding out of the charges collected by a

recommendation for a process for us to consider a month or so after that workshop. We would direct interested parties to comment on that proposal within a reasonable period of time. Then, after consideration of the staff's recommendation and stakeholder comments, we would adopt a process that meets our common goal. I, however, have not been so persuasive.

For the reasons stated herein, I dissent.

Cheryl L. Roberto, Commissioner

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conservation rider. See PSE tariff, schedule No. 258, available at http://www.pse.com/SiteCollectionDocuments/rates/elec_sch_258.pdf.

Other states' programs also require a mercantile customer's projects to meet specific cost-effectiveness and payback period requirements before it is eligible to receive credits or exemptions. Definitions of cost-effectiveness range from Montana's simple acknowledgment that the expected benefits accrued as a result of pursuing an action must exceed the expected costs associated with that action over some reasonable time period to New Mexico's requirement that a program meet the Total Resource Test with a payback period of between one and seven years. MONT. ADMIN. R. 42.29.101, *et seq*; N.M. STAT. §§ 62-17-4(C) and 62-17-9(A). Rocky Mountain Power generally requires that a payback period of between one and five years and must meet minimum cost-effectiveness tests as required by the utility's program administrator. See P.S.C. Wyoming No. 11 and P.S.C.U. No. 47, schedule No. 192. Oregon law provides that a payback period can be up to 10 years. OR. REV. STAT. § 757.600(26). Puget Sound Energy expects that measures will satisfy both the Total Resource Cost Test and the Utility Cost Test. See PSE tariff, schedule No. 83, available at http://www.pse.com/SiteCollectionDocuments/rates/elec_sch_083.pdf.