BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Riesbeck Food Markets, Inc. and Ohio Power Company for Approval of a Special Arrangement with a Mercantile Customer.	))))	Case No. 09-1504-EL-EEC
In the Matter of the Application of Ball Metal Corporation and Ohio Power Company for Approval of a Special Arrangement with a Mercantile Customer.	))))	Case No. 09-1505-EL-EEC
In the Matter of the Application of Ohio Northern University and Ohio Power Company for Approval of a Special Arrangement with a Mercantile Customer.	))))	Case No. 09-1511-EL-EEC
In the Matter of the Application of Taco Bell, Inc. and Ohio Power Company for Approval of a Special Arrangement with a Mercantile Customer.	))))	Case No. 09-1513-EL-EEC
In the Matter of the Application of Taco Bell #5586 and Ohio Power Company for Approval of a Special Arrangement with a Mercantile Customer.	))))	Case No. 09-1516-EL-EEC

FINDING AND ORDER

The Commission finds:

(1) On December 18, 2009, Ohio Power Company (OP) filed joint applications with Riesbeck Food Markets, Inc. (Riesbeck), Ball Metal Corporation (Ball), Ohio Northern University (Ohio Northern), Taco Bell, Inc. (Taco Bell), and Taco Bell #5586 (Taco Bell—5586) for exemptions from Rider EE/PDR in Case Nos. 09-1504-EL-EEC (09-1504), 09-1505-EL-EEC (09-1505), 09-1511-EL-EEC (09-1511), 09-1513-EL-EEC (09-1513), and 09-1516-EL-EEC (09-1516), respectively.

(2) Rider EE/PDR is the mechanism by which OP recovers from customers the costs associated with compliance with the energy efficiency and demand reduction requirements set forth in Section 4928.66, Revised Code.

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

(8) Riesbeck, Ball, Ohio Northern, Taco Bell, and Taco Bell—5586 are mercantile customers as defined in Section 4928.01(A)(19), Revised Code.

(9) In each of the cases enumerated in this proceeding, the joint application provides for either a one-time reduced incentive payment on the condition of continuing payment of the EE/PDR rider (Option 1), or an EE/PDR rider exemption for a defined period of time (Option 2), as set forth in Rule

4901:1-39-08, O.A.C.[1] The customer will have a choice between Options 1 and 2; however, the customer cannot receive both incentives for committing the project for energy efficiency compliance.

Under Option 1, the mercantile customer will receive a one-time payment equal to 75 percent of the calculated incentive amount offered under OP's incentive program. If the customer elects to receive the incentive payment under Option 1, it will continue to pay the EE/PDR rider.

Under Option 2, the mercantile customer will be exempted from paying the EE/PDR rider for the time period that its committed energy savings are equal to OP's annual mandated benchmark requirement percentages for energy savings, based upon the customer's 2006-2008 average annual energy usage baseline.

(10) The joint application in 09-1504 explains that, on May 7, 2008, Riesbeck replaced 144 400W metal halide fixtures with 114 4-lamp 4' T5 fixtures and 30 4-lamp 4' T8 fixtures.

(11) The joint application in 09-1505 explains that, from May 2008 until December 2008, Ball replaced 1,058 400W metal halide fixtures with 455 4'8" lamp fixtures, 600 4'6" lamp fixtures, and three 4'4" T8 fixtures, all with T8 lamps with high output electronic ballasts. Additionally, 219 400W metal halide fixtures were permanently removed.

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1 The Commission notes that our Finding and Order in Case No. 09-512-GE-UNC clarified Rule 4901:1-39-08, O.A.C., by indicating that "in order to minimize the potential for free-riders and some of the need to calculate net savings, utilities should not provide incentives for programs that have a payback of one year or less." *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 6 (October 15, 2009). On the same day, the Commission rejected the benchmark comparison method, reversing its prior position, stating, "[w]e 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-UNC, Entry on Rehearing (October 15, 2009). Given that the agreements between the mercantile customers and the electric utility were entered into prior to the effective date of this rule on December 10, 2009, 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.

(12) The joint application in 09-1511 explains that, in November 2008, Ohio Northern replaced 97 1000W metal halide fixtures with 72 350W pulse start metal halide fixtures. Ohio Northern also replaced 32 400W metal halide fixtures with 32 6-lamp T8 fixtures at that time.

(13) The joint application in 09-1513 explains that, on May 12, 2008, Taco Bell replaced its steam-based production line equipment to a dry production line operation in its kitchen. The grill-to-order dry production line operation has dry hot food wells to hold heated products, and a griddle to heat products, in place of the less efficient steam tables and steam cabinets previously used. The application also explains that the dry production line equipment is more efficient and uses less energy.

(14) The joint application in 09-1516 explains that, on February 25, 2008, Taco Bell-5586 replaced its steam-based production line equipment to a dry production line operation in its kitchen. The replacement in 09-1516 is the same replacement that is explained in finding (13) for 09-1513.

(15) The joint applications in 09-1504, 09-1505, 09-1511, 09-1513, and 09-1516 each contain a request for a mercantile commitment pursuant to Rule 4901:1-39-05, O.A.C., as well as a request for approval of the selection, by each applicant, of either Option 1 or 2, as set forth above.

(16) On April 9, 2010, Commission Staff (Staff) filed recommendations in 09-1504, 09-1505, 09-1511, 09-1513, and 09-1516 recommending approval of each of the joint applications. Staff reviewed each joint application and any further supporting information provided by OP, including engineering studies, engineering estimates, and, in 09-1504, 09-1505, and 09-1511, new lighting receipts. Staff also considered each project, customer size, project installation date, kWh reduction, peak kW demand reduction, total project cost, incentive total, the eligible self-direct incentive, and the exemption period from the EE/PDR rider. Staff confirmed that the methodology each of the applicants used to calculate energy savings conforms to the general principles of the International Performance Measurement Verification Protocol used by OP.

Based upon its review, Staff found that the programs set forth in each joint application meet the requirements for integration in OP's EE/PDR compliance plan, and recommended approval of the joint applications in 09-1504, 09-1505, 09-1511, 09-1513, and 09-1516, which would provide Riesbeck, Ball, Ohio Northern, Taco Bell, and Taco Bell—5586 with the ability to choose between Options 1 and 2.

(17) In 09-1504, Staff calculated that under Option 1, Riesbeck would be entitled to a one-time incentive payment of $10,895.85. Further, Staff verified that Option 2 would allow Riesbeck an exemption from the EE/PDR rider for 108 months.

(18) In 09-1505, Staff calculated that under Option 1, Ball would be entitled to a one-time incentive payment of $83,288.63. Further, Staff verified that Option 2 would allow Ball an exemption from the EE/PDR rider for 37 months.

(19) In 09-1511, Staff calculated that under Option 1, Ohio Northern would be entitled to a one-time incentive payment of $31,763.28. Further, Staff verified that Option 2 would allow Ohio Northern an exemption from the EE/PDR rider for 63 months.

(20) In 09-1513, Staff calculated that under Option 1, Taco Bell would be entitled to a one-time incentive payment of $3,252.06. Further, Staff verified that Option 2 would allow Taco Bell an exemption from the EE/PDR rider for 151 months.

(21) In 09-1516, Staff calculated that under Option 1, Taco Bell—5586 would be entitled to a one-time incentive payment of $2,168.04. Further, Staff verified that Option 2 would allow Taco Bell—5586 an exemption from the EE/PDR rider for 117 months.

(22) Upon review of the joint applications in 09-1504, 09-1505, 09-1511, 09-1513, and 09-1516, as well as any supporting documentation provided by each of the applicants and Staff's recommendations, the Commission finds that the requirements related to each of the joint applications, as delineated above, have been met. The Commission finds that the requests for mercantile commitment pursuant to

Rule 4901:1-39-05, O.A.C., do not appear to be unjust or unreasonable. Additionally, the Commission finds that neither Option 1, nor Option 2, as presented in each joint application, appears to be unjust or unreasonable. Thus, a hearing on these matters is unnecessary. Accordingly, we find that the joint applications in 09-1504, 09-1505, 09-1511, 09-1513, and 09-1516 should be approved. As a result of such approval, we find that OP 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 OP's portfolio status report on March 15 of each year, as set forth in Rule 4901:1-39-05(C), O.A.C.

(23) 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 joint applications filed in 09-1504, 09-1505, 09-1511, 09-1513, and 09-1516 be approved. It is, further,

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

Valerie A. Lemmie

Steven D. Lesser

Cheryl L. Roberto

RLH/sc

Entered in the Journal
MAY 0 5 2010

Reneé J. Jenkins
Secretary

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CONCURRING OPINION OF COMMISSIONER CHERYL L. ROBERTO

I concur with the opinion of my colleagues that, with regard to the benchmark comparison method used by the applicants, it is both equitable and reasonable to recognize that the applicants relied upon then-current Commission orders to prepare their applications. This is a short-term aberration only necessary because of the flux surrounding the promulgation of rules implementing SB 221's mandates. Now that final rules are in place, it is time for the Commission to continue promoting a sustained commitment by electric utilities and mercantile customers to deploy all cost effective energy efficiency. While there are arguably a variety of methods to calculate energy savings, I urge applicants to be cognizant of the direction offered by this Commission in

both 08-888-EL-ORD and 09-512-GE-UNC in preparing future applications for the commitment of energy efficiency and peak demand programs to their electric utility, and *for the exemption from energy efficiency program riders.*

In particular, the measurement of savings must be documented and consistent with prior Commission statements governing the establishment of baselines for purposes of measurement. In our June 17, 2009 entry on rehearing in the 08-888 case, we rejected commenters' suggestions that that the gross amount of savings between replaced and replacement equipment should count in the calculation of a mercantile customer's kilowatt-hour savings (p. 18, paragraph 35). Subsequently, on June 24, 2009, we issued an entry in the 09-512 docket that provided a provisional recommendation for how to measure savings resulting from the early retirement of functioning equipment. Briefly, we stated that the difference between the energy use of existing equipment and the newly installed high-efficiency equipment may be used. However, once the remaining useful life of the existing equipment expires, the energy savings will be the difference in energy savings from new standard equipment and the new high-efficiency equipment. (Appendix A, Provisional Recommendation, p. 4.) On October 15, 2009, after receiving comments from all stakeholders regarding the provisional recommendation, the Commission adopted the standard by final commission action. We stated:

> For purposes of calculating energy savings for programs targeting early equipment retirement, the Commission finds 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.

(p. 9, paragraph 27)

As a final note, the rules which became effective in December 2009 did not change this standard in any way. They merely codified the standard that the Commission had previously adopted. Rule 4901:1-39-05(F), instructs, in part, that

> A mercantile customer's energy savings and peak-demand reductions shall be presumed to be the effect of a . . . program to the extent they involve the early retirement of fully functioning 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.

In sum, it is evident from our rules and the guidance provided by the recommendations adopted in 09-512, that the remaining useful life is key to measuring energy savings attributable to mercantile programs involving the early retirement of existing equipment.

Cheryl L. Roberto, Commissioner

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CONCURRING OPINION OF COMMISSIONER PAUL A. CENTOLELLA

In this and similar cases involving reasonable arrangements that may result in mercantile exemptions based on pre-2009 historical investments, the Commission is seeking to recognize historical efficiency investments while applying the decisions which it made when adopting 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, Case No. 08-888-EL-ORD, *Entry on Rehearing* at 13-14 (October 15, 2009). For mercantile customer agreements entered after the effective date of the Rules, our decision indicates the Commission does not expect to rely on benchmark comparisons in exercising its discretion to grant mercantile customer exemptions under Section 4928.66(A)(2)(c), Ohio Revised Code. Immediately preceding this passage, our Entry states that:

> 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. And, the Commission has shown greater flexibility with respect to mercantile customer agreements entered prior to the effective date of the Rules, allowing the limited use of the benchmark comparison methodology in such cases.

In a second Order on October 15, 2009, the Commission adopted measurement and verification protocols applicable to utility energy efficiency and peak demand reduction programs for all customer classes. In that Order, we limited our initial willingness to rely on calculations of gross savings, rather than net savings, for measurement and verification purposes by stating that:

> [T]he Commission intends to address the issue of moving toward program evaluation on a net savings basis as experience with energy efficiency program implementation and evaluation is gained. Additionally, the Commission finds that, in order to minimize the potential for free-riders and some of the need to calculate net savings, utilities should not provide incentives for programs that have a payback of one year or less.

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 6 (October 15, 2009). The limitation on utility program incentives in this second case reflected the potential to benefit from greater experience, the diversity in financing costs and

investment hurdle rates for energy users in different circumstances, and the portfolio review process for utility programs.

The Commission will continue to exercise appropriate discretion and flexibility to encourage the adoption of cost-effective efficiency measures. However, I am concerned that circumstances could arise in which failing to set limits on the total amount and duration of benchmark comparison exemptions, based on mercantile customer agreements that were entered into prior to the adoption of our Rules, could damage the long-term interests of the very mercantile consumers that Section 4928.66(A)(2)(c), Revised Code, was 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 efficiency 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. Moreover, we should encourage mercantile customer efficiency programs and efficiency programs delivered by third parties in mercantile customer facilities.

Option 1 represents a reasonable approach to recognizing mercantile customer efficiency programs. However, Option 2, which relies on benchmark comparisons, raises additional concerns. When we consider the potential extent of such 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 both the fact, as the options offered in these agreements help to make clear, that an exemption is simply a different form of incentive and an acknowledgement that our ability to provide such incentives will have limits.

Additionally, I am concerned that approving exemptions for historical projects based on benchmark comparisons without further limitations could have an unduly discriminatory impact. One customer could receive a long 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 made 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 premised on benchmark comparisons 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. Under Section 4905.31, Revised Code, a reasonable arrangement, such as the agreements we are asked to approve in this case, remains, "under the supervision and regulation of the commission, and is subject to change, alteration, or modification by the commission." I approve the proposed agreements subject to reexamination of the total exemptions implemented using the benchmark comparison approach, Option 2, and potential modification of such exemptions in the electric utility's portfolio plan proceedings.

Paul A. Centolella, Commissioner