BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of a Mercantile Application Pilot Program Regarding Special Arrangements with Electric Utilities and Exemptions from Energy Efficiency and Peak Demand Reduction Riders.	)	Case No. 10-834-EL-POR
In the Matter of the Following Applications for Integration of Mercantile Customer Energy Efficiency or Peak-Demand Reduction Programs:	)	
Ohio Edison Company and MACtac, dba Morgan Adhesives.	)	Case No. 11-2044-EL-EEC
The Toledo Edison Company and Lake Local Schools.	)	Case No. 11-2143-EL-EEC
The Toledo Edison Company and Toledo-Lucas County Convention and Visitors Bureau.	)	Case No. 11-2145-EL-EEC
Ohio Edison Company and Austintown Local Schools.	)	Case No. 11-3046-EL-EEC

FIFTH ENTRY ON REHEARING

The Commission finds:

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

(2) On September 15, 2010, the Commission issued an entry in Case No. 10-834-EL-POR adopting an 18-month pilot program which established an automatic approval process for applications filed by

mercantile customers under Rule 4901:1-39-05(G), O.A.C. The pilot program was intended to simplify the Energy Efficiency Credits (EEC) application process through the development of a standard application template posted on the Commission's website for use by mercantile customers.

(3) On May 25, 2011, the Commission issued a second entry on rehearing in Case No. 10-834-EL-POR which clarified that all valid EEDR mercantile customer programs implemented during 2006 or 2007 would be eligible for counting and incentives if the complete application was currently pending or was filed by June 24, 2011. At that time, the Commission indicated that it would consider granting an additional 30 days if warranted due to special circumstances. On June 24, 2011, Plug Smart filed motions to extend the filing deadline on behalf of Winton Woods City School District, The Ohio State University (OSU), Lakota Local Schools, Cincinnati Public Schools, and Ashtabula City Schools, arguing that special circumstances warranted a 30-day extension. By entry issued July 6, 2011, the Commission granted Plug Smart's motion to extend the filing deadline by 30 days, expressly stating that the extension was warranted solely for the movants. Consequently, the Commission ordered that EEDR mercantile program applications *for these movants* be filed on or before July 25, 2011.

(4) On July 15, 2011, the Commission issued a third entry on rehearing granting additional time for further consideration to consider issues raised by Ohio Edison Company (OE), The Cleveland Electric Illuminating Company, and The Toledo Edison Company (TE) (collectively, FirstEnergy), and the Dayton Power and Light Company, regarding limitations on customer commitment payments for demand reduction programs and FirstEnergy's request that customers be granted until March 15, 2012, to file applications for 2006 and 2007 mercantile programs.

(5) On July 25, 2011, OE filed several EEC applications on behalf of MACtac dba Morgan Adhesives (MACtac) and Austintown Local Schools (Austintown), and TE filed applications on behalf of Lake Local Schools (Lake) and the Toledo-Lucas County Convention and Visitors Bureau (Bureau). Additionally, OE and TE simultaneously filed motions to extend the filing deadline on behalf of these entities, arguing that special circumstances warranted the extension. On July 27, 2011 and August 11, 2011, Plug Smart filed motions in Case No. 10-834-EL-POR to extend the filing deadline

on behalf of OSU and University Hospital, respectively, requesting an additional 90 days to complete their EEC applications.

(6) On September 20, 2011, the Commission issued its Fourth Entry on Rehearing in Case No. 10-834-EL-POR which, *inter alia*, denied all motions and requests for additional extensions of time to file EEDR mercantile customer programs implemented during 2006 or 2007. The Entry noted that in granting Plug Smart's June 24, 2011 motions for an extension, the Commission limited the extension to those specific movants and also ordered that the applications be filed on or before July 25, 2011. Consequently, the Commission also issued an entry in Case 11-2044-EL-EEC, et al., (September 20, 2011 Dismissal Entry) denying all EEC applications that were not timely filed.

(7) On October 18, 2011, OE and TE filed an application for rehearing of the September 20, 2011 Dismissal Entry on behalf of the four above-captioned mercantile customers, arguing that the EEC filing deadlines were unconstitutionally vague and ambiguous, that the applications were timely filed, that the entries unreasonably and unlawfully modified the stipulation in Case No. 08-935-EL-SSO, and that dismissal of these EEC applications was contrary to public policy. On that same date, FirstEnergy also filed a separate application for rehearing in Case No. 10-834-EL-POR requesting clarification of Finding 12 of the Fourth Entry on Rehearing regarding automatic approval of EEC applications which seek exemption from the utility's EEDR rider for periods beyond 24 months.

(8) With respect to the applications for rehearing of the September 20, 2011 Dismissal Entry, we find no reasonable ground to reverse our decision. Section 4928.66, Revised Code, establishes a three-year period for the measurement of energy efficiency and peak demand reduction programs. Our May 25, 2011 Entry in Case No. 10-834-EL-POR expressly stated that "[o]n a going-forward basis, in order to be eligible for incentives, mercantile customers will have one calendar year to sign a commitment agreement with the electric utility for EEDR projects implemented within the past three calendar years. The electric utility will then have until March 31 of the following year to file the complete application with the Commission."[1] If applied to 2006 customer programs, this rule

[1] Finding 15 of the Second Entry on Rehearing, Case No. 10-834-EL-POR, issued May 25, 2011, at 6.

would have resulted in a filing deadline of March 31, 2011. However, the Commission was mindful of a number of EEC applications that either had been filed but were incomplete or that customers or utilities expected to file but had not already done so. Accordingly, we granted the electric utilities and mercantile customers an additional 30 days, until June 24, 2011, to complete their applications for EEDR programs implemented during 2006 or 2007 and suggested that an additional 30-day extension would be considered for special circumstances.[2]

As noted above, our subsequent July 6, 2011 Entry did find special circumstances and extended the filing deadline to July 25, 2011, but only for the customers listed therein, none of whom are applicants in the four cases captioned above. Clearly, the filing deadline for each of the four captioned EEC cases was June 24, 2011, but all four applications were filed on July 25, 2011.

(9) OE and TE infer that the July 15, 2011 Entry in Case No. 10-834-EL-POR should be construed to consider these four EEC applications as being timely filed. We can not agree. The July 15, 2011 Entry only granted the Commission additional time to consider the issues raised, one of which was FirstEnergy's request that customers be granted until March 15, 2012, to file applications for 2006 and 2007 mercantile programs. No extension of the filing deadline was granted.

(10) OE and TE also argue that the September 20, 2011 Dismissal Entry unreasonably and unlawfully modified the stipulation in Case No. 08-935-EL-SSO, and that dismissal of these EEC applications is contrary to public policy. We disagree on both counts. We do not believe the stipulation filed February 19, 2009, in Case No. 08-935-EL-SSO, or the Commission's approval of such stipulation in its Second Opinion and Order in that case issued March 25, 2009, can now force this Commission to approve the four captioned EEC applications. With respect to the public policy argument, OE and TE list the loss of incentives to two schools, a convention center, and a manufacturing facility in asserting that the dismissal of these cases will increase costs to all FirstEnergy customers and make it more costly for the utilities to comply with statutory benchmarks. While we regret any loss to these customers, the Commission must

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[2] *Id.*

establish filing deadlines that are consistent with our statutory mandates.

(11) Finally, FirstEnergy requests clarification of Finding 12 of the Fourth Entry on Rehearing in Case No. 10-834-EL-POR, regarding automatic approval of EEC applications which seek exemption from the utility's EEDR rider for periods beyond 24 months. Specifically, FirstEnergy asks which applications (pending and/or filed after September 20, 2011) that involve exemptions beyond 24 months are eligible for automatic approval of the exemption up to the initial 24-month period only. Given that the pilot program does apply to applications already pending before the Commission, FirstEnergy states that they would assume that this provision applies as well. However, there are currently applications pending before the Commission that involve exemptions beyond 24 months and have also surpassed the 60-day waiting period for automatic approval.

In response to this request, we hereby clarify that EEC applications filed prior to September 15, 2010 are not eligible for automatic approval under the pilot program. EEC applications filed after September 15, 2010 but prior to May 25, 2011, that requested an EEDR rider exemption rather than a cash rebate are also not eligible for automatic approval under the pilot program, notwithstanding any subsequent amendment of the application. The Commission's staff has been working on these older cases and expects to process all of these pending cases in the near future. EEC applications filed after May 25, 2011, in accordance with the pilot program are automatically approved after the 60-day waiting period, unless suspended by a Commission or attorney examiner entry; but any exemption from a utility's EEDR rider beyond the initial 24-month period will be subject to review, and the applicants (mercantile customer, electric utility, or authorized third party) must file for renewal of the EEDR rider exemption, via a form to be published by Staff.

It is, therefore,

ORDERED, That the applications for rehearing regarding the dismissals of the applications in Case Nos. 11-2044-EL-EEC, 11-2143-EL-EEC, 11-2145-EL-EEC, and 11-3046-EL-EEC are hereby denied. It is, further, ORDERED, That the application for rehearing of FirstEnergy in Case No. 10-834-EL-POR requesting clarification of Finding 12 of the September 20, 2011 Fourth Entry on Rehearing is hereby granted to the extent set forth above. It is, further,

ORDERED, That a copy of this entry on rehearing be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Todd A. Snitchler, Chairman

Paul A. Centolella

Steven D. Lesser

Andre T. Porter

Cheryl L. Roberto

RMB/dah

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Secretary