BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application for	)	
Approval of a Pilot Program Regarding	)	Case No. 10-834-EL-POR
Mercantile Applications for Special	)	
Arrangements with Electric Utilities and	)	
Exemptions from Energy Efficiency and	)	
Peak Demand Reduction Riders	)	

COMMENTS OF OHIO EDISON COMPANY, THE CLEVELAND ELECTRIC ILLUMINATING COMPANY AND THE TOLEDO EDISON COMPANY

INTRODUCTION

On September 5, 2012, the Commission issued a Finding and Order that directed Staff to file, by January 15, 2013, a report of its review and recommendations of the Mercantile Pilot Program ("EEC Pilot") established in this case, including the determination of appropriate levels and lengths of rider exemptions for mercantile customers opting out of utility energy efficiency programs. The Order also scheduled a workshop which was held on November 15, 2012. At that workshop, a representative of Lawrence Berkeley National Laboratory ("Lawrence Berkeley") presented a review of self-directed demand-side management ("DSM") programs across the country, including alternatives to the use of the Benchmark Comparison for calculating rider exemption periods and the "as found" method for calculating energy savings.

On November 16, 2012, the Attorney Examiner in the above-captioned case issued an Entry requesting comments on any matter discussed at the November 15, 2012 workshop or on the EEC Pilot by November 30, 2012. Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company

(“Companies”) appreciate the opportunity to comment on both the workshop and the EEC Pilot.

The Companies’ comments are separated into two parts. First, the Companies will discuss their support of the continuation of the EEC Pilot. Second, the Companies will address the specific questions that Lawrence Berkeley raised in the workshop.

EEC PILOT

The Companies began filing joint applications with Mercantile Customers in July, 2009. On September 15, 2010, the Commission introduced the EEC Pilot in the above-captioned case whereby the Commission and Staff issued a standard application form, introduced a 60 day auto approval timeline for applications, and clarified what types of projects could count as energy savings for the Companies’ compliance obligations under Section 4928.66, Ohio Revised Code. Given that the Companies are under a continuing obligation to meet statutory energy efficiency and demand response mandates and the Companies’ desire to streamline applications for mercantile applications, the Companies are supportive of the EEC Pilot as evidenced by the active role it has taken in the above-captioned case.

Moreover, in its September 15, 2010 Entry, the Commission made clear the pilot program was motivated by that backlog of hundreds of applications that has developed since the Commission issued its October 15, 2009 Entry on Rehearing in Case No. 08-888-EL-UNC. The Commission confirmed the importance of these applications when it recognized “that the prompt review of applications to commit mercantile customer programs for integration with electric utility programs is essential in order for electric utilities to meet their peak demand reduction and energy efficiency benchmarks."[1] The Companies have filed over 450 mercantile applications since the inception of the program. Eliminating the EEC Pilot will hinder the Companies' ability to comply with SB 221 mandates and increase the costs of compliance for customers. The Companies are also supportive of the EEC Pilot's use of the "as found" method of counting savings and the "benchmark comparison" method for exemptions. The Companies have received positive feedback from customers, administrators and from trade organizations that assist customers in preparing applications. The EEC Pilot has been successful and the Companies believe that it should become a permanent program.

WORKSHOP

At the workshop, Lawrence Berkeley posed four questions for consideration. The Companies will address each of those questions below:

1. More than half (10 of 19) of the programs reviewed provide some portion of the DSM charge to support costs such as program administration and EM&V – **Should Ohio's self-direct customers pay for some of these costs, and if so to what extent?**

Currently under the Companies' Mercantile Program, for an incentive, customers may choose between a rebate option and an exemption from the recovery mechanism, Rider DSE2. The majority of customers who choose the rebate are still paying into Rider DSE2, and therefore, are paying for program administrative, EM&V, and other costs.

For those customers who choose the exemption, the Companies believe that the law is clear. Under Section 4928.66 (A)(2)(c), Ohio Revised Code "Any mechanism designed to recover the cost of energy efficiency and peak demand reduction programs … may exempt mercantile customers that commit their demand-response or other

[1] Case No. 10-834-EL-POR, Entry at 1 (September 15, 2010).

customer-sited capabilities…" The statute neither limits the exemption nor requires the Companies to only partially exempt customers from the rider. Any limit on the exemption will discourage customers from committing their projects to the Companies' program.

2. Few self-direct programs reward credit for historic projects **– Should Ohio re-direct resources to new and additional projects, and if so how?**

In the EEC Pilot, the Commission limited projects that can be counted under the pilot program. In its Second Entry on Rehearing, the Commission stated:

> On 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. Further, as the pilot program is currently scheduled to end on March 15, 2012, the Commission will review the results of the pilot program at that time, and may adjust these periods to balance the awarding of incentives and counting, with the need to minimize future measurement and verification issues.[2]

As discussed in their Application for Rehearing on the September 15, 2010 Entry developing the EEC Pilot, the Companies do not agree with this three year limitation and believe that the statute does not provide for such a limitation. Nevertheless, by March 31, 2013, projects from 2009 must be filed or they cannot count. Thus, the three-year limitation has virtually eliminated historical projects that were completed before SB 221 was enacted from being counted by EDUs or from being eligible for an incentive. Therefore, by 2013, all projects that can count will be "new and additional" projects given that they were completed after the enactment of SB 221. There is no need to change the EEC Pilot program terms on this issue.

[2] Case No. 10-834-EL-POR, Second Entry on Rehearing at ¶ 15 (May 25, 2011).

Moreover, the language in SB 221 appropriately recognizes incentivizing historical projects. Section 4928.66 (A)(2)(c), Ohio Revised Code states: "[a]ny mechanism designed to recover the cost of energy efficiency and peak demand reduction programs … may exempt mercantile customers that commit their demand-response or other customer-sited capabilities, whether **existing or new**……" The intent of the statute was to include historical projects towards utility compliance targets. The legislators wisely recognized that before the economic downturn of late 2008, a large number of customers had progressively invested in efficiency programs, and that even subsequent to the downturn, certain customers make significant investments to achieve energy savings on their own for which they should be recognized. With regard to new and additional projects, the Companies currently have programs in place that encourage and support customers' investments in new energy efficiency projects through the end of this year and have a 3 year plan pending before the Commission for the years 2013 – 2015. Thus, the Companies are already directing investments to new and additional projects.

3. Most programs provide credit for projects based on project cost (or incremental project cost), and a few programs reward customers for aggressive savings with competitively granted funds or by allowing customers to receive incentives beyond their DSM charge – **Should Ohio consider alternatives to the Benchmark Comparison Method?**

The Benchmark Comparison Method is reasonable and should continue to be used. The Companies' Mercantile Program has observed a high level of success with many of the larger industrial customers generally choosing the rider exemption option. The Benchmark Comparison Method is fair and equitable to customers, with the rationale being that if customers do enough efficiency improvements on their own to keep up with the statutory requirements for utilities, they have done their "fair share" and thus should not have to pay into a rider that supports other customer energy efficiency programs. For customers who have additional cost-effective energy efficiency measures available within their facilities, the Companies' policy allows for application for additional rebates, either through the Mercantile Customer Program or alternatively through one of the Companies' C&I Programs. Therefore, the Benchmark Comparison Method does not limit potential for any specific customers who have the ability to do more than their "fair share."

4. To achieve many of the system benefits from DSM, savings need to be reliable, verifiable, and *additional* – **Should Ohio adopt the baseline of current code or industry standard instead of "as found"?**

There are several reasons the Commission should maintain the "as found" method of calculating energy savings in the Mercantile Customer Program. First, in its September 15, 2010 Entry, the Commission explained "for purposes of counting savings toward utility compliance and providing available incentives under the pilot program, all equipment replacements will be considered using the "as found" method."[3] In further support of the "as found" method, the Commission stated in their most recent entry on rehearing:

> …we again note that the goals of this pilot program are to reduce obstacles to compliance with the statutory energy efficiency benchmarks, simplify the existing application process, and minimize the overall cost of compliance to all ratepayers. The September 15 Entry expressly allowed under the pilot program the use of the "as found" method for calculating energy savings, the "benchmark comparison" method for calculating EEDR rider exemptions, and an EEDR rider exemption for projects with a payback of less than one year. …Ultimately, this Commission must be at liberty to adjust our policies within the boundaries of its statutory authority, either sua sponte or otherwise, in developing effective mercantile customer programs that will permit Ohio electric utilities to meet their statutory EEDR obligations. Such flexibility is crucial to the development of a vibrant pilot program and the lessons learned by the

[3] *Id.* at Paragraph 7 (emphasis added).

> Commission as a part of the pilot program are the opportunity to engage shareholders and offer the opportunity to demonstrate the long-tern feasibility of the EEDR program.[4]

Those sensible and valid reasons exist today justifying making the "as found" method of calculating savings a permanent part of the Mercantile Customer Program.

Second, SB 221 does not give the Commission authority to place restrictions upon the counting of mercantile customers' efficiency gains and peak demand reductions toward the EE/PDR mandates in Section 4928.66, Revised Code. The law requires the Commission to count the effects of **all** energy efficiency and peak demand reduction programs towards compliance with the statutory benchmarks.[5]

Third, requiring the baseline to meet current code or industry standards is vague and unworkable. Customers would not have predictability and certainty in knowing what is meant by "current code" or "industry" standard. This rule is impractical and would require an EDU to track each and every building code, statute and regulation on the federal, state, and political-subdivision levels within the EDU's certified territory. Moreover, it creates a presently unknown and unknowable compliance deficit that, as the years go by, will become more difficult to overcome as more and more projects, both past and future, get eliminated from consideration. As a result, customers would be responsible not only for the costs associated with previously approved and implemented programs, even though the results of such programs would no longer count towards compliance as a result of the supervening energy standards, but also for the costs of new programs needed in order to overcome the deficit — assuming new programs could be

[4] *Id.* at Paragraph 9.
[5] R.C. § 4928.66 ("Compliance with divisions (A)(1)(a) and (b) of this section shall be measured by including the effects of **all** demand response programs for mercantile customers of the subject electric distribution utility and all such mercantile customer-sited energy efficiency and peak demand reduction programs, adjusted upward by the appropriate loss factors.").

developed and implemented faster than new standards are mandated. For those reasons, the Companies believe that the Commission should sanction the "as found" method of counting savings.[6]

CONCLUSION

The Companies appreciate the opportunity to provide comments on the EEC Pilot and Workshop and look forward to working with the Commission and Staff in the future on this issue.

Respectfully submitted,

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[6] The Companies also believe the Commission should allow all savings from customers' energy efficiency projects, regardless of whether they are mercantile customers, to count under the "as found" method as discussed in their Comments in Case No. 08-888-EL- ORD and 09-512-GE-UNC