

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Cleveland)	Case No. 09-1117-EL-EEC
Electric Illuminating Company and Charter)	
Manufacturing Company, Inc., For Approval)	
of a Special Arrangement Agreement With a)	
Mercantile Customer)	

**COMMENTS REGARDING THE JOINT APPLICATION
BY
THE OHIO ENVIRONMENTAL COUNCIL AND THE OHIO CONSUMERS'
COUNSEL**

Respectfully Submitted,

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COMMENTS

I. INTRODUCTION

In its Joint Application in the above-captioned case, the Cleveland Electric Illuminating Company (“CEI” or “FirstEnergy”) seeks approval of a Special Arrangement Agreement with a Mercantile Customer, Charter Manufacturing Company, Inc. (“Charter”). The Joint Application seeks to allow Charter to opt-out of paying CEI for the costs collected under energy efficiency Rider DSE2. Approval of the Application would also allow CEI to attribute the energy reductions associated with the projects undertaken by Charter to the energy efficiency benchmarks established by Substitute Senate Bill 221 (“S.B. 221”) and codified in R.C. 4928.66. The Joint Application does not provide sufficient information to allow Commission approval. The Joint Application requires significant revisions or the filing of supplemental information as an addendum to the application before the Application can be approved by the Commission.

The undeniable purpose and goal of S.B. 221 was to promote the development of energy efficiency and renewable energy in the state of Ohio. To meet this goal of cleaner generation and reduced energy consumption, R.C. 4928.66 requires all electric distribution utilities (“utilities”) to meet annual Energy Efficiency and Peak Demand Reduction (“EE/PDR”) benchmarks, which culminate in a 22 percent reduction in energy usage by the year 2025. R.C.

4928.66(A)(2)(c) also allows utilities to count certain qualifying customer-sited energy improvements towards those benchmarks and, in exchange, for the customer to opt-out of a utility's EE/PDR cost recovery mechanism.

The Joint Application in question clearly fails to include data that must be reviewed by the Commission in order to provide a foundation for approval. Specifically, the Joint Application fails to include a description of measurement and verification methodologies, lacks information on remaining useful life of equipment or avoided incremental cost, and includes inadequate descriptions of energy efficiency programs and initiatives. For all of these reasons, the Joint Application is inadequate.

Accordingly, the Joint Application should not be approved without significant revisions or the filing of supplemental information as an addendum to the application. The OEC and OCC also request that the Commission convene a technical conference to educate interested parties about the Commission's criteria for approval, and establish a standard form that will be used to evaluate this and future applications. Finally, we note that FirstEnergy intends to use the energy savings from this and other projects to meet a substantial portion of its 2010-2012 EE/PDR benchmark obligations. FirstEnergy's Portfolio Plan application is currently being litigated before the Commission in Case No. 09-1947-EL-POR, et al. The viability of the Company's Portfolio Plan is directly dependant on the viability of this and other mercantile exemption applications. Therefore, the Commission should promptly consider the matters raised in these Comments.

II. ARGUMENT

A. The Application Does Not Contain Sufficient Information For Commission Approval

The Joint Application should not be approved until further information has been provided consistent with the requirements of the Ohio Administrative Code. In the present Joint Application, there is insufficient information describing the methodologies used to measure and verify program results, no information regarding the remaining life of the replaced equipment or the electric utility's avoided incremental cost, and inadequate descriptions of the specific initiatives themselves. Commissioner Cheryl Roberto has expressed concern regarding the lack of such necessary information contained in similar applications.¹

1. The Joint Application Contains An Insufficient Description Of Measurement And Verification Methodologies

The Joint Application cannot be approved until the Applicants provide further information regarding measurement and verification methodologies, as required by Commission regulations. According to O.A.C. 4901:1-39-05(G)(5), a joint application for a special arrangement between a mercantile customer and an electric utility must:

“[i]nclude 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.”

The Joint Application does not satisfy the requirements of O.A.C. 4901:1-39-05(G)(5). The Joint Application in whole is sixteen pages, the majority of which is boilerplate information, including a six-page agreement and a five-page recitation of the statutory requirements.² Only

¹ *In the Matter of the Application of PolyChem Corporation and the Cleveland Electric Illuminating Company For Approval of a Special Arrangement with a Mercantile Customer*, Case No. 09-1102-EL-EEC, Finding and Order at pages 3-5 (February 11, 2010) (Roberto, Comm'r, dissenting).

² The agreement is required by O.A.C. § 4901:1-39-05(G)(4).

the final four pages provide the Commission with any substance about the Project. These pages fail to provide enough information upon which the Commission could approve the Joint Application. More specifically, CEI submits Exhibit 3 as the description of all relevant methodologies, protocols, and practices.³ Exhibit 3 is simply a repetition of the following statement: “Calculations were based on measured values taken before and after the project’s in service date.” The Joint Application includes no substantive description of methodologies, as regulation requires.⁴ The Joint Application also sets forth no substantive methodology for measurement as required by O.A.C. § 4901:1-39-05(G)(5), and the brief, simplistic description in Exhibit 3 is inadequate. Without more information the Commission is incapable of determining whether the savings reported for this energy project are purely speculative, or an accurate estimate of anticipated savings. The Commission should require the Applicants to submit information regarding the measurement and verification methodologies used in the Joint Application.

2. The Joint Application Contains No Information On Remaining Useful Life Of Equipment Or Avoided Incremental Cost

The Joint Application also lacks the information required to obtain a presumption that the energy efficiency will be attributed to the project alone. For a customer-sited project to be eligible for an exemption, the customer’s energy savings must have been the result of an EE/PDR project. The Commission’s rules provide that that an EE/PDR project must involve either early retirement of fully functioning equipment or the installation of new energy efficient equipment that exceeds the market standard:

³ *In the Matter of the Application of Cleveland Electric Illuminating Company and Charter Manufacturing Company, Inc. For Approval of a Special Arrangement Agreement With a Mercantile Customer*, Case No. 09-1117-EL-EEC, Joint Application at page 3 (December 23rd, 2009).

⁴ O.A.C. § 4901:1-39-05(G)(5).

A mercantile customer's energy savings and peak-demand reductions 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.⁵

Therefore, pursuant to O.A.C. § 4901:1-39-05(F), if the customer retires fully-functioning equipment, or if newly-installed equipment provides greater reductions than new standard equipment would have, the Commission presumes the energy savings resulting from those projects to be the result of the project. As noted by Commissioner Roberto, the Commission cannot grant this presumption unless the application contains the appropriate information.⁶ The application must describe the functionality and remaining useful life of the replaced equipment and the energy efficiency of standard replacement equipment.⁷ The Joint Application does not contain this information. Specifically, project 12, referenced in Exhibit 3, contains no representation on the early retirement of fully functional equipment.⁸ Without information describing the remaining useful life of the equipment replaced, it is impossible to know whether the savings were *incidental* as the result of a necessary "business as usual" investment, or *additional*, as the result of an energy efficiency project. The mercantile opt-out provision is intended to reward mercantile customers who make a choice to invest in energy efficiency, not for customers who simply make a necessary replacement of equipment that is at the end of its useful life.

⁵ O.A.C. 4901:1-39-05(F).

⁶ *In the Matter of the Application of PolyChem Corporation and the Cleveland Electric Illuminating Company For Approval of a Special Arrangement with a Mercantile Customer*, Case No. 09-1102-EL-EEC, Finding and Order at pages 3 (February 11, 2010) (Roberto, Comm'r, dissenting).

⁷ *Id.*

⁸ *In the Matter of the Application of Cleveland Electric Illuminating Company and Charter Manufacturing Company, Inc. For Approval of a Special Arrangement Agreement With a Mercantile Customer*, Case No. 09-1117-EL-EEC, Joint Application, Exhibit 2 (December 23rd, 2009).

In order to comply with O.A.C. 4901:1-39-08(A), Commissioner Roberto points out that “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.”⁹ The Joint Application does not contain this information. Because of these deficiencies, the Commission should require the Applicants to submit additional information on these topics.

3. Additional Data Is Necessary to Determine Whether The Joint Application Encourages Further Customer-Sited Energy Efficiency Development, And Whether The Energy Efficiency Projects Pass The Total Resource Cost Test.

The Commission is authorized by R.C. 4928.66(A)(2)(c) to allow an exemption if the Commission determines that the exemption reasonably encourages the customer to commit those energy savings to the utility. Specifically, a rider exemption requires, according to rule 4901:1-39-08, “[a] demonstration that energy savings and peak-demand reductions 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 costs exceeds the cost to the electric utility for the mercantile customer’s program.” Nowhere in the Joint Application is this demonstration included, discussed or alluded to. In light of this central component of the Commission’s “reasonableness” determination under O.A.C. 4928.66(A)(2)(c), the Commission cannot approve this Joint Application until the Applicants make this demonstration of reasonable cost. Because such a demonstration is not included with or discussed in the subject application, the Commission should require Charter to submit additional information on this issue.

⁹ *In the Matter of the Application of PolyChem Corporation and the Cleveland Electric Illuminating Company For Approval of a Special Arrangement with a Mercantile Customer*, Case No. 09-1102-EL-EEC, Finding and Order at page 5 (February 11, 2010) (Roberto, Comm’r, dissenting).

4. The Joint Application Does Not Include Adequate Descriptions Of Energy Efficiency Programs And Initiatives.

The Joint Application's description of specific measures is completely inadequate as a basis for approval. Specifically, several of the project descriptions included in the Joint Application leave significant questions about the nature of these projects, whether they qualify as energy efficiency, or whether they even occurred at a facility in the state of Ohio. The Commission's rules require a specific description of the project to be filed as part of the Joint Application:

“A listing and description of the Customer Energy Projects implemented, including measures taken, devices or equipment installed, processes modified, or other actions taken to increase energy efficiency and reduce peak demand, including specific details such as the number, type and efficiency levels both of the installed equipment that is being replaced, if applicable;”¹⁰

Filed with the present Joint Application is the “Mercantile Customer Project Commitment Agreement,” signed by Charter. This agreement includes a listing of items that Charter agrees to provide to the Commission as part of the Joint Application. However, the Joint Application fails to provide this information in a coherent form. These incoherent descriptions of the projects do not lead to the conclusion that the projects are energy efficiency projects. The project descriptions also contain various deficiencies. For the “Coiler Cobble Reduction,” “Reduction in EAF Tap Temperature,” “Baghouse Fan Runtime Reduction,” and the “Starter Bar Reduction” projects, it is unclear from the descriptions in Exhibit 3 whether or not these actions are part of routine business and maintenance practices. If these reduction efforts are part of routine maintenance efforts, they do not qualify as energy efficiency savings projects under the applicable rule. O.A.C. 4901:1-39-01 (L) states that “Energy Efficiency” means:

¹⁰ *In the Matter of the Application of Cleveland Electric Illuminating Company and Charter Manufacturing Company, Inc. For Approval of a Special Arrangement Agreement With a Mercantile Customer*, Case No. 09-1117-EL-EEC, Joint Application, Exhibit 1 at page 2 (December 23rd, 2009).

“reducing the consumption of energy while maintaining or improving the end-use customer’s existing level of functionality, or while maintaining or improving the utility system functionality;”

If routine maintenance projects produce energy savings, this is incidental savings, not additional savings. If maintenance projects produce savings and are new additions to a facility’s operation, then under the O.A.C. the projects would qualify as energy efficiency measures. That noted, Charter makes no representation that the “Coiler Cobble Reduction,” “Reduction in EAF Tap Temperature,” “Baghouse Fan Runtime Reduction” and “Starter Bar Reduction” projects, undertaken in April of 2006, October 2006, February 2007 and July of 2006, respectively, are more than routine maintenance projects.¹¹ Charter must demonstrate that these projects were newly added in the 2006-2008 period to qualify them as energy efficiency projects eligible for exemption; presumably, such a demonstration would require a description of the new practice, a description of the old practice, and the date of the practice change.

Some of the projects include information that indicates that they were not routine maintenance practices. For instance, in its description of “Enhancement Projects,” Charter represents that “[i]n the later part of 2008, several projects were implemented to further maximize the efficiency of the melt shop, specifically on the largest energy user, the EAF.”¹² Although this description does not include specifics and details concerning individual initiatives or measurement and verification methodologies, the application implies that the savings were additional. However, because the Joint Application lacks information containing the details and specifics of measurement and verification methodologies, the Commission should require the applicants to submit additional concrete information on these projects.

¹¹ *In the Matter of the Application of Cleveland Electric Illuminating Company and Charter Manufacturing Company, Inc. For Approval of a Special Arrangement Agreement With a Mercantile Customer*, Case No. 09-1117-EL-EEC, Joint Application, Exhibit 2 (December 23rd, 2009).

¹² *Id.*, exhibit 3.

5. The Joint Application Indicates That At Least One Of The Projects Referenced In The Application Took Place In Another State, Not Subject To The Rider, Making The Project Ineligible For Exemption.

The Joint Application has been filed on behalf of “Charter Manufacturing Company, Inc., 1658 Cold Springs Road, Saukville, WI.” Presumably, Charter is a Wisconsin-based manufacturer with facilities in Ohio. However, the description of Project 4, the “LRF Procedures” Project, represents that the Saukville, Wisconsin facility was the project’s location.¹³ This would make the project ineligible for inclusion in the Joint Application. Charter does not pay the rider in question in Wisconsin, and Ohio customers do not directly benefit from the project. Charter cannot use projects completed in Wisconsin to obtain an exemption for a charge in Ohio. This representation in Exhibit 3 the entire application into question. If any of the other projects referenced were undertaken at non-Ohio facilities, they are also ineligible for inclusion in the Joint Application.

B. The Commission Should Outline Criteria For Approval Of Mercantile Opt-Out Applications

CEI’s mercantile application is a vague, legally inadequate document. If approved by the Commission, this Joint Application could initiate a flood of other deficient mercantile exemption applications. The Commission should stop the flood of these deficient applications by outlining the criteria required for approval of mercantile applications. A technical conference on the mercantile application process would be the ideal venue for all interested parties and the Commission to discuss the information required in applications, and to develop a standard application for mercantile customers looking to opt-out EE/PDR riders.

¹³ *Id.*

1. The Commission Should Convene a Technical Conference

To address the Commission's obligation to promote the state policy under R.C. 4928.02(J) to "provide coherent, transparent means of giving appropriate incentives to technologies that can adapt successfully to potential environmental mandates," the Commission should consider Commissioner Roberto's recommendation that the Commission's Staff undertake a workshop or technical conference.¹⁴ The workshop would allow for a methodical formulation of a regulatory framework that would provide for input from all interested parties, develop standardized forms and develop a "go—no go" decision matrix for mercantile EE/PDR applications. This process would provide the Commission with an opportunity to explain the information it needs under the new rules, would lessen future litigation, and would encourage the use of low-cost opportunities for Ohio electric utilities to meet their benchmarks. Given the plethora of mercantile opt-out applications, it would also help the Staff and other interested parties in the review process.

2. The Commission Should Provide a Standard Application Form

One of the goals of the technical conference on the mercantile opt-out application process should be the creation of a standard application form, similar to those that must be filed to certify renewable energy generating facilities.¹⁵ Utilities and their customers could then use the standardized application, being certain that their application would include all information necessary for approval. Additionally, a uniform application would simplify the approval process for the Commission and interested parties because those reviewing the applications would be familiar with the standard forms and would be able to quickly navigate the application to find

¹⁴ See *In the Matter of the Application of Casualty Insurance and the Cleveland Electric Illuminating Company For Approval of a Special Arrangement Agreement With a Mercantile Customer*, Case No. 09-0595-EL-EEC, Dissenting Opinion at 7.

¹⁵ The standard form for REN applications, with its specific criteria, can be used a model for creating a standard mercantile application form.

specified information. For example, reviewers would know that descriptions of the energy projects were located in section 'x', or that descriptions of the methodologies used to measure and verify program results are located in section 'y'. A uniform application would also focus the approval process on substantive issues, such as whether the projects implemented by the customer constitute energy efficiency projects, instead of the current debate over what information applications need to include.

C. The Commission Should Take Up This Matter Promptly To Prevent Unlawful Mercantile Applications From Being Included in Portfolio Plan Calculations

As discussed above, FirstEnergy intends to use the energy savings obtained from this and other similar mercantile projects to satisfy a substantial portion of its EE/PDR obligations. In fact, the Company intends to use such historic mercantile savings to meet over 50 percent of its 2010 benchmark.¹⁶ Therefore, it is critically important that each mercantile exemption application represents a lawful use of the mercantile exemption statute. The Commission should promptly take up this matter, while FirstEnergy's Portfolio Plan, Case No. 09-1947-EL-POR, et al., is being litigated. Given that time is of the essence, the parties recommend that the Commission schedule a workshop within the next two weeks, to be continued daily in the same fashion as a hearing would until there is either a consensus of the parties or a partial consensus, with a week to file comments on what is not resolved through consensus. If the Commission so ordered, the OEC and the OCC would volunteer to draft a straw document from which the parties can work. The parties request the Commission to render a decision on this matter no later than June 30 so that all new filings can be consistent with PUCO requirements.

¹⁶ See Case No. 09-1947-EL-POR, et al., OEC's Post-Hearing Brief at 8, citing OEC Exhibit 1, FirstEnergy's Data Responses.

III. CONCLUSION

In conclusion, the Joint Application in question fails to include data and representations that must be reviewed by the Commission in order to provide a foundation for statutorily permissible approval. Specifically, the Joint Application fails to include a description of measurement and verification methodologies, lacks information on remaining useful life of replaced equipment or avoided incremental cost, and includes wholly inadequate descriptions of energy efficiency programs and initiatives. In order to meet these requirements, the Commission should request that CEI significantly revise, or file supplemental information in addendum to, the Joint Application. The Commission should also use this filing as an opportunity to elaborate on the criteria it will use to judge mercantile exemption applications. To this end, the Commission should promptly convene a technical conference as outlined above. This process will allow the Commission to discuss the mercantile application process, clarify what information it requires for approval under the new rules, and develop a standard application form. The OEC and the OCC volunteer to be active participants in such a process, and to help develop a standardized mercantile application form.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing Comments has been served upon the following parties, via electronic and/or U.S. Mail, this 4th day of May, 2010.

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