

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Parma )  
General Hospital and The Cleveland )  
Electric Illuminating Company For ) Case No. 09-1103-EL-EEC  
Approval of a Special Arrangement with a )  
Mercantile Customer and Exemption from )  
Payment of Costs Included in Rider DSE2. )

FINDING AND ORDER

The Commission finds:

- (1) On November 4, 2009, The Cleveland Electric Illuminating Company (CEI) filed a joint application with Parma General Hospital (PGH) (collectively, Applicants) for an exemption from Rider DSE2 for PGH (joint application). Rider DSE2 is the mechanism by which CEI 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) CEI is a public utility as defined in Section 4905.02, Revised Code, and, as such, is subject to the jurisdiction of this Commission.
- (8) PGH is a mercantile customer as defined in Section 4928.01(A)(19), Revised Code.
- (9) The joint application and attached Exhibit A explain that, in 2006, PGH implemented lighting, motor, and transformer improvement projects, made air handling unit improvements, and installed cooling tower variable frequency drives. 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., through 2018, as a result of these projects.
- (10) On February 2, 2010, the Ohio Environmental Council (OEC) filed a motion to intervene, asserting that there is a danger that if the energy savings justifying PGH's exemption from Rider DSE2 are insufficient, CEI will not meet the energy savings requirements under Section 4928.66, Revised Code.
- (11) On March 23, 2010, 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 PGH's energy savings are not sufficient under the requirements set forth in Section 4928.66, Revised Code, and, as a result, consumers have to pay additional costs toward Rider DSE2.
- (12) The Commission finds that OEC and OCC have set forth reasonable grounds to intervene in this proceeding. Accordingly, their motions to intervene should be granted.

- (13) On May 18, 2010, OEC and OCC jointly filed comments, alleging that the application does not provide enough information for Commission approval and, as such, should be denied. OEC and OCC contend that the joint application contains an insufficient description of measurement and verification methodologies, no information concerning remaining useful life of equipment or avoided incremental costs, insufficient data to determine whether the joint application encourages further customer-sited energy efficiency development and passes the total resource cost test, and inadequate descriptions of energy efficiency programs and initiatives. Further, OEC and OCC assert that the joint application at issue is a vague, legally inadequate document, and that the Commission should specifically outline criteria for approval of mercantile opt-out applications. OEC and OCC suggest that the best method to ensure the inclusion of all necessary information in an application is to develop a standard application form. OEC and OCC suggest that the Commission convene a workshop in order to gather input from all interested parties, develop standardized forms, and build a decision matrix upon which mercantile energy efficiency and peak demand reduction applications can be evaluated.
- (14) On May 20, 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 the 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 CEI, including, but not limited to, engineering studies, engineering estimates, and new lighting receipts. 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 is reasonable.

- (15) On June 2, 2010, CEI filed a reply to OEC and OCC's comments. In its reply, CEI contends that it, along with PGH, has provided the Commission with all of the information required by law, including engineering studies, the methodologies used to calculate energy savings, and a demonstration that the costs avoided by CEI exceed the costs incurred for the projects, in the joint application, as well as in responses to various Staff data requests. CEI further contends that the joint application and documents provided to Staff offer a complete and detailed description of the methodologies used to measure and verify program results. CEI argues that the rules do not require the joint application to contain information on the remaining useful life of equipment or avoided incremental cost. Likewise, CEI argues that the rules do not require the joint application to contain a demonstration that the energy efficiency projects satisfy the total resource cost test, or that CEI's avoided cost exceeds the costs of the project. Further, CEI contends that the energy efficiency projects at issue are not routine business and maintenance practices, as OEC and OCC argue.
- (16) OEC and OCC filed a response to CEI's reply on June 9, 2010, which reiterated its comments and stressed the importance of scrutinizing mercantile exemption applications due to an intention by CEI to use mercantile and other historical savings to largely satisfy its energy efficiency benchmarks in 2010 and beyond.
- (17) Upon review of the joint application and supporting documentation provided by the Applicants, the comments advanced by OEC and OCC, the reply comments propounded by CEI, and Staff's recommendation, the Commission finds that the requirements related to the joint application, as delineated above, have been met. Although OEC and OCC contend that CEI has provided insufficient information upon which the Commission can evaluate CEI's measurement and verification methodologies, the remaining useful life of equipment or avoided incremental costs, whether the joint application encourages further customer-sited energy efficiency development and passes the total resource cost test,

whether the joint application provides sufficient descriptions of energy efficiency programs and initiatives, and whether the projects are a routine business and maintenance practice, the Commission finds that the information provided with the application and Staff's recommendation demonstrates that the joint application meets the criteria set forth above. Despite the arguments of OEC and OCC regarding insufficient information, both have had an opportunity to conduct discovery regarding the joint application.

- (18) With regard to the requests for a standard application and a workshop, the Commission has directed Staff to develop a standard application template for mercantile applications for special arrangements with electric utilities and exemptions from energy efficiency and peak demand reduction riders in order to assist the Commission in expediting the approval process. Accordingly, in the near future, the Commission will publish an application form and filing instructions for such applications. In light of these developments, the Commission finds that a workshop on these issues is unnecessary. Additionally, the Commission intends to streamline the approval of certain types of applications via an auto-approval process. Case No. 10-834-EL-EEC has been opened for this purpose.
- (19) 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.,<sup>1</sup> 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 CEI 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

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<sup>1</sup> On October 15, 2009, the Commission rejected the benchmark comparison method, reversing its prior position. Given that the agreement between the mercantile customer 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.

status report proceeding initiated by the filing of CEI's portfolio status report on March 15 of each year, as set forth in Rule 4901:1-39-05(C), O.A.C.

- (20) 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.

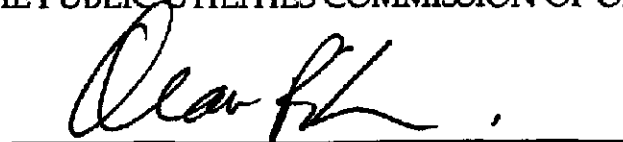
It is therefore,

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

ORDERED, That the joint application filed by CEI and PGH be approved. It is, further,

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

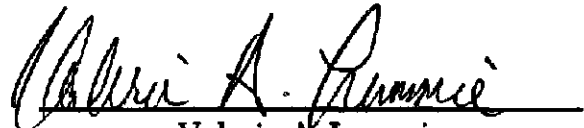
THE PUBLIC UTILITIES COMMISSION OF OHIO




Alan R. Schriber, Chairman



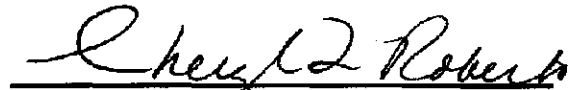
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Entered in the Journal

**JUN 16 2010**



Renee J. Jenkins  
Secretary

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CONCURRING OPINION OF COMMISSIONER PAUL A. CENTOLELLA

This case presents comparable circumstances to those in Case No. 09-595-EL-EEC, *In the Matter of the Application of Progressive Insurance Company and The Cleveland Electric Illuminating Company for Approval a Special Arrangement with a Mercantile Customer*. For the reasons stated in my Concurring Opinion in Case No. 09-595-EL-EEC, I would approve the proposed agreement subject to reexamination based on the total exemptions granted for this utility using a benchmark comparison approach and potential modification of such exemptions.

  
Paul A. Centolella, Commissioner