

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Sterling)
Jewelers, Inc. and Ohio Edison Company)
For Approval of a Special Arrangement) Case No. 09-1209-EL-EEC
with a Mercantile Customer and Exemption)
from Payment of Costs Included in Rider)
DSE2.)

In the Matter of the Application of)
Whirlpool Corporation – Marion Division)
and Ohio Edison Company For Approval) Case No. 09-1210-EL-EEC
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, Ohio Edison Company (OE) filed a joint application with Sterling Jewelers, Inc. (Sterling) in Case No. 09-1209-EL-EEC (09-1209) for an exemption from Rider DSE2 for Sterling. 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) On November 25, 2009, OE filed a joint application with Whirlpool Corporation – Marion Division (Whirlpool) in Case No. 09-1210-EL-EEC (09-1210) for an exemption from Rider DSE2 for Whirlpool.
- (3) 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."
- (4) 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.

- (5) 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.

- (6) 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.
- (7) 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.
- (8) OE is a public utility as defined in Section 4905.02, Revised Code, and, as such, is subject to the jurisdiction of this Commission.
- (9) Sterling and Whirlpool are mercantile customers as defined in Section 4928.01(A)(19), Revised Code.
- (10) In 09-1209, Sterling states that it undertook lighting system retrofits in May 2007. The joint application in 09-1209 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 2021, as a result of these projects.
- (11) In 09-1210, Whirlpool states that it undertook lighting upgrades on November 1, 2008. The joint application in 09-1210 contains a request for a mercantile commitment, as well as a request for a mercantile rider exemption through 2019.
- (12) Commission Staff (Staff) filed a letter recommending approval of the joint application in 09-1209 and 09-1210 on May 21, 2010. In its recommendations, Staff noted that the applicants in 09-1209 and 09-1210 provided the following items in support of their joint applications: (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 applications, Staff reviewed the items listed above, as well as further supporting documentation provided by OE, including, but not limited to, engineering studies, engineering estimates, and new lighting receipts. Staff confirmed that the methodology the applicants in 09-1209 and 09-1210 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 exemptions sought by Sterling and Whirlpool are reasonable.

- (13) Upon review of the joint application and supporting documentation provided by the applicants, as well as Staff's recommendation, the Commission finds that the requirements related to the joint applications in 09-1209 and 09-1210, as delineated above, have been met.
- (14) The Commission finds that the requests in 09-1209 and 09-1210 for mercantile commitment pursuant to Rule 4901:1-39-05, O.A.C., and for mercantile exemptions from Rider DSE2 pursuant to Rule 4901:1-39-08, O.A.C.,¹ do not appear to be unjust or unreasonable, and thus, hearings on the matters are unnecessary. Accordingly, we find that the joint applications in 09-1209 and 09-1210 should be approved. As a result of such approvals, we find that OE 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

¹ 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.

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

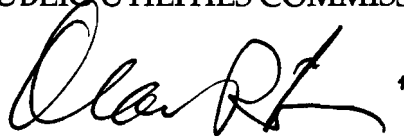
- (15) The Commission also notes that every arrangement approved by this Commission remains under our supervision and regulation, and is subject to change, alteration, or modification by the Commission.

It is therefore,


ORDERED, That the joint applications in 09-1209 and 09-1210 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

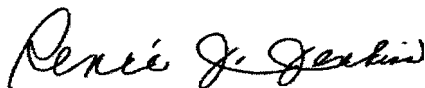


Cheryl L. Roberto

RLH/sc

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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