

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of)
Automated Packaging Systems and Ohio)
Edison Company For Approval of a Special) Case No. 09-1202-EL-EEC
Arrangement with a Mercantile Customer)
and Exemption from Payment of Costs)
Included in Rider DSE2.)

In the Matter of the Application of)
Cardington Yutaka Technologies, Inc. and)
Ohio Edison Company For Approval of a) Case No. 09-1203-EL-EEC
Special Arrangement with a Mercantile)
Customer and Exemption from Payment of)
Costs Included in Rider DSE2.)

In the Matter of the Application of Elyria)
Foundry and Ohio Edison Company For)
Approval of a Special Arrangement with a) Case No. 09-1205-EL-EEC
Mercantile Customer and Exemption from)
Payment of Costs Included in Rider DSE2.)

FINDING AND ORDER

The Commission finds:

- (1) On October 15, 2009, Ohio Edison Company (OE) filed a joint application with Automated Packaging Systems (APS) in Case No. 09-1202-EL-EEC (09-1202) for an exemption from Rider DSE2 for APS. 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) Also on October 15, 2009, OE filed a joint application with Cardington Yutaka Technologies, Inc. (Cardington) in Case No. 09-1203-EL-EEC (09-1203) for an exemption from Rider DSE2 for Cardington.
- (3) On October 28, 2009, OE filed a joint application with Elyria Foundry (EF) in Case No. 09-1205-EL-EEC (09-1205) for an exemption from Rider DSE2 for EF.

- (4) 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."
- (5) 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.
- (6) 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.
- (7) 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.
- (8) 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.
- (9) OE is a public utility as defined in Section 4905.02, Revised Code, and, as such, is subject to the jurisdiction of this Commission.
- (10) APS, Cardington, and EF are mercantile customers as defined in Section 4928.01(A)(19), Revised Code.
- (11) In 09-1202, APS states that it engaged in plant relamping, installed a new, more efficient air compressor, completed lighting retrofits, and installed variable air volume control timers during August 2006 through December 2007. The joint application in 09-1202 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 2025, as a result of these projects.

- (12) In 09-1203, Cardington states that it installed a direct blade assembly system cooling tower on February 1, 2008. The joint application in 09-1203 contains a request for a mercantile commitment, as well as a request for a mercantile rider exemption through 2022.
- (13) In 09-1205, EF states that it installed a coreless workshop addition that reduces the energy used during production in September 2008. The joint application in 09-1205 contains a request for a mercantile rider exemption through 2022.
- (14) The Ohio Environmental Council (OEC) filed motions to intervene in 09-1202, 09-1203, and 09-1205, asserting that there is a danger that if the energy savings justifying the mercantile customers' exemptions from Rider DSE2 are insufficient, CEI will not meet the energy savings requirements under Section 4928.66, Revised Code.
- (15) The Office of the Ohio Consumers' Counsel (OCC) also filed motions to intervene in 09-1202, 09-1203, and 09-1205, stating that the interests of Ohio's residential consumers may be adversely affected by this case, in the event that the mercantile customers' 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.
- (16) The Commission finds that OEC and OCC have set forth reasonable grounds to intervene in 09-1202, 09-1203, and 09-1205. Accordingly, their motions to intervene should be granted.
- (17) In May 2010, OEC and OCC jointly filed comments in 09-1202, 09-1203, and 09-1205, alleging that the applications do not provide enough information for Commission approval, and as such, should be denied. OEC and OCC contend that the applications contain 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 applications encourage further customer-sited energy efficiency development is encouraged, no determination of whether the projects pass the total resource cost test, and

inadequate descriptions of energy efficiency programs and initiatives. Further, OEC and OCC assert that the joint applications in 09-1202, 09-1203, and 09-1205 are vague, legally inadequate documents, 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 further 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.

- (18) Commission Staff (Staff) filed a letter recommending approval of the joint application in 09-1205 on May 21, 2010, and filed the same in 09-1202 and 09-1203 on May 26, 2010. In its recommendations, Staff noted that the applicants in 09-1202, 09-1203, and 09-1205 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 09-1202, 09-1203, and 09-1205 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 APS, Cardington, and EF are reasonable.
- (19) On June 2 and 3, 2010, OE filed replies to OEC and OCC's comments. In its replies, OE contends that it, along with each mercantile customer, 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 OE exceed the costs incurred for the projects, in the joint applications, and in responses to various Staff data requests. OE further contends that the joint applications and documents provided to Staff offer a complete and detailed description of the methodologies used to measure and verify program results. OE 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, OE 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 OE's avoided cost exceeds the costs of the project. Further, OE contends that the energy efficiency projects at issue are not routine business and maintenance practices, as OEC and OCC argue.

- (20) In 09-1202 and 09-1203, OEC and OCC filed a response to OE'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.
- (21) Upon review of the joint applications and supporting documentation provided by the applicants, the comments advanced by OEC and OCC, the reply comments propounded by CEI, the responses from OEC and OCC, and Staff's recommendation, the Commission finds that the requirements related to the joint applications in 09-1202, 09-1203, and 09-1205, as delineated above, have been met. Although OEC and OCC contend that OE has provided insufficient information upon which the Commission can evaluate OE's measurement and verification methodologies, the remaining useful life of equipment or avoided incremental costs, whether the joint applications encourage further customer-sited energy efficiency development and pass the total resource cost test, whether they provide 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 applications and Staff's recommendations demonstrate that the joint applications meet 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 applications.

- (22) 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.
- (23) The Commission finds that the requests in 09-1202, 09-1203, and 09-1205 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 09-1202, 09-1203, and 09-1205 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 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.

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.

- (24) 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.

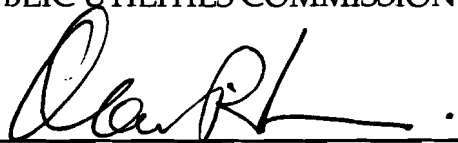
It is therefore,

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

ORDERED, That the joint applications in 09-1202, 09-1203, and 09-1205 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

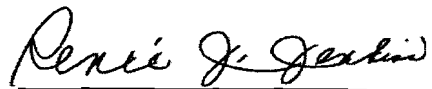

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Entered in the Journal

JUN 16 2010



Renee J. Jenkins
Secretary

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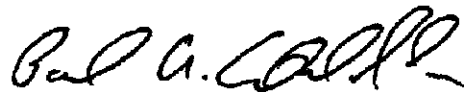
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CONCURRING OPINION OF COMMISSIONER PAUL A. CENTOLELLA

These cases present 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 agreements 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