BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Joint Applications of The Cleveland Clinic Foundation and The Cleveland Electric Illuminating Company and Ohio Edison Company for Integration of a Mercantile Customer Energy Efficiency or Peak-Demand Reduction Program.	)	Case No. 10-1956-EL-EEC Case No. 10-2025-EL-EEC

FINDING AND ORDER

The Commission finds:

(1) Section 4928.66, Revised Code, requires electric utilities to meet certain annual energy efficiency and peak demand reduction benchmarks specified in the statute. Further, the statute enables mercantile customers to commit their peak demand reduction, demand response, and energy efficiency programs for integration with an electric utility's programs in order for the electric utility to meet the statutory benchmarks.

(2) Section 4928.01(A)(19), Revised Code, defines a mercantile customer as a commercial or industrial customer that consumes more than 700,000 kilowatt hours of electricity per year or that is part of a national account involving multiple facilities in one or more states.

(3) The Cleveland Electric Illuminating Company (CEI) and Ohio Edison Company (OE) are public utilities as defined in Section 4905.02, Revised Code, and, as such, are subject to the jurisdiction of this Commission. CEI and OE recover their costs of complying with the energy efficiency and demand reduction (EEDR) requirements imposed by Section 4928.66, Revised Code, from their customers through their respective Riders DSE2.

(4) Rule 4901:1-39-05(G), Ohio Administrative Code (O.A.C.), provides for the filing of an application by a mercantile customer, either individually or jointly with an electric utility, to commit the customer's demand reduction, demand response, and energy efficiency programs for integration with an electric utility's programs in order to meet the utility's statutory requirements.

(5) On August 3, 2010, CEI and OE filed these energy efficiency credit (EEC) applications pursuant to Rule 4901:1-39-05(G), O.A.C., jointly with the Cleveland Clinic Foundation (Clinic or customer) to commit the Clinic's lighting program upgrades implemented in 2006 through 2009, for integration with CEI's and OE's programs to meet the utilities' EEDR benchmarks. The Clinic's program replaces, where feasible, incandescent lighting with more efficient fluorescent or light-emitting diode lighting, and includes the installation of occupancy sensors. The joint applications request mercantile rider exemptions under Rule 4901:1-39-08, O.A.C., through December 31, 2018, for Clinic facilities served by CEI, and through December 31, 2019, for Clinic facilities served by OE, as a result of these projects. According to the applications, the annual energy savings achieved through December 31, 2009 as a result of the Clinic's program equals 39,648,619 kWh for sites served by CEI and 513,919 kWh for sites served by OE. These improvements amount to energy savings of 8.52 percent and 10.56 percent, respectively, from the baseline energy usage for the Clinic facilities in question, with corresponding peak demand reductions of 1,295 kW for facilities served by CEI and 21 kW for OE-served facilities.

(6) According to the applications, the Clinic operates over 200 health care and mixed-use facilities, totaling over 23 million square feet across North America, a large number of which are located in the CEI and OE service territories. The Clinic's main campus is comprised of 50 buildings on 178 acres in Cleveland and is one of the largest private employers in Ohio with more than 40,000 direct employees. In addition, the Clinic operates numerous other healthcare facilities in Northeast Ohio, including nine regional hospitals, seventeen family healthcare and outpatient facilities, and dozens of specialized testing and treatment centers.

(7) On December 10, 2010, the applicants filed a request in Case No. 10-2025-EL-EEC to eliminate the lighting program upgrades at Clinic's Elyria FCH facility as that facility is no longer in operation and is being offered for sale.

(8) On April 8, 2011, the Commission staff filed reports in both cases. With respect to both cases, Staff reviewed the application and supporting documentation, and reports that these applications were properly filed in conformance with the applicable rules. Staff has verified that the customer meets the definition of a mercantile customer and has provided documentation that the methodology used to calculate energy savings conforms to the general principals

of the International Performance Measurement Verification Protocol used by the companies. Staff compared the customer's average annual energy baseline consumption with the energy savings achieved to verify the length of exemption of the DSE2 Rider and concluded that the exemption periods are accurately calculated. Staff also verified that the respective company's avoided cost exceeds the cost that the electric utility will spend to acquire the customer's commitment for integration of the self-directed energy efficiency project.

(9) With respect to Case No. 10-2025-EL-EEC, Staff notes that all of the lighting program upgrades at the three remaining Clinic facilities were implemented after January 1, 2007, and recommends exemption periods be approved for the respective facilities, as show below.

Case No. 10-2025-EL-EEC Cleveland Clinic Foundation Sites	**Exemption Period through**
Chestnut Commons FHC	12/31/2019
Elyria	N/A*
Lorain FHC	12/31/2016
Sagamore MOB 2	12/31/2019

(10) With respect to Case No. 10-1956-EL-EEC, Staff notes that this application covers lighting program upgrades at 38 Clinic facilities and that some were implemented prior to January 1, 2007, more than three years prior to the filing of this application. Nevertheless, Staff recommends that, given the uncertainties and delays in establishing rule requirements for mercantile customer programs, the mercantile exemptions from the DSE2 Rider be approved for all projects implemented on or after January 1, 2006. Additionally, Staff recommends any portion of the DSE2 Rider assessed to the customer during the recommended exemption period be refunded. With the savings achieved, the following chart shows each of the Cleveland Clinic Foundation sites and Staff's recommended periods for exemption from the DSE2 Rider.

Case No. 10-1956-EL-EEC Cleveland Clinic Foundation Sites		**Exemption Period through**
1	Avon Pointe MOB	12/31/2013
2	Beachwood FHC	12/31/2019
3	CCAC I	12/31/2012

Case No. 10-1956-EL-EEC Cleveland Clinic Foundation Sites		Exemption Period through
4	CCAC III	12/31/2023
5	Chagrin Falls	12/31/2013
6	Euclid Hospital	12/31/2018
7	Fairview Hospital	12/31/2017
8	Fairview Hospital Physicians	N/A*
9	Fairview West Physicians	12/31/2009
10	Health Space	12/31/2025
11	Hillcrest Hospital	12/31/2018
12	Hillcrest MOB 1	12/31/2017
13	Hillcrest MOB 2	12/31/2012
14	Huron Hospital	12/31/2014
15	Independence FHC	12/31/2011
16	Lakewood Community Health	12/31/2010
17	Lakewood FHC	12/31/2025
18	Lakewood Hospital	12/31/2016
19	Lakewood Hospital Professional Building	12/31/2015
20	Lakewood Medical	12/31/2010
21	Lutheran Hospital	12/31/2018
22	Lutheran Medical Building	12/31/2021
23	Lyndhurst Main	12/31/2025
24	Main Campus	12/31/2016
25	Marymount Hospital	12/31/2019
26	Parker	12/31/2010
27	Rockport MOB	12/31/2011
28	Rockside I	12/31/2011
29	Shaker Hospital	12/31/2012
30	Solon FHC	12/31/2025
31	South Pointe Hospital	12/31/2021
32	Strongsville FHC	12/31/2017
33	Westlake FHC	12/31/2019
34	Westlake MOB A	12/31/2010
35	Westlake MOB B	12/31/2017
36	White Mansion	12/31/2009
37	Willoughby I FHC	12/31/2019
38	Willoughby II	12/31/2015
* Customer exemption period determined to be zero		

(11) Upon review of the application, supporting documentation, and Staff's recommendations, the Commission finds that these joint applications meet the requirements for mercantile commitment pursuant to Rule 4901:1-39-05, O.A.C., and for mercantile customer EEDR rider exemptions pursuant to Rule 4901:1-39-08, O.A.C., and do not appear to be unjust or unreasonable. With respect to Case No. 10-1956-EL-EEC, we agree with Staff's recommendation that the Clinic should not be penalized for failing to file for EEDR rider exemptions in 2009 for lighting program upgrades which were implemented in 2006, particularly in view of the uncertainties and delays in establishing rule requirements for mercantile customer programs. As noted in our entry on rehearing issued today in Case No. 10-834-EL-POR, our establishment of an 18-month mercantile customer pilot program should allow flexibility in assessing the incentives awarded to past EEDR projects that were undertaken before the Commission's rules or programs were established. Accordingly, we find that the mercantile exemptions from the DSE2 Rider be approved for all projects implemented on or after January 1, 2006 as set forth above. Additionally, any portion of the DSE2 Rider assessed to the customer during the recommended exemption period should be refunded as a credit. Thus, a hearing on these matters is unnecessary, and we find that the applications should be approved. As a result of such approval, we find that the companies should adjust their baselines, pursuant to Section 4928.66(A)(2)(c), Revised Code, and Rule 4901:1-39-05, O.A.C. We note, however, that approval of these applications are subject to evaluation, measurement, and verification in the portfolio status report proceedings initiated by the filing of the electric utilities' portfolio status reports, as set forth in Rule 4901:1-39-05(C), O.A.C. We also note 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 these applications be approved as set forth above. 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

Todd A. Snitchler, Chairman

Paul A. Centolella

Steven D. Lesser

Andre T. Porter

Cheryl L. Roberto

RMB/HPG/dah

Entered in the Journal

MAY 25 2011

Betty McCauley

Betty McCauley
Secretary

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DISSENTING OPINION OF COMMISSIONER CHERYL L. ROBERTO

I am passionately supportive of mercantile customers' cost-effective energy efficiency investments. I believe these investments to be foundational to Ohio's manufacturing and economic renaissance. I am equally supportive of seeing the fruits of those investments committed to Ohio utilities' energy efficiency programs.

Unfortunately, the use of the Benchmark Comparison Method in this case and others to calculate the length of an exemption from Rider DSE2 bears no relationship to these economic goals, the statutory requirements of S.B. 221, or to the practical reality of energy efficiency programs. In fact, it undermines those goals.

The Benchmark Comparison Method only works if each customer has an equal opportunity to contribute to the utility's statutory benchmark. They simply do not. It makes no sense to allocate this benchmark to individual customers. Successful energy efficiency programs rely upon a few participating customers to produce energy savings at rates in excess of the electric utility's benchmark to, in the aggregate or total, achieve the benchmark across its entire load. Thus, while it may be reasonable to excuse a customer from participating in an electric utility's rider when that customer is already contributing its "fair share" of energy savings, an individual customer's "fair share" of energy reductions is unrelated to the electric utility's benchmark.

We learn from a review of programs in other states that a customer's fair share is met when the mercantile customer has implemented all cost-effective energy efficiency available to that customer. Further, those demonstrations must be refreshed on a regular basis in order for the customer to preserve their exemption from the rider. For example, New Mexico allows a mercantile exemption of seventy percent of the rider if the customer demonstrates that it has exhausted all cost-effective energy efficiency measures. N.M. STAT. § 62-17-9(B). Pursuant to N.M. ADMIN. CODE tit. 17, § 17.7.2.11(C), an exemption is valid for 24 months, and the customer may request approval to extend the exemption by demonstrating that it has exhausted all cost effective energy efficiency in its facility.

Oregon law contains similar provisions with the exemption being fifty four percent of the public purpose charges. Or. REV. STAT. § 757.612(5)(d)(A).

When a mercantile customer reduces its energy usage to a degree equal to the electric utility's benchmark and then seeks exemption from the rider, the remaining compliance burden shifts to the remaining customers despite the fact that additional cost-effective energy efficiency measures may still be available within the exempted customer's facility. The result is that, in order for the energy savings benchmarks to be met, more of the remaining customers must choose to participate and, of those who do, they must contribute even higher savings levels. Thus, the Benchmark Comparison Method fails to integrate energy efficiency as a resource on a least cost basis.

By granting an exemption for such a lengthy period of time, customers will have no incentive to commit any additional savings to the utility benchmark and the utility will have no means to incentivize additional energy savings projects. As a result, the utility will find it more and more difficult, and more expensive, to deploy cost-effective energy efficiency --- and we will miss an opportunity to advance Ohio's economy.

This Commission has rejected the method over a dozen times, reversing previous orders only as a matter of expediency to launch the mercantile pilot outlined in 10-834-EL-EEC last fall:

> The Commission previously ruled that the benchmark comparison methodology should not be used for applications filed after December 9, 2009. For purposes of the pilot program, the Commission will authorize the use of the benchmark comparison methodology or an electric utility-proposed methodology that simplifies the calculation of the incentive payment.

But if the method provides simplicity for program administration, it also works against the aims of S.B. 221 and Ohio's economic goals.

Alternatively today, the Commission could work collaboratively with stakeholders in a transparent and public docket to establish a protocol by which mercantile customers can demonstrate that they have an energy management system with meaningful commitments to deploy all cost-effective energy efficiency as defined by those measures that yield savings with an agreed payback period.

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For these reasons, I dissent.

Cheryl L. Roberto
Commissioner

/dah

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Betty McCauley
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 future reexamination based on the total exemptions granted for this utility using a benchmark comparison approach.

Paul A. Centolella, Commissioner