

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Joint Applications of)	
Ohio Edison Company for Integration of)	
an Energy Efficiency or Peak-Demand)	
Reduction Program with Following)	
Mercantile Customers:)	
)	
Johnny Appleseed Broadcasting)	Case No. 09-1226-EL-EEC
Kovatch Castings)	Case No. 10-2011-EL-EEC
IRG RC Lessor LLC)	Case No. 10-2035-EL-EEC
Hitachi Medical Systems America, Inc.)	Case No. 10-2039-EL-EEC
Youngstown State University)	Case No. 10-2055-EL-EEC
Giant Eagle, Inc.)	Case No. 10-2064-EL-EEC

FINDING AND ORDER

The Commission finds:

- (1) Section 4928.66, Revised Code, imposes certain annual energy efficiency and peak demand reduction requirements upon Ohio's electric distribution utilities, beginning in calendar year 2009; but the statute also 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 to meet the statutory requirements.
- (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) Ohio Edison Company (OE) is a public utility as defined in Section 4905.02, Revised Code, and, as such, is subject to the jurisdiction of this Commission. OE recovers its costs of complying with the energy efficiency and demand reduction requirements imposed by Section 4928.66, Revised Code, from its customers through its DSE2 Rider.
- (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) Each of the captioned energy efficiency credit (EEC) applications were filed, pursuant to Rule 4901:1-39-05(G), O.A.C., to commit the customer programs which were implemented within three calendar years prior to the date of filing for integration with OE's programs to meet the utility's energy efficiency and peak demand reduction benchmarks. In each case, a staff report was filed recommending approval of the application and an incentive payment or exemption from assessment of the DSE2 Rider for the designated period shown below. Additionally, Staff recommends any portion of the DSE2 Rider assessed to the customer during the recommended exemption period be refunded.

Case No.	Customer	Rebate or Exemption
09-1226	Johnny Appleseed Broadcasting	Through 2022
10-2011	Kovatch Castings	Through 2016
10-2035	IRG RC Lessor LLC	\$382,847.00
10-2039	Hitachi Medical Systems America, Inc.	Through 2011
10-2055	Youngstown State University	\$479,363.00
10-2064	Giant Eagle Inc.	\$144,606.00

- (6) In Case No. 09-1226-EL-EEC, motions to intervene were filed by the Office of the Ohio Consumers' Counsel (OCC) and the Ohio Environmental Council (OEC), but OCC subsequently withdrew its request for intervention. In addition, OEC filed motions to intervene in Case Nos. 10-2035-EL-EEC, 10-2055-EL-EEC, and 10-2064-EL-EEC. Although we will grant OEC's motions to intervene as an interested party in these proceedings, we note that OEC has not raised any specific defect or objection to the applications or Staff's recommendations for approval of these applications.
- (7) In each case, the Commission's staff has reviewed the application and additional supporting documentation, including engineering studies and estimates, and receipts. 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 OE. The customer has attested to the validity of the information, and its intention to participate in OE's program. The project either provides for early retirement of fully functioning equipment, or 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.

- (8) Upon review of the applications and supporting documentation, and Staff's recommendations, the Commission finds that the requirements related to each of these applications have been met. The Commission finds that the requests for mercantile commitment pursuant to Rule 4901:1-39-05, O.A.C., do not appear to be unjust or unreasonable. Thus, a hearing on these matters is unnecessary. Accordingly, we find that these applications should be approved. As a result of such approval, we find that OE should adjust its baselines, 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. 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.
- (9) Finally, we note that all Rider DSE2 exemptions of more than 24 months are subject to review and adjustment every two years, as set forth in this Commission's May 25, 2011 second entry on rehearing in Case No. 10-834-EL-POR, to ensure that such exemption accurately reflects the projected energy efficiency and demand reduction savings. Further, CEI should refund to the customer any assessed charges under Rider DSE2 during the exemption period approved by this order.


It is, therefore,

ORDERED, That each of the captioned applications be approved, and that the record of these cases be closed. It is, further,

ORDERED, That the motions to intervene by the Ohio Environmental Council in Case Nos. 09-1226-EL-EEC, 10-2035-EL-EEC, 10-2055-EL-EEC, and 10-2064-EL-EEC be granted. 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/dah

Entered in the Journal

OCT 12 2011


Betty McCauley

Betty McCauley
Secretary

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CONCURRING OPINION OF COMMISSIONER PAUL A. CENTOLELLA

I concur with the majority opinion of the Finding and Order issued today, but write separately with respect to Case No. 09-1226-EL-EEC.

This case presents comparable circumstances to those in Case No. 09-595-EL-EEC, *In re: 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 issued February 11, 2010, in that case, 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 the exemption.


Paul A. Centolella

/dah

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CONCURRING AND DISSENTING OPINION OF
COMMISSIONER CHERYL L. ROBERTO

While I concur in this matter with regard to the cash incentives granted, I write separately to urge that staff, as part of the review required by the order creating the mercantile pilot program in Case No. 10-834-EL-POR, analyze and prepare recommendations as to how we can best evaluate the appropriate level of an incentive.

The need to answer this question is revealed with the adoption of the highly variable levels of incentives granted in the matters considered today for the identical technology adopted by the same mercantile customer. This variation occurs both within a single utility's energy efficiency program and as compared between utilities in Ohio. It presents the question: If an energy efficiency investment is appealing to a mercantile customer at a lower incentive level, why should a higher incentive be paid? Payment of an incentive at higher than necessary levels fruitlessly adds costs to energy efficiency programs without concomitant benefits.

In general, our goal should be to encourage to the greatest extent practicable that incentives are paid at a level at which a customer is encouraged to make an investment in energy efficiency that they may not otherwise have made. The incentive should not be set at a level that represents a windfall for an action that a customer would have taken without the incentive. In instances where the incentive is to gain a commitment from a mercantile customer to contribute their own energy efficiency efforts to a utility's energy efficiency program, the calculus may be different and that warrants analysis as well. In its September 7, 2011 Entry on Rehearing of the FirstEnergy companies 2010-2012 EEDR program portfolio review in Case No. 09-1947-EL-POR, et al., this Commission stated:

In the absence of any regulatory, economic, or technological reasons beyond the Companies' reasonable control, the Companies should seek to provide to their customers all available cost effective energy efficiency opportunities. *In order to maximize customer opportunities, utilities must seek the least cost means to achieve this standard.* This is the performance standard to be expected from Ohio's electric utilities.

Case No. 09-1947-EL-POR, et al., September 7, 2011, Entry on Rehearing at 6 (emphasis added).

The "least cost" means includes learning as much as we can to enable us to promote appropriate incentive levels recognizing that these will change over time as adoption levels for energy efficiency technologies and behaviors increase. I am hopeful that our staff can guide our learning so that we can maximize customer opportunities for energy efficiency.

I am also dissenting with respect to the award of a EEDR rider exemption based upon the benchmark comparison method. 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 this Commission's September 15, 2010 Entry in Case No. 10-834-EL-POR, at 4:

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.

For these reasons, I dissent with respect to the award of a rider exemption based upon the benchmark comparison method.


Cheryl L. Roberto

/dah

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