

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of The )  
Toledo Edison Company for Integration of )  
Mercantile Customer Energy Efficiency or ) Case No. 10-2115-EL-EEC  
Peak-Demand Reduction Programs with )  
AK Tube LLC. )

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) The Toledo Edison Company (TE) is a public utility as defined in Section 4905.02, Revised Code, and, as such, is subject to the jurisdiction of this Commission. TE 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) On April 19, 2010, TE and AK Tube LLC (customer) filed an energy efficiency credit (EEC) application, pursuant to Rule 4901:1-39-05(G), O.A.C., to commit the customer's programs which were implemented within three calendar years prior to the date of filing

for integration with TE's programs to meet the utility's energy efficiency and peak demand reduction benchmarks. 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. Although we will grant OEC's motion to intervene as an interested party in this proceeding, we note that OEC has not raised any specific defect or objection to the application or Staff's report recommending approval of the application.

- (6) On October 28, 2011, the Commission's Staff filed a report recommending approval of the application and the customer's exemption from the DSE2 Rider through 2018. Additionally, Staff recommends any portion of the DSE2 Rider assessed to the customer during the recommended exemption period be refunded to the customer.
- (7) Staff has reviewed the application and all supporting documentation, 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 TE. The customer has attested to the validity of the information, and its intention to participate in TE'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 this application have been met. The Commission finds that the request for mercantile commitment pursuant to Rule 4901:1-39-05, O.A.C., does not appear to be unjust or unreasonable. Thus, a hearing on this matter is unnecessary. Accordingly, we find that this application should be approved. As a result of such approval, we find that TE 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 TE'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, TE should refund to the customer any assessed charges under Rider DSE2 during the exemption period approved by this order.

It is, therefore,

ORDERED, That the application be approved as set forth above. It is, further,

ORDERED, That the motion to intervene filed by the Ohio Environmental Council 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

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Paul A. Centolella

  
Steven D. Lesser

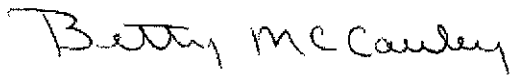
  
Andre T. Porter

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Cheryl L. Roberto

RMB/dah

Entered in the Journal

**DEC 07 2011**

  
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Betty McCauley  
Secretary

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DISSENTING OPINION OF  
COMMISSIONER CHERYL L. ROBERTO

I dissent to the use of the “benchmark comparison method” to evaluate the significance of a mercantile customer’s energy efficiency efforts relative to a utility’s statutory mandate. 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 to calculate the length of a rider exemption (or incentive payment) 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 all customers have 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 its 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 or over-valuing these efforts with incentives based upon the benchmark comparison method, 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.

Alternatively, 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.

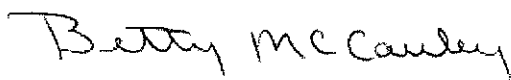
For these reasons, I dissent.

  
Cheryl L. Roberto

/dah

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Betty McCauley

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Secretary