BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of The Toledo Edison Company and Johns Manville Waterville Complex, for Integration of Mercantile Customer Energy Efficiency or Peak-Demand Reduction Programs.	))))))	Case No. 09-1318-EL-EEC

FINDING AND ORDER

The Commission finds:

(1) 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 (kWh) of electricity per year or that is part of a national account involving multiple facilities in one or more states. Section 4928.66, Revised Code, imposes certain energy efficiency and peak demand reduction (EEDR) requirements upon Ohio's electric distribution utilities, but 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) The Toledo Edison Company (TE or utility) 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 EEDR requirements imposed by Section 4928.66, Revised Code, from its customers through its Rider DSE2 (EEDR rider).

(3) Rule 4901:1-39-05(G), Ohio Administrative Code (O.A.C.), permits a mercantile customer to file, either individually or jointly with an electric utility, an energy efficiency commitment (EEC) application to commit the customer's EEDR programs for integration with the electric utility's programs, pursuant to Section 4928.66, Revised Code, in order to meet the utility's statutory requirements.

(4) This application was filed pursuant to Rule 4901:1-39-05(G), O.A.C., on December 31, 2009, by TE and Johns Manville Waterville Complex (Johns Manville), prior to the

Commission's implementation of the EEC Pilot Program in Case No. 10-834-EL-POR on September 15, 2010. The application seeks an exemption from TE's EEDR rider through December 2010 for ten projects involving the upgrade or replacement of oven or boiler equipment, insulation, controls, and motors, as well as the installation of an oxygen fire forehearth at a cost of $3,200,000. All ten projects are projected to achieve energy savings of 2,233,137 kWh per year, and reduce the utility's peak demand by 180 KW.

(5) Motions to intervene were filed by the Ohio Environmental Council (OEC) and the Ohio Consumers' Counsel (OCC) on February 4 and April 14, 2010, respectively.

(6) On May 19, 2010, OEC and OCC jointly filed comments objecting to the approval of this application on the grounds that the application fails to include a description of measurement and verification methodologies, lacks information on remaining useful life of equipment or avoided incremental cost, and includes inadequate descriptions of energy efficiency programs and initiatives. They argue that the application fails to adequately describe the methodologies, protocols, and practices used or proposed to be used in measuring and verifying program results under Rule 4901:1-39-05(G)(5), O.A.C., thereby failing to meet the evidentiary requirements necessary to allow the Commission to make an appropriate decision. The OEC/OCC comments also cite paragraph (F) of Rule 4901:1-39-05, O.A.C., in asserting that the application lacks sufficient information for the Commission to make a proper decision as to whether the projected energy savings can be attributed to the customer's EEDR project alone, as neither of the projects involve either early retirement of fully functioning equipment or the installation of new energy efficient equipment that exceeds the market standard. The joint comments assert that without information describing the remaining useful life of replaced equipment, it is impossible to know whether the savings were incidental as the result of a necessary "business as usual" investment, or additional, as the result of an EEDR project. Finally, OEC/OCC argue that Rule 4901:1-39-08(A), O.A.C., requires a demonstration that energy savings and peak-demand reductions associated with the mercantile customer's program are the result of investments that meet the total resource cost (TRC) test, or that the electric

utility's avoided cost exceeds the cost to the electric utility for the mercantile customer's program. OEC/OCC allege that nowhere in the application is such a demonstration included, discussed or alluded to.

(7) On June 3, 2010, TE and Johns Manville filed a joint reply to the objections of OEC and OCC. TE/Johns Manville first note that neither OEC or OCC have been granted intervention in this case, and that while Rule 4901:1-39-06(A), O.A.C., provides a 30-day comment period for the filing of annual portfolio status reports, no comment period is expressly provided for under the current rules. TE/Johns Manville also assert that sufficient information has been provided to the Commission's Staff in response to data requests, and would have been provided to OEC and OCC under a protective agreement had they requested it. TE/Johns Manville further allege that there is no statutory or regulatory requirement to include information on the early retirement of fully functioning equipment or the installation of new energy efficient equipment that exceeds the market standard. TE/Johns Manville note that the required demonstration under Rule 4901:1-39-08(A), O.A.C., that a project's energy savings and peak-demand reductions result from investments that meet the TRC test, or that the electric utility's avoided cost exceeds the cost to the utility for commitment of the customer's program, apply to the annual reports to be provided by the customer, rather than the EEC application itself. Finally, TE/Johns Manville contend that there is no statutory basis for excluding "business as usual" projects, and that each of the Johns Manville projects is a valid EE/DR project.

(8) On June 10, 2010, OEC and OCC filed a response to the TE/Johns Manville reply. The OEC/OCC response notes that they have been granted intervention in other EEC cases, and that no comment period is set by rule in these cases. OEC/OCC also reassert their arguments that the application does not include all required information, contending that such information should be in the application itself, rather than replies to staff data requests, and that any confidential information should be filed under seal. Further, OEC/OCC assert that the TE/Johns Manville argument regarding cost-effectiveness is incorrect since cost-effectiveness is an essential

element of reasonableness for Commission approval of the application under Section 4928.66(A)(2)(c), Revised Code.

(9) On August 4, 2011, OCC withdrew its request for intervention in this case as a result of reduced resources, rather than a change in OCC's position on the issues raised herein. Accordingly, we will grant only OEC's motion to intervene as an interested party in this proceeding.

(10) On June 21, 2012, Staff filed a report of its review of the ten projects implemented by Johns Manville between March 2006 and August 2009, in this case. Staff recommends that only eight of the ten projects be approved as filed. Staff recommends that projects 5 (closing doors to improve oven efficiency) and 8 (vacant building utility reduction) be denied as no capital expenditure or replacement of existing equipment was involved. With respect to the remaining eight projects, Staff found 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 utility. The customer has attested to the validity of the information, and its intention to participate in the utility's program. The projects either provide for early retirement of fully functioning equipment, or achieve 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.

(11) On November 16, 2012 and January 15, 2013, the applicants filed amendments to the application to request commitment payments for the two projects which Staff had recommended be denied. Under the application, as amended, Johns Manville is now requesting a refund for its exemption from TE's EEDR rider for the period of January through December 2012, plus a commitment payment of $2,940.

(12) Upon review of the application and supporting documentation, Staff's recommendations, and the amendments to the application, 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 of this matter is unnecessary. Accordingly, we find that this application should be approved, and the utility should refund to the customer any charges collected under TE's EEDR rider for the period of January through December 2012, plus a commitment payment of $2,940. As a result of such approval, we find that the utility should adjust its baselines, pursuant to Section 4928.66(A)(2)(c), Revised Code, and Rule 4901:1-39-05, O.A.C. 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 the utility's portfolio status report on March 15 of each year, as set forth in Rule 4901:1-39-05(C), O.A.C. Further, 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 this application, as amended, be approved. It is, further,

ORDERED, That the motion of the Ohio Environmental Council to intervene be granted. It is, further,

ORDERED, That TE should refund to the customer a commitment payment of $2,940, in addition to any charges collected under TE's EEDR rider for the period of January through December 2012. 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

Steven D. Lesser

Lynn Slaby

M. Beth Trombold

Asim Z. Haque

RMB/vrm

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Barcy F. McNeal

Barcy F. McNeal
Secretary