Ohio | Public Utilities Commission

November 15, 2012 Workshop
Case No. 10-834-EL-POR

Mercantile Customer Pilot Program for Integration of Customer Energy Efficiency or Peak-Demand Reduction Programs

Ohio Revised Code Section 4928.66 (A)(1)(a):

Beginning in 2009, an electric distribution utility shall implement energy efficiency programs that achieve energy savings equivalent to at least three-tenths of one per cent of the total, annual average, and normalized kilowatt-hour sales of the electric distribution utility during the preceding three calendar years to customers in this state. .*** The savings requirement, using such a three-year average, shall increase to *** a cumulative, annual energy savings in excess of twenty-two per cent by the end of 2025.

- Effective Date: 2008 SB221 07-31-2008
- Amended by 129th General Assembly File No. 125, SB 315, § 101.01, eff. 9/10/2012.

Ohio Revised Code Section 4928.66 (A)(1)(b):

Beginning in 2009, an electric distribution utility shall implement peak demand reduction programs designed to achieve a one per cent reduction in peak demand in 2009 and an additional seventy-five hundredths of one per cent reduction each year through 2018. In 2018, the standing committees in the house of representatives and the senate primarily dealing with energy issues shall make recommendations to the general assembly regarding future peak demand reduction targets.

Ohio Revised Code Section 4928.66 (A)(2):

For the purposes of divisions (A)(1)(a) and (b) of this section:

(a) The baseline for energy savings under division (A)(1)(a) of this section shall be the average of the total kilowatt hours the electric distribution utility sold in the preceding three calendar years, and the baseline for a peak demand reduction under division (A)(1)(b) of this section shall be the average peak demand on the utility in the preceding three calendar years, except that the commission may reduce either baseline to adjust for new economic growth in the utility's certified territory.

Ohio Revised Code Section 4928.01(A)(19):

"Mercantile customer" means a commercial or industrial customer if the electricity consumed is for nonresidential use and the customer consumes more than seven hundred thousand kilowatt hours per year or is part of a national account involving multiple facilities in one or more states.

Ohio Revised Code Section 4928.66(A)(2)(c):

Compliance with divisions (A)(1)(a) and (b) of this section shall be measured by including the effects of all demand-response programs for mercantile customers of the subject electric distribution utility, all waste energy recovery systems and all combined heat and power systems, and all such mercantile customer-sited energy efficiency, including waste energy recovery and combined heat and power, and peak demand reduction programs, adjusted upward by the appropriate loss factors. Any mechanism designed to recover the cost of energy efficiency, including waste energy recovery and combined heat and power, and peak demand reduction programs under divisions (A)(1)(a) and (b) of this section may exempt mercantile customers that commit their demand-response or other customer-sited capabilities, whether existing or new, for integration into the electric distribution utility's demand-response, energy efficiency, including waste energy recovery and combined heat and power, or peak demand reduction programs, if the commission determines that that exemption reasonably encourages such customers to commit those capabilities to those programs. ***

Ohio Revised Code Section 4928.66 (A)(2)(d):

Programs implemented by a utility may include demand-response programs, smart grid investment programs, provided that such programs are demonstrated to be cost-beneficial, customer-sited programs, including waste energy recovery and combined heat and power systems, and transmission and distribution infrastructure improvements that reduce line losses. Division (A)(2)(c) of this section shall be applied to include facilitating efforts by a mercantile customer or group of those customers to offer customer-sited demand-response, energy efficiency, including waste energy recovery and combined heat and power, or peak demand reduction capabilities to the electric distribution utility as part of a reasonable arrangement submitted to the commission pursuant to section 4905.31 of the Revised Code.

Green Rules Case No. 08-888-EL-ORD

April 15, 2009 Opinion and Order adopting rules, at 20.

"We have changed the provision of proposed Rule 39-04(C)(1) which is now incorporated in new Rule 39-05(D) to prohibit only the counting of those measures that are subject to energy performance standards required by law, including those embodied in the Energy Independence and Security Act of 2007. We see no reason to credit electric utilities for benefits of measures that would have happened regardless of their efforts. Under the new rule, the replacement of incandescent lighting with compact florescent lighting program would count now, but not after such measures become required under the Energy Independence and Security Act of 2007."

http://dis.puc.state.oh.us/DocumentRecord.aspx?DocID=c5430c1b-7b49-4fef-9be7-e5e720801eb6

Ohio Administrative Code Rule 4901:1-39-05(E) [Effective: 12/10/2009]:

An electric utility may satisfy its peak-demand reduction benchmarks through a combination of energy efficiency and peak-demand response programs implemented by electric utilities and/or programs implemented on mercantile customer sites where the mercantile program is committed to the electric utility.

(1) For energy efficiency programs, an electric utility may count the programs' effects resulting in coincident peak-demand savings.

(2) For demand response programs, an electric utility may count demand reductions towards satisfying some or all of the peak-demand reduction benchmarks by demonstrating that either the electric utility has reduced its actual peak demand, or has the capability to reduce its peak demand and such capability is created under either of the following circumstances:

(a) A peak-demand reduction program meets the requirements to be counted as a capacity resource under the tariff of a regional transmission organization approved by the federal energy regulatory commission.

(b) A peak-demand reduction program equivalent to a regional transmission organization program, which has been approved by this commission.

Rule 4901:1-39-05(F) [Effective: 12/10/2009]:

A mercantile customer's energy savings and peak-demand reductions shall be measured by including the effects of all demand-response programs of the mercantile customer and all mercantile customer-sited energy efficiency and peak-demand reduction programs. A mercantile customer's energy savings and peak-demand reductions shall be presumed to be the effect of a demand response, energy efficiency, or peak-demand reduction program to the extent they involve the early retirement of fully functioning equipment, or the installation of new equipment that 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. Electric utilities may make an alternative demonstration that mercantile customer energy savings or peak demand reductions are effects of such a program.

Rule 4901:1-39-05(G) [Effective: 12/10/2009]:

A mercantile customer may 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 division (A)(2)(d) of section 4928.66 of the Revised Code. Such application shall:

(1) 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.

(2) 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.

(3) Identify all consequences of noncompliance by the customer with the terms of the commitment.

(4) 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 of the Administrative Code.

(5) 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.

Rule 4901:1-39-05(H):

An electric utility shall not count in meeting any statutory benchmark the adoption of measures that are required to comply with energy performance standards set by law or regulation, including but not limited to, those embodied in the Energy Independence and Security Act of 2007, or an applicable building code.

[Effective: 12/10/2009]

Rule 4901:1-39-07:

***

(A)(2) Mercantile customers, who commit their peak-demand reduction, demand response, or energy efficiency projects for integration with the electric utility's programs as set forth in rule 4901:1-39-08 of the Administrative Code, may individually or jointly with the electric utility, apply for exemption from such recovery.

(B) Any person may file objections within thirty days of the filing of an electric utility's application for recovery. If the application appears unjust or unreasonable, the commission may set the matter for hearing.

[Effective: 12/10/2009]

Rule 4901:1-39-08 [Effective: 12/10/2009] :

An application to commit a mercantile customer program for integration filed pursuant to paragraph (G) of rule 4901:1-39-05 of the Administrative Code, may include a request for an exemption from the cost recovery mechanism set forth in rule 4901:1-39-07 of the Administrative Code. To be eligible for such 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. The report shall include the following:

(A) 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 test, or that the electric utility's avoided cost exceeds the cost to the electric utility for the mercantile customer's program.

(B) A statement distinguishing programs implemented before and after January 1, 2009, or in future reports filed for years subsequent to 2009, before and after the most recent year. [continued]

Rule 4901:1-39-08 [continued] [Effective: 12/10/2009]:

(C) A quantification of the energy savings or peak-demand reductions for programs initiated prior to 2009 in the baseline period, recognizing that programs may have diminishing effects over time as technology evolves or equipment degrades.

(D) A recognition that the energy saving and demand reduction effects during the electric utility's baseline period of any mercantile customer-sited energy efficiency or peak-demand reduction programs that are integrated into an electric utility's programs are excluded from the electric utility's baselines by increasing its baseline for energy savings and baseline for peak-demand reductions by the amount of mercantile customer energy savings and demand reductions.

(E) A listing and description of the customer programs implemented, including measures taken, devices or equipment installed, processes modified, or other actions taken to increase energy efficiency and reduce peak demand, including specific details such as the number, type, and efficiency levels both of the installed equipment and the old equipment that is being replaced, if applicable.

(F) An accounting of expenditures made by the mercantile customer for each program and its component energy savings and electric utility peak-demand reduction attributes.

(G) The timeline showing when each program went into effect, and when the energy savings and peak-demand reductions occurred.

(H) Any request for an exemption may be combined with any other reasonable arrangement, approved pursuant to Chapter 4901:1-38 of the Administrative Code, if such reasonable arrangement contains appropriate measurements and verification of program results.

Case No. 09-512-GE-UNC Protocols for Measurement & Verification of Energy Efficiency and Peak Demand Reduction Measures (aka TRM)

June 16, 2010 Entry on Rehearing at 4-5:

"*** [T]he Commission believes that an "as found" standard is only appropriate in the event of the early retirement of functioning equipment. In such a case, savings are calculated from the "as found" level, which serves as the baseline, for the period of time from the replacement of the previous equipment, until the end of the previous equipment's useful life. *** [U]sing the "as found" method of establishing the baseline for all energy efficiency calculations runs a high risk of overstating the energy savings effects of efficiency programs. Additionally, when equipment is replaced based upon the failure of existing equipment or normal replacement schedules, or is installed due to new construction, using the "as found" method may allow electric utilities to claim savings for changes in energy use that are in no way related to efficiency programs. While IEU-Ohio claims that Section 4928.66(A)(2)(c) requires the Commission to count the effects of all mercantile demand response and energy efficiency programs, the changes in energy use related to the replacement of existing equipment with state or federally mandated equipment based upon the failure of equipment, normal replacement schedules, and new construction are not the effects of demand response or energy efficiency programs at all. They are simply replacements of existing equipment with new state or federally mandated standard equipment. Therefore, the use of the "as found" standard in those circumstances is inappropriate.

http://dis.puc.state.oh.us/DocumentRecord.aspx?DocID=f4c5a382-4233-4468-af6b-31b435ce28ac

Case No. 09-512-GE-UNC - TRM Docket

June 16, 2010 Entry on Rehearing, Continued at 5-6:

"We reaffirm that after the expiration of the useful life of functioning equipment that has been retired early, and for programs other than those targeting the early retirement of functioning equipment, the baseline should be set at the highest of state or federal standards, or current market practices *** While reaffirming our original guidance, we believe that there is potential for misunderstanding of how the policy guidance in our original order is to be applied. It has always been our intention that our policy be followed in a common sense manner. Under Ohio law, the energy savings which may be counted toward an electric utility's compliance must be the result of an energy efficiency program. In certain cases, energy savings may be derived from activities that can only be categorized as "business as usual" practices; these activities do not constitute energy efficiency programs. Section 4928.66(A)(1)(a) and (c), Revised Code, underscores the efficacy of programs that encourage the adoption of cost-effective efficiency measures beyond the simple replacement of worn-out equipment. The law encourages the adoption of additional cost-effective efficiency measures, avoids the need for more costly resources, and reduces costs for Ohio consumers. "

http://dis.puc.state.oh.us/DocumentRecord.aspx?DocID=f4c5a382-4233-4468-af6b-31b435ce28ac

Case No. 09-512-GE-UNC - TRM Docket

June 16, 2010 Entry on Rehearing, Continued at 6:

"In order to assist the Commission in expediting the approval process for such mercantile applications for special arrangements with electric utilities and exemptions from energy efficiency and peak demand reduction riders, the Commission has directed Staff to develop a standard application template. Accordingly, in the near future, the Commission will publish an application and filing instructions for such applications. 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. "

http://dis.puc.state.oh.us/DocumentRecord.aspx?DocID=f4c5a382-4233-4468-af6b-31b435ce28ac

Case No. 10-833-EL-EEC

June 23, 2010 Finding and Order

approved 241 Energy Efficiency Credit (EEC) applications to commit mercantile customer programs for integration pursuant to Rule 4901:1-39-05, subject to Staff review and objection by any party.

Footnote 1 at 3:

"On October 15, 2009, the Commission rejected the benchmark comparison method, reversing its prior position. Given that the agreements between the mercantile customers and the electric utilities listed in Appendix A were entered into prior to the effective date of this rule, 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."

http://dis.puc.state.oh.us/DocumentRecord.aspx?DocID=bfa6ed7e-0727-4936-8694-67a52a7baac3

Case No. 10-834-EL-POR EEC Pilot Program

September 15, 2010 - Initial Entry

- Established an 18-month Energy Efficiency Credit (EEC) Pilot Program
- 60-day automatic approval process for newly filed mercantile applications using template posted on the Commission's website
- cash rebates only – no exemption from the electric utility's EEDR rider
- rules and prior commission orders waived for purposes of the pilot

http://dis.puc.state.oh.us/DocumentRecord.aspx?DocID=bfa6ed7e-0727-4936-8694-67a52a7baac3;

Case No. 10-834-EL-POR EEC Pilot Program
Commissioner Roberto's dissent to September 15, 2010 Entry

- Objects to waiver of Rule 4901:1-39-05(H)
- Majority overrules the June 16, 2010 Entry on Rehearing in Case No. 09-512-GE-UNC TRM Docket regarding use of "as found" method,
- Objects to use of the benchmark comparison method for any application filed after December 10, 2009

Cites Footnote 1 of the June 23, 2010 Finding and Order in Case No. 10-833-EL-EEC, at 3:

"On October 15, 2009, the Commission rejected the benchmark comparison method, reversing its prior position. Given that the agreements between the mercantile customers and the electric utilities listed in Appendix A were entered into prior to the effective date of this rule, 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."

http://dis.puc.state.oh.us/DocumentRecord.aspx?DocID=29645426-0778-44c6-9536-81721a60ef20;

Case No. 10-834-EL-POR EEC Pilot Program

May 25, 2011 - 2nd Entry on Rehearing

- EEC Pilot tracks the statutory three-year period under ORC 4928.66 but allows a reasonable time for processing applications - customers have one calendar year to sign a commitment agreement with the utility for EEDR projects implemented within the past three calendar years; utility has until March 31 of the following year to file a completed application.
- Notwithstanding above, allowed a one-time 30-day window for the filing of completed applications for programs implemented in 2006 and 2007.
- 60-day automatic approval process extended to applications seeking an exemption from the utility's EEDR rider for periods of 24 months or less

http://dis.puc.state.oh.us/DocumentRecord.aspx?DocID=0cd932ab-b9bc-4b41-851a-8a9652d346db

Case No. 10-834-EL-POR EEC Pilot Program

September 20, 2011 - 4th Entry on Rehearing

- 60-day automatic approval process extended to applications seeking an exemption from the electric utility's EEDR rider for periods beyond 24 months, subject to true-up adjustments every two years to ensure that the exemption accurately reflects the EEDR savings; directed that the applicants (customer, utility, or authorized third party) file for renewal, via a form to be published by Staff, for any exemption beyond 24 months
- clarified that peak demand reduction programs such as participation in a PJM program should not fall within the EEC Pilot
- establishment of a maximum customer commitment payment should be addressed in the electric utility's portfolio review case
- extended the Pilot for an additional six months, through September 15, 2012

http://dis.puc.state.oh.us/DocumentRecord.aspx?DocID=45a408a9-5dfc-4a66-ad68-e607ad38e11b

Case No. 10-834-EL-POR EEC Pilot Program

September 5, 2012 – Finding and Order

- Clarified the post-approval reporting requirements for rider exemptions beyond 24 months
- Extended the EEC Pilot for an additional six months, through March 15, 2013
- Directed the Commission's Staff to file a report of its review and recommendations of the pilot including a recommended process for establishing an appropriate level and length of exemption for mercantile customers opting out of utility energy efficiency programs by January 15, 2013
- Scheduled a Technical Workshop on November 15, 2012 to explore alternatives to the Benchmark Comparison Method and review the experience of other jurisdictions which have enacted similar self-direct programs.

http://dis.puc.state.oh.us/DocumentRecord.aspx?DocID=8559c5ee-c9fa-49ed-9291-c3320eec2c0d