

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Duke)
Energy Ohio, Inc. and The Kroger Co. for)
Integration of Mercantile Customer) Case No. 10-3134-EL-EEC
Energy Efficiency or Peak-Demand)
Reduction Programs.)

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 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 requirements upon Ohio's electric distribution utilities, but also enables mercantile customers to commit their energy efficiency, peak demand reduction, and demand response (EEDR) programs for integration with an electric utility's programs in order to meet the statutory requirements. Section 4928.66, Revised Code, establishes a three-year period for the measurement of EEDR programs.
- (2) Duke Energy Ohio, Inc., (Duke) is a public utility as defined in Section 4905.02, Revised Code, and, as such, is subject to the jurisdiction of this Commission. Duke recovers its costs of complying with the EEDR requirements imposed by Section 4928.66, Revised Code.
- (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) On September 15, 2010, the Commission issued an entry in Case No. 10-834-EL-POR establishing a pilot program

(EEC Pilot Program) to accelerate the review and approval process for applications filed by mercantile customers under Rule 4901:1-39-05(G), O.A.C. The EEC Pilot Program expedites the processing of EEC applications through the use of a standard template and a 60-day automatic approval process under which the application is deemed approved unless suspended or denied by order of the Commission or attorney examiner. By entry issued on May 25, 2011, the Commission expanded the EEC Pilot Program to include applications requesting an exemption from the utility's EEDR rider for a period longer than 24 months, but held that any such exemption will be subject to adjustments every two years to ensure that the exemption accurately reflects the EEDR savings. The May 25, 2011 Entry also clarified that all valid EEDR mercantile customer programs implemented during 2006 or 2007 would be eligible for counting and incentives if the complete application was currently pending or filed by June 24, 2011. Further, the Commission determined that, henceforth, mercantile customers will have one calendar year to sign a commitment agreement with the electric utility for EEDR projects implemented within the past three calendar years in accordance with the three-year measurement period under Section 4928.66, Revised Code. The electric utility will then have until March 31 of the following year to file a complete application with the Commission. *Pilot Program*, Case No. 10-834-EL-POR, May 25, 2011 Entry, at 5-6.

- (5) On December 30, 2010, The Kroger Co. (Kroger) filed an application under Rule 4901:1-39-05(G), O.A.C., jointly with Duke to commit energy efficiency projects under the pilot program established in Case No. 10-834-EL-EEC, and subject to a 60-day automatic approval unless suspended.
- (6) On January 28, 2011, Duke and Kroger filed a joint motion requesting waiver of the 60-day automatic approval process under the pilot program in order to allow for more time to provide additional data.
- (7) By entry issued on February 18, 2011, the automatic approval process under EEC Pilot Program was suspended.

- (8) On July 6 2011, Duke and Kroger filed a joint motion to amend the application and a motion for protective order.
- (9) On September 14, 2012, Kroger filed an unredacted version of the motion to amend the application and motion for a protective order. Accordingly, as the redacted information is now publicly available, the applicants' motion for a protective order is denied.
- (10) On December 3, 2012, Staff filed its recommendation for approval of the application, providing for a cash rebate of \$74,171. Staff has reviewed the application and all supporting documentation, has verified that the customer meets the definition of a mercantile customer. 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) Upon review of the application and supporting documentation, and Staff's recommendation, the Commission finds that the requirements related to the 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, the hearing on this matter is unnecessary. Accordingly, we find that the application should be approved, and the utility should refund to the customer a cash rebate of \$74,171. 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 this project is approved, it is 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.

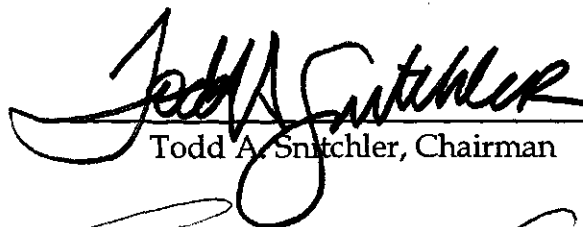
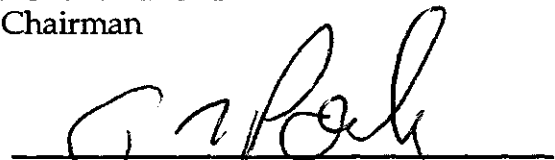

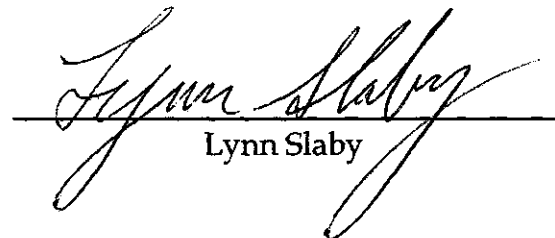
It is, therefore,

ORDERED, That the motion for protective order be denied. It is, further,

ORDERED, That the application be approved and Duke should refund Kroger the cash rebate of \$74,171. It is, further,

ORDERED, That a copy of this finding and order be served upon all parties of record.

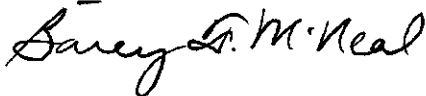
THE PUBLIC UTILITIES COMMISSION OF OHIO


Todd A. Snitchler, Chairman
Steven D. Lesser
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JJT/sc

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DEC 19 2012.


Barcy F. McNeal

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Secretary