BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Duke	)	
Energy Ohio, Inc., for Approval of its	)	Case No. 13-0431-EL-POR
Energy Efficiency and Peak Demand	)	
Reduction Portfolio of Programs.	)	

OBJECTIONS OF THE KROGER CO.

Pursuant to Rule 4901:1-39-04(D), Ohio Administrative Code (O.A.C.), and the Public Utilities Commission of Ohio's ("Commission") Entry of June 13, 2013, The Kroger Co. ("Kroger") hereby respectfully submits its objections to Duke Energy Ohio's ("Duke") Application for Approval of its Energy Efficiency and Peak Demand Reduction Portfolio of Programs ("Application"), filed with the Commission on April 15, 2013. As detailed herein, Kroger opposes and objects to the substantial incentive payments obtained by Duke through the continued use of the shared savings mechanism in instances of over-compliance with the energy efficiency and peak demand reduction ("EE/PDR") mandates.

I. <u>Introduction</u>

Kroger is one of the largest grocers in the United States, with over 65 stores, manufacturing plants, and offices, consuming over 225 million kWh per year in Duke's service territory. The stores Kroger operates use electricity for food storage, lighting, heating, cooling, and distribution, generally 24 hours per day, seven days per week. As a substantial consumer of electricity and related services in Duke's service territory, Kroger supports energy efficiency and peak demand reduction efforts and implements such initiatives at its facilities. Kroger continues to work aggressively in all areas of its business to reduce energy consumption. Since 2000, Kroger has reduced its overall energy consumption in its stores by 32.7 percent. In total, Kroger facilities have saved more than 2.48 billion kWh of electricity. Given Kroger's interest in EE/PDR initiates, as well as the cost recovery mechanisms of such programs, Kroger moved to intervene in the above-captioned matter on June 25, 2013, and offers the following objections to Duke's Application.

II. Objections

A. Kroger objects to the continuation of the shared savings incentive mechanism as proposed, which is in direct violation of the Stipulation approved in Case No. 11-4393-EL-RDR.

In its Application, Duke states that it is seeking approval of a one-year extension of the shared savings mechanism approved in Case No. 11-4393-EL-RDR through December 31, 2016.[1] In its order in that case, the Commission stated that it was modifying the stipulation and "only approving Rider EE/PDR through the Commission's review of Duke's 2013 portfolio filing."[2] To the extent Duke has received approval of the shared savings mechanism through the end of 2015, Kroger objects to the continuation of the incentive mechanism beyond the end of 2015, which was agreed to in the RDR Stipulation.[3]

The RDR Stipulation specifically set forth the expiration of the incentive mechanism and stated that it would not be reevaluated any sooner than the third quarter of 2014 in order "to

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[1] Application at 3 (April 15, 2013).

[2] *In the Matter of the Application of Duke Energy Ohio, Inc. for an Energy Efficiency Cost Recovery Mechanism and for Approval of Additional Programs for Inclusion in its Existing Portfolio*, Case No. 11-4393-EL-RDR, Opinion and Order at 18 (August 15, 2012) ("RDR Order").

[3] *In the Matter of the Application of Duke Energy Ohio, Inc. for an Energy Efficiency Cost Recovery Mechanism and for Approval of Additional Programs for Inclusion in its Existing Portfolio*, Case No. 11-4393-EL-RDR, Stipulation and Recommendation (November 18, 2011)("RDR Stipulation").

allow interested parties to assess the reasonableness and effectiveness of the incentive mechanism and to consider whether or not they support its further use (as structured or as modified) for the remaining year of the five year portfolio."[4] This provision appears to have been inserted as a way to evaluate the success, failure, or need for any such incentive after the Portfolio had been implemented for 2.5 years. Additionally, the timing is aligned with an important consideration of whether the incentive mechanism is appropriate after Duke has divested its generating assets, which is scheduled to occur on or before December 2014. [5] Deciding the continuation of the incentive mechanism in this proceeding, in 2013, is in violation of the bargained-for agreement in the RDR Stipulation.[6]

Duke does not have the authority to unilaterally change the terms of a stipulation that Duke voluntarily entered into. Duke has not justified a modification to the RDR Stipulation that would allow it to continue the shared savings incentive mechanism beyond 2015 at this time. Conversely, as explained further below, circumstances have changed to warrant an elimination of the shared savings mechanism as proposed by Duke. At a minimum, the Commission should reject Duke's attempt to extend its benefits under the shared savings incentive mechanism approved by the Commission and revisit the issue either in this proceeding in light of new information,[7] or in the third quarter of 2014 as provided for in the RDR Stipulation.

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[4] RDR Stipulation at 5.

[5] *In The Matter of Duke Energy Ohio for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the form of an Electric Security Plan, Accounting Modifications and Tariffs for Generation Service*, Case No. 11-3549-EL-SSO, et al., Stipulation and Recommendation at 25 (October 24, 2011).

[6] It is also important to note that the RDR Stipulation specifically provided a footnote to the section regarding the incentive mechanism that recognized that Staff and signatory parties' support of the RDR Stipulation could not be used as precedent in any other proceeding. RDR Stipulation at 4, n.3.

[7] RDR Order at 18.

B. Kroger objects to the proposed continuation of the shared savings incentive mechanism that incentivizes Duke to over-comply with its annual EE/PDR benchmarks at a significant cost to its ratepayers.

Duke's shared savings incentive mechanism and its proposal in this proceeding to continue such mechanism beyond what has been previously approved[8] may have a disparate impact upon customers who, like Kroger, are substantial consumers of electricity. Requiring customers to pay for incentives for exceeding EE/PDR benchmarks, beyond those already provided for under Section 4928.66, Revised Code, is not justified in a restructured environment. Moreover, authorizing Duke to recover an incentive in addition to recovering the costs to fund its EE/PDR programs affords Duke with excessive reimbursement over and beyond its program costs, which is unnecessary and unjustified.

As designed, the shared savings mechanism strongly encourages Duke to over-comply with annual energy efficiency targets. Once Duke exceeds its benchmark for energy efficiency and peak demand electricity savings set forth in Section 4928.66, Revised Code, the shared savings mechanism requires Duke's customers to pay Duke an incentive. As explained in testimony in support of the Application, "if [Duke] exceeds its annual target of energy efficiency savings by 11% and delivers $50 million dollars of avoided cost benefits to consumers associated with $35 million dollars of energy efficiency expenditures, [Duke's] incentive would be $1.5 million dollars."[9] As demonstrated by this example, this mechanism not only provides Duke with a direct financial incentive, but also permits it to bank savings above and beyond its annual portfolio requirements for use in future years, which will affect subsequent compliance years and the level of incentives that Duke may receive for exceeding the annual targets in those years.

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[8] See RDR Order at 18.

[9] Direct Testimony of Timothy J. Duff on Behalf of Duke Energy Ohio, Inc. at 8 (April 15, 2013) ("Duke Witness Duff Testimony").

The greater the expenditures by customers like Kroger on EE/PDR measures which are committed to Duke, the greater the reward for Duke in years in which it will obviously meet its EE/PDR portfolio targets. Therefore, over compliance in years in which portfolio targets are met is greatly enriching Duke with incentive payments paid for by Duke's customers. Kroger does not support excessive incentives that may be generated for Duke under the shared savings mechanism proposed by Duke.

C. Kroger objects to the failure to establish a reasonable cap on the amount of incentives Duke can collect through the shared savings mechanism if continued.

If the Commission considers the continuation of the shared savings mechanism, in order to prevent abuse of the shared savings mechanism as proposed, Kroger recommends, at a minimum, that the Commission impose a reasonable cap on the degree of incentive payments Duke may receive through the mechanism. This cap could be a specific dollar threshold that serves as the greatest amount of money Duke can receive through the mechanism, or a more reasonable percentage of the savings derived under the mechanism. The current stipulated incentive, which is a percentage of the savings derived under the mechanism, is designed to allow Duke to achieve the maximum allowable percentage threshold when Duke achieves as little as 115% of the annual EE/PDR target established by the RDR Stipulation.[10]

Since the approval of the shared savings mechanism in the RDR Order,[11] the magnitude of the savings that has been achieved to date demonstrates a need to revisit the issue of establishing a cap mechanism to limit any incentives paid by customers. Duke Witness Duff explained that in 2012, Duke "achieved almost 25,000 MWH more of energy efficiency impacts

[10] RDR Stipulation at 4-5.

[11] RDR Order at 15; Entry Nunc Pro Tunc at 1-2.

than it had projected in its application in Case No. 11-4393-EL-RDR," which resulted in Duke exceeding its annual target by over 50,000 MWh or over 30 percent.[12]

Kroger asserts that without some type of reasonable cap placed on Duke's potential earnings through the shared savings mechanism, Kroger and other similarly situated customers will unreasonably benefit Duke. As Duke recognizes, "the shared savings mechanism is incentivizing [Duke] to over-achieve."[13] Given the clear achievability of the statutory benchmarks and the new information presented by Duke, it is no longer necessary to incentivize Duke to satisfy its statutory obligations.

III. Conclusion

As proposed in the Application, and as explained above, continuing the shared savings incentive mechanism will provide Duke with substantial, unwarranted benefits for over-compliance with energy efficiency mandates at a significant cost to Kroger and other customers. At a minimum, Kroger urges the Commission to impose a cap on the incentives Duke may receive as a result of over-compliance with these mandates.

[12] Duke Witness Duff Testimony at 9.

[13] Id.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate cope of the foregoing document was served this 1st day of July, 2013, by electronic mail, if available, or by regular U.S. mail, postage prepaid, upon the persons listed below.

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Summary: Objection Objections of The Kroger Co. electronically filed by Mrs. Kimberly W. Bojko on behalf of The Kroger Co.