BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Duke Energy Ohio, Inc. for Approval to Continue Cost Recovery Mechanism for Energy Efficiency Programs through 2016.	))))	Case No. 14-1580-EL-RDR

REPLY BRIEF OF
THE KROGER COMPANY

I. Introduction

Duke Energy Ohio, Inc. (Duke or the Company) filed an application (Application) on September 9, 2014, seeking approval from the Public Utilities Commission of Ohio (Commission) to continue, through 2016, the shared savings incentive mechanism for its energy efficiency programs. An evidentiary hearing on the Company's Application took place on July 7, 2015. At the hearing, Duke witness Duff, Ohio Energy Group (OEG) witness Baron, Office of the Ohio Consumers' Counsel (OCC) witness Gonzalez, Ohio Manufacturers' Association (OMA) witness Seryak, and Commission staff (Staff) witness Scheck offered testimony. Pursuant to the attorney examiners' request at the hearing's conclusion, a number of parties, including The Kroger Company (Kroger), Duke, Staff, OCC, OMA, OEG, Industrial Energy Users-Ohio (IEU-Ohio), Ohio Partners for Affordable Energy (OPAE), and People Working Cooperatively (PWC) filed initial briefs. Kroger hereby submits its reply brief in response to certain arguments advanced by the parties in their initial briefs.

II. Argument

A. Duke's Application represents an amendment of its existing Portfolio Plan.

As stated in Kroger's initial brief, the Commission's decision on the propriety of the request included in Duke's Application is dependent upon the Commission's analysis of the Application in the context of 2014 Am. Sub. S.B. 310 (SB 310). Duke states in initial brief that it "seeks the Commission's approval to continue to manage its portfolio, as previously approved, through 2016."[1] As stated in Kroger's initial brief, however, Duke's current plan is fully implemented and approved for use through 2016, with the exception of the shared savings incentive mechanism, which expires at the end of 2015.[2] Thus, a Commission determination on the propriety of the use of a shared savings incentive mechanism in a 2016 is not necessary to administer the implementation of Duke's existing portfolio plan.[3]

The request contained in Duke's Application materially changes the makeup of its portfolio plan, exposing customers to significant additional costs in the event that the Application is approved by the Commission. Granting Duke's request would change the content of the 2016 plan to which numerous parties agreed in Case No. 13-431-EL-POR, in all likelihood to the economic detriment of customers. In fact, it seems obvious from the language of the stipulations in Case Nos. 11-4393-EL-RDR and 13-431-EL-POR that the potential negative consequences of authorizing Duke to utilize its shared savings incentive mechanism in 2016 caused numerous intervenors not to accede to its continuation when negotiating the settlement of the aforementioned cases. Authorization to extend the mechanism for use in 2016 would change the composition of the plan, thereby amending the plan, from what is

[1] See Initial Post-Hearing Brief of Duke Energy Ohio, Inc. (Duke Initial Brief) at 3.

[2] Initial Brief of The Kroger Company (Kroger Initial Brief) at 4-5.

[3] Id.

currently approved for 2016. Based on these facts, the approval sought in Duke's Application is not merely necessary to administer its portfolio program; rather, it represents an unauthorized amendment of the plan and should be rejected by the Commission.

B. Duke's existing shared savings incentive mechanism is not working effectively such that it should be extended for use in 2016 by the Commission.

In support of its proposal to extend the existing shared savings incentive mechanism for use in 2016, Duke contends that its cost recovery mechanism, including its shared savings incentive mechanism, "works effectively to align the Company's interests with customers' interests" and "should be approved."[4] However, as demonstrated by the Company's filings in Case Nos. 14-457-EL-RDR and 15-534-EL-RDR, the Company's shared savings incentive mechanism, which is currently approved and in place, did not encourage Duke to maximize the energy efficiency savings achieved by means of its annual, approved programs in 2013 and 2014. The results demonstrated by the Company's filings in these cases suggest that the same result should be anticipated in Duke's 2016 filing if the Company is permitted to utilize its approved shared savings incentive mechanism in 2016. The Commission should not encourage this result by extending the current incentive mechanism for use in 2016.

C. If the Commission determines that Duke may utilize a shared savings incentive mechanism in 2016, the Commission should incorporate a cap on the incentive that may be achieved by the Company.

In the event that the Commission authorizes Duke to utilize a shared savings incentive mechanism in 2016, the Commission should impose a cap on the incentive that may be earned by the Company. Duke asserts in its initial brief that a cap on any shared savings incentive mechanism that it may earn in 2016 is unnecessary, alleging that if the Commission decides

[4] Duke Initial Brief at 4.

that the Company may not earn an incentive that includes counting banked impacts, the Company "will not be in a position to earn shared savings at all."[5] Duke's argument obfuscates the meaning of the Commission's determination in Case No. 14-457-EL-RDR:[6] Duke may, in fact, utilize banked savings to earn a shared savings incentive; however, it may not do so unless it first meets its benchmark through actual savings achieved through its annual programs. Duke cannot and should not be able to utilize banked savings to both meet and exceed (and thereby earn a shared savings incentive) in a year in which it does not even come close to meeting its benchmark. Despite Duke's contentions that it designed its program with the intention of banking significant savings in the early years for use in the later years, its decision to design its program in that manner does not alleviate its obligation to meet its benchmarks through savings derived from its annually approved programs if it intends to collect a shared savings incentive mechanism by using its previously banked savings.

III. Conclusion

As explained above, Kroger respectfully requests that the Commission dismiss Duke's Application to extend its shared savings incentive mechanism for use in 2016, because granting the Application would require the unlawful amendment of the Company's existing portfolio plan. If, however, the Commission determines that Duke may properly utilize a shared savings incentive mechanism in 2016, Kroger respectfully requests that the Commission impose a cap on the shared savings incentive Duke may earn in 2016 and, in accordance with arguments advanced in Kroger's initial brief, revise Duke's shared savings mechanism so that Duke is not permitted to collect a shared savings incentive for mere compliance with its annual benchmark,

[5] Duke Initial Brief at 6.

[6] *In the Matter of the Application of Duke Energy Ohio, Inc. for Recovery of Program Costs, Lost Distribution Revenue, and Performance Incentives Related to its Energy Efficiency and Demand Response Programs,* Case No. 14-457-EL-RDR, Finding and Order (May 20, 2015).

and affirm that Duke is not permitted to use banked savings to earn a shared savings incentive in a year in which the Company has failed to meet its energy efficiency benchmark.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was served upon the following parties via electronic mail on September 8, 2015.

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