BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In The Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Approval of Their Energy Efficiency and Peak Demand Reduction Program Portfolio Plans for 2017 through 2019.	)	Case No. 16-743-EL-POR

OBJECTIONS OF THE KROGER CO.

In accordance with Ohio Adm. Code 4901:1-39-04(D) and the Public Utilities Commission of Ohio's (Commission) Entry of May 23, 2016, the Kroger Co. (Kroger) submits its objections to the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, FirstEnergy or Companies) for Approval of their Energy Efficiency and Peak Demand Reduction Program Portfolio Plans for 2017 through 2019 (EE/PDR Plans), filed with the Commission on April 15, 2016. The lack of an objection herein to a particular issue should not be construed to prohibit Kroger from presenting evidence or argument on a particular issue at hearing or on brief.

I. Introduction.

On April 15, 2016, FirstEnergy filed an application seeking approval of its proposed EE/PDR Plans.[1] FirstEnergy avers that the EE/PDR Plans reflect valuable insights from many parties and also states its interest in working with all interested parties as the EE/PDR Plans move forward.[2] The programs contained in the EE/PDR Plans are targeted at the following customer segments: (1) residential-low income; (2) residential-other; (3) small enterprise; (4) mercantile-utility; and (5) governmental.[3] As proposed, the EE/PDR Plans would be implemented on January 1, 2017 and run through the end of 2019.[4]

Aside from certain costs associated with the Transmission and Distribution Improvements Program, Rider ELR, and the Smart Grid Modernization Initiative, FirstEnergy proposes to collect costs associated with the EE/PDR Plans, including lost distribution revenue, through its Demand Side Management and Energy Efficiency Rider (Rider DSE).[5] Shared savings incentives are also being requested for recovery through Rider DSE, in accordance with the proposed shared savings mechanism.[6]

In FirstEnergy's recent fourth electric security plan proceeding (ESP 4), the Commission adopted an annual shared savings cap of $25 million on an after-tax basis.[7] According to

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[1] In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Company, and The Toledo Edison Company for Approval of Their Energy Efficiency and Peak Demand Reduction Program Portfolio Plans for 2017 through 2019, Case No. 16-743-EL-POR (April 15, 2016). The April 15, 2016 filing contains both the "Application" itself as well as the "EE/PDR Plans."

[2] Application at 16.

[3] Id. at 5.

[4] Id. at 15.

[5] EE/PDR Plans at 99.

[6] Id.

[7] *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Authority to Provide for a Standard Service Offer Pursuant to R.C. 4928.143 in the Form of an Electric Security Plan*, Case No. 14-1297-EL-SSO, Opinion and Order at 95 (March 31, 2016).

FirstEnergy, the shared savings mechanism in the EE/PDR Plans "would be triggered only if [it] exceed[s] both [its] Annual and Cumulative energy savings targets as set forth in R.C. 4928.66(A)(1)(a) in any given year."[8] FirstEnergy envisions that savings generated from "all programs" contained in the EE/PDR Plans will be eligible for inclusion in the shared savings calculation.[9]

Kroger offers the following objections to FirstEnergy's EE/PDR Plans.

II. Objections.

A. FirstEnergy should not be permitted to earn shared savings incentives from energy savings captured by its Customer Action Program.

The Customer Action Program (CAP) is a continuation from FirstEnergy's Amended Prior EE/PDR Plan, which was filed on September 24, 2014 and modified and approved by the Commission on November 20, 2014.[10] Notwithstanding its approval of CAP in the Amended Prior EE/PDR Plan proceeding, the Commission noted that "FirstEnergy has included little information on the EM&V approaches that will be used to verify savings" and "stresse[d] that * * * any savings resulting from [CAP] may not be counted until it can be measured and verified * * *."[11]

Under the EE/PDR Plans, FirstEnergy avers that CAP relies on the efforts of a qualified evaluation, measurement and verification (EM&V) consultant who conducts market research and collects market data from customers.[12] Continuing, FirstEnergy claims that "CAP captures energy savings and peak-demand reductions achieved through actions taken by customers

[8] EE/PDR Plans at 99.

[9] Id. at 100.

[10] *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Company, and The Toledo Edison Company for Approval of Their Energy Efficiency and Peak Demand Reduction Program Portfolio Plans for 2013 through 2015*, Case No. 12-2190-EL-POR, et al., Finding and Order at 2, 9, 22 (November 20, 2014).

[11] Id. at 9.

[12] EE/PDR Plans at 40, 53, 65.

outside of utility-administered programs pursuant to R.C. 4928.662."[13] Under the EE/PDR Plans, savings captured from CAP would be eligible for inclusion in the shared savings calculation, meaning that customers could end up paying a shared savings incentive on actions already taken by customers "outside of utility-administered programs" as the shared savings mechanism is designed to count "all programs."[14]

The Commission should not permit FirstEnergy to earn a shared savings incentive on energy savings that have been achieved by prior customer actions that are merely accounted for pursuant to CAP. As FirstEnergy admits, CAP is an after-the-fact attempt to capture savings generated by customers outside of utility-administered programs.[15] This type of business-as-usual framework does not produce net benefits to customers. Net benefits arise from actions that go above and beyond business-as-usual activities.

Customers should not be forced to pay a shared savings incentive to a utility where the utility had no responsibility in directing the investment or implementation of an energy efficiency program. As the Staff has previously stated, there should be no financial reward given to a utility if it is "not actively influencing retail customers to invest in and implement energy efficiency programs, and incurring no financial risk with respect to these programs."[16] CAP does not actively influence customers' behavior, and thus, FirstEnergy should not be permitted to earn a shared savings incentive from creating the CAP program.

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[13] Id. (emphasis added).

[14] FirstEnergy's Response to ELPC Set 1, INT-028 (Attachment A).

[15] EE/PDR Plans at 40,53, 65.

[16] *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Approval of their Energy Efficiency and Peak Demand Reduction Program Portfolio Plans for 2013 to 2015*, Case No. 12-2190-EL-POR, et al., Initial Comments of Staff at 3 (October 20, 2014).

B. FirstEnergy should not be permitted to implement or earn shared savings incentives from the proposed Energy Special Improvement Districts program.

The Commission should not approve FirstEnergy's request to implement a new program to capture savings associated with Energy Special Improvement Districts (ESID).[17] According to FirstEnergy, the "ESID is a program where Ohio Townships and municipalities can create ESIDs to offer constituents Property Assessed Clean Energy ("PACE") financing to install qualified energy improvements" in accordance with R.C. 1710.061.[18] This new program proposed by FirstEnergy is designed to capture the savings associated with these improvements.[19] Approval will be sought to include the savings from these projects in separate dockets.[20]

The implementation plan for this new program lacks sufficient detail, and thus, the proposed ESID program should be rejected. The costs for the program are not included in the EE/PDR Plans' budget; therefore, it is unknown what customers could ultimately pay for this program.[21] There is no EM&V plan provided; therefore, it is unclear how FirstEnergy will capture savings associated with the program. In terms of implementation, FirstEnergy merely states that it "will be developing a process with the Commission for constituents to submit their energy improvement projects."[22] The lack of detail associated with this new program does not justify approval by the Commission.

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[17] Application at 10.

[18] Id.

[19] Id.

[20] Id. at 10-11.

[21] Id. at 11.

[22] EE/PDR Plans at 77.

Nonetheless, if approval of this new program is granted, FirstEnergy should not be permitted to earn any shared savings incentives from the program. FirstEnergy has no specific plans to assist communities with the establishment of ESIDs.[23] It also has no specific plans to provide financial incentives for energy efficiency investments in ESIDs.[24] In this way, the ESID program is much like the CAP. In CAP, any savings generated from the program arise from independent customer actions. Likewise with the ESID program, any savings generated from the program arise from the independent efforts of townships and municipalities. Given the lack of involvement that FirstEnergy has with the ESID program, customers should not be required to pay a shared savings incentive to FirstEnergy for a program that produces energy savings and operates outside of utility-administered programs.

C. The Incentive Tier of the Shared Savings Mechanism Requires Further Clarification.

FirstEnergy's proposed shared savings mechanism specifies five incentive tiers that drive its proposed shared savings calculation.[25] For each incentive tier there is a compliance percentage and a corresponding incentive percentage.[26] The Commission should clarify that a shared savings incentive for performance is only available and the shared savings mechanism is only triggered if FirstEnergy exceeds the statutory benchmark.

D. The Commission should adopt performance metrics for integration into the shared savings mechanism.

To ensure that customers receive proper benefits in exchange for their payment of shared savings to FirstEnergy, the Commission should consider integrating performance metrics into the shared savings mechanism. First, shared savings should be indexed to the cost of programs.

[23] FirstEnergy's Response to NRDC Set 1, Int-004 (Attachment B).

[24] FirstEnergy's Response to NRDC Set 1, Int-005 (Attachment C).

[25] EE/PDR Plans at 99.

[26] Id.

Currently, there is no inducement for a utility to perform cost-effectively as a utility that is operating cost-effectively receives the same shared savings incentive as one that is not operating cost-effective programs. By indexing shared savings to the cost of programs, utilities will be encouraged to deliver low-cost programs which will work to the benefit of customers. Second, a metric should be implemented to account for customers' satisfaction with FirstEnergy's programs. This customer-satisfaction metric should then be incorporated into the shared savings mechanism. Utilities should not be permitted to earn shared savings incentives if customers are not satisfied with the utility's programs.

III. Conclusion.

Kroger respectfully requests that its objections and modifications to FirstEnergy's EE/PDR Plans be adopted and implemented as set forth herein.

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 June 14, 2016.

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Attachment A

ELPC Set 1
Witness: Eren G. Demiray

Case No. 16-0743-EL-POR

In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company For Approval of Their Energy Efficiency and Peak Demand Reduction Program Portfolio Plans for 2017 through 2019

RESPONSES TO DATA REQUESTS

ELPC Set 1 – INT-028 With respect to the shared savings mechanism described in Section 7 of the EE/PDR Plans, please indicate:

a) Whether FirstEnergy plans to count energy savings from all programs included in the proposed EE/PDR Plans toward determining the Companies' incentive tier and net benefits. If not, please indicate which programs would be excluded in determining the applicable incentive tier and in calculating net benefits.
b) How FirstEnergy will calculate whether the Customer Action Programs (Residential, Small C&I, and Large C&I) are "cost-effective energy efficiency programs" for purposes of the shared savings mechanism, as described on page 100 of the EE/PDR Plans.
c) If benefits from the Customer Action Programs (Residential, Small C&I, and Large C&I) are eligible for shared savings, how FirstEnergy will calculate the Total Discounted Net Lifetime Benefits of those programs;
d) With respect to "banked energy efficiency savings from previous years" as referenced on page 100 of the EE/PDR Plans, will FirstEnergy:
   i) Consider the shared savings mechanism to be triggered if it must rely on such banked savings to meet the goals established in R.C. 4928.66(A)(1)(a) for a particular year;
   ii) Include such banked savings in determining the applicable incentive tier for the year; and
   iii) Include such banked savings in calculating Total Discounted Net Lifetime Benefits for a year in which shared savings are triggered.
e) Whether the calculation of eligible savings for purposes of the shared savings mechanism will be based on:
   i) Gross savings (as that term is used in R.C. 4928.662) or net savings;
   ii) As-found or deemed savings (as those terms are used in R.C. 4928.662).

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Response:

a) Consistent with the currently approved shared savings mechanism, the savings of all programs will contribute to the calculations of whether the Companies have exceeded their benchmarks for any particular year and in doing so, have triggered the Shared Savings Mechanism and at what incentive tier.

As described in Section 7.1 of the Companies' Plan and consistent with the Commission's Opinion and Order in the Companies' Stipulated ESP IV, the Total Discounted Net Lifetime Benefits of all cost-effective energy efficiency programs (as determined by the Utility Cost Test) are eligible for shared savings. However, the Companies' T&D projects and projects that receive any funding from the Universal Service Fund as established in RC §4928.51 shall be excluded from the Total Discounted Net Lifetime Benefits calculation, even if cost-effective, and will not be included in the Portfolio's Adjusted Net Benefits.

b) UCT Cost Effectiveness testing for the Customer Action Programs will be performed as part of the Companies' Annual Report by the Companies' independent Evaluation Measurement & Verification provider in line with standard industry practice.

c) Total Discounted Net Lifetime Benefits for the Customer Action Program will be determined utilizing the Utility Cost Test.

d) Consistent with the currently approved shared savings mechanism and as described in Section 7.1 of the Companies' Plan,

   i. Banked savings are considered when determining if the Companies have met the cumulative targets as set forth in R.C. 4928.66(A)(1)(a) that is part of the existing Shared Savings mechanism trigger. For purposes of determining if the Annual energy targets in the Shared Savings Mechanism have been met and for applicable incentive tiers, the Companies will include only Annual savings that are reflected in the Companies' Portfolio Status Reports for the year in which the Shared Savings Mechanism is being calculated, and not banked energy efficiency savings from previous years.

   ii. See answer to i.

   iii. Total Discounted Net Lifetime Benefits are calculated from Annual savings as reflected in the Companies' Portfolio Status Reports for the year in which the Shared Savings Mechanism is being calculated, and not banked energy efficiency savings from previous years.

e) Consistent with the currently approved shared savings mechanism, the calculation will be performed based on information presented in each EDU's annual compliance report in accordance with R.C. 4928.662.

Attachment B

NRDC Set 1
Witness: Edward C. Miller
As to objections: Carrie M. Dunn

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NRDC Set 1 – INT-004 Is FirstEnergy planning any specific actions to help communities establish ESIDs? If so, please explain such efforts.

Response: Objection. This request is vague and ambiguous and assumes facts not in evidence or testimony. Subject to and without waiving the foregoing objections, the Companies have no specific plans to help communities establish ESIDs at this time.

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RESPONSES TO DATA REQUESTS

NRDC Set 1 – INT-005 Is FirstEnergy planning to provide any additional financial incentives – beyond those provided through its other programs – for efficiency investments in ESIDs? If so, please explain.

Response: The Companies have no specific plans to provide additional financial incentives for efficiency investments in ESIDs at this time.