BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In The Matter of the Application of The Dayton Power and Light Company for Approval of its Energy Efficiency and Peak Demand Reduction Program Portfolio Plan for 2017 through 2019.	)))))	Case No. 16-649-EL-POR Case No. 16-1369-EL-WVR

OBJECTIONS OF THE KROGER CO.

In accordance with Ohio Adm. Code 4901:1-39-04(D), the Kroger Co. (Kroger) submits its objections to the Application of The Dayton Power and Light Company (DP&L) for Approval of its Energy Efficiency and Peak Demand Reduction Program Portfolio Plan for 2017 through 2019 which was filed with the Commission on June 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 June 15, 2016, DP&L submitted its Application (Application) for Approval of its Energy Efficiency and Peak Demand Reduction Program Portfolio Plan for 2017 through 2019 (EE/PDR Plan). The EE/PDR Plan contains program offerings for residential and non-residential customers, as well as cross sector programs.[1] DP&L proposes to recover all prudently incurred costs identified in its EE/PDR Plan through its Energy Efficiency Rider (EER) and its Distribution Decoupling Rider.[2] Additionally, DP&L requests to earn an uncapped, 15% after-tax shared savings incentive to the extent it exceeds its energy efficiency requirements for the current year.[3] Kroger has a strong interest in seeing that the programs offered under this EE/PDR Plan are structured to minimize customers' costs. To this end, Kroger offers the following objections to DP&L's EE/PDR Plan.

II. Objections.

A. DP&L's request to implement its Non-Programmatic Savings program should be denied. If implemented, no shared shavings incentive should accrue to DP&L.

DP&L's proposal to implement a new program, the Non-Programmatic Savings program, should be denied.[4] This program is designed to "account for customer efficiency efforts undertaken outside of the utility-administered programs."[5] According to DP&L, the program's objective is to "quantify energy efficiency improvements occurring in [its] territory, beyond

[1] Application at 3-4.

[2] Id. at 8-9.

[3] Id. at 5.

[4] Id. at 4.

[5] EE/PDR Plan at 86.

those savings recorded by [its] other programs * * * ."[6] Captured savings will then be applied by DP&L towards its benchmarks.[7]

The Non-Programmatic Savings program should be denied. Even though DP&L's budget for the program for the next three years is $4 million, it has provided no forecast of savings or benefits that could accrue to customers.[8] Moreover, the evaluation, measurement, and verification (EM&V) plan for this program is described in a perfunctory nature. DP&L states that it will work with an independent evaluator to develop the EM&V Plan, but it does not specify the contours of the EM&V plan in any detail. If customers are expected to pay $4 million for this program, they should know the types of benefits they are getting in return. DP&L's failure to include the basic details on how this plan will take shape counsels against its adoption.

Even if DP&L is permitted to implement the Non-Programmatic Savings program, it should not be permitted to earn a shared savings incentive on it. The Non-Programmatic Savings program is an after-the-fact attempt to capture savings generated by customers outside of utility-administered programs. 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. Forcing customers to pay a utility a shared savings incentive where the utility had no responsibility in directing the investment or implementation of an energy efficiency program is unjust and unreasonable. Staff has previously stated that there should be no financial reward given to a utility if it is "not actively influencing retail customers to invest in and implement

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[6] Id.

[7] Id.

[8] Id. at 87-88.

energy efficiency programs, and incurring no financial risk with respect to these programs."[9] The Non-Programmatic Savings program does not actively influence customers' behavior, and thus, DP&L should not be permitted to earn a shared savings incentive from the program.

B. DP&L's proposal to modify its shared savings mechanism is unjustified.

DP&L's proposed shared savings mechanism in this case is an unnecessary departure from what was implemented previously. DP&L requests approval of a shared savings mechanism that provides an uncapped, after-tax net benefit of 15% whenever it exceeds it cumulative energy efficiency requirements for the current year.[10] Previously, however, DP&L was subject to an annual $4.5 million after-tax cap and its shared savings mechanism was tiered so that greater savings resulted in a higher percentage (up to 13%) of shared savings accruing to DP&L.[11]

To protect customers against continually escalating costs, a cap on shared savings should be adopted. Other utilities have been directed or have proposed to cap the level of shared savings they can earn.[12] Imposing a cap on DP&L's shared savings incentive would be consistent with the proposals made by other electric distribution utilities. Additionally, DP&L offers no convincing justification for eliminating its achievement tiers in place of an across-the board, after-tax net benefit of 15%. As the Commission has explained before, a tiered incentive

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[9] *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).

[10] Application at 9.

[11] *In the Matter of the Application of The Dayton Power and Light Company for Approval of its Energy Efficiency and Peak Demand Reduction Program Portfolio Plan for 2013 through 2015*, Case No. 13-833-EL-POR, et al., Opinion and Order at 8, 13 (December 4, 2013).

[12] See *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) and *In the Matter of the Application of Ohio Power Company for Approval of Its Energy Efficiency/Peak Demand Reduction Portfolio Plan*, Case No. 16-574-EL-POR, Testimony of Williams at 19 and 22 (June 15, 2016).

structure is designed to motivate and reward the utility.[13] To ensure proper motivations continue to exist for DP&L, its proposal to discontinue the incentive tiers should be reevaluated.

Moreover, permitting shared savings incentives to be grossed up for taxes results in a significant additional charge to customers, especially without an annual cap on shared savings. DP&L does not explain why customers should pay DP&L's tax liabilities on profit received. Grossing up shared savings for taxes increases the amount of profit that DP&L receives on the programs paid by customers. DP&L already recovers 100% of program costs from customers and shared savings are paid to the utility in addition to the program costs. Thus, customers should not pay DP&L's taxes for its profit on energy efficiency programs that are paid for by customers. Shared savings payments should not be grossed up for taxes. Finally, the Commission should clarify that DP&L cannot use banked savings to trigger its shared savings mechanism.

C. Performance metrics should be considered for integration into the shared savings mechanism.

To ensure that customers receive proper benefits in exchange for their payment of shared savings to DP&L, the Commission should consider integrating performance metrics into the shared savings mechanism. First, shared savings should be indexed to the cost of programs. Currently, there is no inducement for a utility to perform cost-effectively because a utility that is operating cost-effectively receives the same profit 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, savings derived from projects that occur outside of utility-administered programs (i.e., mercantile

[13] *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 at 5 (May 20, 2015).

self-direct, the Non-Programmatic Savings program) should not be counted towards the shared savings mechanism.

D. Changes to DP&L's cost recovery mechanism should be clarified.

DP&L proposes to modify the rate design of the non-residential portion of its EER so that costs for the program are allocated 100% based on each class's share of base distribution revenue.[14] In order to understand the impacts caused by this allocation methodology and potential increases in costs to customers, DP&L should provide an analysis showing how its proposed modifications will impact customers across different classes.

E. DP&L's capacity bidding plan should be structured to maximize customer benefits.

Ohio customers benefit when energy efficiency is bid into PJM's capacity auction. Not only does it reduce the costs associated with operating energy efficiency programs, but it can suppress capacity prices. To ensure that these benefits are achieved, DP&L should be required to bid energy efficiency capacity into the upcoming base residual auctions (BRA) and bid any remainder into the incremental auctions. Additionally, it would be beneficial if DP&L and other utilities were given direction to bid energy efficiency capacity into BRAs for later program years that are yet to be approved. To the extent a utility does not provide programs in the future, the ability to buy back capacity from incremental auctions would be appropriate.

[14] Application at 7.

III. Conclusion.

Kroger respectfully requests that its objections and modifications to DP&L's EE/PDR Plan 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 August 15, 2016.

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