

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In The Matter of the Application of Duke )  
Energy Ohio, Inc., for Approval of its Energy ) Case No. 16-576-EL-POR  
Efficiency and Peak Demand Reduction )  
Portfolio of Programs. )

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**OBJECTIONS ON BEHALF OF THE KROGER CO.**

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In accordance with Ohio Adm. Code 4901:1-39-04(D), the Kroger Co. (Kroger) submits its objections to the Application of Duke Energy Ohio, Inc. (Duke) for Approval of its Energy Efficiency and Peak Demand Reduction Portfolio of Programs for 2017 through 2019. 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, Duke submitted its Application (Application) for Approval of its Energy Efficiency and Peak Demand Reduction Portfolio of Programs for 2017 through 2019 (EE/PDR Plan).<sup>1</sup> Duke avers that its EE/PDR Plan benefited from engagement with its energy efficiency collaborative and that input from the energy efficiency collaborative was employed in the development of programs offered for approval.<sup>2</sup> Duke represents that the EE/PDR Plan, which offers both continuing and new programs, contains a comprehensive set of measures for customers of all classes.<sup>3</sup> 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 Duke's EE/PDR Plan.

## **II. Objections.**

### **A. Lingering uncertainty with Duke's EE/PDR Plan deprives customers of valuable information they can use to evaluate the impact of the EE/PDR Plan on their businesses.**

Unlike the other electric distribution utilities in Ohio, Duke has not filed a complete EE/PDR Plan that enables intervenors to completely evaluate the impacts of its proposal. Although Ohio Adm. Code 4901:1-39-03(A) requires an electric distribution utility to file a market assessment study contemporaneously with its EE/PDR Plan, Duke did not meet this requirement. As directed by the Commission's June 13, 2016 Entry in Case No. 16-1017-EL-WVR, Duke states that it will file its market assessment study by August 15, 2016 and then "integrate the findings into its programs and amend its filing as necessary by October 15, 2016 \*

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<sup>1</sup> Duke did not, however, include a timely market assessment study with its EE/PDR Plan. See *In the Matter of the Application of Duke Energy Ohio, Inc. for a Waiver*, Case No. 16-1017-EL-WVR, Entry at 1-3 (June 13, 2016) (directing Duke to file the market assessment study by August 15, 2016).

<sup>2</sup> Application at 15-16.

<sup>3</sup> 12-13.

\* \* .”<sup>4</sup> It is thus possible that the EE/PDR Plan now under consideration could undergo changes in the ensuing months to account for the results of the market assessment study. Duke apparently anticipates that a change could occur, noting that the market assessment study “will be utilized to make sure its portfolio is comprehensive and consistent with the changes made to the counting of energy efficiency savings that were instituted with the passage of Ohio SB 310 in 2014.”<sup>5</sup>

Duke’s failure to timely deliver an EE/PDR Plan *together* with a market assessment study deprives Kroger of valuable information that it can use to evaluate the impacts of Duke’s proposal. Any forthcoming changes to the EE/PDR Plan that materially modify what has already been proposed are objectionable in the absence of an opportunity to offer input on those changes.

To the extent changes to the EE/PDR Plan are made, the Commission should deny any proposal by Duke that would allow it to earn a shared savings incentive from so-called customer action programs. Kroger has opposed similar measures in the past.<sup>6</sup> Customer action programs attempt to capture energy efficiency and peak demand reductions that are achieved by customer actions occurring outside of utility-administered programs.<sup>7</sup> While Ohio law permits a utility to apply savings achieved from customer action programs towards its benchmarks, a utility is not required by law to earn a shared savings incentive from such a program.<sup>8</sup>

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

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<sup>4</sup> Application at 13.

<sup>5</sup> Id.

<sup>6</sup> *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 Kroger at 3-4 (June 14, 2016).

<sup>7</sup> R.C. 4928.662(A).

<sup>8</sup> Id.

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.”<sup>9</sup> Following Staff’s guidance, any forthcoming proposal by Duke to earn a shared savings incentive associated with a customer action program should be denied.

**B. The Commission should cap the level of Duke’s proposed shared savings incentive and deny any attempt by Duke to earn an incentive for simply meeting its benchmarks.**

Duke’s proposal to earn a 10% after-tax shared savings incentive is unjust and unreasonable because it lacks a cap.<sup>10</sup> This means that there is no ceiling on the amount of shared savings that customers could be required to pay to Duke. As a measure of protection to customers, the Commission should cap the level of shared savings that Duke can earn.

Duke asserts that its proposed shared savings mechanism is consistent with those from other utilities.<sup>11</sup> But other utilities have been directed or have proposed to cap the level of shared savings they can earn.<sup>12</sup> Imposing a cap on Duke’s shared savings incentive would be consistent with the proposals made by other electric distribution utilities.

Another problem with Duke’s proposed shared savings incentive is that it is structured to deliver an incentive to Duke for “*meet[ing]* or *exceed[ing]*” its benchmarks.<sup>13</sup> Customers should not be required to pay Duke a shared savings incentive for simply meeting the requirements

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<sup>9</sup> Initial Comments of Staff at 3, Case No. 12-2190-EL-POR, et al. (October 20, 2014).

<sup>10</sup> Application at 51.

<sup>11</sup> Id. at 52.

<sup>12</sup> 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).

<sup>13</sup> Haemmerle Direct Testimony at 9 (June 15, 2016) (emphasis added).

imposed by Ohio law. The Commission has previously stressed that incentives are “designed to motivate and reward the utility for *exceeding*” its benchmarks.<sup>14</sup> Following that principle, Duke’s proposal to recover a shared savings incentive for simply meeting its benchmarks should be denied.

Moreover, shared savings are paid to the utility in addition to program costs. 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. Duke does not explain why customers should pay Duke’s tax liabilities on profit received. Grossing up shared savings for taxes increases the amount of profit that Duke makes on the programs paid by customers. Duke already recovers 100% of program costs from customers. Thus, customers should not pay Duke’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. Furthermore, Duke should not be permitted to use banked savings to claim a shared savings incentive.<sup>15</sup>

**C. No shared savings incentive should accrue to Duke from the implementation of business demand response programs.**

Another area where shared savings opportunities for Duke should be curtailed lies with its proposal to implement business demand response programs such as PowerShare and Power Manager for Business.<sup>16</sup> A market for demand response programs exists in Ohio. Private firms compete to offer demand response services, but unlike a utility, the firms’ costs for providing these services are not recovered from customers as a whole. To the extent that private firms are able to deliver demand response programs that are on par with or better than Duke’s capabilities,

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<sup>14</sup> *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) (emphasis added).

<sup>15</sup> *Id.*

<sup>16</sup> Application at 11-12.

it undermines any justification for allowing Duke to offer those programs. At a minimum, Duke should be prohibited from earning a shared savings incentive from the implementation of these programs.

**D. 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 incentives to Duke, 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 should not be counted towards the shared savings mechanism.

**E. Duke'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, Duke 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 Duke and other utilities were directed how 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.

### **III. Conclusion.**

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

Respectfully submitted,



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Ryan P. O'Rourke (0082651)  
Carpenter Lipps & Leland LLP  
280 Plaza, Suite 1300  
280 North High Street  
Columbus, Ohio 43215  
Telephone: (614) 365-4110  
Email: O'Rourke@carpenterlipps.com

*Counsel for The Kroger Co.*

## 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.



Ryan P. O'Rourke

[Amy.spiller@duke-energy.com](mailto:Amy.spiller@duke-energy.com)  
[Elizabeth.watts@duke-energy.com](mailto:Elizabeth.watts@duke-energy.com)  
[Bojko@carpenterlipps.com](mailto:Bojko@carpenterlipps.com)  
[Ghiloni@carpenterlipps.com](mailto:Ghiloni@carpenterlipps.com)  
[cmooney@ohiopartners.org](mailto:cmooney@ohiopartners.org)  
[mfleisher@elpc.org](mailto:mfleisher@elpc.org)  
[fdarr@mwncmh.com](mailto:fdarr@mwncmh.com)  
[mpritchard@mwncmh.com](mailto:mpritchard@mwncmh.com)  
[tdougherty@theoec.org](mailto:tdougherty@theoec.org)  
[jfinnigan@edf.org](mailto:jfinnigan@edf.org)  
[Christopher.healey@occ.ohio.gov](mailto:Christopher.healey@occ.ohio.gov)  
[rdove@attorneydove.com](mailto:rdove@attorneydove.com)  
[mleppla@theoec.org](mailto:mleppla@theoec.org)  
[joliker@igsenergy.com](mailto:joliker@igsenergy.com)  
[dstinson@bricker.com](mailto:dstinson@bricker.com)  
[rick.sites@ohiohospitals.org](mailto:rick.sites@ohiohospitals.org)  
[mwarnock@bricker.com](mailto:mwarnock@bricker.com)  
[dborchers@bricker.com](mailto:dborchers@bricker.com)



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Summary: Objection OBJECTIONS ON BEHALF OF THE KROGER CO. electronically filed by Ms. Cheryl A Smith on behalf of The Kroger Co.