

FILE

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Adoption of Rules for )  
Standard Service Offer, Corporate Separation, )  
Reasonable Arrangements, and Transmission )  
Riders for Electric Utilities Pursuant to )  
Sections 4928.14, 4928.17, and 4905.31, )  
Revised Code, as Amended by Amended )  
Substitute Senate Bill 221. )

Case No. 08-777-EL-ORD

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**RULEMAKING COMMENTS OF THE KROGER COMPANY, INC.**

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In accordance with the Entry issued on July 2, 2008 by the Public Utilities Commission of Ohio (the "Commission") in the above-captioned proceeding, the Kroger Company, Inc. ("Kroger") submits these comments on the Commission Staff's proposed rules to implement Amended Senate Bill No. 221 ("SB 221").

**I. COMMENT.**

Kroger is a large electric customer of several regulated investor owned electric utilities in the state of Ohio. Like all other retail customers in Ohio, Kroger may be profoundly affected by the changes to Ohio's electric utility law, made pursuant to SB 221. In submitting these comments to the proposed rules to implementing SB 221, Kroger is mindful of the Commission's overall goal to ensure that the rules are fair, that they provide customers with full procedural rights, and that the standard service offer ("SSO") plans submitted by utilities, whether they are electric security plans ("ESPs") or market-rate options ("MROs"), will produce stable, just, and reasonable rates, and ensure reliable service to all customers.

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Kroger's first comment on the proposed rules relates to the proposed rule on Transmission Cost Recovery (4901:1-36-02]). That Rule authorizes a utility to recover its transmission and transmission-related costs, including congestion and ancillary services costs, imposed or approved by FERC. Kroger suggests that the rule clearly indicate that recovery of transmission and transmission-related costs from a utility should be net of any other revenues the utility may be receiving for sales of transmission and transmission-related services, including sales of ancillary services and other products.

Probably the best place to recognize this point is in 4901:1-36-04 – Limitations. A new section (D) could be added that states the following:

“(D) Recovery of transmission and transmission-related cost pursuant to Rule 4901:1-36-02 shall be net of revenues received by the utility for transmission and transmission-related services, including, but not limited to, congestion revenues and sales of ancillary services.”

The additional wording makes clear that a utility must account for these other revenues in recovering transmission and transmission-related costs.

Kroger's second comment relates to Rule 4901:1-35-07. The rule should be amended to provide that upon an appropriate discovery request, any party shall be able to obtain discovery of any contract or agreement between an electric utility or any of its affiliates and a party to the proceeding, consumer, electric service company, or political subdivision that is either relevant to the proceeding, or reasonably calculated to lead to the discovery of any material that may be admissible at a hearing on the matter. As currently drafted, the rule requires utilities to provide

only agreements that are “relevant to the proceeding.” The requirement that agreements be “relevant to the proceeding” unnecessarily limits the scope of the inquiry into contracts and agreements that may not be strictly “relevant” to the proceeding, but may be reasonably expected to lead to the discovery of admissible evidence and is inconsistent with OAC 4901-1-16 and ORCP 26(B).

Kroger submits that 4901:1-35-07 should be amended as follows:

“Upon submission of an appropriate discovery request during a proceeding establishing a standard service offer, an electric utility shall make available to the requesting party every contract or agreement that is between the electric utility or any of its affiliates and a party to the proceeding, consumer, electric service company, or political subdivision and that is relevant to the proceeding or is reasonably calculated to lead to the discovery of admissible evidence, subject to such protection for proprietary or confidential information as is determined appropriate by the commission.”

Third, proposed rule 4901:1-35-08 requires a electric utility proposing a MRO to use an independent third party to design an open, fair, and transparent bid solicitation, to administer the bidding process, and to oversee the entire procedure to assure that the CBP complies with the CBP plan. The proposed rule also provides that any modifications or additions to the CBP by the independent third party shall be submitted to Staff prior to implementation. Kroger submits that any such modifications or additions to the CBP should also be submitted to all stakeholders for review and comment prior to implementation. Allowing stakeholders an opportunity to comment on proposed changes to the CBP by the independent third party will assist in assuring that the process remains equitable and transparent.

Kroger therefore submits that 4901:1-35-08 should be amended as follows:

“An electric utility proposing a market- rate offer in its standard service offer application, pursuant to section 4928.142 of the Revised Code, shall propose a plan for a competitive bidding process (CBP). The CBP shall comply with the requirements set forth in Appendix A to rule 4901:1-35-03 of this chapter. The electric utility shall use an independent third party to design an open, fair, and transparent bid solicitation; to administer the bidding process; and to oversee the entire procedure to assure that the CBP complies with the CBP plan. The independent third party shall be accountable to the commission for all design, process and oversight decisions. Any modifications or additions to the CBP made by an independent third party shall be submitted to staff and to all stakeholders, and a schedule for providing comment or feedback to such proposed modifications or additions to the CBP shall be established and completed prior to implementation. The independent third party shall incorporate into the solicitation such measures as the Commission or its staff may prescribe, and shall incorporate into the bidding process any direction the Commission may provide.”

Kroger also submits that any SSO submitted under the new legislation, whether an ESP or MRO, may constitute an abrupt and substantial change from the rate structures to which customers have become accustomed. Electric utilities should be required to describe in detail the magnitude of the change, propose processes to ease the transition to new and substantially different rate structures, and explain and justify those processes within the SSO application.

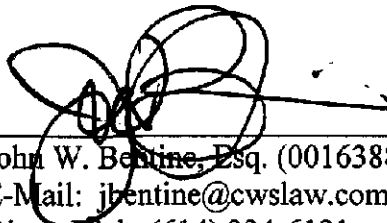
Finally, a utility submitting a proposed SSO should also be required to describe how its specific SSO proposal meets Ohio's energy policy objectives, as those goals are set forth in section 4928.02 of the Ohio Revised Code ("R.C.").

Kroger also submits that, among other considerations, SSO submittals should be made to specifically describe how rates, terms and conditions set forth in the proposed SSO, whether MRO or ESP, are designed to provide accurate price signals for consumers, encourage energy efficiency and promote the elimination of cross subsidies among the various customers and customer classes.

## **II. CONCLUSION.**

Kroger respectfully requests that the Commission consider these comments and incorporate the revisions discussed herein into the proposed rules.

Respectfully submitted,



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