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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

FILE

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In the Matter of the Application of Columbus Southern Power Company For Approval of its Electric Security Plan Including Related Accounting Authority; an Amendment to its Corporate Separation Plan; and the Sale or Transfer Certain Generating Assets	)	**Case No. 08- 917-EL-SSO**
In the Matter of the Application of Ohio Power Company for Approval of its Electric Security Plan Including Related Accounting Authority; and an Amendment to its Corporate Separation Plan	)	**Case No. 08-918-EL-SSO**

INITIAL BRIEF OF THE KROGER CO.

I. INTRODUCTION

On July 31, 2008 Columbus Southern Power Company ("Columbus Southern"), and the Ohio Power Company ("Ohio Power") (collectively referred to herein as "AEP") filed an application for authority to establish a standard service offer ("Application") pursuant to Ohio Revised Code ("R.C.") 4928.143 in the form of an electric security plan ("ESP"). As part of the Application, AEP proposes that if the Public Utilities Commission of Ohio ("Commission") is unable to reach a determination on the three year ESP proposal ("Long Term ESP") by January 1, 2009, that the Commission should establish a one time rider to true-up the difference between the rates charged by AEP under its current rate schedule and the rates that AEP would have charged had an ESP been approved by January 1, 2009 ("AEP True-Up Proposal")[1].

On September 16, 2008, the Commission granted The Kroger Co.'s Motion to Intervene in the above captioned proceeding. The Kroger Co. has been an active participant in this proceeding throughout.

On November 10, 2008, the Commission's Staff ("Staff") filed testimony by J. Edward Hess ("Hess"). Mr. Hess proposed an alternative rate proposal, in the event the Commission did not issue an Opinion and Order on AEP's Application by January 1, 2009 ("Alternative 1/1/09 Plan"). The Commission has now asked the parties to submit briefs stating their positions on the Alternative 1/1/09 Plan.

II. ARGUMENT

The Kroger Co. urges the Commission to not adopt the Alternative 1/1/09 Plan or the AEP True-Up Proposal (Collectively "Short Term Proposals"). R.C. 4928.141 allows customers to be served under the existing rate plan if an ESP is not approved by January 1, 2009. Therefore, there is no need for the implementation of a new rate plan or a true-up to reconcile the difference between AEP's current rate plan and the rate plan approved in this proceeding.

If the Commission must approve one of the Short Term Proposals, The Kroger Co. recommends that the Commission approve the AEP True-Up Proposal. The AEP True-Up Proposal would be less expensive to administer and less confusing to customers than the Alternative 1/1/09 Plan. Also, the AEP True-Up Proposal is more likely to set rates that are reasonable for customers than the Alternative 1/1/09 Plan.

[1] See AEP Application at pp 17-18.

Finally, if the Commission chooses to adopt the Alternative 1/1/09 Plan, The Kroger Co. recommends that the Commission make some modifications to Mr. Hess's proposal. While some of the increase in base generation rates proposed in the Alternative 1/1/09 Plan may be reasonable, the inclusion of riders such as the provider of last resort ("POLR") rider, and AEP's gridSMART, Energy Efficiency and Peak Demand Reduction programs ("Energy Savings Programs") riders are unreasonable for a rate plan that is to be adopted for such a short period of time.

A. Both Short Term Proposals Should Be Denied.

R.C. 4928.141(A) allows an Electric Distribution Utility's ("EDU") customers to continue to be served under the EDU's existing rate plan if an ESP is not approved by January 1, 2009. Therefore, there is no need for the implementation of a Short Term Proposal.

R.C. 4928.141(A) states that beginning January 1, 2009, an EDU shall provide customers with "a standard service offer of all competitive retail electric services necessary to maintain essential electric service to consumers, including a firm supply of electric generation service." However, the statute also states:

> "<u>the rate plan of an electric distribution utility shall continue</u> for the purpose of the utility's compliance with this division <u>until a standard service offer is first authorized</u> . . . any rate plan that extends beyond December 31, 2008, shall continue to be in effect for the subject electric distribution utility for the duration of the plan's term."

R.C. 4928.141(A) (emphasis added). Therefore, there is no legal requirement to establish a new ESP rate plan by January 1, 2009, nor is there any requirement to "true-up" current rates in the event a Long Term ESP is not approved by January 1, 2009.

Not only are the Short Term Proposals unnecessary, both plans would be costly to administer and would create considerable confusion for AEP's customers. The administrative expense for implementing either Short Term Proposal is unjustified, considering the short period of time either plan is likely to be in effect. Further, the implementation of a "true-up" rider will create additional costs such as additional collection and billing expenses. Undoubtedly, AEP will seek to recover the cost of implementing these Short Term Proposals from its customers. The Kroger Co. sees no legal basis to subject customers to these additional costs when neither of the Short Term Proposals are required by statute.

The implementation of these Short Term Proposals would also distract the Commission and divert additional resources from achieving the true goal of this proceeding, which is to establish a just and reasonable Long Term ESP. Undoubtedly, if the Commission were to approve a Short Term Proposal, appeals would be filed and more discussion in the hearing would be dedicated to resolving these issues. Also, implementing a Short Term Proposal would give AEP less incentive to reach a resolution on its Long Term ESP, since AEP would already be recovering additional revenues from a Short Term Proposal. In order to reduce additional expenses and not waste administrative resources, The Kroger Co. urges the Commission deny any Short Term Proposal not required by the law.

B. The AEP True-Up Proposal Should be Adopted Rather Than The Alternative 1/1/09 Plan.

While The Kroger Co. does not support the adoption of either Short Term Proposal, if the Commission must adopt a Short Term Proposal, The Kroger Co. recommends the Commission adopt the AEP True-Up Proposal. The AEP True-Up Proposal is less difficult to administer, and is most likely to produce just and reasonable electric rates for customers.

The AEP True-Up Proposal only requires the Commission to implement an additional rider to the Long Term ESP, rather than an entirely new rate plan which will essentially be required under the Alternative 1/1/09 Plan. Establishing an additional rate plan, particularly for such a short period of time, will create additional costs including costs AEP would incur to change its billing format. These additional costs will surely be passed on to AEP's customers and are unnecessary. Adopting the AEP True-Up Proposal will minimize the costs that must be recovered from the customers to implement a Short Term Proposal.

Also, the AEP True-Up Proposal is more likely to justly and reasonably set rates for customers. AEP's recovery under the AEP True-Up Proposal will be based on the final rate plan the Commission approves in AEP's Long Term ESP. Therefore, AEP's recovery under the AEP True-Up Proposal will be more closely scrutinized by the Commission and the intervening parties.

While the Kroger Co. appreciates the efforts of Mr. Hess in developing the Alternative 1/1/09 Plan, the Kroger Co. respectfully submits that this plan has not been subject to sufficient scrutiny due to the lack of available time. Under the AEP True-Up Proposal the costs recovered by AEP will not be determined until the time the Long Term ESP is approved and therefore is more likely to produce a just and reasonable outcome for all parties.

The Kroger Co. notes, that by supporting the AEP True-Up Proposal over the Alternative 1/1/09 Plan, The Kroger Co. is not necessarily supporting AEP's Long Term ESP proposal. There are several flaws in AEP's Long Term ESP proposal which The Kroger Co. will address in its briefs regarding AEP's Long Term ESP. However, The Kroger Co. does have confidence that the Commission will make the necessary modifications to AEP's Long Term ESP proposal to ensure that customers will receive more just and reasonable rates under the AEP True-Up Proposal.

C. The Alternative 1/1/09 Plan Should Be Modified.

The Kroger Co. does not support the adoption of the Alternative 1/1/09 Plan, but if the Commission does choose to adopt the Alternative 1/1/09 Plan, the Alternative 1/1/09 Plan should be modified to eliminate some of the charges included in the proposal. The additional riders appear to be unnecessary for a rate plan that would be adopted for a very short period of time.

The Alternative 1/1/09 Plan provides for an increase in generation rates by 3% for Columbus Southern and 7% for Ohio Power, as well as allows for an additional 4% rate increase from both companies. *Hess Testimony at pp. 3-4.* Additionally, the Alternative 1/1/09 Plan proposes that AEP be allowed to charge its existing POLR rider. The plan proposes a cost recovery mechanism for AEP to recover costs associated with AEP's Energy Savings Programs. *Hess Testimony at p. 4.* While, <u>some</u> increase in AEP's base generation rates may be appropriate, The Kroger Co. does not believe the recovery of the other costs proposed in the Alternative 1/1/09 Plan is reasonable.

The inclusion of a POLR rider is unnecessary in the Alternative 1/1/09 Plan. The Alternative 1/1/09 Plan is to be in effect for, at most, a few months. AEP faces very little risk that during this short time period AEP will be forced to provide service to shopping customers at the ESP rate. Notwithstanding the shortcomings of the proposed POLR charge in AEP's Long Term ESP proposal, recovering costs incurred from POLR risk is surely not necessary for a rate plan that is to last for a very short period of time.

The Energy Savings Program charges proposed in the Alternative 1/1/09 Plan are also unnecessary. While AEP may invest in its Energy Savings Programs during the period of time which the Alternative 1/1/09 Plan is in effect, AEP will have adequate time to recover these costs after the Long Term ESP is approved. There may also be a risk that customers will be overcharged for the Energy Savings Programs if AEP is allowed to recover costs of the Energy Savings Programs before the true cost of these programs is determined. The Commission should wait until all parties have had a chance to carefully scrutinize these Energy Savings Programs through the Long Term ESP application process before AEP is allowed to recover for these programs.

Finally, while The Kroger Co. allows that some increase in the base generation rates may be reasonable, it is not clear that the proposed increase of 3% for Columbus Southern, 7% for Ohio Power and an additional 4% rate increase from both companies is reasonable. It is difficult to determine in the short time frame since the Alternative 1/1/09 Plan has been proposed whether this rate increase is reasonable under the circumstances. The Kroger Co. notes that this problem would not exist if the Commission chose not to adopt either of the Short Term Proposals or if the Commission simply chose to adopt the AEP True-Up Proposal.

III. CONCLUSION

The Commission should not adopt either of the Short Term Proposals. Ohio Law does not require that either of the Short Term Proposals be implemented if a Long Term ESP is not approved by January 1, 2009. Further, adopting a Short Term Proposal will cost customers additional money to implement, and will divert time and resources from reaching a timely decision on AEP's Long Term ESP proposal. However, if the Commission chooses to adopt a Short Term Proposal, the Commission should adopt the AEP True-Up Proposal rather than the Alternative 1/1/09 Plan. The AEP True-Up proposal is the least difficult to administer of the two proposals and is the most likely to produce just and reasonable rates for customers. Finally, if the Commission chooses to adopt the Alternative 1/1/09 Plan, the Alternative 1/1/09 Plan should be modified to eliminate some of the charges contained in the proposal.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading was served upon the following parties of record or as a courtesy, via electronic transmission, on December 3, 2008.

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