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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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PUCO

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

REPLY BRIEF OF THE KROGER CO.

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On July 31, 2008 Ohio Power Company ("OP") and Columbus Southern Power Company ("CSP") (collectively "AEP") filed their application to establish an electric security plan ("ESP"). Prior to the evidentiary hearing held in regards to AEP's ESP application, The Kroger Co. filed direct expert testimony of Kevin C. Higgins ("Higgins"). On December 12, 2008, The Kroger Co. filed its initial brief in this proceeding. In accordance with the briefing schedule established by the Attorney Examiners, The Kroger Co. submits this Reply Brief in response to the initial briefs filed by AEP and the other parties to this proceeding.

In this Reply Brief, The Kroger Co. responds to several issues raised in the initial briefs by other parties in this proceeding. The Kroger Co. focuses most of its response to the positions taken in AEP's initial brief. Absence of comment on a particular position taken in the initial

briefs filed by the parties in this proceeding does not in any way indicate The Kroger Co.'s support of, or opposition to, the positions taken.

I. SUMMARY

In its ESP application, AEP proposes a substantial rate increase of fifteen percent for each of the next three years and a total of fifty percent over the three year ESP period.¹ Throughout its initial brief, AEP argues that these increases are not cost based increases²; however, AEP repeatedly cites additional costs as justification for the proposed increases in AEP's generation rates.³ AEP fails to explain in its initial brief why only certain specific cost increases should be considered when determining AEP's rates, without considering the *overall costs* AEP incurs to provide electric service to customers.

While SB 221 may not strictly require rates to be directly determined by cost of service, if AEP continues to use costs as a justification to increase rates, AEP should be required to prove that its overall costs have increased as well. Otherwise, any cost discussion is irrelevant in this proceeding. Without showing some reasonable relationship between AEP's proposed rate increases to the overall costs of providing electric service (which AEP fails to do in its initial brief and throughout this proceeding), the Public Utilities Commission of Ohio ("Commission")

¹ The rate increase AEP proposes may actually exceed fifteen percent annually. The fifteen percent figure excludes any potential transmission rate increases or the proposed deferrals of AEP's generation rate. AEP Application at p. 6.

² AEP Initial Brief at p. 5, 23, 27, 34.

³ See AEP Initial Brief at pp. 4-5 (AEP seeks to increase non-FAC rates to recover *costs* associated with carrying charges on environmental investments); AEP Initial Brief at pp. 19-20 (AEP cites *costs* to be included in FAC recovery); AEP Initial Brief at pp. 60-61 (AEP seeks a distribution rate increase to recover the *costs* of its gridSMART investment).

must not approve the rate increase AEP is proposing, nor should it approve the lesser rate increase proposed by Staff.⁴

Keeping in mind the general principle that AEP has not adequately demonstrated that its requested rate increases are reasonably aligned with the cost of providing electric service, The Kroger Co. makes the following responses to specific portions of the initial briefs submitted in this proceeding.

(1) AEP argues in its initial brief that its proposed “slice-of-system” power purchases from the market should be approved in its ESP because AEP has agreed to serve additional load in the Monongahela Power Company (“Mon Power”) service territory, and has incorporated the load of the Ormet Primary Illuminating Company (“Ormet”) into AEP’s service territory.⁵ These “slice-of-system” market power purchases are planned even though AEP also plans to sell excess generating capacity to non-AEP customers for significant profit. The power AEP proposes to purchase from the market through the “slice-of-system” exceeds the percentage that the Mon Power and Ormet loads account for in the AEP service territory, and for this reason alone the “slice-of-system” proposal should be rejected.⁶ Further, Staff’s proposal to allow AEP to purchase power equal to the amount of load AEP must serve to Ormet and Mon Power must also be rejected because AEP is able to earn a significant return by serving Ormet and Mon Power with AEP’s existing generating assets.⁷

⁴ This position is shared with many of the other parties in this proceeding, including the Ohio Consumer and Environmental Advocates (“OCEA”) and the Ohio Energy Group (“OEG”); See OCEA Initial Brief at p. 30; OEG Initial Brief at p. 12.

⁵ Id. at pp. 37-38.

⁶ Ormet and Mon Power account for approximately 7.5% of AEP’s overall load. AEP proposes to purchase 10% of its overall load from the market over a 3 year period. Staff Initial Brief at pp. 3-4

⁷ See Id. for Staff’s alternative proposal to AEP’s “slice-of-system” proposal.

(2) In its initial brief, AEP does not comment on Mr. Higgins' proposal to credit customers for off-system sales margins.⁸ Rather, AEP focuses a significant portion of its brief justifying why off-system sales margins should be excluded from its significantly excessive earnings test ("SEET").⁹ AEP is right to be concerned about the prospects of off-system sales producing significantly excessive earnings. However, rather than excluding off-systems sales profits from AEP's SEET, there is a very simple and much more equitable solution for dealing with AEP's "problem" of significantly excessive earnings. AEP should credit the Fuel Adjustment Clause ("FAC") charge paid by customers for the profits earned on off-system sales. At a minimum, off-system sales margins should be included in AEP's SEET, despite AEP's unconvincing arguments otherwise in its initial brief.

(3) In its initial brief, AEP attacks Mr. Higgins' proposal to require that AEP show its *net* non-FAC costs have increased in order for AEP to recover capital costs on other environmental investments and other non-FAC costs. AEP argues that SB 221 does not require that an increase in non-FAC rates pass a "cost-of-service test."¹⁰ AEP has missed the point of Mr. Higgins' testimony. While SB 221 may not strictly require rates to be tied to cost of service, if AEP is going to use costs as a justification to increase non-FAC rates, AEP must be required to show that its *overall* non-FAC costs have increased as well. Otherwise, all cost discussions are irrelevant in this proceeding.

(4) In its initial brief, AEP argues that it cannot recover the cost of shopping customers through a true-up mechanism, rather than a provider of last resort ("POLR") rider, because the

⁸ See The Kroger Co. Exhibit 1, Testimony of Kevin Higgins (hereinafter "The Kroger Co. Ex. 1") at p. 9. for an explanation of Mr. Higgins' proposal to credit customers for off-system sales margins.

⁹ AEP Initial Brief at p. 11; AEP Initial Brief at pp. 140-141.

¹⁰ Id. at p. 34.

current Commission cannot bind the actions of a later Commission.¹¹ However, AEP has no concerns about binding future Commissions when it asks the Commission to defer generation charges in excess of fifteen percent for recovery in the years 2012-2018.¹² AEP also argues a true-up mechanism will cause non-shopping customers to subsidize shopping customers.¹³ However, AEP's POLR rider proposal will cause non-shopping customers to subsidize AEP by "reimbursing" AEP for costs that are not incurred. For these reasons, the Commission must reject the proposal to charge customers a POLR rider, including Staff's proposal to allow AEP to continue its current POLR charge. The Commission should allow AEP to recover actual costs incurred due to shopping customers through a true-up rider.

(5) In response to Mr. Higgins' proposal to allow customers to opt-out of AEP's energy efficiency and demand response ("DSM") programs, AEP argues in its initial brief that under Mr. Higgins' proposal, it would be too difficult to verify that customers who opt-out are performing their "fair share" of DSM.¹⁴ However, Mr. Higgins' proposal requires customers who opt-out to partake in a third party energy efficiency audit which would verify that customers are participating in every possible economically viable DSM measure. AEP's alternative proposal to allow customers to negotiate special arrangement contracts with AEP gives too much control to AEP and could potentially lead to the consideration of non-DSM factors in granting the special contracts.

(6) Several of the parties in their initial briefs note that this proceeding is not an appropriate forum for determining a distribution rate increase, and any distribution rate increase

¹¹ Id. at p. 49.

¹² AEP proposes to defer the total amount needed to keep AEP's proposed rate increase to approximately fifteen percent per year, through a non-bypassable surcharge to be paid through the FAC mechanism in the years 2012-2018. Id. at p. 9.

¹³ Id.

¹⁴ Id. at pp. 107-108.

should be considered in a separately filed distribution rate case.¹⁵ As noted in its initial brief, The Kroger Co. supports this position.

(7) Throughout its initial brief, AEP uses several different terms to describe its proposals to defer present charges, to be paid by customers, with carrying costs, at a later date. Despite AEP's attempts to soften the perception of increased rates by deferring costs, AEP's proposals are simply putting off paying now, so that customers will pay more later. The Commission must not accept AEP's proposals to defer charges.¹⁶

(8) While not specifically addressed in the initial briefs of the other parties, The Kroger Co. asks that the Commission adopt Mr. Higgins' proposals to allow customers with multiple accounts taking service under the GS-3 rate schedule to aggregate loads, as well as allow customers cost-free, real-time, access to advanced metering technology installed by AEP.

II. ARGUMENT

A. AEP Does Not Adequately Justify its Proposed "Slice-Of-System" Market Power Purchases.

AEP spends a significant portion of its initial brief justifying its proposed purchases of a portion of the power supplied to customers through a "slice-of-system." None of the reasons proffered by AEP in its initial brief adequately justify AEP charging customers for power purchased from the market, and then selling its excess generating capacity for a significant profit through off-system sales.

¹⁵ See Ohio Manufacturers Group ("OMG") Initial Brief at p. 6; Industrial Energy Users (IEU) Initial Brief at p. 25; Staff Initial Brief at p. 7.

¹⁶ The Kroger Co. notes that if the Commission accepts The Kroger Co.'s proposed modifications to AEP's ESP, AEP's proposal to defer charges that exceed a fifteen percent rate increase annually will not be necessary.

AEP's primary justification for its "slice-of-system" proposal is AEP's obligation to serve the Ormet and Mon Power loads.¹⁷ However, AEP was only required to charge Ormet and Mon Power reduced rates until December 31, 2008.¹⁸ Prior to December 31, 2008, AEP had also been recovering from customers the difference between the power purchased on the market to serve Ormet and Mon Power and the special rates charged to Ormet and Mon Power.¹⁹ Therefore, AEP has already recovered the cost of serving the Ormet and Mon Power loads at special rates.

Nothing in the Stipulation entered into in the Ormet case or the Opinion and Order issued in the Mon Power case requires that AEP be allowed to purchase power after December 31, 2008 to serve the Ormet and Mon Power loads. As of December 31, 2008, AEP is allowed to serve Ormet and Mon Power at regular tariff rates. Therefore, after December 31, 2008 AEP will receive from Mon Power and Ormet the already significant earnings it is allowed to recover under its tariff rates.

AEP also states in its initial brief that the proposed "slice-of-system" market power purchases will foster economic development in the AEP service territory. AEP does not explain the rationale behind this assertion.²⁰ In fact, it is difficult for The Kroger Co. to understand how a proposal that would increase electric rates in AEP's Ohio service areas will help economic development efforts in those same areas.

The final justification AEP asserts for its proposed "slice-of-system" purchases is that it will help transition customers to market-based rates.²¹ If AEP wants market based rates, it

¹⁷ AEP Initial Brief at p. 37-38.

¹⁸ See PUCO Case No. 05-1057-EL-CSS, Ormet Stipulation paragraph 7 at p. 7 (11/21/2006); See PUCO Case No. 05-0765-EL-UNC, Opinion and Order at pp. 15-16 (11/09/05).

¹⁹ Id.

²⁰ AEP Initial Brief at p. 39.

²¹ Id. at p. 37-38.

should have applied for an MRO. AEP cannot argue that its ESP is more favorable than an MRO, and then propose to charge customers for power purchased directly from the market.

For these reasons, the Commission must modify AEP's ESP to exclude AEP's "slice-of-system" power purchase proposal. Further, because AEP is permitted to recover sufficient earnings serving the Mon Power and Ormet load at tariff rates, Staff's proposal to allow AEP to purchase only the portion of power AEP needs to serve the Ormet and Mon Power loads should be rejected as well.²²

B. Off-System Sales Margins Should Not be Excluded From the SEET.

In its initial brief, AEP argues that margins AEP allocates to itself from off-system sales should be excluded from its SEET.²³ While AEP is correct that off-system sales will likely lead to significantly excessive earnings, simply excluding the margins from the SEET is not an adequate or equitable solution to this problem. Rather, AEP should remedy its "problem" of significantly excessive earnings by crediting customers for margins from off-system sales.

Mr. Higgins proposes that a direct credit to customers be made to the FAC charge for the margins generated from off-system sales.²⁴ After all, customers financed the generating assets through the payment of rates and they should be entitled to benefit when those generating assets make a profit. As Mr. Higgins notes in his testimony, "a FAC charge without such a credit is asymmetrical and fundamentally unreasonable."²⁵

²² Staff proposes to allow AEP to purchase on average 7.5% of its electricity annually from the market to serve what Staff estimates to be the 7.5% of the total load AEP dedicates to serving Ormet and Mon Power. This is in contrast to AEP's proposal to purchase an average of 10% of its power annually from the market. Staff Initial Brief at 4-5.

²³ Id. at p. 11, pp. 140-141.

²⁴ The Kroger Co. Ex. 1 at p. 9.

²⁵ Id.

AEP's assertions in its initial brief are inadequate to justify allocating off-system sales margins solely to AEP, much less excluding off-system sales from the SEET altogether. In its initial brief, AEP argues that it is a violation of federal law for the Commission to order a refund of the revenues that AEP receives from FERC jurisdictional rates.²⁶ If ordering a refund of revenues from FERC jurisdictional rates is a violation of federal law, then AEP's affiliates in West Virginia and Virginia that credit customers for off-system sales must currently be violating federal law.²⁷

AEP also argues in its initial brief that because the focus of SB 221 is on retail sales, it would be "inappropriate" to include off-system sales margins in the SEET, which presumably result from the sale of wholesale electricity. This claim is unsupported by authority and contrary to Ohio statute.

The SEET, which is described in R.C. § 4928.143(F), requires that the Commission make a determination "whether the earned return on common equity of the electric distribution utility is significantly in excess of the return on common equity that was earned during the same period by publicly traded companies, including utilities, that face comparable business and financial risk." Clearly AEP's generating assets producing off-system sales profits are included in the calculation of AEP's common equity. R.C. § 4928.143(F) (or any other part of The Ohio Revised Code) does not require that the return on common equity must come from the sale of retail electricity.²⁸ Reading a limitation into statute based on what AEP feels is "inappropriate" would be unlawful and unwise.

²⁶ AEP Initial Brief at 140.

²⁷ See The Kroger Co. Ex. 1 at p. 9, lines 8-10 (Witness Higgins testifies that AEP affiliates in West Virginia and Virginia currently credit customers for off-system sales).

²⁸ The only limitation placed on the return on common equity in the SEET is that earnings from an affiliate or parent company may not be considered in the calculation of the SEET. R.C. § 4928.143(F).

AEP has not made a legitimate showing that off-system sales margins should be excluded from the SEET; therefore any SEET should include a calculation of off-system sales margins retained by AEP as required by R.C. § 4928.143(F). Further, AEP's attempt to exclude off-system sales from its SEET itself indicates that allowing AEP to retain all profits from off-system sales will likely result in significant excessive earnings for AEP. Accordingly, the Commission should include a full credit for off-system sales as proposed by Mr. Higgins as well as the OCEA and OEG in this proceeding.²⁹

C. AEP's Use of Non-FAC Cost Increases to Justify a Non-FAC Rate Increase is Unacceptable.

Mr. Higgins comments that AEP does not show an increase in its net non-FAC costs, despite asking for a non-FAC rate increase to cover costs associated with AEP's increase in incremental environmental capital costs.³⁰ AEP responds to Mr. Higgins' testimony in its initial brief stating that "there is no provision (in SB 221) which makes inclusion of incremental environmental capital costs in an ESP contingent on the Companies passing an earnings or cost-of-service test."³¹ With this argument, AEP misses the point of Mr. Higgins' testimony.

While SB 221 may not strictly require a "cost-of-service test", it is incongruent to allow a rate increase based upon certain cost increases, without examining whether AEP's overall costs have increased. To permit such increases would allow AEP to increase rates when a particular cost to AEP increases, even if that particular cost increase is offset by a cost decline to AEP in another area. This sort of single issue ratemaking will result in AEP recovering rates from

²⁹ See OCEA Initial Brief at p. 59; OEG Initial Brief at p. 10

³⁰ The Kroger Co. Ex. 1 at p. 10.

³¹ AEP Initial Brief at p. 34.

customers not justified by increases in AEP's overall costs, and will likely produce significantly excessive earnings for AEP.

In its Initial Brief AEP responds to Mr. Higgins' testimony that AEP's non-FAC proposal does not account for accumulated depreciation on environmental assets. AEP asserts that because the carrying costs, including depreciation, are levelized for the lives of the investments, accumulated depreciation is not a factor.³² Again, AEP misses the point. While accumulated depreciation may or may not be a factor in regards to its environmental investments,³³ this ambiguity is indicative of AEP's failure to account for all costs in its non-FAC rates. AEP has not shown that cost decreases, including costs associated with accumulated depreciation of *all* its generating assets, do not offset AEP's alleged cost increases. Until AEP makes such a showing, the Commission cannot be certain that a non-FAC rate increase will not result in significantly excessive earnings for AEP.

D. AEP's Criticisms of the Proposal to Recover Costs Associated With Shopping Customers Through a True-up Mechanism is Unfounded.

AEP makes several dubious attacks on the proposal to recover costs incurred due to shopping customers through an adoption of a true-up rider proposed by Mr. Higgins or a true-up to the FAC mechanism proposed by several other parties to this proceeding.³⁴ Despite AEP's faulty claims regarding this proposal, AEP is unable to adequately demonstrate that its POLR rider proposal is superior to a proposal that will allow AEP to recover costs associated with

³² AEP Initial Brief at p. 31.

³³ The Kroger Co. does not have enough information regarding AEP's costs to determine whether accumulated depreciation truly is not a factor in regards to AEP's environmental investments.

³⁴ Mr. Higgins' proposal can be found at The Kroger Co. Ex. 1 at pp. 10-11.

shopping customers, without forcing customers to pay an exorbitant upfront POLR charge that is not and cannot be adequately justified.

One of AEP's concerns regarding the proposal to recover the costs of its POLR obligation through a true-up mechanism is that AEP does not believe the Commission has the authority to bind this recovery on future Commissions.³⁵ However, AEP does not appear to share these same concerns when it proposes to defer generation rates that exceed fifteen percent to be paid in the years 2012-2018.³⁶ Further, AEP itself proposes a continuing ongoing true-up to the FAC charge for any over or under recovery of FAC related expenses.³⁷ There is no rational reason why a rider to true-up charges AEP incurs due to customer shopping cannot be included along with AEP's proposed ongoing true-up of the FAC charge.

AEP also states that its concerns regarding a true-up proposal are particularly acute since the proposal would result in non-shopping customers subsidizing shopping customers.³⁸ While AEP's concern for non-shopping customers is laudable, AEP fails to note in its initial brief that its POLR rider proposal would ultimately result in non-shopping customers directly subsidizing AEP's earnings.

Under the Black Scholes model, which AEP uses to price its POLR proposal, there should never be a case when there are non-shopping customers and shopping customers. Since all customers should act rationally, theoretically all customers will shop when the market price goes below AEP's ESP price and all customers will return when the market price rises above AEP's ESP price.³⁹ Therefore, when customers are shopping and others are not, some customers

³⁵ AEP Initial Brief at p. 49.

³⁶ *Id.* at p. 9.

³⁷ Assante Direct Testimony at p. 5, lines 1-5.

³⁸ *Id.*

³⁹ Commenting on AEP's POLR proposal, AEP's witness Baker states "when it becomes apparent that there are *economic benefits* from switching between a competitive supplier and the ESP price, the *rational* customer will exercise his or her flexibility to change providers." Baker Direct Testimony at p. 30, line 23, p. 31, lines 1-2.

are not acting rationally. Under AEP's POLR rider proposal, when a customer does not act rationally (i.e. exercise the option to shop when it is in the customer's economic best interest to do so), AEP retains the profits from that customer's irrationality, without actually taking any risk.

As noted in The Kroger Co.'s Initial Brief, AEP's POLR rider proposal is completely unnecessary and will result in a massive over recovery of "costs" never incurred by AEP.⁴⁰ Further, AEP's rationale in its initial brief to reject the true-up proposals presented by Mr. Higgins and other parties in this proceeding is unconvincing at best.⁴¹ The Commission should reject AEP's POLR rider proposal, and adopt Mr. Higgins' proposal to allow AEP to recover its costs associated with shopping customers through a true-up rider that collects only costs actually incurred by AEP. Additionally, the Commission should not approve the continuation of AEP's current POLR charge, because as noted above, a true-up rider will eliminate *all* risk to AEP associated with being a provider of last resort.⁴²

E. AEP's Arguments Against an Opt-Out Mechanism From DSM Programs are Unconvincing.

In its initial brief, AEP indicates its opposition to Mr. Higgins' proposal to allow customers who pursue DSM on their own to opt out of AEP's DSM programs and related

⁴⁰ See The Kroger Co. Initial Brief at p. 15-17.

⁴¹ Both the OCEA and Staff propose allowing AEP to recover POLR risk through the FAC mechanism. See OCEA Initial Brief at pp. 28-29; Staff Initial Brief at 16.

⁴² Staff proposes that rather than AEP's POLR proposal, customers who shop and return to AEP's ESP should either be required to pay market rates upon return, or AEP's incremental cost to purchase power for those customers should be recovered through the FAC. Also, Staff states in its Initial Brief that *if* it is considered appropriate to compensate AEP for customers leaving its ESP, then AEP's current POLR charge would be more reasonable. Staff Initial Brief at pp. 16-17.

charges.⁴³ AEP argues that customers should not be allowed to opt-out of AEP's DSM programs because it would be too difficult to verify that customers who opt-out are performing their "fair share" of DSM.⁴⁴ AEP alternatively proposes to allow customers to avoid DSM charges through special contracts negotiated with AEP.⁴⁵

AEP's argument that Mr. Higgins' opt-out approach cannot assure that customers who opt-out are doing their "fair share" of DSM is simply not true. Mr. Higgins' proposal calls for an energy efficiency audit to be performed every three years by an independent third party auditor.⁴⁶ The results of such audits can be requested by the Commission.⁴⁷ Further, after three years, another audit will be performed to verify if customers have implemented the changes recommended from the previous audit. If the Commission determines that a customer is not doing its "fair share" of DSM by reviewing the energy audit results, the Commission can simply decline to allow a customer to opt-out.

Opt-out provisions similar to the provision proposed by Mr. Higgins was approved by the Commission in the Stipulation in the Duke Energy Ohio ("Duke") SSO proceeding and also approved by Finding and Order in the FirstEnergy SSO proceeding. Under the Duke Stipulation, certain mercantile customers in the Duke's service territory may be exempt from Duke's DSM rider with Commission approval.⁴⁸ Also, in the FirstEnergy SSO proceeding the Commission approved FirstEnergy's Rider DSE proposal which, *inter alia*, allows certain customers to avoid

⁴³ See The Kroger Co. Ex. 1 at p. 13 for Mr. Higgins' proposal to allow customers with 10 MW load size to opt-out of AEP's DSM programs.

⁴⁴ AEP Initial Brief at pp. 107-108.

⁴⁵ Id. at p. 108.

⁴⁶ See The Kroger Co. Ex. 1 at p. 13.

⁴⁷ Id.

⁴⁸ Stipulation and Recommendation, paragraph 13(b), pp. 18-22, PUCO Case No. 08-0920-EL-SSO (10/17/2008).

FirstEnergy's Rider DSE2 by implementing customer-sited programs that help the Companies secure compliance with R.C. 4928.66.⁴⁹

Mr. Higgins' approach is far less arbitrary than AEP's proposal to negotiate "special contracts" with AEP to reduce electric charges. AEP's proposal does not ensure customers will be able to avoid all charges associated with AEP's DSM programs, because the amount customers will be charged for DSM programs will be determined by the type of "special contract" a customer can negotiate with AEP. A general opt-out provision creates a clear and equally applicable standard for all customers. This contrasts with AEP's proposed "case-by-case" approach, which could lead to the reduction of DSM charges based on factors not associated with DSM.

AEP also argues that Mr. Higgins' approach does not follow the DSM mandates found in SB 221.⁵⁰ This is clearly not the case. R.C. 4928.66(A)(2)(c) provides that any mechanism designed to recover the cost of energy efficiency and peak demand reduction programs may exempt mercantile customers with existing or new demand- response, energy efficiency, or peak demand reduction capability under certain conditions. Mr. Higgins' opt-out proposal fits squarely within the language of R.C. 4928.66(A)(2)(c), as further evident by the Commission's decision to approve similar proposals in the Duke and FirstEnergy SSOs.

F. The Commission Should Decline to Make a Determination on AEP's Distribution Rate Issues in this Proceeding.

The number of issues presented in AEP's ESP application is vast. In particular, AEP raises several issues in regards to its distribution system and requests a substantial increase in

⁴⁹ Finding and Order, Section I(2), pp. 45-47, PUCO Case No. 08-0935-EL-SSO (12/19/08).

⁵⁰ AEP Initial Brief at p. 108.

distribution rates.⁵¹ Considering the time constraints placed on the parties by SB 221, and the number of complicated issues raised in this proceeding, The Kroger Co. and several other parties proposed that a more appropriate forum for AEP's distribution system related issues would be in a separately filed distribution rate case.⁵²

Not only do many other parties in this proceeding believe that a distribution rate case is a more appropriate venue for the distribution issues raised by AEP, the Commission itself, in a previous ESP proceeding, reached a similar conclusion. In FirstEnergy's ESP proceeding, the Commission declined to resolve the issues in FirstEnergy's distribution rate case in the context of its ESP.⁵³ The Commission should accept the well reasoned arguments of many of the parties in this proceeding, as well as its past precedent, and decline to resolve distribution related issues in the context of AEP's ESP.

G. AEP's Arguments in Support of Deferrals are Not Persuasive.

Throughout its initial brief, AEP refers to its proposals to defer rates to be paid at a later date, plus carrying costs, in several different terms. For instance, AEP proposes a "rate impact mitigation" plan⁵⁴ or a "phase-in"⁵⁵ of rates. These euphemisms, while perhaps sounding nice to customers, are nothing more than AEP's attempt to mask the true nature of simple and straightforward deferrals. Simply put, deferrals require customers to pay more at a later date

⁵¹ In its ESP application, AEP requests a seven percent rate increase for CSP and a six and one half percent rate increase for OP. AEP Application at p. 6.

⁵² See The Kroger Co. Initial Brief pp. 17-18; OMA Initial Brief at p. 6; OCEA Initial Brief at p. 44 (suggesting the Commission should address distribution reliability programs in a separate proceeding); IEU Initial Brief at pp. 24.-25; Staff Initial Brief at p. 7 (recommending that AEP file a base rate case to recover costs of additional reliability programs, line extensions and amortization of regulatory assets that have been requested by AEP in its ESP application).

⁵³ *Finding and order that the application of FirstEnergy be modified and approved*, PUCO Case No. 08-0935-EL-SSO (December 19, 2008).

⁵⁴ AEP Initial Brief at 9.

⁵⁵ *Id.* at 51.

than they otherwise would now pay for electric service. As The Kroger Co. argues in its initial brief, deferrals are not good public policy and should not be adopted by the Commission.⁵⁶

The Kroger Co. notes that if the Commission accepts The Kroger Co. proposed modifications to AEP's ESP, including proposals to credit customers for off-system sales margins and eliminate AEP's proposed "slice-off system" purchases, AEP's proposal to defer charges that exceed a fifteen percent rate increase annually will not be necessary.

H. Miscellaneous.

In his testimony, Mr. Higgins proposed to incorporate a generation aggregation program that would allow customers with multiple accounts taking service under the GS-3 rate schedule to aggregate loads for the purpose of determining monthly peak demand.⁵⁷ While this proposal was not specifically addressed by any of the parties in their initial briefs, The Kroger Co. urges the Commission to adopt this aggregation proposal because this approach allows multi-site customers the opportunity to benefit appropriately from the operational diversity of their loads, provides an additional incentive for these customers to control those loads, and most appropriately aligns cost with causation.⁵⁸

Additionally, The Kroger Co. urges that *if* the Commission approves AEP's proposal to install advanced metering technology, and allows AEP to recover costs for such installation, customers should be granted full, cost-free, real-time, access to the information measured by smart metering technology installed on customers' property.⁵⁹

⁵⁶ The Kroger Co. Initial Brief at pp. 13-14.

⁵⁷ See The Kroger Co. Ex. 1 at p. 14-15 for a more detailed description of Mr. Higgins's proposal; The Kroger Co. Initial Brief at p. 22-23.

⁵⁸ The Kroger Co. would like to believe that Mr. Higgins' proposal was not addressed by any of the parties in their initial briefs because of the flawless nature of the proposal.

⁵⁹ See The Kroger Co. Ex. 1 at p. 13; The Kroger Co. Initial Brief at p. 19.

III. CONCLUSION

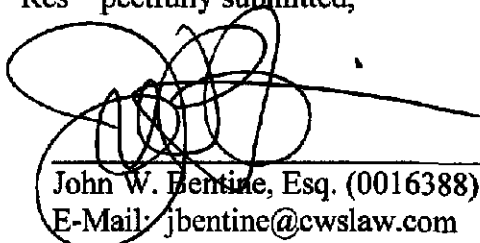
The Kroger Co. reiterates that the substantial rate increases proposed by AEP, and the lesser, yet still large rate increases proposed by Staff, must not be approved by the Commission, until AEP can show its *overall* costs of supplying electricity has increased, despite AEP's argument in its initial brief that it need not demonstrate such increases to its overall costs.

AEP arguments to justify its "slice-of-system" market power purchases are unpersuasive and recovery for "slice-of-system" purchases must not be included in its ESP. Similarly, AEP makes no showing that it should be allowed to solely retain margins from off-system sales, in the face of its proposed market power purchases; therefore, customers should get a credit for off-system sales margins, and at a minimum, off-system sales margins retained by AEP should be included in the SEET. If these modifications are approved by the Commission, there will be no need to adopt AEP's otherwise unwise proposals to defer certain charges for payment at a later date.

AEP's attacks on the proposal to recover costs associated with shopping customers through a true-up rider are unfounded, and the true-up proposal is far superior to AEP's unnecessary and complicated POLR rider proposal. Further, Mr. Higgins' proposal to allow customers to opt-out of AEP's DSM programs has many advantages over AEP's alternative proposal, and therefore should be adopted by the Commission.

Finally, a generation aggregation program, as well as allowing customer full access to advanced metering technology, will add great value to AEP's ESP, without any drawbacks for customers or AEP.

Respectfully submitted,

A handwritten signature in black ink, appearing to be "John W. Bentine", is written over a horizontal line. The signature is stylized with loops and a long horizontal stroke extending to the right.

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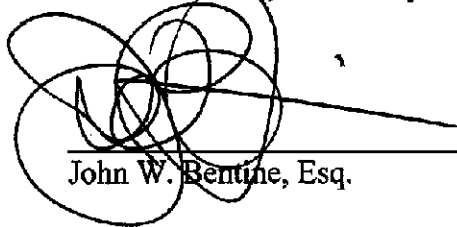
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CERTIFICATE OF SERVICE

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 January 14, 2009.



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