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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Adoption of Rules for Alternative and Renewable Energy Technologies and Resources, and Emission Control Reporting Requirements, and Amendment of Chapters 4901:5-1, 4901:5-3, 4901:5-5, and 4901:5-7 of the Ohio Administrative Code, Pursuant to Chapter 4928, Revised Code, to Implement Senate Bill No. 221.	)	Case No. 08-888-EL-ORD

THE KROGER CO.'S MEMORANDUM CONTRA APPLICATION FOR REHEARING

Pursuant to Ohio Administrative Code ("OAC") 4901-1-35(B), The Kroger Co. submits this Memorandum Contra applications for rehearing filed in this proceeding.

I. INTRODUCTION

On April 14, 2009, the Public Utilities Commission of Ohio ("Commission") issued an Opinion and Order ("April 14 Order") approving rules to implement the requirements of SB 221. On May 15, 2009, several interested parties in this proceeding, including The Kroger Co., applied for rehearing on a number of rules approved by the Commission. The Kroger Co. will not restate its arguments for rehearing in this Memorandum Contra. However, The Kroger Co. respectfully requests that the Commission consider The Kroger. Co.'s comments on the Applications for Rehearing filed by other parties. Comment on an issue discussed herein does not necessarily indicate The Kroger Co.'s opposition to a rehearing on the issue.

II. <u>RESPONSE TO REQUEST FOR REHEARING</u>

A. Recovery for Transmission and Distribution Upgrades

In its Application for Rehearing, OCEA requests rehearing on OAC 4901:1-39-07(A)(2), which allows a mercantile customer to opt-out of the energy efficiency and demand reduction cost recovery mechanism ("DSM Rider") with the Commission's approval. Upon rehearing, OCEA requests that the Commission amend the rule to require that mercantile customers opting-out of the DSM Rider pay for lost distribution revenues.[1]

Before discussing OCEA's proposed amendment to OAC 4901:1-39-07(A)(2), The Kroger Co. reiterates its objection to an electric distribution utility ("EDU") recovering lost revenues for demand reduction and energy savings initiatives ("EE").[2] An EDU should not be able to recover lost revenues that result from the implementation of a new technology or system upgrade unless an EDU is willing to forgo additional revenue caused by demand increases that result from technological innovation.[3] It is asymmetrical to allow an EDU to recover lost revenues from more efficient technology, without requiring them to forego revenues that result from demand increasing technologies.

However, if a mercantile customer that opts-out of the DSM Rider must pay for lost distribution revenues, the allocation of lost distribution revenues must have a demand component. Most lost distribution revenues will result from a reduction in peak demand.

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[1] OCEA Application for Rehearing at p. 13-14.

[2] See The Kroger Co. Reply Comments at 3-4 (arguing an EDU should not be allowed to recover costs associated with lost distribution revenues).

[3] For example, if an EDU recovers lost revenue that results from the installation of more efficient light bulbs, an EDU should return revenue generated from customers increased usage as a result of electronic picture frames or any other technology that increase customer electric usage.

A higher percentage of peak demand reduction is attributable to low load-factor customers, because low load factor customers have the highest percentage of demand to reduce.

OCEA asserts that R.C. 4928.141(A) requires an EDU to provide consumers "on a comparable and nondiscriminatory basis within its service territory, a standard service offer." According to OCEA's own logic, the Commission must not discriminate when applying the rate recovery mechanism for lost distribution revenues. Because lost distribution revenues are attributable to peak demand reduction, a demand component must be used to allocate lost distribution revenues. To do otherwise would be discriminate against high load factor customers and violate R.C. 4928.141(A).

B. Mercantile Customer Application to Integrate Energy Savings

In its Application for Rehearing, Dayton Power and Light Company ("DP&L") requested rehearing on OAC 4901:11-39-08 which requires a mercantile customer to file an application with the Commission to integrate its energy efficiency and demand reduction ("EE") with an EDU. DP&L argues that the application for reasonable arrangements and the subsequent reporting requirements are too complex, burdensome and intrusive for mercantile customers.[4] The Kroger Co. supports DP&L's request for rehearing on this issue. Requiring over burdensome, costly and unnecessary application and reporting requirements could deter a mercantile customer from applying for reasonable arrangements. This is even more so if the reporting requires disclosure of confidential and proprietary information. As noted in The Kroger Co.'s Application for Rehearing, allowing customers to opt-out of utility EE programs encourages a customer

[4] DP&L Application for Rehearing at 24-25.

to invest in cost effect energy efficiency and demand response measures on its own.[5] For these reasons, the Commission must order a rehearing to reduced and or eliminate many costly and unnecessary requirements of OAC 4901:11-39-08.

C. One Time Payment to Mercantile Customers That Commit Energy Savings

In its Application for Rehearing, AEP proposes to amend OAC 4901:11-39-08 to allow an EDU to make a one-time incentive payment to a mercantile customer that commits its EE to an EDU.[6] The Kroger Co. generally agrees with including more options for a mercantile customer to commit its EE with that of an EDU. Flexibility to commit EE enables mercantile customers and EDUs to precisely tailor EE programs in a way that achieves maximum energy savings and demand reduction.

However, the availability of a one-time payment to mercantile customers must not supplant the ability of a mercantile customer to avoid a DSR Rider all together. In this brief, and in several other pleadings filed in this proceeding, The Kroger Co. demonstrated the importance of allowing a mercantile customer to opt-out of an EDU's EE program. Therefore, The Kroger Co. supports AEP's proposal to include the option to give incentive payments to mercantile customers, but cautions that this measure must supplement, not substitute, the other measures used by EDU's and mercantile customers to obtain energy savings and demand reduction.

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[5] The Kroger Co. Application for Rehearing at 12.
[6] AEP Application for Rehearing at 16-18.

III. CONCLUSION

The Kroger Co. respectively requests that the Commission consider the matters discussed herein, if rehearing is ordered in this proceeding.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Application for Rehearing and Memorandum in Support of The Kroger Company was served via by first-class, postage prepaid U.S. mail, and, where indicated, electronic on this 27th day of May, 2009 upon the following:

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