

In the Matter of the Application of Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to R.C. 4925.143, the Form of an Electric Security Plan.	) ) ) ) ) )	Case No. 13-2385-EL-SSO
In the Matter of the Application of Ohio Power Company for Approval of Certain Accounting Authority.	) ) )	Case No. 13-2386-EL-AAM

The Public Utilities Commission of Ohio (the “Commission”) should deny the Ohio Power Company’s (“OP”) motion to strike portions of The Kroger Co.’s (“Kroger”) expert witness Kevin Higgins’ testimony. Ohio Power claims that Mr. Higgins’ testimony is outside the scope of this proceeding and not relevant to this proceeding. However, the portion of Mr. Higgins’ testimony of which Ohio Power has moved to strike consists of Kroger’s recommendations regarding the future rate design of the Retail Stability Rider (“RSR”), which is testimony filed in response to Ohio Power’s witness William A. Allen’s testimony. Mr. Allen’s stated purpose of his testimony is, among other things, to describe “the recovery mechanism to collect the deferred capacity charges that were previously authorized by the Commission” in Ohio Power’s previous ESP and Capacity cases. (Direct Testimony of William A. Allen in Support of Ohio Power’s Electric Security Plan (“Allen Testimony”) at 3:7-10). Ohio Power opened the door to an examination of the RSR by submitting testimony related to the level of the regulatory asset, the rate of the RSR, and the period for recovery of the RSR. Indeed, Mr. Allen expressly references a specific rate and rate design for the RSR that could be implemented after June 1, 2015:

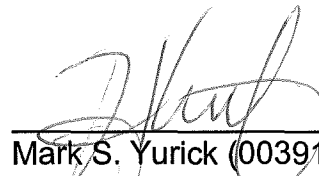
Based on current estimates the Company believes that a rider set at \$4/MWh implemented with the first billing cycle of June 2015 will allow the regulatory asset to be recovered over a period of approximately 34 months. (Allen Testimony at 12:15-17).

Through Mr. Higgins' testimony, Kroger responded to Mr. Allen's testimony by proposing an alternative rate design for collecting the RSR. Accordingly, Mr. Higgins' testimony in response to topics raised by Mr. Allen is relevant and within the scope of this proceeding.

Further, Mr. Higgins' testimony provides a sensible approach to the RSR that the Commission should have the opportunity to weigh and consider. It is uncontroverted that the RSR is a capacity-related cost that is allocated to customers on the basis of demand. (Direct Testimony of Kevin Higgins on behalf of Kroger ("Higgins Testimony") at 6:6-7). As such, the RSR should be recovered from customers based on demand charge rather than through an energy charge; otherwise customers with high load factors will needlessly subsidize low load factor customers. (*Id.* at 7:8-15). This issue should be considered in this proceeding because in the ESP II hearing, the Commission mistakenly found that "smaller commercial and industrial customers would face an undue burden of the RSR" under Kroger's recommendation. (Case Nos. 11-346-EL-SSO, 11-348-EL-SSO, 11-349-EL-AAM, 11-350-EL-AAM, January 30, 2012 Entry on Rehearing, Finding 27, p. 25; App. 121). However, as Mr. Higgins explains in his testimony, the size of the customer is irrelevant to this issue because the demand charge is neutral to the size of the customer (Higgins Testimony at 7:7-9). Kroger's proposal would simply assign demand costs on a pro rata share based on customer load factor consistent with rate design principles. (*Id.* at 7:11-13). The Commission should be given the opportunity to review this issue given the fact that Ohio Power raised issues related to the RSR in its ESP III application.

Mr. Higgins' complete testimony is integral to the development of a complete record in this proceeding. The Commission should weigh all of the evidence without resorting to Ohio Power's extreme approach of striking testimony. Based on the foregoing reasons, The Kroger Co. respectfully urges this Commission to deny Ohio Power's motion to strike portions of Mr. Higgins' testimony.

Respectfully submitted,



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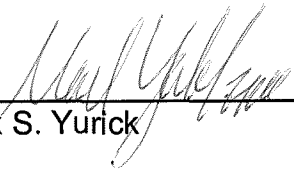
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## **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing *The Kroger Co.'s Memorandum Contra Ohio Power Company's Motion to Strike* was served this 30<sup>th</sup> day of May, 2014 upon the following via electronic mail and U.S. regular mail, postage prepaid.

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Summary: Memorandum Contra Ohio Power Company's Motion to Strike Testimony electronically filed by Mark Yurick on behalf of The Kroger Company