

**BEFORE THE  
PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of	)	
Ohio Power Company for Authority to	)	Case No. 13-2385-EL-SSO
Establish a Standard Service Offer	)	
Pursuant to §4928.143, Revised Code,	)	
in the Form of an Electric Security Plan	)	

In the Matter of the Application of	)	
Ohio Power Company for Approval of	)	Case No. 13-2386-EL-AAM
Certain Accounting Authority	)	

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**INITIAL POST HEARING BRIEF OF THE KROGER CO.**

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## I. INTRODUCTION.

The Kroger Co. (“Kroger”) is one of the largest grocers in the United States. Kroger has 93 facilities served by AEP-Ohio (also referred to herein as “AEP,” or the “Company”) in the Columbus Southern Power (“CSP”) service territory and 40 facilities served by AEP-Ohio in the Ohio Power (“OP”) service territory that collectively consume over 240 million kWh per year. Kroger is a shopping customer in both service territories. (Kroger Exhibit 1, at page 2.) As a large commercial customer of AEP, Kroger has a substantial interest in this electric security plan (“ESP”) proceeding, filed by the Company on December 20, 2013 (hereinafter referred to as “ESP III”).<sup>1</sup>

Ohio Revised Code (“ORC”) §4928.141(A) requires electric-distribution utilities to provide to consumers 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.” The utility may provide the offer in one of two ways: through a “market rate offer” under ORC §4928.142 or through an “electric security plan” under ORC §4928.143.

In the ESP III application, AEP chose the second option and filed an application for approval of an ESP. The ESP statute permits numerous rate components, ORC §4928.143(B)(2), but says very little about rate calculation. The only substantive requirement is that the plan must be “more favorable in the aggregate as compared to the expected results” of a market-rate offer. ORC 4928.143(C)(1).<sup>2</sup>

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<sup>1</sup> AEP filed the current application for a standard service offer under Ohio Revised Code (“ORC”) section 4928.141 pursuant to ORC Section 4918.143. See, Company’s Exhibit 1, Application at pp 1-2.

<sup>2</sup> In re Columbus Southern Power Co., 138 Ohio St. 3d 448, 2014-Ohio-462; 8 N.E.3d 863; 2014 Ohio LEXIS 256 (Ohio, February 13, 2014) (Reconsideration denied by In re Columbus S. Power Co., 2014-Ohio-2245, 2014 Ohio LEXIS 1315, 9 N.E.3d 1064 (Ohio, May 28, 2014)).

As explained more fully below, certain aspects of the Company's ESP III application should be rejected. A summary of Kroger's primary conclusions and recommendations are as follows:

(1) The Commission should reject the Company's PPA Rider proposal. The PPA Rider would make shopping customers responsible for AEP Ohio generation costs long after the period for transition cost recovery has ended. Moreover, recovery of these costs by the Company would be incremental to the capacity costs that all customers continue to pay through the RSR and is therefore unreasonable.

(2) The Commission should reject the Company's proposed approach to recovering incremental distribution-related costs through continued increases in the DIR and the addition of new distribution riders. The incremental costs that AEP wishes to recover through these proposals are best considered in the overall context of the respective Company's service territories' total distribution revenues, expenses, and return on distribution rate base. The best forum for such consideration is a distribution rate case.

Relative to the wide scope of the issues addressed in the Company's filing, Kroger's issues are limited in number. Absence of comment in this Initial Post Hearing Brief does not signify support (or opposition) toward the Company's filing with respect to the non-discussed issue.

## II. ARGUMENT.

### **A. Purchased Power Adjustment Rider.**

As discussed in the direct testimony of Mr. Vegas<sup>3</sup> and Mr. Allen,<sup>4</sup> the Company proposes a non-bypassable PPA Rider that would recover the net cost of the Company's entitlement to Ohio Valley Electric Corporation ("OVEC") power after crediting the revenues from the sale of its OVEC entitlement into the PJM market. Further, the PPA Rider would act as a placeholder Rider for other power purchase arrangements proposed by AEP.<sup>5</sup> If the costs of generation exceed the price to be obtained in the PJM market, all customers shall be assessed a charge to cover the difference. Conversely, if the price obtained in the PJM market exceeds the cost, customers will receive a credit.<sup>6</sup> According to Mr. Allen's testimony, AEP Ohio has a 19.93% share of OVEC power and had intended to transfer its OVEC power participation benefits and costs to AEP Generation.<sup>7</sup> However, the OVEC Sponsoring Companies withheld their consent for this transfer. AEP Ohio proposes the PPA Rider in response to its unplanned continued ownership of the OVEC power entitlement. The Rider as proposed would be non-bypassable, so that even shopping customers that obtain generation from certified retail electric suppliers ("CRES") would pay the PPA Rider if OVEC costs exceed the price to be obtained for the sale of the OVEC entitlement to the PJM wholesale market.<sup>8</sup>

The PPA Rider proposal must be rejected, or at least modified by the Commission. The PPA Rider would make shopping customers responsible for the Company's generation costs long after the period for transition cost recovery has ended.

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<sup>3</sup>Company Exhibit No. 2, Direct Pre-Filed Testimony of Pablo Vegas at page 13, lines 4-19.

<sup>4</sup>Company Exhibit No. 7, Direct Pre-Filed Testimony of William Allen at page 8, line 4, through page 11, line 19.

<sup>5</sup>Company Exhibit No. 1, at page 8.

<sup>6</sup>Company Exhibit No. 7, at page 8, lines 5-18.

<sup>7</sup>Company Exhibit No. 7, at page 9, lines 8-22

<sup>8</sup>Id, at 8.

Transition cost recovery for the Company was fully resolved and completed several years ago in Case Nos. 99-1729-EL-ETP and 99-1730-EL-ETP.<sup>9</sup> Moreover, recovery of these costs by the Company would be incremental to the capacity costs that all customers, including shopping customers, continue to pay through the RSR. The Commission has already determined collection of the RSR to be sufficient to provide AEP with certainty in retail electric service. If the transfer to AEP Generation had proceeded, customers would not have the responsibility to pay for OVEC costs (nor receive the benefit from its sales).<sup>10</sup> The action of the OVEC Sponsoring Companies in withholding their support for the transfer to AEP Generation of the Company's share of OVEC costs and entitlement should not be permitted to determine the cost recovery mechanisms applicable to Ohio retail customers by forcing shopping customers to pay both their CRES provider and AEP for generation related costs. If the Commission approves some form of PPA Rider, the Rider should be modified to make it a bypassable rider, not payable by those customers who choose to obtain generation service from a CRES provider.

**B. Distribution Rates / Distribution Investment Rider**

As explained in the direct testimony of Andrea E. Moore, the Company proposes expanding the types of costs allowable for recovery under the DIR, including the absorption into the DIR of gridSMART Phase I ("gridSMART") assets,<sup>11</sup> which the Commission has previously ordered to remain separate from the DIR.

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<sup>9</sup> Summary of the Commission's Opinion and Order of September 28, 2000 in the Columbus Southern Power Company and Ohio Power Company Electric Transition Plan Cases, at pages 10-18.

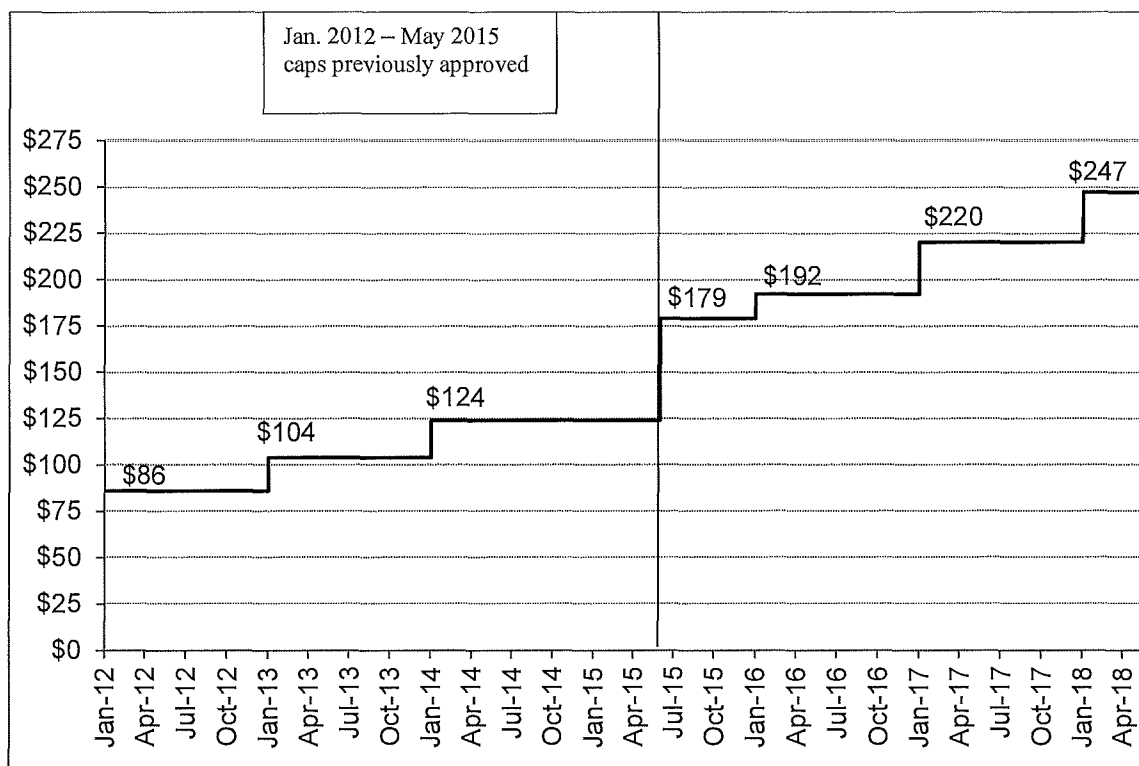
<sup>10</sup> According to ORC 4928.02 it is the policy of this state to do the following throughout this state: \*(H) Ensure effective competition in the provision of retail electric service by avoiding anticompetitive subsidies flowing from a noncompetitive retail electric service to a competitive retail electric service or to a product or service other than retail electric service, and vice versa, including by prohibiting the recovery of any generation-related costs through distribution or transmission rates;

<sup>11</sup> Company Exhibit 13, Direct Pre-filed Testimony of Andrea E. Moore, page 5, line 16 through page 7, line 16.

As illustrated in Figure KCH-1, below,<sup>12</sup> DIR charges to customers are projected to increase dramatically, nearly tripling from \$86 million in 2012 to \$247 million in 2018. In addition, as noted above, the Company proposes to introduce new riders to recover other as yet undetermined distribution-related costs.

**Figure KCH-1**

**Annualized DIR Caps 2012-18 (\$ millions)<sup>13</sup>**



The Commission should reject the Company's proposed approach to recovering incremental distribution-related costs through continuous increases in the DIR and the constant addition of new distribution riders in standard service offer applications. The trajectory of DIR cost recovery proposed by the Company is dramatic; yet, even this steep series of increases is insufficient to meet the Company's desired distribution revenue requirement, as evidenced by the Company's desired distribution revenue

<sup>12</sup> The Kroger Co.'s Exhibit No. 1. Direct Pre-filed Testimony of Kevin Higgins, at page 10.

<sup>13</sup> Source: AEP Ohio Exhibit AEM-2.

requirement, and further evidenced by the Company's attempt to introduce even more riders.<sup>14</sup>

Investing in and maintaining the distribution system and properly staffing its workforce are fundamental responsibilities for a utility distribution company such as AEP. In carrying out this responsibility, utilities are entitled to an opportunity to recover their prudently-incurred costs. However, rather than relying on continuous increases in the DIR and the introduction of new distribution riders, the incremental distribution costs that AEP wishes to recover in this proceeding are best considered in the overall context of the utilities' total distribution revenues, expenses, and return on distribution rate base. The best forum for such consideration is a distribution rate case.<sup>15</sup>

Further, gridSMART costs should not be folded into the DIR. The Commission has previously ordered that these costs remain outside the DIR and should be recovered through a separate rider. The Commission stated that, "Keeping subsequent non-DIR, gridSMART expenditures in a new separate recovery mechanism facilitates enforcement and a Commission determination that recovery of gridSMART investment occur only after the equipment is installed, tested, and is in-service."<sup>16</sup> If gridSMART costs are recovered outside the framework of a distribution rate case, then they should continue to be recovered through a separate rider that properly recovers these costs on a per-customer basis.<sup>17</sup>

### **III. SUMMARY.**

The Commission should reject the Company's PPA Rider proposal. Adoption of the PPA Rider would make shopping customers responsible for the Company's

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<sup>14</sup> The Kroger Co.'s Exhibit No. 1 at 10.

<sup>15</sup> Id., at 11.

<sup>16</sup> Case Nos. 11-346-EL-SSO et al, Order at 63.


<sup>17</sup> The Kroger Co.'s Exhibit No. 1 at 11.



generation costs long after the period allowed by law for transition cost recovery has ended. Moreover, recovery of these costs by the Company would be incremental to the capacity costs that all customers continue to pay through the RSR and is therefore unreasonable. If the Commission approves a PPA Rider, it should modify the Company's proposal and make the PPA bypassable so that it is not collectible from shopping customers who obtain generation service from a CRES.

The Commission should also reject the Company's proposed approach to recovering incremental distribution-related costs through continued increases in the DIR and the addition of new distribution riders. Incremental costs that AEP wishes to recover through these Rider proposals are best considered in the overall context of the respective AEP service territories' total distribution revenues, expenses, and return on distribution rate base. The best forum for such consideration is a distribution rate case.

Respectfully submitted,

  
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## CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing *Initial Post Hearing Brief of The Kroger Company* was served this 23<sup>rd</sup> day of July, 2014 upon the following via electronic mail.

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Summary: Brief Initial Post Hearing Brief of The Kroger Company electronically filed by Mark Yurick on behalf of The Kroger Company