

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In The Matter of the Application of Duke )  
Energy Ohio, Inc., for Authority to Establish a )  
Standard Service Offer Pursuant to R.C. ) Case No. 14-841-EL-SSO  
4928.143, in the Form of an Electric Security )  
Plan, Accounting Modifications, and Tariffs )  
for Generation Service. )

In the Matter of the Application of Duke )  
Energy Ohio, Inc. for Authority to Amend its ) Case No. 14-842-EL-ATA  
Certified Supplier Tariff, P.U.C.O. No. 20. )

---

**REPLY BRIEF  
OF  
THE KROGER COMPANY**

---

Rebecca L. Hussey (0079444) (Counsel of Record)

**CARPENTER LIPPS & LELAND LLP**

280 Plaza, Suite 1300

280 North High Street

Columbus, Ohio 43215

Telephone: (614) 365-4110

Fax: (614) 365-9145

Email: Hussey@carpenterlipps.com

**December 15, 2014**

*Counsel for The Kroger Company*

## TABLE OF CONTENTS

<b>I.</b>	<b>INTRODUCTION .....</b>	<b>3</b>
<b>II.</b>	<b>ARGUMENT.....</b>	<b>4</b>
<b>A.</b>	<b>The PSR is not, as Duke contends, “a permitted aspect of the ESP.”.....</b>	<b>4</b>
<b>B.</b>	<b>Duke’s proposed PSR violates state energy policy, as codified in Section 4928.02, Revised Code.....</b>	<b>7</b>
<b>C.</b>	<b>Commission approval of the PSR would unlawfully permit Duke to recover transition revenues.....</b>	<b>8</b>
<b>D.</b>	<b>Duke has not demonstrated pursuant to Section 4928.143(C)(1), Revised Code, that its proposed ESP is more favorable in the aggregate than a MRO.....</b>	<b>9</b>
<b>E.</b>	<b>In the event that the Commission determines that Duke’s proposed ESP should be modified and approved, Kroger recommends several modifications.....</b>	<b>11</b>
<b>1.</b>	<b>The Commission should deny the Company’s request to establish the PSR. ....</b>	<b>11</b>
<b>2.</b>	<b>The Commission should reject the Company’s proposed allocation of Rider DCI in favor of a simple, equal percentage rider applicable to all rate classes.....</b>	<b>12</b>
<b>3.</b>	<b>The Commission should phase Rider LFA out over the course of the proposed ESP, rather than abruptly terminating the Rider prior to the proposed ESP term. ....</b>	<b>14</b>
<b>4.</b>	<b>The Commission should deny Duke’s request to retain the option to terminate the ESP after its second year. ....</b>	<b>15</b>
<b>III.</b>	<b>CONCLUSION .....</b>	<b>15</b>

## **I. INTRODUCTION**

On May 29, 2014, Duke Energy Ohio, Inc. (Duke or the Company) filed an application (Application) for authority to establish a standard service offer pursuant to Section 4928.143, Revised Code, in the form of an electric security plan (ESP).<sup>1</sup> In its Application, Duke sought approval from the Public Utilities Commission of Ohio (Commission) to establish its proposed Distribution Capital Investment Rider (Rider DCI), to discontinue its Load Factor Adjustment Rider (Rider LFA), and to establish and approve for use through 2040 its proposed Price Stabilization Rider (PSR). Numerous parties, including The Kroger Company (Kroger), were authorized by the Commission to participate in the above-captioned matters, and participated in an evidentiary hearing on Duke's proposed ESP, which commenced on October 22, 2014 and concluded on November 20, 2014.

Pursuant to the briefing schedule adopted on the last day of the evidentiary hearing,<sup>2</sup> Kroger and a number of other parties, including Duke, the staff of the Commission (Staff), the Office of the Ohio Consumers' Counsel (OCC), Ohio Partners for Affordable Energy (OPAЕ), Ohio Development Services Agency (ODSA), Industrial Energy Users-Ohio (IEU-Ohio), the Ohio Manufacturers' Association (OMA), Ohio Energy Group (OEG), Greater Cincinnati Health Council (GCHC), the City of Cincinnati (Cincinnati), the University of Cincinnati and Miami University (Universities), Wal-Mart Stores East, LP, and Sam's East, Inc. (Wal-Mart), the Retail Energy Supply Association (RESA), IGS Energy (IGS), Constellation NewEnergy, Inc., and Exelon Generation Company, LLC (Exelon), Direct Energy Services, LLC and Direct Energy Business, LLC (Direct Energy), the Environmental Law and Policy Center (ELPC), Sierra Club, Ohio Environmental Council (OEC), and the Natural Resources Defense Council (NRDC),

---

<sup>1</sup> Duke Energy Ohio Ex. 1.

<sup>2</sup> Tr. Vol. XVI at 4374.

submitted their initial briefs on the Company's proposed ESP. Kroger hereby submits its reply brief in response to certain arguments raised in the parties' initial briefs.

## II. ARGUMENT

### A. The PSR is not, as Duke contends, "a permitted aspect of the ESP."

Duke contends that the proposed PSR is a "permitted aspect of [an] ESP" under Section 4928.143(B)(2), Revised Code.<sup>3</sup> Duke's characterization of the PSR is contrary to the evidence introduced in the case, rendering its contention misplaced. As such, Duke's argument should be rejected by the Commission.

Section 4928.143(B)(2)(d), Revised Code, provides that an ESP may include, in pertinent part, the following:

Terms, conditions, or charges relating to limitations on customer shopping for retail electric generation service, bypassability, standby, back-up, or supplemental power service, default service, carrying costs, amortization periods, and accounting or deferrals, including future recovery of such deferrals, as would have the effect of stabilizing or providing certainty regarding retail electric service[.]

As Duke mentions, assessing a rider under Section 4928.143, Revised Code, implicates three specific criteria, namely, whether the proposed rider involves a term, condition, or charge; whether that term, condition, or charge relates to one of the enumerated issues; and whether the rider would have the effect of stabilizing or providing certainty regarding retail electric service.<sup>4</sup> In its brief, Duke states that the PSR "undeniably involves a term, condition, or charge."<sup>5</sup> Duke appears to be correct in saying that the PSR undeniably involves a charge: as the evidence demonstrates, the PSR is anticipated to result in a net charge to customers over the term of the

---

<sup>3</sup> Merit Brief of Duke Energy Ohio, Inc. (Duke Initial Brief) at 18.

<sup>4</sup> Id., citing *In the Matter of the Application of The Dayton Power and Light Company for Approval of its Electric Security Plan*, Case No. 12-426-EL-SSO, et al., Opinion and Order at 21-22 (September 4, 2013).

<sup>5</sup> Duke Initial Brief at 18.

proposed ESP. By Duke's own projections (which were provided to the parties in response to discovery propounded upon Duke, but were notably excluded from Duke's quantitative analysis of whether the proposed ESP is better in the aggregate than a market rate offer), the PSR would result in a net cost to customers of \$22 million over the three year term of the proposed ESP.<sup>6</sup>

Duke contends that the second criterion, the relation of the term, condition, or charge to one of the issues enumerated in Section 4928.143, Revised Code, is satisfied because as proposed, the PSR is non-bypassable. Duke argues that by being proposed as non-bypassable, the PSR serves as the "corollary to bypassability[.]" and thus satisfies the second prong of the test.<sup>7</sup> Duke's analysis of the meaning of the second criteria and the manner in which the proposed PSR satisfies its terms lends no significance to the provision. By suggesting that the rider would be proper whether bypassable or non-bypassable, as both relate to "bypassability" under Section 4928.143(b)(2)(d), Revised Code, Duke renders the term "bypassability," as selected by the General Assembly, meaningless. Duke's interpretation violates a longstanding rule of statutory construction, i.e., statutes should be construed so as to avoid rendering superfluous any language included therein.<sup>8</sup> As such, Kroger submits that Duke has not met the second prong of the test under Section 4928.143(B)(2)(d), Revised Code.

Moreover, Duke has not, as it contends, demonstrated that the PSR would have the effect of stabilizing or providing certainty regarding retail electric service in order to meet the third criterion set forth above. Duke characterizes the proposed PSR as "a rider that is intended to

---

<sup>6</sup> See OCC Ex. 4 and 4A (Duke Response to IGS-POD-01-001).

<sup>7</sup> Duke Initial Brief at 18.

<sup>8</sup> See *East Ohio Gas Company v. Public Utilities Commission of Ohio*, 39 Ohio St.3d 295, 299, 530 N.E.2d 875 (1988); see also Section 1.47(B), Revised Code (stating that in "enacting a statute, it is presumed that the entire statute is intended to be effective").

mitigate anticipated, yet undefined, volatility in the wholesale market.”<sup>9</sup> The word “undefined,” while used by Duke to describe market volatility, is an apt characterization of the nature of the costs Duke’s customers will face if the PSR is approved. Duke asserts a number of ways in which the wholesale electric market is changing, ultimately citing these reasons in support of Commission approval of the PSR.<sup>10</sup> What Duke fails to outwardly recognize, however, is that the risk associated with these “anticipated” changes, in relation to the Ohio Valley Electric Corporation (OVEC) units, currently resides with Duke, not its customers. Therefore, Duke’s proposal to shift this risk to customers by means of the PSR actually imposes upon customers various risks which they do not currently bear. Rather than “bestowing the benefits” of its OVEC entitlement to customers, therefore, Duke’s proposal to shift the costs and risks associated with the OVEC units to customers unfairly exposes customers to risks and costs for which the Company does not want to be responsible, through the term of the proposed ESP and beyond. Duke’s reluctance to shoulder the risks associated with these units in the short term in exchange for the “benefits” it has forecasted in the longer term indicates that the benefits may not be as great as Duke has contended,<sup>11</sup> or may not come to fruition at all.

The economic danger inherent in shifting unknown, undefined risks and costs from Duke to its customers pursuant to the PSR seriously undermines Duke’s contention that the PSR will serve to stabilize or provide certainty regarding retail electric service. Indeed, the only party for whom the PSR is likely to provide stability or certainty is Duke. Approval of the PSR, as proposed, would assure that Duke would not be responsible for the unknown, albeit “anticipated,” costs associated with its interest in the OVEC generating units for the remainder of

---

<sup>9</sup> Duke Initial Brief at 18.

<sup>10</sup> See generally Duke Initial Brief at 19-24.

<sup>11</sup> See generally OCC Ex. 4 and 4A.

its contract with OVEC; rather, Duke would shrug the risks associated with its OVEC contractual entitlement onto its customers for the next 25 years.

Further, as noted by Staff, in connection with Section 4928.05(A)(1), Revised Code, OVEC costs are generation-related costs that Duke cannot recover in an ESP.<sup>12</sup> Staff states that the “general rule is that generation service is not regulated by the Commission, and [electric distribution utilities] are only allowed to recover generation-related costs if the costs are permitted under R.C. 4928.141 to 4928.144.”<sup>13</sup> Given that the PSR will not stabilize or otherwise provide certainty regarding retail electric service, and that costs inuring to customers through the PSR amount to generation-related costs that Duke cannot recover in an ESP, the Commission may not permissibly approve the PSR as a term of the Company’s proposed ESP. Further, the Commission should not approve the PSR, as it represents an unfounded shift in risk from the Company to customers for costs associated with Duke’s interest in the OVEC generating units. Accordingly, the Commission should reject Duke’s proposal to establish the PSR as a part of its ESP.

**B. Duke’s proposed PSR violates state energy policy, as codified in Section 4928.02, Revised Code.**

Approving the PSR would also violate the state of Ohio’s energy policy, as enumerated in Section 4928.02, Revised Code. A Commission decision approving the PSR would compel Duke’s electric distribution customers to subsidize its generation-related assets, in violation of Section 4928.02(H), Revised Code. Section 4928.02(H), Revised Code, provides that it is the policy of the state to do the following:

---

<sup>12</sup> Post-Hearing Brief Submitted on Behalf of the Staff of the Public Utilities Commission of Ohio (Staff Initial Brief) at 15.

<sup>13</sup> Id.

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[.]

Distribution service offered by Duke is a noncompetitive retail electric service, whereas generation service has been characterized as a competitive retail electric service in Ohio since the advent of S.B. 3. Under the proposed PSR, Duke would collect costs pursuant to a charge associated with its distribution service which would, in turn, be used to subsidize obligations accruing to the Company pursuant to its entitlement to the output of the OVEC generating units. Permitting such a practice violates Section 4928.02(H), Revised Code.

Importantly, as noted by IEU-Ohio and Staff, the Commission previously rejected an electric distribution utility's (EDU) attempt to recover competitive, generation-related costs through its non-competitive distribution rates.<sup>14</sup> The Commission's determination in the aforementioned matter directly relates to the issues under consideration in this case relating to the proposed PSR, and the Commission should look to its previous decision when addressing Duke's proposal to establish the PSR.

**C. Commission approval of the PSR would unlawfully permit Duke to recover transition revenues.**

Permitting an EDU to recover costs associated with a generating facility amounts to approving the recovery of transition revenues outside of the market development period, in violation of Section 4928.38, Revised Code. As noted by IEU-Ohio, Sections 4928.32 through 4928.40, Revised Code, provided an EDU with "a single opportunity to secure transition

---

<sup>14</sup> See *In the Matter of the Application of Ohio Power Company for Approval of the Shutdown of Unit 5 of the Philip Sporn Generating Station and to Establish a Plant Shutdown Rider*, Case No. 10-1454-EL-RDR, Finding and Order (January 11, 2012); see also Staff Initial Brief at 17; Initial Brief of IEU-Ohio (IEU-Ohio Initial Brief) at 13.



revenue.”<sup>15</sup> Notably, Duke gave up any claims it may have had to secure generation-related revenue as part of the settlement of its electric transition plan (ETP) case in 2000.<sup>16</sup> Given that Duke effectively relinquished its claim for transition revenue in settlement of its ETP case, and that we find ourselves well outside of the market development period, Duke’s request for approval of the PSR is not permitted under the applicable statutory or regulatory schemes, and should be denied by the Commission.

**D. Duke has not demonstrated pursuant to Section 4928.143(C)(1), Revised Code, that its proposed ESP is more favorable in the aggregate than a market rate offer.**

In addition to the concerns set forth above, Duke has not sustained its burden to demonstrate that the proposed ESP is more favorable in the aggregate than a market rate offer (MRO). Section 4928.143(C)(1), Revised Code, provides as follows:

The burden of proof in the proceeding shall be on the electric distribution utility. Subject to division (D) of this section, the commission by order shall approve or modify and approve an application filed under division (A) of this section if it finds that the electric security plan so approved, including its pricing and all other terms and conditions, including any deferrals and any future recovery of deferrals, is more favorable in the aggregate as compared to the expected results that would otherwise apply under section 4928.142 of the Revised Code.

Evaluation of whether an ESP is more favorable in the aggregate than an MRO (the MRO test) includes both a quantitative comparison and a qualitative comparison.<sup>17</sup> In its initial brief, Duke contends that the cost of service under an MRO versus its proposed ESP would be the

---

<sup>15</sup> IEU-Ohio Initial Brief at 13.

<sup>16</sup> Id.

<sup>17</sup> See generally, *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Authority to Provide for a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan*, Case No. 12-1230-EL-SSO, Opinion and Order at 55-56 (July 18, 2012).

same.<sup>18</sup> Therefore, the Company contends that quantitatively, its proposed ESP and an MRO are the same. As noted previously by Kroger and in various parties' initial briefs, however, when performing the MRO test, Duke erroneously failed to include the costs associated with the proposed PSR.<sup>19</sup> As established above, Duke's own projections estimate that the costs of the PSR over the ESP term will amount to approximately \$22 million. Those costs must be considered when analyzing whether a proposed ESP is more favorable in the aggregate than an MRO.

In consideration of the qualitative benefits of the proposed ESP versus an MRO, Duke identifies four "conspicuous benefits" of its ESP: (1) the elimination of non-market-based influences on behavior; (2) the promotion of competition through leveling the playing field between SSO auction winners and CRES providers; (3) fostering improvements to the safety and reliability of the distribution system; and (4) stabilizing competitive generation prices for shopping and non-shopping customers.<sup>20</sup> Despite its assertions, however, three of these alleged benefits of the ESP are significantly outweighed by the negative consequences occasioned by the proposed PSR, and the remaining benefit would be available under an MRO and consequently should not be considered a benefit of the proposed ESP. First, the safety and reliability improvements touted by Duke as a result of the proposed ESP are available under an MRO, as they may be made through a base distribution rate case. They are in no way exclusive to an ESP. As such, they should be afforded little weight by the Commission. With regard to the other three benefits of the proposed ESP posited by Duke, each is centered around the promotion of competition. As discussed previously, the proposed PSR is anti-competitive subsidy flowing

---

<sup>18</sup> Duke Initial Brief at 27.

<sup>19</sup> See Initial Brief of The Kroger Company (Kroger Initial Brief) at 15; IEU-Ohio Initial Brief at 32-33; Initial Brief of the Ohio Manufacturers' Association (OMA Initial Brief) at 28, et al.

<sup>20</sup> Duke Initial Brief at 27-32.

from the Company's distribution customers to its generation-related assets. The anti-competitive nature of the proposed PSR looms heavily over the other alleged benefits of the ESP. Any assertions that the proposed ESP effectively promotes competition are seriously undercut by the scenario created by the proposed PSR.

Weighing the quantitative and qualitative factors of the proposed ESP versus an MRO, the proposed ESP will be at least \$22 million more costly to customers than an MRO. The safety and reliability benefits touted by Duke as a benefit of the proposed ESP are, in reality, equivalent under the proposed ESP and an MRO, as such benefits may effectively be secured through a base distribution rate case. Therefore, all factors considered, the proposed ESP is not more favorable in the aggregate than an MRO. As such, the Commission should reject the proposed ESP.

**E. In the event that the Commission determines that Duke's proposed ESP should be modified and approved, Kroger recommends several modifications.**

Duke notes in its initial brief that "the Commission has the authority to fashion an ESP that encourages competition and, indeed, helps competition to prosper, while reasonably protecting customers' well-being."<sup>21</sup> In this vein, if the Commission determines it is in the best interest of the Company and customers to modify and approve Duke's proposed ESP, Kroger recommends that the Commission adopt the modifications discussed herein.

**1. The Commission should deny the Company's request to establish the PSR.**

As discussed at length supra, as proposed, the PSR does not comply with Ohio law or policy, and unfairly shifts the risks and costs associated with Duke's interest in the OVEC generating units to customers. If the Commission determines that it should modify and approve the Company's proposed ESP, it is of the utmost importance that it deny Duke's request to

---

<sup>21</sup> Duke Initial Brief at 20-21.

establish the PSR. Making this modification would eliminate a minimum of \$22 million in expenses and countless risks sought to be shifted to customers over the ESP term.

Further, Staff expresses concern in its initial brief that Commission approval of the PSR will “invite the other Ohio EDUs to seek guaranteed cost recovery for generation assets that are *not* committed to Ohio ratepayers and are *not* regulated by the Commission.”<sup>22</sup> Denying the PSR would send an important message that the Commission will not rubber stamp attempts by EDUs to pile millions of dollars worth of unwanted generation-related charges on customers when those costs are properly borne by the EDUs.

The Company has asserted that it “believes that the most reasonable approach is to allow customers to receive the difference between the OVEC-related costs and revenues for as long as possible.”<sup>23</sup> Judging, however, from the shift of risks from Duke to its customers that approval of the PSR would occasion, Duke is actually arguing that it is reasonable for the Commission to make customers responsible for the Company’s share of OVEC costs for as long as possible, i.e. the term of the contract, which is scheduled to expire in 2040. The Commission should recognize that this request is unreasonable, and deny the establishment of the PSR.

**2. The Commission should reject the Company’s proposed allocation of Rider DCI in favor of a simple, equal percentage rider applicable to all rate classes.**

As stated in its initial brief, Kroger does not oppose the Company’s request to establish Rider DCI; however, Kroger recommends that the Commission adopt a rider mechanism that

---

<sup>22</sup> Id. at 5.

<sup>23</sup> Duke Initial Brief at 24.

applies a simple, equal percentage increase on distribution rates to all rate classes, rather than the approach the Company has proposed.<sup>24</sup>

As explained by Duke witness Laub, Duke has proposed to allocate the incremental revenue requirement for Rider DCI “based on the same allocation as used in Schedule E in the Company’s then most recently approved distribution base rate case.”<sup>25</sup> However, in practice, the share of costs allocated to each rate class is not directly proportional to the class’s share of revenues, as determined in Case No. 12-1682-EL-AIR, and each class’s share of costs is not reflective of any changes in the class’s load.<sup>26</sup>

If the Commission determines that it should modify and approve Duke’s proposed ESP, Kroger recommends that the Commission modify the design of Rider DCI, such that it functions as an equal percentage rider applicable to base distribution rates, consistent with the design of AEP Ohio’s Commission-approved Distribution Investment Rider.<sup>27</sup> Under this approach, calculation of the rider under this approach will be simple and straightforward, and any incremental Rider DCI costs will be allocated in proportion to each customer’s base distribution rates. Because Kroger’s recommendation for the allocation and design of Rider DCI is straightforward, easy to administer, reflects an allocation methodology which has previously been approved by the Commission, and effectuates Duke’s stated intent regarding allocation of the rider, the Commission should modify Rider DCI to encompass Kroger’s recommended approach for allocation of Rider DCI, rather than the approach proposed by the Company.

---

<sup>24</sup> Kroger Initial Brief at 3-5.

<sup>25</sup> Duke Energy Ohio Ex. 9 at 4.

<sup>26</sup> Kroger Ex. 1 at 11.

<sup>27</sup> Id.

**3. The Commission should gradually phase out Rider LFA over the course of the proposed ESP, rather than abruptly terminating the Rider prior to the proposed ESP term.**

If the Commission chooses to approve Duke's proposed ESP with modifications, it should adopt Staff witness Donlon's approach to Rider LFA, rather than the approach to Rider LFA advocated by the Company. The Company has proposed to eliminate Rider LFA effective June 1, 2015, but for a final true-up to zero-out the rider's balance.<sup>28</sup> Adopting the approach advanced by the Company, however, would have a significant adverse impact on high load factor customers taking service under rate schedules DS, DP, and TS.

In contrast to the Company's proposal, Staff witness Donlon advocates phasing Rider LFA out over the term of the proposed ESP, reducing Rider LFA by 33% in years one and two of the proposed ESP, and by 34% in year three, with a true-up to follow for any remaining balance.<sup>29</sup> The rationale behind such gradual phase-out of the rider is based on Staff's belief "that the initial rate increase to certain customers would be too high and thus [Rider LFA] should be phased out over the period of the ESP."<sup>30</sup> Because the principle of gradualism promoted by Staff witness Donlon's approach would benefit customers in all rate classes that are negatively impacted by the elimination of Rider LFA, the Commission should modify the proposed ESP to adopt and implement Staff witness Donlon's proposal for Rider LFA over the term of the proposed ESP, rather than the approach advocated by Duke.

---

<sup>28</sup> Duke Energy Ohio Ex. 18 at 7.

<sup>29</sup> Staff Ex. 5 at 3.

<sup>30</sup> Id.

**4. The Commission should deny Duke's request to retain the option to terminate the ESP after its second year.**

Duke has attempted to reserve “the right to terminate its proposed ESP at the conclusion of the second year thereof, or May 31, 2017[,]” in the event there is a substantive change in either Ohio or federal law that affects standard service offers (SSOs).<sup>31</sup> Although early termination is limited, under Duke's alleged reservation, to circumstances in which a “substantive change” in Ohio or federal law occurs that affects SSOs or SSO rate plans,<sup>32</sup> a “substantive change” may arguably encompass many situations.

Permitting Duke to terminate its ESP one year early would permit the Company to include in its ESP a provision that is not specifically authorized by Section 4928.143(B)(2), Revised Code, which, as established above, covers the permissible contents of ESPs. Including such a provision would be unlawful. Additionally, permitting the Company to terminate the ESP early based upon broad, undefined circumstances would diminish much of the “security” that is supposed to be imparted on Duke's customers as a result of an approved ESP. Given these reasons, the Commission should deny Duke's request to reserve the right terminate the ESP early in the event of a “substantive change” in Ohio or federal law affecting SSOs or SSO rate plans.

**III. CONCLUSION**

As explained above, as proposed, the Company's ESP is not more favorable in the aggregate than an MRO. If the proposed ESP is maintained its current form, Kroger recommends that it be rejected by the Commission. However, in the event that the Commission determines it is in the best interests of Duke and its customers to modify and subsequently approve the proposed ESP, Kroger recommends that the Commission adopt the following

---

<sup>31</sup> Duke Energy Ohio Ex. 1 at 16.

<sup>32</sup> Id.

modifications for the purpose of rendering the proposed ESP lawful and reasonable: (1) the Commission should deny the establishment of the proposed PSR and its requested approval through 2040; (2) the Rider DCI allocation methodology advanced by Kroger should be adopted; (3) the phase-out of Rider LFA proposed by Staff witness Donlon should be adopted; and (4) the Company's purported reservation of the right to terminate the ESP early should be rejected. If the Commission adopts these proposed changes, Kroger believes the ESP will be more favorable in the aggregate than an MRO, and should accordingly be adopted and approved by the Commission.

Respectfully submitted,

/s/ Rebecca L. Hussey  
Rebecca L. Hussey (0079444)  
Carpenter Lipps & Leland LLP  
280 Plaza, Suite 1300  
280 North High Street  
Columbus, Ohio 43215  
Telephone: (614) 365-4110  
Email: Hussey@carpenterlipps.com

*Counsel for The Kroger Company*



## CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was served upon the following parties via electronic mail on December 29, 2014.

/s/ Rebecca L. Hussey  
Rebecca L. Hussey

Amy.Spiller@duke-energy.com  
Elizabeth.watts@duke-energy.com  
Rocco.dascenzo@duke-energy.com  
Jeanne.Kingery@duke-energy.com  
haydenm@firstenergycorp.com  
scasto@firstenergycorp.com  
joliker@igsenergy.com  
mswhite@igsenergy.com  
joseph.clark@directenergy.com  
sam@mwncmh.com  
fdarr@mwncmh.com  
mpritchard@mwncmh.com  
Bojko@carpenterlipps.com  
Allison@carpenterlipps.com  
Sechler@carpenterlipps.com  
tdougherty@theoec.org  
callwein@wamenergylaw.com  
toddm@wamenergylaw.com  
dhart@douglasshart.com  
tobrien@bricker.com  
dstinson@bricker.com  
dborchers@bricker.com  
damson@ralaw.com  
mtraven@ralaw.com  
rchamberlain@okenergylaw.com  
tony.mendoza@sierraclub.org

Steven.beeler@puc.state.oh.us  
Thomas.lindgren@puc.state.oh.us  
Ryan.orourke@puc.state.oh.us  
dboehm@BKLawfirm.com  
mkurtz@BKLawfirm.com  
jkylercohn@BKLawfirm.com  
kboehm@bkllawfirm.com  
Schmidt@sppgrp.com  
Judi.sobecki@aes.com  
cmooney@ohiopartners.org  
yalami@aep.com  
stnourse@aep.com  
mjsatterwhite@aep.com  
asonderman@keglerbrown.com  
mkimbrough@keglerbrown.com  
mchristensen@columbuslaw.org  
Edmund.berger@occ.ohio.gov  
Maureen.grady@occ.ohio.gov  
Joseph.serio@occ.ohio.gov  
gpoulos@enernoc.com  
mhpeticoff@vorys.com  
mjsettineri@vorys.com  
glpetrucci@vorys.com  
ghull@eckertseamans.com  
jvickers@elpc.org  
swilliams@nrdc.org

Attorney Examiners:  
Christine.pirik@puc.state.oh.us  
Nicholas.walstra@puc.state.oh.us

**This foregoing document was electronically filed with the Public Utilities**

**Commission of Ohio Docketing Information System on**

**12/29/2014 3:07:12 PM**

**in**

**Case No(s). 14-0841-EL-SSO, 14-0842-EL-ATA**

Summary: Reply Brief of the Kroger Company electronically filed by Ms. Rebecca L Hussey on behalf of The Kroger Company