

**BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application Seeking)	
Approval of Ohio Power Company's)	Case No. 14-1693-EL-RDR
Proposal to Enter into an Affiliate Power)	
Purchase Agreement for Inclusion in the)	
Power Purchase Agreement Rider)	

In the Matter of the Application of)	Case No. 14-1694-EL-AAM
Ohio Power Company for Approval of)	
Certain Accounting Authority)	

INITIAL POST HEARING BRIEF OF THE KROGER CO.

Mark S. Yurick (0039176)
Counsel of Record
Email: myurick@taftlaw.com
Direct: (614) 334-7197
Celia M. Kilgard (0085207)
Direct Dial: (614) 334-6145
Email: ckilgard@taftlaw.com
TAFT STETTINIUS & HOLLISTER LLP
65 East State Street, Suite 1000
Columbus, Ohio 43215
Telephone: (614) 221-2838
Facsimile: (614) 221-2007

Attorneys for 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 133 facilities served by AEP Ohio that collectively consume over 240 million kWh per year. Kroger is a shopping customer in AEP Ohio’s service territory. As a large commercial customer of AEP Ohio, Kroger has a substantial interest in AEP Ohio’s PPA rider proposal. Kroger was opposed to AEP Ohio’s PPA rider when it was initially proposed in AEP Ohio’s *ESP III Case*,¹ and Kroger is opposed to the PPA rider today.

Although the Commission allowed AEP Ohio to establish the PPA rider in the *ESP III Case*, the Commission should deny AEP Ohio’s current request to enter into the revised affiliate power purchase agreement (“Revised Affiliate PPA”) with its affiliate, AEP Generation Resources, Inc. (“AEPGR”), and should further deny AEP Ohio’s request to include the Revised Affiliate PPA in the PPA rider. The PPA rider essentially requires customers to subsidize AEP Ohio and AEPGR for eight years through a period of financial uncertainty. Although AEP Ohio has submitted a stipulation whereby various parties agree to the inclusion of the Revised Affiliate PPA in the PPA rider, this does not change the fact that forcing customers to subsidize AEPGR’s generation units for years harms customers and the public interest. The Commission should not adopt the stipulation and should deny AEP Ohio’s request to include the Revised Affiliate PPA in the PPA rider.

II. LAW AND ARGUMENT

A. Standard of review for stipulations.

On December 14, 2016, AEP Ohio filed the Joint Stipulation and Recommendation (“Stipulation”) in this case. Joint Ex. 1. The Ohio Supreme Court has endorsed the

¹ In the Matter of the Application of Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to §4928.143, Revised Code, in the Form of an Electric Security Plan, Case No. 13-2385-EL-SSO (*ESP III Case*).

Commission's use of a three-part test when considering stipulations. The Commission considers the following three factors:

1. Is the settlement a product of serious bargaining among capable, knowledgeable parties?
2. Does the settlement, as a package, benefit ratepayers and the public interest?
3. Does the settlement package violate any important regulatory principle or practice?

Consumers' Counsel v. Pub. Util. Comm., 64 Ohio St.3d 123, 126, 1992-Ohio-122, 592 N.E.2d 1370, 1373 (1992).

Although there are various provisions in the Stipulation that some parties dispute, the primary reasons for Kroger's objection to the proposed Stipulation are the rate design of the PPA rider and the undue financial burden customers will be forced to bear if AEP Ohio's PPA proposal is adopted. The evidence adduced at hearing demonstrates that the Stipulation fails to satisfy the Commission's three-prong test. Therefore, the Commission should reject the Stipulation and deny AEP Ohio's application.

B. The Stipulation, as a package, does not benefit ratepayers and the public interest because the Revised Affiliated PPA proposal forces customers to subsidize AEPGR's generation units for years.

The Revised Affiliate PPA will not benefit ratepayers and is contrary to the public interest. Kroger witness Higgins testified that the Commission should reject AEP Ohio's proposal to include the Affiliate PPA² and the OVEC entitlement in the PPA Rider. Kroger Ex. 2 at p. 12-13. Mr. Higgin's testified that AEP Ohio's request is essentially a request for a "cash infusion" from customers for eight years to help AEPGR through an alleged period of future financial uncertainty. Kroger Ex. 2 at p. 4. In addition, customers would assume the financial risk of the long-term performance of AEPGR's generation assets relative to the market, while

² Mr. Higgins direct testimony was filed and admitted into the record before the Stipulation was filed. Although Mr. Higgins' testimony addressed the Affiliate PPA before it was revised for purposes of the Stipulation, Mr. Higgins criticism of the concept of the PPA remains valid and applicable to the Revised Affiliate PPA.

AEPGR enjoys the benefit of a healthy utility-type rate of return on these assets. Kroger Ex. 2 at p. 4.

Kroger witness Higgins testified that AEP Ohio offers two contradictory rationales for the PPA rider. On the one hand, AEP Ohio claims this arrangement will provide customers a valuable long-term hedge against future market price increases. Kroger Ex. 2 at p. 10. On the other hand, AEP Ohio claims that absent the proposed PPA Rider arrangement, the AEPGR-owned units are in danger of being shut down or sold due to the uncertain economics of their continued operation. AEP Ohio claims that jobs and capacity will be lost, and new transmission likely would have to be built if the plants are shut down. Kroger Ex. 2 at p. 10. These two rationales are contradictory because AEPGR would presumably weather any near-term economic uncertainty in order to reap the long-term gains projected by AEP Ohio. Kroger Ex. 2 at p. 10-11. As Kroger witness Higgins testified, the fact that AEP Ohio and/or AEPGR has threatened potential shut down or sales of the generation units shows that AEPGR is not sufficiently confident in the long-term economic benefits forecasted by AEP Ohio. Kroger Ex. 2 at p. 11. If AEPGR was confident in the projections submitted by AEP Ohio in this case, it would accept burden of potential short-term losses in order to reap the projected long-term gains. Kroger Ex. 2 at p. 11.

Contrary to AEP Ohio's claims, the PPA rider is likely to result in a net negative proposition for customers for quite a few years. Kroger Ex. 2 at p. 11. Mr. Higgins testified that even if AEP Ohio's projections are accepted at face value, absent speculative PJM Capacity Performance benefits, the PPA rider is projected to lose money for customers each year through 2017. Kroger Ex. 2 at p. 11. In addition, the *cumulative* net benefit does not turn positive in nominal terms until 2021, after taking into account the cumulative costs to customers racked up

during the initial years of the proposed arrangement. Kroger Ex. 2 at p. 11. Placing customers into a net negative position for approximately five years is not an attractive proposition. Kroger Ex. 2 at p. 11. This is especially true when one considers the fact that the price and cost projections that AEP Ohio used to forecast the long-term benefits could turn out to be overly optimistic. Kroger Ex. 2 at p. 11.

AEP Ohio's PPA proposal is not in the public interest because it unfairly shifts risks to customers. Kroger Ex. 2 at p. 12-13. AEP Ohio may claim that the "additional PPA Rider commitment" provision in the Stipulation is an adequate risk-sharing mechanism. Joint Ex. 1 at p. 5-6. However, under this provision, AEP Ohio does not begin its credit commitments until planning year 2020/2021. Direct Testimony RESA witness Bennett (RESA Ex. 1) at p. 7. Customers assume the complete risk of losses in the early years of the arrangement, which are the years AEP Ohio projects to be the least favorable for customers. Further, OCC witness Wilson testified that the PPA rider may cost customers a cumulative \$1.9 billion over the eight-year term of the PPA rider even with AEP Ohio's "additional PPA Rider commitment." Supplemental Direct Testimony of James F. Wilson (Public) (OCC Ex. 34) at p. 5 and 10.

The record shows that AEP Ohio's PPA proposal will not benefit customers or the public interest. Therefore, the Commission should reject the Stipulation.

C. The rate design of the PPA rider violates the important regulatory principle of cost causation.

If the Commission approves the PPA rider, it should modify the rate design for the PPA rider because the proposed rate design for the PPA rider violates the important regulatory

principle of cost causation. The Commission has reaffirmed the principle of “cost causation” on numerous occasions.³ The Commission should ensure this principle is applied in this case.

As proposed, the PPA rider would properly allocate costs to rate classes based on their PJM five monthly coincident peak demands for the prior year. Joint Ex. 1 at p. 6. However, the PPA rider would recover costs from customers within each rate class through an energy charge. Joint Ex. 1 at p. 6. It is a fundamental tenant of ratemaking that if costs are allocated on demand, then these costs should be recovered from customers on the same basis, *i.e.* on a demand basis. Mismatching the *allocation* of costs and the *recovery* of costs can result in unfair and unjust subsidies that violate the principle of cost causation. This is exactly what will result here. Recovering PPA costs through an energy charge will result in intraclass subsidization, whereby high load factor customers subsidize low load factor customers. High load factor customers, whose energy usage is high relative to their demand levels, will be forced to pay for a portion of the demand costs attributable to low load factor customers in the same rate class whose energy usage is comparatively low relative to their demand levels. This essentially punishes high load factor customers for being more efficient energy consumers.

In order to be more consistent with the principle of cost-causation, and to avoid punishing high load factor customers such as Kroger, the PPA rider costs should be recovered on a demand basis.

³ *In the Matter of the Application of Duke Energy Ohio, Inc., for an Increase in Elec. Rates. in the Matter of the Application of Duke Energy Ohio, Inc.*, Case No. 08-709-EL-AIR, *et al.*, Opinion and Order at 15 (July 8, 2009). (“The stipulation provides the important benefit of reducing or eliminating cross-subsidies between classes by being consistent with the principle of cost causation.”); *In the Matter of the Application of Ohio Edison Co., the Cleveland Elec. Illum. Co., & the Toledo Edison Co. for Approval of Ohio Site Deployment of the Smart Grid Modernization Initiative & Timely Recovery of Associated Costs.*, No. 09-1820-EL-ATA, *et al.*, Finding and Order at p. 9 (June 30, 2010) (“Therefore, the Commission finds that, according to principles of cost causation, Staff’s recommendation that Rider AMI be a fixed monthly charge is reasonable...”).

III. CONCLUSION

Based on the foregoing, the Commission should reject the Stipulation and deny AEP Ohio's PPA rider request. If the Commission allows AEP Ohio to include the Revised Affiliated PPA in the PPA rider, the Commission should modify the PPA rider rate design so that PPA rider costs are recovered on a demand basis.

Respectfully submitted,

/s/ Mark S. Yurick

Mark S. Yurick (0039176)

Counsel of Record

Email: myurick@taftlaw.com

Direct: (614) 334-7197

Celia M. Kilgard (0085207)

Direct Dial: (614) 334-6145

Email: ckilgard@taftlaw.com

TAFT STETTINIUS & HOLLISTER LLP

65 East State Street, Suite 1000

Columbus, Ohio 43215

Telephone: (614) 221-2838

Facsimile: (614) 221-2007

Attorneys for The Kroger Co.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Initial Post-Hearing Brief of *The Kroger Co.* was served this 1st day of February, 2016 upon the following via electronic mail.

/s/ Mark S. Yurick

Mark S. Yurick

Allison@carpenterlipps.com;
Bojko@carpenterlipps.com;
charris@spilmanlaw.com;
chris@envlaw.com;
Christopher.Miller@icemiller.com;
cmooney@ohiopartners.org;
drinebolt@ohiopartners.org
dstinson@bricker.com;
ghiloni@carpenterlipps.com;
dclarkl@aep.com;
dboehm@BKLawfirm.com;
dconway@porterwright.com;
dwilliamson@spilmanlaw.com;
fdarr@mwncmh.com;
gaunder@CarpenterLipps.com;
ghull@eckertseamans.com;
glpetrucci@vorys.com;
gpoulos@enernoc.com
Greta.see@puc.state.oh.us;
haydenm@firstenergycorp.com;
stnourse@aep.com
mjsatterwhite@aep.com

drinebolt@ohiopartners.org
dstinson@bricker.com;
ghiloni@carpenterlipps.com; dclarkl@aep.com;
dboehm@BKLawfirm.com;
dconway@porterwright.com;
dwilliamson@spilmanlaw.com;
fdarr@mwncmh.com;
gaunder@CarpenterLipps.com;
ghull@eckertseamans.com;
glpetrucci@vorys.com; gpoulos@enernoc.com
Greta.see@puc.state.oh.us;
haydenm@firstenergycorp.com;
mhpetricoff@vorys.com;
jeffrey.mayes@monitoringanalytics.com;
jennifer.spinosi@directenergy.com;
jkylecohn@BKLaw.com
jlang@calfee.com;
jmcdermott@firstenergycorp.com;
Jodi.bair@occ.ohio.gov;
joliker@igsenergy.com;

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