BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Duke Energy Ohio, Inc., for Recovery of Program Costs, Lost Distribution Revenue and Performance Incentives Related to its Energy Efficiency and Demand Response Programs for 2014.	))))))	Case No. 15-534-EL-RDR

APPLICATION FOR REHEARING OF THE KROGER COMPANY

Pursuant to Section 4903.10, Revised Code, and Rule 4901-1-35, Ohio Administrative Code (O.A.C.), the Kroger Company (Kroger) hereby respectfully requests rehearing of the Public Utilities Commission of Ohio's (PUCO) Opinion and Order (Order) issued in the 2014 Recovery Case (Case No. 15-534-EL-RDR),[1] regarding Duke Energy Ohio, Inc.'s (Duke) request for recovery of program costs, lost distribution revenue, and performance incentives related to its energy efficiency and demand response programs for 2014 and a settlement entered into between Duke and Staff of the PUCO.[2] On October 26, 2016, the PUCO also issued a related decision in Duke's 2013 Recovery Case (Case No. 14-457-EL-RDR), which was also subject to the same settlement.[3] Kroger contends that the PUCO's Order is unlawful and unreasonable in the following respects:

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[1] *In the Matter of the Application of Duke Energy Ohio, Inc., for Recovery of Program Costs, Lost Distribution Revenue and Performance Incentives Related to its Energy Efficiency and Demand Response Programs for 2014*, Case No. 15-534-EL-RDR, Opinion and Order (October 26, 2016) (2014 Recovery Case).

[2] Joint Ex. 1 (Stipulation).

[3] *In the Matter of the Application of Duke Energy Ohio, Inc., for Recovery of Program Costs, Lost Distribution Revenue and Performance Incentives Related to its Energy Efficiency and Demand Response Programs for 2013*, Case No. 14-457-EL-RDR, Second Entry on Rehearing (October 26, 2016) (2013 Recovery Case).

1. The PUCO erred in approving, with modifications, Duke's application for recovery of program costs, lost distribution revenue, and performance incentives related to its energy efficiency and demand response programs for 2014.

2. The PUCO erred in determining that the Stipulation was a product of serious bargaining among capable, knowledgeable parties.

3. The PUCO erred in finding that the Stipulation benefits ratepayers and is in the public interest.

4. The PUCO erred in finding that the Stipulation does not violate any important regulatory principles or practices.

For these reasons, and as further explained in the Memorandum in Support attached hereto, Kroger respectfully requests that the PUCO grant its Application for Rehearing.

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MEMORANDUM IN SUPPORT

I. INTRODUCTION AND PROCEDURAL HISTORY

On March 30, 2015, Duke filed an application for recovery of program costs, lost distribution revenue, and performance incentives related to its energy efficiency and demand response programs for 2014 in the pending case (2014 Recovery Case).[4] The filing of the 2014 Recovery Case followed a similar one that had already been filed and was then pending for recovery of 2013 costs associated with Duke's energy efficiency and demand response programs for 2014 (2013 Recovery Case).[5] On May 20, 2015, the PUCO issued a decision in Duke's 2013 Recovery Case, approving Duke's application with the modification that Duke could not recover shared savings incentive payments through the use of energy efficiency savings achieved during prior year (i.e., banked savings).[6] Almost 18 months later, the PUCO has reversed course and permitted Duke to use banked savings from previous years to recover shared savings incentive

[4] 2014 Recovery Case, Application (March 30, 2015).

[5] 2013 Recovery Case, Application (March 28, 2014), as amended (April 17, 2014).

[6] 2013 Recovery Case, Finding and Order at 5 (May 20, 2015).

payments in the amount of $19.75 million.[7] This decision by the PUCO not only creates bad precedent as it allows utility companies to recover shared savings in years during which they did not meet the annual mandated benchmark for energy efficiency savings, but it is also unreasonable and unlawful in light of previous PUCO decisions that had been in place for almost 18 months.

Both Duke and Ohio Partners for Affordable Energy (OPAE) filed applications for rehearing of the May 20, 2015 Order. Duke, among other things, stated that the PUCO erred in prohibiting its use of banked savings to achieve a shared savings incentive.[8]

On January 6, 2016, Duke and Staff filed a stipulation in both cases to address the outstanding issues raised in the 2013 Recovery Case and the shared savings incentive mechanism in the 2014 Recovery Case (Stipulation). Duke, Staff, and intervening parties, including Kroger, participated in an evidentiary hearing beginning March 10, 2016 through March 15, 2016. The PUCO issued decisions in both the 2013 Recovery Case and the 2014 Recovery Case, approving the Stipulation, granting Duke's application for recovery of program costs, lost distribution revenue, and performance incentives for 2014, and granting Duke's application for rehearing on the issue of using banked savings to achieve a shared savings incentive in the 2013 Recovery Case.[9]

Through approval of the Stipulation between Duke and Staff, the PUCO unreasonably and unlawfully ignored its own precedent and embarked upon a slippery slope of allowing otherwise unlawful provisions to prevail for the sake of reaching settlement. Not only did the

[7] 2013 Recovery Case, Second Entry on Rehearing at 15-16 (October 26, 2016).

[8] 2013 Recovery Case, Application for Rehearing of Duke Energy Ohio, Inc. at 5-13 (June 19, 2015).

[9] See, e.g., 2013 Recovery Case, Second Entry on Rehearing at 15-16 (October 26, 2016); 2014 Recovery Case, Opinion and Order at 16-17 (October 26, 2016).

PUCO unreasonably approve the Stipulation filed in these cases, but the PUCO also erred in granting Duke's application for rehearing in the 2013 Recovery Case, as this decision reverses its prior order and establishes new precedent that contradicts the underlying purpose of the shared savings incentive mechanism.

II. ARGUMENT

A. The PUCO erred in approving, with modification, Duke's application for recovery of program costs, lost distribution revenue, and performance incentives related to its energy efficiency and demand response programs for 2014.

In approving Duke's application for 2014, the PUCO permitted Duke to use its banked savings from previous years in order to collect recovery from customers through the shared savings incentive. This decision is inconsistent with the PUCO's own established precedent regarding the disallowance of banked savings for obtaining a shared savings incentive.

In its May 20, 2015 Order regarding the 2013 Recovery Case, based upon the record before it, the PUCO found that the Company may only use the banked savings to reach its mandated benchmark" and that "Duke's use of banked savings to claim an incentive is improper."[10] The PUCO further explained that the shared savings mechanism "is designed to motivate and reward the utility for exceeding energy efficiency standards on an annual basis. . . [i]n order for the structure to continue to serve as a true incentive for Duke to exceed the benchmarks, the Commission finds the banked savings cannot be used to determine the annual shared savings achievement level."[11]

Although the PUCO recently granted rehearing for Duke regarding the use of banked savings to receive a shared savings incentive, the language in the May 20, 2015 Order is clear. A

[10] 2013 Recovery Case, Opinion and Order at 2 (May 20, 2015).

[11] Id.

distribution utility should not be permitted to obtain a shared savings incentive for not doing more and exceeding the minimum required in any given year.

In a recent decision involving FirstEnergy's application to provide a standard service offer pursuant to an electric security plan (ESP), the PUCO similarly disallowed the recovery of shared savings by a distribution utility for energy savings resulting from no action by the utility (i.e., the utility doing nothing more than counting what customers had already completed on their own).[12] The PUCO noted that, as a policy, they have *never* allowed shared savings for programs that involve "no action by the Companies to achieve the energy savings."[13]

Thus, the PUCO has clearly indicated that electric distribution utilities should not be permitted to obtain a shared savings incentive for doing nothing. However, pursuant to its recent decision, the PUCO has authorized Duke to collect a shared savings incentive from customers when Duke has failed to take action and exceed the statutory benchmarks. In fact, Duke failed to even meet the annual statutory benchmarks for energy efficiency absent the use of banked savings during 2013 and 2014, but yet Duke was still awarded $19.75 million in shared savings.[14] Unfortunately, it appears that the PUCO is choosing to approve terms and provisions within a settlement over precedent and good public policy. Such an outcome is improper, unlawful, and thwarts the good public policy already established by the PUCO, as well as the underlying purpose of shared savings to "motivate and reward the utilities for exceeding energy efficiency standards on an annual basis."[15]

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[12] *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 R.C. 4928.143in the Form of an Electric Security Plan,* Case No. 14-1297-EL-SS), Fifth Entry on Rehearing at 147 (October 12, 2016).

[13] Id. (emphasis added).

[14] Tr. Vol. I at 141.

[15] 2013 Recovery Case, Opinion and Order at 5 (May 20, 2015).

Regardless of the agreement reached by certain signatory parties with respect to a particular settlement, the PUCO is obligated to ensure that a filed stipulation meets the established criteria. Although Stipulations are viewed as "an efficient and cost-effective means of bringing issues before the Commission,"[16] a Stipulation is merely a recommendation[17] and is not binding. As the Supreme Court of Ohio has stated, the PUCO still "must determine what is just and reasonable from the evidence presented at the hearing."[18] Here, the provision in the Stipulation between two parties, Duke and Staff, that allows the use of banked savings to achieve a shared savings incentive is unreasonable and fails to satisfy the following established criteria for reviewing stipulations:

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?[19]

B. The PUCO erred in determining that the Stipulation was a product of serious bargaining among capable, knowledgeable parties.

As discussed at length in Kroger's initial brief and reply brief, the Stipulation falls far short of meeting the first criterion of the settlement analysis, requiring that the Stipulation be the

[16] See, e.g., *In the Matter of the Application Seeking Approval of Ohio Power Company's Proposal to Enter into an Affiliate Power Purchase Agreement for Inclusion in the Power Purchase Agreement Rider,* Case No. 14-1693-EL-RDR, Opinion and Order at 77-78 (March 31, 2016); *In re FirstEnergy,* Case No. 12-1230-EL-SSO, Opinion and Order at 42 (July 18, 2012); *In re Columbus Southern Power Co. and Ohio Power Co.,* Case No. 11-5568-EL-POR, et al., Opinion and Order at 17 (March 21, 2012).

[17] *Duff v. Pub. Util. Comm.,* 56 Ohio St.2d 367, 379 (1978).

[18] Id.

[19] See, e.g., *In the Matter of the Application of the Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company for Authority to Provide for a Standard Service Offer Pursuant to R.C. 4928.143 in the Form of an Electric Security Plan,* Case No. 14-1297-EL-SSO, Opinion and Order at 39 (March 31, 2016).

product of serious bargaining among capable, knowledgeable parties.[20] The PUCO, therefore, erred in finding that the first prong of the test is satisfied.[21]

First, as the record demonstrates, Duke excluded intervening parties, who represent customer classes, from meaningful discussions regarding the proposed settlement, in contravention of the *Time Warner Axs v*. PUCO case.[22] While Duke participated in a total of four meetings with Staff regarding the Stipulation, Duke failed to invite intervening parties to these meetings.[23] Moreover, intervening parties were not even aware of the existence of two of the four meetings until months later.[24] When Duke finally did include intervening parties in its discussions, it did so only as an after-the-fact consideration and provided parties little time to respond. For example, on December 30, 2015, Staff and Duke circulated a copy of the negotiated settlement to intervening parties, requesting that intervenors inform them by noon on January 6, 2016 as to "whether your client has an interest in being a signatory party."[25] This provided intervening parties only three business days to respond.[26] Further, the text of the email did not request that intervening parties participate in negotiations or provide feedback regarding the terms of the Stipulation; only that they respond if they would like to become a signatory party to the settlement document forwarded.[27] Additionally, Duke's own witness testified that he

[20] 2013 Recovery Case, Initial Brief of the Kroger Company at 3-7 (April 28, 2016); 2013 Recovery Case, Reply Brief of the Kroger Company at 3-5 (May 13, 2016); 2014 Recovery Case, Initial Brief of the Kroger Company at 3-7 (April 28, 2016); 2014 Recovery Case, Reply Brief of the Kroger Company at 3-5 (May 13, 2016).

[21] 2013 Recovery Case, Second Entry on Rehearing at 11; 2014 RecoveryCase, Opinion and Order at 11.

[22] See *Time Warner Axs v. PUCO* (1996), 75 Ohio St. 3d 229, 234, n.2. (The Supreme Court of Ohio noted a grave concern" with partial settlement stipulations that arise from settlement talks from which an entire customer class is intentionally excluded.)

[23] OMA Ex. 15; Tr. Vol. I at 104 and 267 and 296.

[24] OMA Ex. 14.

[25] OMA Ex. 21.

[26] Tr. Vol. I at 119.

[27] Id. at 62 and 314.

was unaware of any intervenor party involvement in settlement negotiations prior to a settlement being reached between Duke and Staff.[28] Duke witness Duff testified that by the time he participated in the settlement meetings between Staff and Duke, the $19.75 million provision for the 2013 and 2014 shared savings incentive had already been decided.[29] His testimony, as well as the fact that the terms of the Stipulation did not change from the date of the December 30, 2015 circulated email to the date the Stipulation was filed with the PUCO on January 6, 2016, provide strong evidence to demonstrate that Duke intentionally excluded intervening parties from negotiation discussions until a settlement with Staff had been reached. This behavior clearly violates the first prong of the three-part settlement test and the "*Time Warner* footnote."[30]

Second, the Stipulation, signed by only two parties, does not represent a wide variety of interests among the parties. The signatory parties to the Stipulation include only Duke and Staff. Although the PUCO has consistently held that it will not require a single party to agree to a stipulation in order to meet the serious bargaining prong of the three-part test,[31] it is notable that no intervening parties in this proceeding agreed to the Stipulation. In fact, Staff witness Donlon admitted that all intervening parties in that case that represent commercial and industrial customers oppose the proposed Stipulation.[32] While Staff does have an interest in this case, that interest does not equate to exclusive representation of customer classes or an avid advocate for customer classes and their unique interests. The Stipulation falls far short of representing diverse interests as it was not supported by *any* customer class representatives.

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[28] Id. at 62.

[29] Id. at 22.

[30] Supra at n. 18.

[31] See, e.g., *In the Matter of the Application of the Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company for Authority to Provide for a Standard Service Offer Pursuant to R.C. 4928.143 in the Form of an Electric Security Plan*, Case No. 14-1297-EL-SSO, Opinion and Order at 43 (March 31, 2016).

[32] Tr. Vol. I at 251.

Finally, the terms of the Stipulation were not the result of serious bargaining that represents significant compromises as stated by the PUCO.[33] Rather, the Stipulation provides benefits to Duke with no corresponding benefits to customers, which hardly constitutes material concessions or "significant compromises."[34]

According to the Stipulation, if Duke is successful in its advocacy efforts and obtains reversals of prior decisions, Duke may be entitled to a shared savings incentive of as much as $55 million in pre-tax dollars for calendar years 2013, 2014, 2015, and 2016 combined.[35] Given that the May 20, 2015 Order in the 2013 Recovery Case specifically prohibited the use of banked savings to claim a shared savings incentive,[36] thereby precluding Duke from collecting any shared savings for 2013 and 2014,[37] absent the Stipulation, Duke would have received zero dollars in shared savings incentives for 2013 and 2014. Further, the shared savings incentive mechanism expired at the end of 2015, therefore, absent the Stipulation, the shared savings incentive in 2016 for Duke was also zero. Accordingly, the alleged $55 million in estimated costs that Duke alleges it could collect from customers without the Stipulation is grossly overstated and does not accurately reflect the actual potential costs to customers for shared savings incentives. Rather the $19.75 million provision, which the PUCO calls a "compromise,"[38] is really no compromise at all as customers would not have paid Duke anything for shared savings during the 2013 and 2014 years under existing Ohio law and absent the Stipulation.

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[33] Id.

[34] 2013 Recovery Case, Second Entry on Rehearing at 11; 2014 Recovery Case, Opinion and Order at 11.

[35] Joint Ex. 1 at 6-7 (Stipulation).

[36] 2013 Recovery Case, Opinion and Order at 5.

[37] 2013 Recovery Case, Opinion and Order at 5; Tr. Vol. I at 141.

[38] 2013 Recovery Case, Second Entry on Rehearing at 13; 2014 Recovery Case, Opinion and Order at 13.

Further, the provision stating that beginning in calendar year 2017, Duke will not file for recovery of a shared savings mechanism in any year after 2014 in which banked savings have been used to meet the annual benchmark standards is also not a compromise as the provision includes an exception for any changes in law, regulation, or order regarding shared savings.[39] This exception (which Duke was able to obtain through approval of the Stipulation) effectively nullifies any concession or compromise Duke claims to have made related to foregoing receipt of a shared savings incentive in the future.

The record clearly demonstrates that intervening parties were not involved in drafting the Stipulation,[40] negotiating the terms of the Stipulation,[41] or participating in settlement discussions.[42] Further, the signatory parties to the Stipulation, representing only the utility company and Staff, hardly engaged in serious bargaining and compromise of issues given Duke's significant windfall under the Stipulation. Therefore, the PUCO erred in finding that the Stipulation meets the first prong of the three-part settlement test.

C. The PUCO erred in finding that the Stipulation benefits ratepayers and is in the public interest.

In addition to failing to satisfy the first prong of the three-part settlement test, the Stipulation also fails to satisfy the second prong of the test as it does not benefit ratepayers and is not in the public interest. The PUCO's finding specific to this prong over exaggerates the risk of continued litigation on the issue of shared savings and inflates the amount that Duke could potentially recover if successful in those various facets of litigation. Additionally, the PUCO

[39] Joint Ex. 1 at 6-7 (Stipulation).

[40] Tr. Vol. I at 62.

[41] Id.

[42] Id. at 104.

minimizes the regulatory-out clauses embedded in the Stipulation, which render any purported value or benefit to customers essentially meaningless.

As previously discussed, Duke's claim that it could be entitled to as much as $55 million in a shared savings incentive for 2013, 2014, 2015 and 2016 combined is inaccurate.[43] The May 20, 2015 Order from the 2013 Recovery Case, which both Duke witness Duff and Staff witness Donlon acknowledged is valid,[44] prohibits the use of banked savings to claim a shared savings incentive.[45] Pursuant to that order, Duke could not collect shared savings for 2013 or 2014 as Duke failed to meet the energy efficiency annual benchmarks in both years absent the use of banked savings.[46] Further, Duke could not collect shared savings in 2016 as the shared savings incentive mechanism expired at the end of 2015.[47] Therefore, the $19.75 million provision combined with Duke's agreement to not pursue future shared savings does not mitigate any cost risk for customers[48] as customers, absent the Stipulation, would pay zero dollars in shared savings for 2013, 2014 and 2016. Thus, these provisions provide no benefit to customers.

Moreover, the PUCO's finding that the Stipulation serves the public interest by providing certainty and finality regarding the shared savings issue going forward is in error.[49] This statement ignores the regulatory-out provision embedded in the Stipulation, which provides an exception permitting Duke to seek a shared savings mechanism in any year after 2014 in which banked savings have been used to meet the annual benchmark standards consistent with a change

[43] Joint Ex. 1 at 6 (Stipulation).

[44] Tr. Vol. I at 65 and 264.

[45] 2013 Recovery Case, Opinion and Order at 5.

[46] 2013 Recovery Case, Opinion and Order at 5; Tr. Vol. I at 141.

[47] Tr. Vol. I at 60-61.

[48] 2013 Recovery Case, Second Entry on Rehearing at 13; 2014 Recovery Case, Opinion and Order at 13.

[49] Id.

in law, regulation, or order regarding shared savings.[50] A decision or order in any of the pending PUCO cases could invoke this exception (such as the second Entry on Rehearing in the 2013 Recovery Case and the Order issued in this case approving the Stipulation that allows Duke to use banked savings to obtain a shared savings incentive),[51] thereby invalidating any benefit, finality, or "certainty regarding the shared savings issue going forward"[52] for ratepayers.

Finally, the PUCO's finding that the Stipulation benefits ratepayers by preventing protracted litigation is in error.[53] Duke not only overstates the recovery amounts it could receive as a result of litigation, but it also overstated the potential risk of litigation in an attempt to provide value to customers when there is no actual value. Regardless of whether a case is resolved through a Stipulation or by a PUCO order, there is always a risk of additional litigation through the appeals process.[54] In fact, the PUCO's decision to completely reverse its prior holding in the 2013 Recovery Case will likely *increase* the risk of litigation regarding the shared savings issue as intervening parties who believed the issue was resolved now must reconsider their positions and potentially engage in more litigation (such as filing the instant application for rehearing) to obtain finality on whether banked savings can be used to claim a shared savings incentive. This provides no benefit to ratepayers who will be forced to not only pay the cost of shared savings but also, indirectly, costs associated with litigation.

Therefore, the Stipulation actually harms ratepayers by obligating them to pay the costs associated with a shared savings incentive when Duke has failed to meet any mandated annual benchmark regarding energy efficiency savings. Moreover, permitting the use of banked savings

[50] Joint Ex. 1 at 6-7 (Stipulation).

[51] Tr. Vol. II at 367-368.

[52] 2013 Recovery Case, Second Entry on Rehearing at 13; 2014 Recovery Case, Opinion and Order at 13.

[53] Id.

[54] Tr. Vol. I at 166-168.

to achieve a shared savings incentive in no way furthers the purpose of shared savings to encourage energy efficiency[55] and is not in the public interest. Therefore the PUCO erred in finding that the Stipulation meets the second prong of the three-part settlement test.

D. The PUCO erred in finding that the Stipulation does not violate any important regulatory principles or practices.

The Stipulation also fails to meet the third prong of the settlement test as it violates several regulatory principles, PUCO orders, and PUCO regulatory audit and accounting practices. As previously discussed at length, none of the intervening parties to these proceedings support the Stipulation or were invited to participate in settlement discussions.[56] This intentional exclusion of customer classes from settlement negotiations clearly violates an important regulatory principle established by the PUCO and the Supreme Court of Ohio regarding negotiations in *Time Warner Axs v. PUCO.*[57]

Additionally, as explained previously, the provisions in the Stipulation related to the recovery of a shared savings incentive for 2013, 2014, 2015, and 2016 are inconsistent with previous PUCO orders and current pending PUCO proceedings. Specifically, the $19.75 million provision violates the previous PUCO order in the 2013 Recovery Case, which stated that "Duke's use of banked savings to claim an incentive is improper."[58] The language in the May 20, 2015 Order is clear and unambiguous. The Stipulation, in direct contravention of that May 20, 2015 Order, permits Duke to receive $19.75 million from ratepayers in the form of shared savings for the 2013 and 2014 years.[59] Although the PUCO has since reversed its previous

[55] 2013 Recovery Case, Opinion and Order at 5.

[56] OMA Ex. 15; Tr. Vol. I at 104 and 267 and 296.

[57] See *Time Warner Axs v. PUCO* (1996), 75 Ohio St. 3d 229, 234, n.2.

[58] 2013 Recovery Case, Opinion and Order at 5.

[59] Joint Ex. 1 at 6 (Stipulation).

decision by granting Duke's application for rehearing, the Stipulation, when filed, included a provision that was plainly inconsistent with an established PUCO order. Additionally, the provision in the Stipulation which states that Duke will forego collection for shared savings incentives for 2015 and 2016[60] is inconsistent with a current pending PUCO proceeding in Case No. 14-1580-EL-RDR, in which Duke seeks to *continue* its cost recovery mechanism for energy efficiency programs through 2016.[61] The terms of the Stipulation also violate PUCO regulatory audit and accounting practices. According to the terms of the Stipulation, Staff is accepting a public utility's filing as filed , regardless of whether the application included errors in the costs or expenses associated with the filing.[62] This provision deviates from common and acceptable PUCO regulatory audit and accounting practices for true-ups of utility company costs and expenses. Moreover, this provision removes an important protection for customers embedded in the PUCO rules and regulatory process to ensure that the public utility does not collect from Ohio ratepayers any imprudent, unlawful, or non-jurisdictional expenses. Instead, the Stipulation requires customers to pay for all costs, including any imprudent, unlawful, or non-jurisdictional expenses that may have been incurred by Duke and passed onto to Ohio ratepayers through the rider, with no recourse for disallowance.

Therefore, the PUCO erred in determining that the Stipulation satisfies the third prong of the three-part settlement test. As discussed above, provisions in the Stipulation violate prior PUCO orders as well as established PUCO negotiation standards and regulatory audit practices.

[60] Id.

[61] OMA Ex. 5 at 1 (Attorney Examiner Entry in 14-1580-EL-RDR).

[62] Tr. Vol. I at 284-286.

III. CONCLUSION

Kroger respectfully requests that the PUCO grant its application for rehearing of the issues set forth above. Specifically, Kroger requests that the PUCO reconsider its decision to approve the Stipulation filed between Duke and Staff and its decision to allow Duke to use previous banked savings to achieve a shared savings incentive. As demonstrated above, the Stipulation fails to satisfy the three-part settlement test and the use of banked savings to achieve shared savings undermines the intended purpose of shared savings to encourage energy efficiency. Moreover, the PUCO's reversal of its previous decision in the 2013 Recovery Case in order to approve the Stipulation establishes bad precedent and fails to satisfy the PUCO's own established requirements regarding the reasonableness of a settlement agreement.

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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 November 25, 2016.

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Summary: Application Application for Rehearing of The Kroger Company electronically filed by Ms. Cheryl A Smith on behalf of The Kroger Co.