BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of the Ohio Developmental Services Agency for an Order Approving Adjustments to the Universal Service Fund Rider of Jurisdictional Ohio Electric Distribution Utilities	)))))	**Case No. 17-1377-EL-USF**

JOINT INITIAL POST-HEARING BRIEF OF OHIO EDISON COMPANY, THE CLEVELAND ELECTRIC ILLUMINATING COMPANY, THE TOLEDO EDISON COMPANY, DUKE ENERGY OHIO, INC., OHIO POWER COMPANY, AND THE DAYTON POWER AND LIGHT COMPANY

I. Introduction

In its May 2017 Notice of Intent ("NOI") in this proceeding, the Ohio Development Services Agency ("ODSA") identified the methodology that it intends to use in developing the annual Universal Service Fund ("USF') rider revenue requirement and rate design for purposes of its 2017 application to adjust the USF riders of all Ohio jurisdictional electric distribution utilities ("EDUs"). That application is to be filed by October 31, 2017, so the NOI process permits parties to raise objections, if needed, while allowing sufficient time for the Commission to resolve any issues before the implementation of new rates. The six EDUs that submitted Joint Reply Comments in this proceeding concerning ODSA's proposal urge the Commission to adopt it, and to reject the objections and proposed adjustments offered by The Kroger Co. ("Kroger"). The EDUs respectfully submit that, as hearing testimony confirmed, ODSA's proposed methodology is a reasonable, time-tested, and non-discriminatory methodology for developing the USF rider rate design. The EDUs also respectfully submit that Kroger's proposed modification to that methodology is unsupported by sufficient information to fully analyze its impacts, would be costly and burdensome for the EDUs to implement as a practical matter, and would likely result in cost-shifting to residential customers.

II. The Commission Should Adopt ODSA's Proposed USF Rider Rate Design Methodology and Reject Kroger's Proposed Modification to That Methodology.

A. ODSA's proposed USF rider rate design methodology is reasonable, time-tested, and non-discriminatory.

ODSA proposes to recover the annual USF rider revenue requirement for each EDU through a USF rider that incorporates a two-step, declining-block rate design. As ODSA noted in its NOI, and as ODSA's hearing testimony confirmed, the two-step, declining-block rate design proposed here is of the same type that has been approved by the Commission in all prior ODSA USF rider adjustment applications.[1] The first block of the rate will apply to all monthly consumption up to and including 833,000 kWh, with the second rate block applying to consumption greater than that amount.[2] For each EDU, the rate-per-kWh for the second rate block will be set at the lower of: (1) the PIPP charge in effect in October 1999;[3] or (2) the per- kWh rate that would apply if the EDU's annual USF rider revenue requirement were to be recovered through a single block-per-kWh rate. Thus, when an EDU's October 1999 PIPP charge exceeds the per-kWh rate that would apply if the EDU's annual USF rider revenue requirement were to be recovered through a single block-per-kWh rate, the rate for both consumption blocks will be the

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[1] ODSA Notice of Intent to File an Application for Adjustments to Universal Service Fund Riders ("NOI"), ODSA Exh. 1, at 11; *see also* Aug. 18, 2017 Hearing Transcript ("Tr.") at 15, 17.

[2] ODSA Exh. 1 at 11.

[3] Beginning July 1, 2000, the universal service rider replaced the percentage of income payment plan ("PIPP") rider in existence on the effective date of R.C. 4928.52. *See* R.C. 4928.52(A).

same.[4] Where, on the other hand, the rate for the second block is lower, large EDU customer accounts with metered usage exceeding the first-block threshold achieve some relief from the impact of the USF rider, with respect to usage above that threshold.[5]

Megan Meadows, who serves as the Assistant Deputy Chief in the Office of Community Assistance within ODSA, testified in this proceeding regarding ODSA's proposal to retain this time-tested, two-step declining-rate-block methodology.[6] Ms. Meadows confirmed in her direct testimony, as well as on cross-examination, that the NOI proposes the very same rate-design methodology that the Commission has approved for some fifteen years, since 2001.[7] As Ms. Meadows explained, in each proceeding since then, the Commission has found that the rate design complies with Ohio law, and the Commission has also previously rejected objections alleging that the rate design results in impermissible cost-shifting:

> In the NOI, ODSA proposes to retain the traditional two-step declining block rate design adopted in every proceeding since 2001. In each proceeding, the Commission has found that the rate design does not violate R.C. 4928.52(C), which requires that the USF rider rate not shift among customer classes the cost of funding low-income customer assistance programs.[8]

As proposed by ODSA, the USF rider declining block rates are energy-based charges that apply consistently to residential, commercial, and industrial customers.[9]

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[4] ODSA Exh. 1 at 11.

[5] *Id.*

[6] Testimony of Megan Meadows on Behalf of the Ohio Development Services Agency, ODSA Exh. 2; Reply Testimony of Megan Meadows, ODSA Exh. 3; Tr. 9-29.

[7] ODSA Exh. 2 at 4; Tr. at 15, 17.

[8] ODSA Exh. 2 at 5.

[9] ODSA Exh. 1 at 11.

The reasonableness of ODSA's time-tested rate design methodology is reflected in the support that it has received from the Public Benefits Advisory Board ("PBAB"). The PBAB is a statutory board charged with ensuring that energy services are provided to low-income consumers in an affordable manner, consistent with State policies.[10] As an advisory body to ODSA, the PBAB also provides recommendations concerning the appropriate level of funding for the USF.[11] James Williams, who submitted reply testimony in this proceeding and was cross-examined at the hearing, is the designated representative of the Ohio Consumers' Counsel ("OCC") on the PBAB.[12] Mr. Williams testified that, "as a matter of routine," ODSA coordinates the NOI with the PBAB before the NOI is filed with the Commission, and that in May 2017, the PBAB recommended that ODSA adopt the methodology for calculating USF revenue requirements as currently set forth in the NOI.[13] Like Ms. Meadows, Mr. Williams confirmed that "[t]he methodology that ODSA will follow for calculating the USF as outlined in the NOI remains the same as it has been for many years."[14]

The reasonableness of ODSA's proposed rate-design methodology is reflected not only in the support that ODSA has received from PBAB, but also from other parties that intervened in this proceeding. All six jurisdictional EDUs agreed in their Joint Reply Comments that ODSA's proposed rate design "strikes an appropriate balance that ensures all the Ohio EDUs' customers

[10] Reply Testimony of James D. Williams, OCC Exh. 1, at 2.

[11] *Id.*

[12] *Id.*

[13] *Id.* at 2-3.

[14] *Id.* at 7.

pay an appropriate share of the cost to assist some of Ohio's most vulnerable individuals."[15] The EDUs' hearing witness, James E. Ziolkowski, confirmed in his testimony that the statewide USF rates are properly designed under the assumption that they apply on a per-account basis, and that the rates should not be adjusted in a manner that would cause other rate payers to pick up those costs.[16] Although Duke Energy Ohio, Inc. ("Duke Energy Ohio") submitted objections to ODSA's NOI, those objections were unrelated to ODSA's rate-design methodology or its application to customers, and Duke Energy Ohio's unrelated objections were deferred for resolution until the fall hearing on ODSA's application.[17] And although Ohio Partners for Affordable Energy ("OPAE") also submitted Objections in this docket, those objections raised issues that the Commission has previously rejected,[18] and OPAE did not submit any witness testimony to support its Objections, which were thus unsupported in the evidentiary record.[19] For its part, Industrial Energy Users-Ohio ("IEU") agreed in its Reply Comments that the existing two-step declining block rate design

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[15] Joint Reply Comments of Ohio Edison Company, The Cleveland Electric Illuminating Company, The Toledo Edison Company, Duke Energy Ohio, Inc., Ohio Power Company, and The Dayton Power and Light Company, at 2.

[16] Direct Testimony of James E. Ziolkowski on Behalf of Duke Energy Ohio, Inc., Ohio Power Company, The Dayton Power And Light Company, Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company, Joint Exh.1, at 10-11.

[17] In its Objections, Duke posits that an accounting anomaly resulted in the USF fund under-reimbursing Duke Energy Ohio by $1,560,871.49. Objections of Duke Energy Ohio, Inc. to Ohio Development Services Agency's Notice of Intent to File an Application for Adjustments to the Universal Service Fund Riders, at 2. *See also* Tr. at 211-212 (Counsel for Duke informing the Attorney Examiner of Duke and ODSA's joint agreement to defer this issue until the fall hearing on ODSA's application).

[18] *E.g.*, *In the Matter of the Application of the Ohio Department of Development for an Order Approving Adjustments to the Universal Service Fund Riders of Jurisdictional Ohio Electric Distribution Utilities*, Case No. 12-1719-EL-USF, Opinion and Order at 5-6, 8-10 (Sept. 19, 2012) (where the Commission authorized a stipulation continuing the previously approved two-step declining block rate design and held that it "continue[s] to find OPAE's arguments that the two-step declining block USF rate design violates Section 4928.52(C), Revised Code, to be unpersuasive").

[19] Tr. at 26.

is lawful, as the Commission has previously confirmed.[20] Thus, the great weight of the submissions before the Commission in this proceeding confirms that ODSA's proposed rate-design methodology is not broken and does not need fixing. For the following reasons, moreover, the specific adjustment proposed by Kroger in its Objections should not be adopted.

B. The Commission should not adopt Kroger's proposed modification to ODSA's rate-design methodology.

1. Kroger's proposal should be rejected because it lacks sufficient clarity and remains an amorphous concept with inadequate support.

The record in this case is replete with evidence that Kroger's proposal should be rejected because, in part, there is insufficient information for the Commission, ODSA, the EDUs, and the PBAB to determine how the proposal would be structured, how it would be implemented, and the impact that those decisions could have on other customers.[21] As ODSA's witness explained in her Direct Testimony, Kroger failed to present information "as to how its proposal would be implemented and the number of mercantile customers affected."[22] Instead, Kroger's sole witness admitted that he did not know how many mercantile customers would be eligible to take advantage of the Kroger proposal[23] or how many accounts would be aggregated under the Kroger proposal.[24] Nor did Kroger provide "[a]ctual load information, number of businesses in each EDU service territory, and other pertinent information that would be needed to fully examine the actual impact

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[20]IEU's Reply to the Objections of OPAE, at 3-4.

[21] ODSA Exh. 3 at 5; OCC Exh. 1 at 10.

[22] ODSA Exh. 2 at 5.

[23] Kroger Exh. 2 at 7; Tr. at 43.

[24] Tr. at 43.

on the USF."[25] Kroger's lone supporting witness was not aware if Kroger had issued any discovery in this proceeding, let alone whether Kroger sought or was provided actual load information or the number of businesses located in each EDU's territory.[26] Mr. Higgins also conceded that there could be a shift of costs from the second block (above 833,000 kWh/month) to the first block,[27] as well as administrative costs associated with implementing this proposal,[28] but he did not quantify these amounts. Nor are the EDUs in a position to precisely quantify the amount of costs associated with Kroger's proposal, but those costs would certainly include the expense of performing the necessary calculations manually, or the expense to invest and upgrade entire existing billing systems to handle the aggregation of selected customer accounts.[29] The lack of detail, specifically with respect to quantification of the additional costs to be borne by other customers, is a vital component to fully examine the impact of Kroger's proposal.[30]

Kroger does not actually have a definitive proposal for the Commission to adopt, and the concepts it does suggest lack adequate support or clarity. Mr. Higgins proposes some alternative options in his pre-filed Direct Testimony. Specifically, in his Direct Testimony, Mr. Higgins suggests that if there is a shift in USF costs, the USF rider rates in each block could be adjusted.[31]

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[25] OCC Exh. 1 at 10.

[26] Tr. at 60.

[27] Kroger Exh. 1 at 9.

[28] Tr. at 59.

[29] *Id.* at 145.

[30] *See* OCC Exh. 1 at 10.

[31] Kroger Exh. 1 at 9.

But Mr. Higgins makes no proposal as to how the USF should be adjusted or structured.[32] He also proposes an application and single-bill credit process.[33] But the proposed process lacks an audit or other mechanism by which the utilities can ensure that the applications are accurate, or that the accounts on the application are continually active throughout the year.[34] The proposal also lacks clarity concerning how the EDUs will credit a corporate entity that might not be a customer, and that corporate entity could be out of state.[35] As a result, ODSA's witness maintained her opinion that "[i]nsufficient information has been presented to support this alternative."[36]

In his Reply Testimony, Mr. Higgins amended his suggestion "by expanding the [single bill credit] recommendation to include a credit ***or other suitable crediting mechanism***."[37] But Mr. Higgins did not specifically describe any other suitable type of crediting mechanism. Upon cross-examination, Mr. Higgins then seemed willing to abandon all recommendations "if there was a better way or a preferred way . . . or simpler way to do it."[38] Kroger admittedly opted for "flexibility about how this could be implemented."[39] Flexibility, however, means lack of clarity in this context, potentially leading to additional impacts on costs and other customers. Thus, Kroger's alternative proposals also lack sufficient information, or even a definitive recommendation, for the Commission's consideration.

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[32] *Id.*

[33] *Id.* at 9-10.

[34] Tr. at 47, 91-92.

[35] *Id.* at 53.

[36] ODSA Exh. 3 at 3.

[37] Tr. at 52; Kroger Exh. 2 at 5 (emphasis added).

[38] Tr. at 51.

[39] *Id.* at 52.

2. Kroger's proposal would result in additional costs and is overly burdensome for EDUs to implement.

Kroger has requested an accommodation that the EDUs cannot provide without incurring significant costs and unreasonable administrative burdens. The logistics of preparing spreadsheets with data, manually, and on a monthly basis that would track and account for not only usage, but also billing of an uncertain and potentially fluctuating number of customers, would be costly and onerous. And that problem can be magnified by a hundredfold to the extent other customers chose to participate in Kroger's proposed program.

The EDUs provided joint testimony related to these matters through witness James E. Ziolkowski. Mr. Ziolkowski is a licensed, professional engineer and has been employed with Duke Energy Ohio since 1990.[40] Mr. Ziolkowski has significant familiarity with Duke Energy Ohio's billing system and had discussions with subject matter experts with the other Ohio EDUs to become familiar with their billing systems as well.[41]

As Mr. Ziolkowski explained, Duke Energy Ohio and the other EDUs have spent millions of dollars to develop computer systems that process millions of bills each month. The retail rates incorporated into these bills are charged on an account basis, and not on an aggregated account basis.[42] This billing process is consistent with the cost causation principle of utility ratemaking. The EDUs' billing systems do more than calculate and send out bills. They also perform accounting functions, track revenue, and report on revenue. And they do so on an account-by-

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[40] Joint Exh.1 at 1.

[41] *Id.* at 2; *see also* Tr. at 89.

[42] Joint Exh. 1 at 7.

account basis. These billing systems will automatically function with very little manual intervention, and this is the most efficient and least-cost way to run the business.[43]

Despite Kroger's efforts to demonstrate otherwise, its aggregated billing proposal is simply not compatible with the EDUs' billing systems, as they currently have no way to combine or aggregate accounts for billing purposes. The only way to accomplish aggregated billing under these circumstances would be to perform the service manually.[44] This manual process would entail ongoing verification and would require additional billing manpower in order to process the payments.[45] Likewise, it would entail the processing of checks by accounts payable departments. All of the costs for such services would ultimately be subsidized by customers.[46]

Mr. Ziolkowski further demonstrated the shortcomings of Kroger's proposal by explaining that the proposed September 1 deadline for applications from customers to participate in this rate program would present difficulty because:

> Accounts don't always change hands or change ownerships on September 1 of each year. There are changes that occur throughout the year. One mercantile customer can sell an account to another customer and so there is going to have to be tracking of all of these accounts all throughout the year and not just [on] September 1.[47]

An additional matter overlooked by Kroger is the problem that occurs when customers do not pay their full bill, for various reasons. For Duke Energy Ohio, a combination utility, the Kroger proposal is complicated under this circumstance as a credit in arrears will be issued in the

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[43] *Id.* at 8.

[44] *Id.*

[45] *Id*.

[46] *Id.* at 9.

[47] Tr. at 91-92.

subsequent month. This would be problematic as the customer would receive a credit for a bill that was not paid in the first place.[48]

Additionally, as explained by Mr. Ziolkowski, the dollars Duke Energy Ohio collects each month through Rider USF are not classified as Duke Energy Ohio revenues.[49] Rider revenues are "pass through" amounts that are remitted to the ODSA.[50] Under Kroger's proposal, an EDU would pay credits against non-EDU revenue to reduce customer payments that are "pass through" items. The EDUs would need to be made whole for the loss of such revenue and that cost would likely be borne by all customers.[51]

Mr. Ziolkowski acknowledged that Duke Energy Ohio does track some account information on an aggregated basis for communication with large customers.[52] However, he further explained that none of those tracking systems are used for billing purposes as the data is not billing quality data.[53] This is significant because the purpose for which aggregated data is used is a very important distinction. Therefore, the resources required for the preparation of this limited aggregated customer data simply is not comparable to the time that would be required under Kroger's proposal for the EDUs to manually prepare monthly aggregated billings for a single large customer's multiple locations and accounts, much less the additional time and effort that would be required to prepare aggregated billings for *multiple* large customers who might apply to participate

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[48] Joint Exh. 1 at 9.

[49] *Id.* at 10.

[50] *Id.*

[51] *Id*.

[52] Tr. at 90.

[53] *Id*. at 90, 144.

in Kroger's proposed aggregation scheme. As explained by Mr. Ziolkowski, the Company does perform manual billing today in certain contexts and "*it is not a desirable circumstance*."[54]

In sum, the program that Kroger proposed in this proceeding is impractical for the EDUs. The difficulties presented by the logistics of the proposed scheme are impossible to overcome.

3. Kroger's proposal is likely to result in cost-shifting to residential customers.

Kroger's proposed modification to ODSA's rate-design methodology also likely violates Ohio law by shifting costs of the universal service rider to residential customers. Section 4928.52(C) of the Revised Code provides that "[t]he universal service rider . . . shall be set in such a manner so as not to shift among the customer classes of electric distribution utilities the costs of funding low-income customer assistance programs."[55] Interpreting R.C. 4928.52(C), the Commission has indicated that there must be a "material shift among the customer classes to violate [the provision]."[56] Here, Kroger's proposal has the potential to cause such a "material shift among the customer classes" by shifting costs that would otherwise be owed by Kroger (and by an unknown quantity of other "mercantile customers" who may apply to participate in Kroger's proposed billing plan) and placing them directly upon other customer classes, including the residential customer class, that would not qualify for the special aggregated billing Kroger wishes to receive.

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[54] Tr. at 91.

[55] R.C. 4928.52(C).

[56] *See In the Matter of the Application of the Ohio Department of Development for an Order Approving Adjustments to the Universal Service Fund Riders of Jurisdictional Ohio Electric Distribution Utilities*, Case No. 11-3223-EL-USF, Opinion and Order at 9 (Oct. 3, 2011).

For years, ODSA's rate-design methodology has ensured that there is no cost-shifting among customer classes by treating all accounts (regardless of the account holder's customer class, size, or other characteristics) exactly the same. All accounts receive a specific rate per kWh used up to and including 833,000 kWh (the first block) and another rate, if applicable, for usage above 833,000 kWh (the second block).[57] The second block of rates is always equal to or lower than the first block of rates, and the first block of rates is calculated by determining the revenue shortfall that remains after collecting the entire second block of rates.[58] Under this two-block design, it does not matter whether the account holder is a residential, commercial, or industrial customer, the rates applied equally to all accounts.

Now, though, Kroger proposes that the Commission change this established methodology and recognize a special, defined subset of customers that will receive unique billing treatment, and unique application of the two-block rate design. Specifically, Kroger wants "mercantile customers" to be allowed to aggregate the load from all their accounts prior to the application of the two-block rate design.[59] Kroger provides no justification for why only "mercantile customers" should receive this special treatment, or why a customer's status as a "mercantile customer" should be relevant to its contribution to the universal service rider.

The practical effect of Kroger's proposal is that a significant amount more of large customers' total usage (across all their facilities) would be billed at second-block rates, rather than first-block rates. As explained by Mr. Williams, witness for the OCC, this will result in other

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[57] ODSA Exh. 1 at 11.

[58] *Id.*

[59] Kroger Exh. 1 at 8.

customers — especially residential customers — paying more of the cost for the universal service fund.[60] This is because the revenue requirement for the universal service fund does not change, regardless of whether or not Kroger's proposal is implemented.[61] As a result, all customers, including customers that are not allowed to aggregate their load under Kroger's proposal (such as residential customers), will shoulder the increased burden of funding the revenue shortfall caused by Kroger and other mercantile customers' decreased USF obligations.[62] Kroger's proposal thus would shift costs from an unknown number of "mercantile customers" to other customers, including residential customers, that do not qualify for the special treatment Kroger proposes.

The potential magnitude of this cost-shifting is also concerning. Although implementation of Kroger's proposal for Kroger alone may not have a significant impact,[63] the total impact will likely be larger due to other mercantile customers taking advantage of Kroger's proposal.[64] As Mr. Ziolkowski explained on cross-examination:

> . . . based on the data request for the rates that are currently in effect, the savings would be small ***but that just applies to Kroger***. In future years it could be larger than that because rates are adjusted, the USF rates are adjusted for each EDU each year, so the savings could be substantially larger, but more importantly when we start applying [Kroger's proposal] to all other mercantile accounts who presumably would want to get in on the deal, ***then the dollars could expand dramatically and there could be cost shifting***.[65]

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[60] *See* OCC Exh. 1 at 9.

[61] *Id.*

[62] *See id.* at 10.

[63] *See* Joint Exh. 1 at 4.

[64] *See* Tr. 94, 20-24.

[65] *Id*. at 94, 14-24 (emphasis added).

In short, although it is difficult to know the full potential cost-shifting impact of Kroger's proposal at this time, it is safe to assume that many mercantile customers would seek to take advantage of the special, aggregated billing treatment proposed by Kroger. And, as a result, Kroger's proposal may result in significant cost-shifting from mercantile customers to other classes of customers, including the residential customer class. Such cost-shifting is not allowed under Ohio law and should be rejected by the Commission.

III. Conclusion

For the foregoing reasons, the six intervening EDUs jointly and respectfully ask the Commission to adopt ODSA's time-tested and reasonable proposed USF rider rate-design methodology and to reject Kroger's proposed modification to that methodology.

Respectfully submitted,

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CERTIFICATE OF SERVICE

In accordance with Rule 4901-1-05, Ohio Administrative Code, the PUCO's e-filing system will electronically serve notice of the filing of this document upon the following parties. In addition, I hereby certify that a service copy of the foregoing Joint Initial Post-Hearing Brief was sent by, or on behalf of, the undersigned counsel to the following parties of record this 28th day of August, 2017, via electronic transmission.

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