

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of The)	
Dayton Power and Light Company For)	Case No. 16-395-EL-SSO
Approval of Its Electric Security Plan.)	
)	
In the Matter of the Application of The)	
Dayton Power and Light Company for)	Case No. 16-396-EL-ATA
Approval of Revised Tariffs.)	
)	
In the Matter of the Application of The)	
Dayton Power and Light Company for)	Case No. 16-397-EL-AAM
Approval of Certain Accounting Authority)	
Pursuant to Ohio Rev. Code § 4905.13.)	

APPLICATION FOR REHEARING OF THE KROGER COMPANY

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Pursuant to R.C. 4903.10 and Ohio Adm. Code 4901-1-35, The Kroger Company (Kroger) respectfully requests rehearing of the October 20, 2017 Opinion and Order¹ issued by the Public Utilities Commission of Ohio's (Commission) in the above-referenced proceeding. In that Order, the Commission approved with material modification an amended stipulation (Amended Stipulation) to implement The Dayton Power and Light Company's (DP&L) third electric security plan. Specifically, Kroger contends that the Order is unlawful, unjust, and unreasonable in the following respects:

- A. In modifying the Amended Stipulation to require the Reconciliation Rider to be nonbypassable, the Commission erred by failing to accord the Amended Stipulation substantial weight.
- B. In modifying the Amended Stipulation to require the Reconciliation Rider to be nonbypassable, the Commission erred by violating R.C. 4903.09 inasmuch as the modification is without record support.

¹ *In the Matter of the Application of The Dayton Power and Light Company For Approval of Its Electric Security Plan, et al.*, Case Nos. 16-395-EL-SSO, et al., Opinion and Order (October 20, 2017) (Order).

- C. In modifying the Amended Stipulation to require the Reconciliation Rider to be nonbypassable, the Commission erred by transforming the Reconciliation Rider into an unlawful transition charge.

In sum, the Commission erred by materially modifying the Amended Stipulation to convert the Reconciliation Rider from bypassable to nonbypassable.

For these reasons, and as further explained in the Memorandum in Support attached hereto, Kroger respectfully requests that the Commission grant its application for rehearing and adopt the Amended Stipulation as filed that was either supported or not opposed by almost all parties.²

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² Amended Stipulation at 39-41 (March 13, 2017); DP&L Reply Brief at 1, n.1.

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MEMORANDUM IN SUPPORT

I. INTRODUCTION

In its initial application for a standard service offer (SSO) in the form of an electric security plan (ESP) filed on February 22, 2016, DP&L sought, among other things, a Distribution Investment Rider (DIR) and a Reconciliation Rider that would flow through to customers the net cost (or benefit) from DP&L's sale of its Ohio Valley Electric Corporation (OVEC) contractual entitlement into the PJM market less all associated costs (ESP III).³ Thereafter, on October 11, 2016, DP&L filed an amended application (Amended Application) wherein DP&L added a new credit support rider, Distribution Modernization Rider (DMR), to its requests. Specifically, by and through the new credit support rider, DMR, DP&L sought \$145M/year for 7 years, totally approximately \$1.015 billion.

³ *In the Matter of the Application of The Dayton Power and Light Company For Approval of Its Electric Security Plan, et al.*, Case Nos. 16-395-EL-SSO, et al. (ESP III Case).

After several settlement conferences, on January 30, 2017, DP&L, DPL Inc., and seven other signatory parties⁴ filed a stipulation (Stipulation) wherein, *inter alia*, the parties agreed to \$125M/year for five years, split between the nonbypassable DMR and the DIR-B, totaling \$625M.⁵ The first Stipulation also proposed that the OVEC Reconciliation Rider be implemented on a *nonbypassable* basis.⁶ Due to the excessive DMR amount and the nonbypassable nature of the Reconciliation Rider, among other things, the majority of the intervening parties to this proceeding -- including the Staff of the Commission (Staff) -- opposed the Stipulation and DP&L's Amended Application.⁷ Significantly, there was only one customer group that agreed to sign the Stipulation. Due to the general lack of support for the Stipulation, the parties to this proceeding renewed settlement negotiations.⁸

As a result of those continued negotiations, the parties were able to reach a compromise on some issues that resulted in the filing of another stipulation. Accordingly, on March 14, 2017, DP&L, DPL Inc., Staff, nine signatory parties (including Kroger as a signatory party),⁹ and five non-opposing parties, filed an amended stipulation, which modified several material terms of the

⁴ The signatory parties to the Stipulation were the DP&L, DPL Inc., City of Dayton, Interstate Gas Supply, Inc., Retail Energy Supply Association (RESA), Edgemont Neighborhood Coalition, People Working Cooperatively, Mid-Atlantic Renewal Energy Coalition, and Ohio Hospital Association (OHA). Two intervening parties agreed not to oppose the Stipulation.

⁵ ESP III Case, Stipulation and Recommendation (January 30, 2017) (Stipulation).

⁶ See Stipulation at 16.

⁷ The parties opposed to the Amended Application and the Stipulation included: Staff, KROGER, Office of the Ohio Consumers' Counsel, Ohio Energy Group (OEG), Industrial Energy Users-Ohio, The Kroger Co. (Kroger), Wal-Mart Stores East, LP and Sam's East, Inc., Ohio Partners for Affordable Energy (OPAE), Calpine Energy Solutions, LLC, PJM Interconnection, L.L.C., Independent Market Monitor for PJM, Utility Workers Union of America Local 175, Environmental Law and Policy Center, Environmental Defense Fund and Environmental Council, Adams County, Monroe Township, Sprigg Township, Adams County Ohio Valley School District, and Manchester Local School District.

⁸ As explained by DP&L witness Sharon Schroder, even through the January 30, 2017 Stipulation was filed, DP&L continued to negotiate with Staff and other parties. See DP&L Ex. 3 at 4 (Direct Testimony of Sharon R. Schroder).

⁹ The Signatory parties to Amended Stipulation include: DP&L, DPL Inc., Staff, Dayton, IGS, RESA, Edgemont, PWC, OHA, Kroger, OPAE, and OEG. See Amended Stipulation at 39-40.

original Stipulation (Amended Stipulation).¹⁰ Specifically, the Amended Stipulation eliminated the DIR-B and included a reduced DMR of \$105M/year for three years with a possible extension of up to two years subject to Commission approval.¹¹ Although Kroger did not support the DMR, it agreed not to oppose this provision of the Amended Stipulation taking into consideration the Amended Stipulation as a total package.¹² The Amended Stipulation also materially modified the Reconciliation Rider set forth in the prior Stipulation, authorizing it to be “charged on a *bypassable* basis, allocated to tariff classes based on an allocation method of 50% demand and 50% energy with demand being allocated on a non-shopping customers 5 coincidental peak (5 CP) basis and charged on kWh basis.”¹³

The customer groups which negotiated and signed, or agreed not to oppose, the Amended Stipulation represent a wide range of customer interests consisting of Ohio manufacturers, industrials, hospitals, suppliers, commercial consumers, and low-income residential consumers.

On October 20, 2017, the Commission issued its Order adopting and modifying the Amended Stipulation.¹⁴ On its own initiative, the Commission modified an expressly negotiated term of the Amended Stipulation providing that the Reconciliation Rider be nonbypassable instead of bypassable.¹⁵ Such a modification jeopardizes an explicitly negotiated benefit for shopping customers as part of a negotiated settlement package.

II. DISCUSSION

The Commission acted unlawfully, unreasonably, and unjustly in materially modifying the Amended Stipulation to convert the Reconciliation Rider from bypassable to nonbypassable.

¹⁰ See Amended Stipulation at 41. DP&L and MAREC filed a notice on March 24, 2017 indicating that MAREC will not oppose the Amended Stipulation.

¹¹ Amended Stipulation at 5.

¹² Id. at 4, fn. 1.

¹³ Id. at 13 (Emphasis added).

¹⁴ Order at ¶ 1.

¹⁵ Id. at ¶ 63.

Under the Amended Stipulation, the Signatory and Non-Opposing parties agreed that the Reconciliation Rider would be *bypassable*.¹⁶ This provision and term was supported or unopposed by parties representing a diverse set of interests. The Commission's material modification of the terms and provisions of the negotiated Amended Stipulation, which provided that the Reconciliation Rider would be *bypassable*, is unlawful, unreasonable, and unjust. Importantly, the Commission's material modification opens the door for parties to withdraw from the Amended Stipulation, which could result in additional litigation.¹⁷

The Commission's modification Order is unlawful, unreasonable and unjust because:

- It failed to accord the terms of the Amended Stipulation substantial weight;
- It is without record support in violation of R.C. 4903.09; and
- It transformed the Reconciliation Rider into an unlawful transition charge.

Because the Commission's modification of the Amended Stipulation regarding the Reconciliation Rider was unlawful, unreasonable and unjust, the Commission should grant Kroger's application for rehearing and abrogate or modify its Order to make the Reconciliation Rider *bypassable* as the parties negotiated. Alternatively, the Commission may provide that the Reconciliation Rider be conditionally bypassable.

¹⁶ Amended Stipulation at 13.

¹⁷ See Amended Stipulation at 38 ("This Stipulation is conditioned upon adoption of the Stipulation by the Commission in its entirety and without material modification. If the Commission rejects or modifies all or any part of this Stipulation, any Signatory Party shall have the right to apply for rehearing. If the Commission does not adopt the Stipulation without material modification upon rehearing, or if the Commission makes a material modification to any Order adopting the Stipulation pursuant to any reversal, vacation and/or remand by the Supreme Court of Ohio, then within thirty (30) days of the Commission's Entry on Rehearing or Order on Remand: (a) any Signatory Party may withdraw from the Stipulation by filing a notice with the Commission ('Notice of Withdrawal'); or (b) DP&L may terminate and withdraw from the Stipulation by filing a notice ('Utility Notice').").

A. In Modifying The Amended Stipulation To Require The Reconciliation Rider To Be Nonbypassable, The Commission Erred By Failing To Accord The Amended Stipulation Substantial Weight.

Although not binding on the Commission, it is well-established that the terms of a stipulation are to be accorded substantial weight.¹⁸ The Commission erred in modifying an expressly negotiated, material term of the Amended Stipulation to provide that the Reconciliation Rider be nonbypassable.¹⁹ By proposing that the Reconciliation Rider be bypassable, DP&L, Staff, and the other Signatory and Non-Opposing parties to the Amended Stipulation intended to ensure that shopping customers will only pay for the generation that they use. By making the Reconciliation Rider nonbypassable, shopping customers will now be forced to bear the cost associated with a fleet of uneconomic generating units. What is worse, because shopping customers take generation from competitive retail electric service (CRES) providers, upon the Commission's modification, they will be paying for generation that they do not use and will be forced to unlawfully subsidize DP&L's generation costs. Effectively, shopping customers will pay twice. As RESA witness Matthew White testified, "[b]y setting OVEC cost recovery as a bypassable charge, it preserves the right of shopping customers to select their choice of competitive generation supply."²⁰ He further explained that "[m]aking any cost recovery related to DP&L's OVEC entitlement bypassable avoids an anticompetitive subsidy that would result from collecting generation related costs through nonbypassable charges imposed on shopping customers."²¹

After numerous negotiations and the filing of one Stipulation, the parties were able to compromise on some issues that resulted in the filing of the Amended Stipulation. The

¹⁸ *AK Steel Corp. v. Pub. Util. Comm.*, 95 Ohio St.3d 81, 82, 2002-Ohio-1735, 765 N.E.2d 862.

¹⁹ Order at ¶ 63.

²⁰ RESA Ex. 1 at 12 (Direct Testimony of Matthew White).

²¹ *Id.*

Amended Stipulation modified several material terms of the original Stipulation and was supported by DP&L, DPL Inc., Staff, nine signatory parties,²² and five non-opposing parties.²³ The customer groups which negotiated and signed, or agreed not to oppose, the Amended Stipulation represent a wide range of customer interests consisting of Ohio grocers, manufacturers, hospitals, suppliers, commercial consumers, and low-income residential consumers.

While not all Signatory Parties or Non-Opposing Parties agree with every provision of the Amended Stipulation, the numerous parties agreed to either support or not oppose the settlement as a total package. Importantly, the Amended Stipulation eliminated the DIR-B and included a reduced DMR of \$105M/year for three years with a possible extension of up to two years subject to Commission approval.²⁴ The Amended Stipulation also materially modified the Reconciliation Rider set forth in the prior Stipulation, authorizing it to be “charged on a *bypassable* basis, allocated to tariff classes based on an allocation method of 50% demand and 50% energy with demand being allocated on a non-shopping customers 5 coincidental peak (5 CP) basis and charged on kWh basis.”²⁵

The terms of the Amended Stipulation (especially the modifications noted above) were expressly considered and negotiated. The Commission’s modification of an expressly negotiated material term of the Amended Stipulation, which provided that the Reconciliation Rider would be nonbypassable instead of bypassable, jeopardizes an explicitly negotiated benefit for shopping customers as part of a negotiated settlement package.

As a result of the material modification, Signatory and Non-opposing Parties have the

²² The Signatory parties to Amended Stipulation include: DP&L, DPL Inc., Staff, Dayton, IGS, RESA, Edgemont, PWC, OHA, Kroger, OP&E, and OEG. See Amended Stipulation at 39-40.

²³ Id. at 39-41.

²⁴ Amended Stipulation at 5.

²⁵ Id. at 13 (Emphasis added).

right to withdraw from the Amended Stipulation, which could result in additional litigation.²⁶ If parties withdraw from the Amended Stipulation, an evidentiary hearing will commence to afford the withdrawing party or parties an opportunity to contest the Amended Stipulation.²⁷ Even if the parties are able to arrive at a new settlement to address the Commission's modification, another amended stipulation would need to be filed and a hearing on that new stipulation will likely occur.

To honor the balance achieved by the total settlement package that was carefully negotiated and to prevent further litigation of the issues, the Commission should modify its Order and adopt the Amended Stipulation in its entirety as a total settlement package.

B. In Modifying The Amended Stipulation To Require The Reconciliation Rider To Be Nonbypassable, The Commission Erred By Violating R.C. 4903.09 Inasmuch As The Modification Is Without Record Support.

The Commission's finding that "there is potential for escalating bill impacts as shopping increases" is unsupported by the record in violation of R.C. 4903.09.²⁸ R.C. 4903.09 requires the Commission to include, with its written opinions, "reasons prompting the decisions arrived at, based upon said findings of fact." The Supreme Court of Ohio has stated that the Commission is required to "explain its decision and identify, in sufficient detail to enable review, the record evidence upon which its orders are based."²⁹ The Order did not provide record citations to

²⁶ See Amended Stipulation at 38 ("This Stipulation is conditioned upon adoption of the Stipulation by the Commission in its entirety and without material modification. If the Commission rejects or modifies all or any part of this Stipulation, any Signatory Party shall have the right to apply for rehearing. If the Commission does not adopt the Stipulation without material modification upon rehearing, or if the Commission makes a material modification to any Order adopting the Stipulation pursuant to any reversal, vacation and/or remand by the Supreme Court of Ohio, then within thirty (30) days of the Commission's Entry on Rehearing or Order on Remand: (a) any Signatory Party may withdraw from the Stipulation by filing a notice with the Commission ("Notice of Withdrawal"); or (b) DP&L may terminate and withdraw from the Stipulation by filing a notice ("Utility Notice").

²⁷ Id. at 38-39.

²⁸ Order at ¶ 63.

²⁹ *In re Comm. Rev. of Capacity Charges of Ohio Power Co.*, 147 Ohio St.3d 59, 2016- Ohio-1607 at ¶53 (April 21, 2016); see *MCI Telecommunications Corp. v. Pub. Util. Comm.*, 32 Ohio St. 3d 306, 312, 513 N.E.2d 337 (1987).

support its conclusion that there is the potential for escalating bill impacts and the Order failed to explain and identify, in sufficient detail to enable review, how there may be such a potential.

As DP&L explained in its reply brief, the argument that the Reconciliation Rider will inflate SSO costs should be rejected because: “(1) it is reasonable that SSO customers pay the Reconciliation Rider, since it relates to generation; (2) DP&L’s rates for typical residential customers will remain the lowest in the state and customers will receive a rate decrease (Shroder Test. (DP&L Ex. 3), pp. 20-21, Exs. A&B); and (3) *customers can avoid the rider by switching*.”³⁰ Indeed, even with a bypassable Reconciliation Rider, the ESP III is forecasted to reduce residential customer bills by \$39.84 over three years.³¹ Even if residential customers would not see a reduction in their bills, which they will, every customer can avoid the Reconciliation Rider by switching to a CRES provider for electric generation service. Therefore, any risk of “escalating bill impacts” can be avoided by customers shopping.

Further, the Commission’s finding that the Reconciliation Rider will “benefit customers” and its finding that “there is potential for escalating bill impacts as shopping increases,” is contradictory and inconsistent.³² In its Order, the Commission found that the Reconciliation Rider “will benefit customers because it will act as a hedge which will mitigate spikes in market prices.”³³ If the Reconciliation Rider is to “benefit customers” and operate as a “hedge” as the Commission found, under this premise, there should not be “the potential for escalating bill impacts as shopping increases” should be minimal.³⁴ If the Reconciliation Rider would benefit customers, fewer customers to share this “benefit” should therefore increase the “benefit” among

³⁰ DP&L Reply Brief at 12 (May 15, 2017) (Emphasis added) (DP&L Reply Brief).

³¹ Residential customers using 1000 kWh can expect to see a reduction of \$3.00 in 2017 (DP&L Ex. 3 at Ex. A, p. 1), \$14.76 in 2018 (DP&L Ex. 3 at Ex. A, p. 13), and \$22.08 in 2019 (DP&L Ex. 3 at Ex. A, p. 25).

³² Order at ¶ 63.

³³ Id.

³⁴ See Id.

the non-shopping SSO customers. There is also no concern for “escalating bill impacts” should be limited because every DP&L SSO customer has the option to switch to a CRES provider and avoid the Reconciliation Rider. And as Staff explained, “[s]hopping customers will be helped by the availability of the direct hedge provided by the *bypassable* Reconciliation Rider.”³⁵

Because any potential for escalating bill impacts can be avoided, the Commission should abrogate or modify its Order to provide that the Reconciliation Rider be bypassable. Additionally, because the Commission materially modified the Amended Stipulation, the Signatory and Non-opposing Parties to the Stipulation may withdraw from the agreement leading to additional litigation.³⁶

Notwithstanding the above, the Commission’s concern for the potential of escalating bill impacts as shopping increases could be alleviated or mitigated with the implementation of a “circuit breaker” provision. On rehearing, the Commission could establish an alternative to the settlement by providing for the Reconciliation Rider to be conditionally bypassable when a threshold is met. A threshold could be established so that when customers’ bill impacts reach a certain percentage or level, the Reconciliation Rider would become nonbypassable. Setting a “circuit breaker” or threshold would prevent a situation where the amounts to be recovered from customers under the Reconciliation Rider would become so large that it drives up the SSO cost. Commission approved a similar “circuit breaker” rider provision in a previous ESP case.³⁷

³⁵ Staff Initial Post Hearing Brief at 6 (May 5, 2017) (Emphasis added).

³⁶ See Amended Stipulation at 38.

³⁷ See *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan*, Case No. 10-388-EL-SSO, Opinion and Order at 10 (August 25, 2010) (“The Generation Cost Reconciliation Rider (Rider GCR) will be avoidable by customers during the period that the customer purchases retail electric generation service from a CRES provider unless the allowed balance of Rider GCR reaches five percent of the generation expense in two consecutive quarters.”)

C. In Modifying The Amended Stipulation To Require The Reconciliation Rider To Be Nonbypassable, The Commission Erred By Transforming The Reconciliation Rider Into An Unlawful Transition Charge.

Under R.C. 4928.38, the Commission is barred from authorizing “the receipt of transition revenues or any equivalent revenues by an electric utility” after December 31, 2010.³⁸ The Supreme Court of Ohio recently reversed the Commission’s approval of DP&L’s former *nonbypassable* service stability charge as an unlawful transition charge.³⁹ In the original Stipulation, the Reconciliation Rider subsidizing DP&L’s OVEC liability had the initial makings of an unlawful transition charge. However, in the Amended Stipulation, the parties agreed that the Reconciliation Rider would be bypassable. As DP&L noted in its reply brief, “transition costs are by definition ‘nonbypassable.’”⁴⁰ Indeed, the Supreme Court of Ohio explained that transition costs “are generation costs that the utility incurred to serve its customers that would have been recovered through regulated rates before competition began, but that are no longer recoverable from customers who have switched to another generation provider.”⁴¹ In other words, a transition charge is by definition nonbypassable.

Under the terms of the Amended Stipulation, the Reconciliation Rider was *bypassable* and therefore, DP&L’s generation costs in OVEC could not be recovered from customers who switched to a CRES provider. However, a *nonbypassable* Reconciliation Rider would operate identical to AEP’s RSR and DP&L’s service stability charge that the Court found to be unlawful

³⁸ R.C. 4928.38; R.C. 4928.40.

³⁹ *In re Dayton Power and Light Co.*, 147 Ohio St. 3d 166, 2016-Ohio-3490, 62 N.E.3d.

⁴⁰ DP&L Reply Brief at 23 (citing R.C. 4928.37(A)(1)(b)).

⁴¹ *In re Application of Columbus S. Power Co.*, 147 Ohio St.3d 439, 2016-Ohio-1608, 67 N.E.3d 734, ¶ 15 (finding AEP’s Retail Stability Rider (RSR) to be an unlawful transition charge).

transition charges.⁴² Therefore, when the Commission modified the Reconciliation Rider to make it nonbypassable, it transformed the rider into an unlawful transition charge.

Further, the Commission's modification of the Reconciliation Rider providing that it be nonbypassable violates Ohio policy such that it authorizes the collection of generation charges from distribution customers who shop for generation service. Under R.C. 4928.02, it is Ohio policy to:

(H) Ensure effective competition in the provision of retail electric service by avoiding anticompetitive subsidies flowing from a noncompetitive retail electric service to a competitive retail electric service or to a product or service other than retail electric service, and vice versa, including by prohibiting the recovery of any generation-related costs through distribution or transmission rates⁴³

It is also the duty of the Commission to ensure that the policies set forth in R.C. 4928.02 are effectuated.⁴⁴ By modifying the Reconciliation Rider to provide that it be nonbypassable, the Commission's Order violates Ohio's foregoing policy because shopping customers will be forced to subsidize generation-related costs that are not incurred by their generation provider.

A nonbypassable Reconciliation Rider subsidizes DP&L's generation-related costs.⁴⁵ It is undisputed that the Reconciliation Rider allows DP&L to recover generation costs associated with its contractual commitments in OVEC.⁴⁶ The Reconciliation Rider, therefore, operates to subsidize DP&L's generation costs in OVEC. Finally, a nonbypassable Reconciliation Rider is collected through distribution rates. Because the Commission modified the Reconciliation to be nonbypassable, all distribution customers will pay this charge, including customers who purchase generation from a CRES provider. Notwithstanding, the Commission has found that an

⁴² See *Id.*; see also *In re Application of Dayton Power & Light Co.*, 147 Ohio St.3d 166, 2016-Ohio-3490, 62 N.E.3d 179, ¶ 1 (2016).

⁴³ R.C. 4928.02(H).

⁴⁴ R.C. 4928.06.

⁴⁵ RESA Ex. 1 at 12 (Direct Testimony of Matthew White).

⁴⁶ See Tr. Vol. IV at 755; see also DP&L Ex. 3 at 13:17-19 (Direct Testimony of Sharon R. Schroder).

electric distribution utility's SSO must comply with State policies in R.C. 4928.02.⁴⁷ Subsidizing DP&L's interest in OVEC through a nonbypassable rider violates Ohio's policy under R.C. 4928.02(H).

Agreeing that the Reconciliation Rider would be bypassable ensured that shopping customers would only pay for generation costs incurred by their CRES supplier. Upon the Commission's modification, shopping customers must now also subsidize DP&L's generation-related costs. Accordingly, the Commission's modification of the Reconciliation Rider in its Order fails to effectuate Ohio policy under R.C. 4928.02(H) and violates R.C. 4928.06.

The Commission's Order is, therefore, unreasonable and unlawful. Accordingly, the Commission should abrogate or modify its Order making the Reconciliation Rider bypassable.

III. CONCLUSION

For the foregoing reasons set forth herein, Kroger respectfully requests that the Commission grant its application for rehearing of the issues set forth above and abrogate or modify its Order that provides that the Reconciliation Rider be nonbypassable and adopt the terms and provisions of the Amended Stipulation in their entirety and without modification. Alternatively, Kroger respectfully requests that the Commission consider adopting a provision whereby the Reconciliation Rider would be conditionally bypassable.

⁴⁷ *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Approval of a Market Rate Offer to Conduct a Competitive Bidding Process for Standard Service Offer Electric Generation Supply, Accounting Modifications Associated with Reconciliation Mechanism, and Tariffs for Generation Service, et al.*, Case Nos. 08-936-EL-SSO, et al., Opinion and Order at 13-14 (Nov. 25, 2008).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was served via electronic mail on the following parties on November 20, 2017.

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Summary: App for Rehearing Application for Rehearing of The Kroger Co. electronically filed by Mr. James D Perko on behalf of The Kroger Co.