BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Ohio Power Company for an Increase in Electric Distribution Rates.	))))	Case No. 20-0585-EL-AIR
In the Matter of the Application of Ohio Power Company for Tariff Approval.	)))	Case No. 20-0586-EL-ATA
In the Matter of the Application of Ohio Power Company for Approval to Change Accounting Methods.	)))	Case No. 20-0587-EL-AAM

OBJECTIONS TO THE STAFF REPORT
OF THE KROGER CO.

I. INTRODUCTION

On April 29, 2020, Ohio Power Company (AEP) filed a notice of intent to file an application for an increase in its electric distribution rates with the Public Utilities Commission of Ohio (Commission).[1] Thereafter, on May 6, 2020, the Commission ordered, among other things, that the test period shall begin to run on November 30, 2019, and shall end on November 30, 2020, with a date certain set as of December 31, 2019.[2] AEP filed its application for an increase in its electric distribution rates on June 8, 2020.[3] Significantly, AEP's application seeks a substantial increase in distribution base revenues of over 60%, or $402 million.[4]

On November 18, 2020, the Staff of the Commission (Staff) filed its Staff Report of Investigation in the above-captioned proceeding.[5] Thereafter, on November 25, 2020, Staff filed

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1 Pre-filing Notice of AEP at 1 (April 29, 2020).

2 Entry at ¶ 13 May 6, 2020).

3 Application at 4 (June 8, 2020).

4 Id., Schedule A-1; Staff Report at 38 (November 25, 2020).

5 Staff Report (November 18, 2020).

a new, replacement Staff Report in its entirety to correct errors (Staff Report).[6] Despite filing a replacement Staff Report on November 25, 2020, the Commission issued an Entry on December 10, 2020, stating that the Staff Report shall be deemed filed on November 18, 2020.[7] R.C. 4909.19 requires that objections to the Staff Report be filed "within thirty days after such filing and the mailing of copies thereof." Nonetheless, in accordance with the Commission's December 10, 2020 Entry and without waiving any arguments that the Commission incorrectly reduced the time period for filing objections set forth in R.C. 4909.19, The Kroger Co. (Kroger) hereby respectfully submits its objections to the Staff Report pursuant to R.C. 4909.19 and Ohio Adm. Code 4901-1-28.

Kroger reserves the right to supplement or modify these objections in the event that Staff makes additional findings, conclusions, or recommendations with respect to the Staff Report. Kroger also reserves the right to respond to objections or other issues (either in support or in opposition) raised by other parties in these proceedings.

II. OBJECTIONS TO STAFF REPORT

A. Kroger Objects to the Staff Report to the Extent it Fails to Analyze or Evaluate AEP's Various Consolidation Proposals.

1. AEP's Proposal to Consolidate Rates between Service Territories.

Kroger objects to the Staff Report because it fails to recommend rejection of, or even evaluate, AEP's proposal to consolidate rates between service territories. More specifically, AEP proposed to consolidate the rates between the Ohio Power and Columbus Southern Power Zones.[8] The Columbus Southern Power Zone currently has lower distribution rates than that of the Ohio

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6 Staff Report (November 25, 2020).

7 Entry at ¶ 12 (December 10, 2020).

8 Staff Report at 41 (November 25, 2020)

Power Zone. Consequently, a cost shift will result from Ohio Power customers to Columbus Southern Power customers. In general, principles of cost causation do not support the consolidation of distribution rates because distribution territories are unique and most infrastructure investment serves either one of the utilities, but *not both* utilities jointly. While consolidation may be a matter of convenience for AEP, that alone is not a valid justification for the resulting cost shift. As such, the Staff Report should have recommended the rejection of this proposal.

2. AEP's Proposal to Consolidate the General Service Customer Classes.

Kroger objects to the Staff Report because it fails to clarify how minimum billing demand will be handled if the General Service (GS) customer classes are consolidated. Without such clarification, it is unknown what the impact of consolidating those rate classes would be in calculating the minimum billing demand. .

3. AEP's Proposal to Consolidate Tariffs and Shift Revenues from Demand-Based Charges to Energy-Based Charges.

Kroger objects to the Staff Report because it fails to evaluate AEP's proposal to consolidate the tariffs for non-demand billed customers with demands below 10 kW and demand-billed customers with demands above 10 kW, by shifting revenues from the demand based charges to energy based charges.[9] Without a more thorough analysis there is uncertainty regarding the impact on customers' rates and ensuring that charges are based on cost causation.

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9 Id. at 44-45.

B. Kroger Objects to the Staff Report to the Extent it Recommends an Overstated Revenue Requirement that Does Not Take into Account the Substantial Risk Mitigation Granted to AEP Through Commission-Approved Riders.

Kroger objects to the recommendation in the Staff Report of an unreasonable and unjust revenue requirement for AEP. Specifically, the Staff Report recommends a revenue requirement in the range of $901,428,666 to $921,950,845.[10] Such a recommendation represents an increase of 36 percent to 39 percent over test year operating revenue.[11] The Staff Report's recommendation in this regard is based upon only one month of actual test year data and failed to include the Two-Month Update filed by AEP on July 31, 2020 consistent with the Commission's standard filings requirements. The use of updated actual data, as opposed to projected data, provides a more accurate account of actual test year data. Interestingly, the use of the updated actual data resulted in a lower requested revenue requirement by AEP.[12]

In addition, Kroger objects to the Staff Report to the extent it recommends a rate of return of 7.15% to 7.70% and a return on equity of 8.76% to 9.78%.[13] In making such recommendations, the Staff Report failed to account for the reduced risk to AEP as the sole provider of electric distribution service within its service territory and as the recipient of extensive, guaranteed cost recovery through the numerous Commission-approved riders that it charges to customers.

AEP is the exclusive provider of electric distribution service within its service territory, facing no competition from other electric distribution utilities. Moreover, in Case Nos. 16-1852-EL-SSO, et al., the Commission authorized several riders under AEP's amended ESP III extension (ESP IV) that allow AEP timely and full recovery for many of its costs. For instance, the

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10 Staff Report, Schedule A-1 (November 25, 2020).

11 Id. at 1.

12 See AEP's updated proposed Schedule A-1 (July 31, 2020).

13 Staff Report, Schedule A-1 and Schedule D-1.

Commission approved the Distribution Investment Rider (DIR), which compensates AEP for reliability and infrastructure improvements for the term of its ESP[14] and the Power Purchase Agreement Rider (PPA Rider) that allows AEP to recover costs for an aging and unprofitable coal plant for the term of ESP IV.[15] Other riders that AEP is currently operating under include the Enhanced Service Reliability Rider (ESSR), which charges customers for tree trimming costs[16] and the Storm Damage Recovery Rider (SDRR), which compensates AEP for storm damage expenses that it incurs.[17]

These Commission-approved riders effectively eliminate AEP's risk of recovery for many costs associated with its distribution system by ensuring that the Company is able to recover its dollar-for-dollar costs on a timely basis. The substantial risk mitigation that these riders provide obviates the need for the Commission to adopt the excessive rate of return that the Staff Report recommends. In addition, the current economic environment does not appear to support AEP's proposed cost of long-term debt. AEP, having already secured guaranteed recovery from customers for many of its costs, does not also require a 7.15% to 7.70% rate of return. The Staff Report should have recommended a lower range, or at a minimum, a rate of return at the low end of the range.

Finally, in allocating the revenue requirement among classes, it is important to move toward the goal of aligning rates with cost responsibility in order to achieve a fair and equitable outcome for all customers.

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[14] ESP IV Order at ¶ 46.

[15] Id. at ¶ 53.

[16] Id. at ¶ 111.

[17] Id. at ¶ 109.

C. Kroger Objects to the Staff Report to the Extent it Does Not Take into Account the Impact of the COVID-19 Pandemic Occurring during a Majority of the Test Year and to the Extent the Commission allowed AEP Deferral Authority for COVID-19 related Expenses and Foregone Revenue.

Kroger objects to the Staff Report to the extent it does not take into account the impact and ramifications of the global COVID-19 pandemic that occurred during the majority of the test year and continues to occur today. Indeed, AEP proposes to include costs associated with COVID-19, but there does not appear to be a similar inclusion for savings resulting therefrom. As a result of COVID-19, businesses in AEP's service territory were forced to shut down, and employees were laid off or otherwise lost their jobs. It is indisputable that COVID-19 has had detrimental impacts on the economy and such impacts should be taken into account in considering any potential rate increases to AEP's customers. As such, the Staff Report should have taken into account the COVID-19 pandemic in making its recommendations on AEP's application.

In addition, Kroger objects to the Staff Report to the extent it does not address or consider the deferral authority that the Commission granted AEP in Case Nos. 20-602-EL-UNC, et al. for its COVID-19 related expenses and foregone revenue, which AEP seeks in its application here to recover as regulatory assets through its Bad Debt Rider.[18] Another aspect of COVID-19 that the Staff Report did not account for when proposing a rate of return are the costs that AEP has avoided during the pandemic.[19] For example, in its March 20, 2020 Entry, the Commission suspended its rules regarding meter readings and later, directed AEP to track all costs that it avoided because of the pandemic.[20] The Staff Report should have accounted for this cost reduction in its

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[18] Application at 4.

[19] *In the Matter of the Proper Procedures and Process for the Commission's Operations and Proceedings During the Declared State of Energy and Related Matters,* Case No. 20-591-AU-UNC, Entry at ¶¶ 1, 9 (March 20, 2020).

[20] *In the Matter of the Application of Ohio Power Company for Approval of its Temporary Plan for Addressing the COVID-19 State of Emergency*, Case No. 20-602-EL-UNC, Opinion and Order at ¶ 62 (May 6, 2020).

recommendation. Lastly, while AEP cited COVID-19 and the resulting financial risk as a consideration in its proposed rate of return,[21] AEP did not present any data or studies supporting its assertion.

D. Kroger Objects to the Staff Report to the Extent It Fails to Recommend the Rejection of Certain Riders.

Kroger objects to the Staff Report to the extent that it allows AEP to include various ESP riders in its rate case application. Indeed, if AEP's proposed modifications to these various ESP riders are removed from the calculation, AEP's proposed increase in its base revenue distribution rate of $402 million, would actually be a net revenue increase of $42 million. Accordingly, the Staff Report should have recommended the withdrawal of certain riders, including the DIR, the ESRR, and the Pilot Throughput Balancing Adjustment Rider (PTBAR).

With respect to the DIR, the Staff Report includes unjust and unreasonable recommendations. The Commission established the DIR in AEP's ESP II[22] and subsequently authorized its continuation under AEP's ESP IV.[23] Now, in the above-captioned proceeding, AEP proposed modifying the calculation of the DIR (without authority to do so), increasing the rate caps beyond the Commission's previously recommended amounts, and recovering for expenses without demonstrating to Staff and stakeholders the resulting benefits to customers.[24] Kroger acknowledges and appreciates the Staff Report's recommendations regarding the DIR insomuch as they are more beneficial to customers than AEP's DIR proposal. However, Kroger objects to the Staff Report's recommendations, as they are unjust and unreasonable in the following aspects.

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21 AEP Testimony (McKenzie) at 12 (June 11, 2020).

22 *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Ohio Rev. Code in the form of an Electric Security Plan* , Case Nos. 11-346-EL-SSO, et al., Opinion and Order at 46-47 (August 8, 2012).

23 ESP IV Order at ¶ 46.

24 Staff Report at 12-13.

First, Kroger objects to the immediate collection of any funds under the DIR. The Staff Report's recommendation to implement the DIR *in this proceeding* is inconsistent with the statutory framework governing an application to increase electric distribution rates pursuant to R.C. 4909.18 and the fixation of those rates.[25] The purpose of a distribution rate case is to set base rates that customers pay going forward. Pursuant to R.C. 4909.18, when an EDU submits an application to increase rates, it must submit a "complete operating statement *of its last fiscal year*, showing in detail all its receipts, revenues, and incomes from all sources, all of its operating costs and other expenditures, and any analysis such public utility deems applicable to the matter referred to in said application." (Emphasis added.) Consequently, AEP's expenses included in its DIR proposal should already be incorporated in the base rates that it will collect after this case is resolved. Therefore, it is unnecessary to impose additional costs, including carrying charges, on AEP's customers through the DIR at this time.

Second, Kroger objects to the DIR revenue caps that the Staff Report has proposed.[26] As a general matter, Kroger supports limits to rider charges but opposes the Staff Report's recommendations because they are not reasonably calculated to benefit customers. The Staff Report stated that it based its DIR revenue cap recommendations on AEP's desired spend and the Commission's previously stated maximum growth rate of 3% to 4%.[27] However, the Staff Report did not explain how its chosen rate caps are connected to service reliability or other demonstrable benefits to customers. Accordingly, Kroger objects to the Staff Report's recommended DIR rate caps as they are excessive and arbitrary.

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[25] See R.C. 4909.15.

[26] Staff Report at 12.

[27] Id.

Third, Kroger objects to the Staff Report's failure to recommend that AEP incorporate refund language into the DIR tariffs. The Supreme Court of Ohio has consistently held that because ratemaking is prospective only, absent any refund language within a rider's tariffs, neither the Court nor the Commission can order an EDU to provide customers a refund.[28] Therefore, requiring AEP to include refund language in the DIR's tariffs would afford customers greater protection.

E. Kroger Objects to the Staff Report to the Extent it Does Not Address the Electric Vehicle Component of AEP's Demand Side Management Plan.

As an initial matter, Kroger generally agrees with the recommendations in the Staff Report regarding AEP's proposed Demand Side Management (DSM) plan. Specifically, the Staff Report appropriately recommended that the Commission prohibit AEP from including $40.2 million in DSM Plan expenses in the rate base and $3.66 million for an "administration fee".[29] In addition, Kroger agrees that with the note that the market should be offering EE/DSM programs.[30]

That being said, Kroger objects because the Staff Report was silent on the electric vehicle (EV) component of AEP's DSM plan. Specifically, Kroger objects to any attempt by AEP to own EV technology. As the Commission well knows, Ohio law has embraced a competitive market approach ever since the passage of Am.Sub.S.B. No. 3, 148 Ohio Laws, Part IV, 7962 ("S.B. 3") in 1999, which went into effect in January 2001. Indeed, R.C. 4928.02(H) makes it is the official state policy to:

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[28] See, e.g., *In re Ohio Edison Co.*, 157 Ohio St.3d 73, 2019-Ohio-2401, 131 N.E.3d 906, ¶ **23** (holding that, "[m]oreover, despite our finding that the DMR is unlawful, no refund is available to ratepayers for money already recovered under the rider. R.C. 4905.32 bars any refund of recovered rates unless the tariff applicable to those rates sets forth a refund mechanism. FirstEnergy's tariffs for the DMR, however, contain no refund mechanism.").

[29] Staff Report at 20-21.

[30] Id. at 21.

> **Ensure effective competition in the provision of retail electric service** by avoiding anticompetitive subsidies flowing from a noncompetitive retail electric service to a competitive retail electric service or to a product or service other than retail electric service, and vice versa, including by prohibiting the recovery of any generation-related costs through distribution or transmission rates.[31]

Because R.C. 4928.06 provides that the Commission "shall ensure that the policy specified in section 4928.02 of the Revised Code is effectuated," the Staff Report should not have disregarded the importance of the state's policy. Allowing EDU ownership and operation of EV services and technology conflicts with this state public policy.

Finally, to the extent the Staff Report suggests that AEP can offer EE programs to non-shopping customers and recover the costs thereof through a bypassable rider,[32] Kroger objects as there is no legal support or foundation for providing such a recovery mechanism in a rate case.

III. CONCLUSION

Kroger respectfully submits these Objections to the Staff Report in this proceeding, which frame the major issues in the case, and looks forward to a full discussion of these issues presented herein with Staff, AEP, and other stakeholders as this proceeding continues.

Respectfully submitted,

/s/ Angela Paul Whitfield
Angela Paul Whitfield (0068774)
Carpenter Lipps & Leland LLP
280 North High Street, Suite 1300
Columbus, Ohio 43215
Telephone: (614) 365-4100
Email: paul@carpenterlipps.com
(willing to accept service by email)

Counsel for The Kroger Co.

31 R.C. 4928.02(H) (emphasis added).

32 Staff Report at 21.

CERTIFICATE OF SERVICE

The Public Utilities Commission of Ohio's e-filing system will electronically serve notice of the filing of this document on the parties referenced on the service list of the docket card who have electronically subscribed to the case. In addition, the undersigned hereby certifies that a copy of the foregoing document also is being served via electronic mail on December 18, 2020 upon the parties listed below.

/s/ *Angela Paul Whitfield*
Angela Paul Whitfield
Counsel for The Kroger Co.

bojko@carpenterlipps.com
angela.obrien@occ.ohio.gov
Christopher.healey@occ.ohio.gov
kboehm@BKLlawfirm.com
mkurtz@BKLlawfirm.com
jkylercohn@BKLlawfirm.com
Werner.margard@ohioattorneygeneral.gov
Steven.darnell@ohioattorneygeneral.gov
Andrew.shaffer@ohioattorneygeneral.gov
mfleisher@dickinsonwright.com
dborchers@bricker.com
kherrnstein@bricker.com
jspottswood@bricker.com
dparram@bricker.com
rmains@bricker.com
mpritchard@mcneeslaw.com
rglover@mcneeslaw.com
bethany.allen@igs.com
joe.oliker@igs.com
michael.nugent@igs.com

Attorney Examiners:
Sarah.Parrot@puco.ohio.gov
Greta.See@puco.ohio.gov

stnourse@aep.com
cmblend@aep.com
mjsettineri@vorys.com
glpetrucci@vorys.com
dromig@armadapower.com
little@litohio.com
hogan@litohio.ocm
mleppla@theOEC.org
tdougherty@theOEC.org
ctavenor@theOEC.org
whitt@whitt-sturtevant.com
fykes@whitt-sturtevant.com
cgrundmann@spilmanlaw.com
dwilliamson@spilmanlaw.com
ccox@elpc.org
rdove@keglerbrown.com