**Op0opaeBEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of the )

Ohio Development Services Agency for ) Case No. 20-1103-EL-USF

An Order Approving Adjustments to the )

Universal Service Fund Riders of )

Jurisdictional Ohio Electric Distribution )

Utilities. )

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**REPLY TO OBJECTIONS AND COMMENTS**

**OF OHIO PARTNERS FOR AFFORDABLE ENERGY**

On May 29, 2020, the Ohio Development Services Agency (“ODSA”) filed its Notice of Intent to file an Application to adjust the Universal Service Fund (“USF”) Rider, following the procedure established by the Stipulation approved by the Commission in the Opinion and Order in Case No. 19-1270-EL-USF issued on September 11, 2019. By Entry issued on June 8, 2020, the Attorney Examiner established a procedural schedule for the instant case, requesting that any objection or comments regarding the rate design proposed by ODSA be filed by June 26, 2020. Comments were filed by Kroger and FirstEnergy. Ohio Partners for Affordable Energy (“OPAE”) hereby offers this reply to the filed comments.

1. **INTRODUCTION**

OPAE has been an intervenor in every Universal Service Fund (“USF”) case filed since the General Assembly authorized the program in 1999. The statutory provision regarding the USF Rider is straightforward:

**4928.52 Universal service rider.**

(A) Beginning July 1, 2000, the universal service rider shall replace the percentage of income payment plan rider in existence on the effective date of this section and any amount in the rates of an electric utility for the funding of low-income customer energy efficiency programs. The universal service rider shall be a rider on retail electric distribution service rates as such rates are determined by the public utilities commission pursuant to this chapter. The universal service rider for the first five years after the starting date of competitive retail electric service shall be the sum of all of the following:

(1) The level of the percentage of income payment plan program rider in existence on the effective date of this section;

(2) An amount equal to the level of funding for low-income customer energy efficiency programs provided through electric utility rates in effect on the effective date of this section;

(3) Any additional amount necessary and sufficient to fund through the universal service rider the administrative costs of the low-income customer assistance programs and the consumer education program created in section 4928.56 of the Revised Code.

(B) If, during or after the five-year period specified in division (A) of this section, the director of development, after consultation with the public benefits advisory board created under section 4928.58 of the Revised Code, determines that revenues in the universal service fund and revenues from federal or other sources of funding for those programs, including general revenue fund appropriations for the Ohio energy credit program, will be insufficient to cover the administrative costs of the low-income customer assistance programs and the consumer education program and provide adequate funding for those programs, the director shall file a petition with the commission for an increase in the universal service rider. The commission, after reasonable notice and opportunity for hearing, may adjust the universal service rider by the minimum amount necessary to provide the additional revenues. The commission shall not decrease the universal service rider without the approval of the director, after consultation by the director with the advisory board.

(C) The universal service rider established under division (A) or (B) of this section 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.

O.R.C. 4928.52(A) addressed the Rider structure for the first five years after passage of the legislation. The balance of the section guides the development and approval of the Rider beyond that period. Over the years, a process has evolved that minimizes litigation and establishes Rider levels based on the most recent actual information prior to implementation. Any objections to the Rider design are dealt with in Phase One of the case, with the actual Riders set based on cost data through September of the year prior to the new Rider’s implementation.

OPAE has previously litigated the appropriateness of ODSA’s preferred rate design, a declining block rate available only to the largest industrial customers, in previous cases. Those challenges failed. As a result, OPAE chose not relitigate the argument in this proceeding.

Two parties, Kroger and jointly by The Cleveland Electric Illuminating Company, The Ohio Edison Company, and The Toledo Edison Company (collectively “FirstEnergy”) filed comments or objections to the proposal. OPAE addresses each pleading in turn.

1. **THE OBJECTIONS FILED BY KROGER TO THE STRUCTURE OF THE RIDER ARE UNREASONABLE AND ILLEGAL UNDER O.R.C. 2938.52(C).**

Kroger, as it has in previous years, argues that the declining block rate proposed by ODSA discriminates against a “mercantile customer” as defined by O.R.C. 4928.01(A)(19). Kroger also notes that some utilities voluntarily permit commercial customers to aggregate accounts to qualify for certain benefits or rate designs. Kroger makes two separate proposals: 1) mercantile customers should be able to aggregate all of its accounts in order to qualify for the declining block rate proposed by ODSA; or 2) mercantile customer should be able to aggregate multiple meters from buildings in a campus setting which are under the same management. According to Kroger, the former would allow the aggregated facilities to receive benefits and avoid costs, while the latter would allow the customer “to pay a more equal share of the costs associated with the USF Rider.” [[1]](#footnote-1)

Kroger’s proposal is unreasonable and illegal and should be rejected. The primary statutory barrier to Kroger’s proposal is O.R.C. 4928.52(C), which forbids the USF Rider from shifting costs among customer classes. There are three customer classes: residential, commercial, and industrial. While the two-block rate design has been in place as a result of a stipulation since 2001, its applicability has always been limited to customers with usage of greater than 833,000 per month at a single meter, a very limited eligibility. The stipulation filed in the first Rider case in 2001, and subsequent stipulations approved by the Commission have all noted that the cost shift from those paying the Rider based on the declining block rate and all other ratepayers is *de minimus*.[[2]](#footnote-2)

Expanding the applicability of the declining block rate to mercantile customers under common ownership would likely run afoul of the Statute because the cost shift would no longer be *de minimus*. In order to make a case that such an expansion would not violate O.R.C. 4928.52(C), Kroger would need to provide data adequate to determine the rate impact and level of cost shift from mercantile customers to other customers. It has not done so.

In addition, Kroger is seeking to turn commercial customers into industrial customers. They are not. The statute speaks to shifting costs among customer classes. Under the current declining block rate design and criteria, on large industrial customers benefit, but part of that cost shift is absorbed by industrial customers, which minimizes the impact on commercial and residential customers. Expanding the eligibility to mercantile customers, a unique classification that is not a ‘customer class’ within the meaning of O.R.C. 4928.52(C), would both violate the statute and is unreasonable because it seeks to classify commercial customers as industrial customers.

There is no disparity to rectify here, no benefits to be allocated, nor are Kroger stores paying an unreasonable share of the costs of USF Rider programs. ODSA has chosen to permit a *de minimus* cost shift that benefits the largest industrial customers, and is paid by all customers, including those that benefit because they still must pay the final first tier rate. Programs funded by the USF Rider have been judged by the General Assembly to be system costs, so there are no benefits to be allocated. There is no showing that Kroger stores are paying an unreasonable share of the costs; the stores are paying the same rate that everyone else pays, the intent of the statute.

The statute calls for a rate design that does not shift costs between customer classes. In OPAE’s prior challenge to the rate design, the Commission faulted the argument because it failed to quantify the shift among customer classes. The requirement should reasonably apply to a party seeking to qualify for the declining block rate; it must be required to prove that such treatment would not result in a shift of costs among customer classes. Kroger has not done so. Absent such a showing, its request is unreasonable and illegal, and should be rejected by the Commission.

1. **THE ADEQUACY OF THE UNIVERSAL SERVICE RIDERS RESERVES TO FUND THE COSTS OF THE PERCENTAGE INCOME PAYMENT PLAN AND RELATED PROGRAMS AND FACTORING IN THE IMPACT OF COVID-19 ARE RELEVANT ISSUES AND REQUIRE GUIDANCE FROM THE COMMISSION.**

FirstEnergy raises two issues, both of which are relevant and deserve consideration. The third factor to be considered by ODSA, “other cash flow considerations base on [ODSA’s} experience” is too amorphous. Nonetheless, there needs to be a way to evaluate the need and adequacy for future funding. In previous years, ODSA provided the Public Benefits Advisory Board (“PBAB”) with significant data on program participation, program costs, payment behavior, the impact of HEAP payments on PIPP, and other factors that would affect the size of the USF Rider. That information is no longer provided, putting parties to this proceeding somewhat in the dark.

The impact of the COVID-19 crisis also presents significant challenges. There are a number of moving parts that need to be considered. First, the disconnection moratoria have resulted in customers staying connected, but also reduced bill payment compliance for all customers, not just those on PIPP. Second, Congress has provided additional funding for the Home Energy Assistance Program (“HEAP”) through the CARES Act, funding that was first available to customers on July 1, 2020 when the Summer Crisis Program opened, and neither OPAE members nor ODSA have a good sense of how our clients will respond to what is a new program. Keep in mind that the structure of HEAP benefits can have a major impact on PIPP. Third, at this point we do not have a good sense of how many customers now qualify for PIPP because they have lost their jobs or businesses, and have had their incomes reduced to the point where the household is eligible. This is an atypical year from everyone’s vantage point.

There are two practical options available to address these concerns: ODSA can initiate settlement talks to address these issues; or, as FirstEnergy suggests, the Commission can instruct ODSA to provide additional data and revise the application to better define the steps for developing the revenue requirement, and the implications of the COVID-19 pandemic. In either event, OPAE, as an organization will special knowledge of low-income customer bill payment assistance programs and issues, pledges to assist in the process.

1. **CONCLUSION**

OPAE urges the Commission to reject Kroger’s attack on the current rate design through its proposal to shift costs among customer classes in violation of the statute. OPAE also requests that the Commission provide guidance on the best approach to take on projecting the revenue requirement and gauging the impact of the COVID-19 pandemic on level of revenue that must be generated by the USF Rider.

Respectfully submitted,

/s/ **David C. Rinebolt** David C. Rinebolt (0099353)

(Practice temporarily authorized

pending admission under Gov. Bar R. 1, Sec. 19.)

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**CERTIFICATE OF SERVICE**

 I certify that this Motion to Intervene and Memorandum in Support of Ohio Partners for Affordable Energy was filed electronically through the Docketing Information System of the Public Utilities Commission of Ohio on July 6, 2020. The PUCO’s e-filing system will electronically serve notice of the filing of this document on the parties subscribed to these proceedings.

/s/ **David C. Rinebolt**

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1. Motion to Intervene and Objections and Comments by The Kroger Company (June 26, 2020) at 12. [↑](#footnote-ref-1)
2. [↑](#footnote-ref-2)