**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

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| In the Matter of the Application of the Ohio Development Services Agency for an Order Approving Adjustments to the Universal Service Fund Rider of Jurisdictional Ohio Electric Distribution Utilities.  | ))))) | Case No. 20-1103-EL-USF |

**REPLY COMMENTS**

**BY**

**THE OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

# I. INTRODUCTION

The Office of the Ohio Consumers’ Counsel (“OCC”) files these Reply Comments, on two issues, for residential electric consumers in Ohio. One issue is that Kroger wants to pay less for support of the Universal Service Fund (“USF” or “Fund”) that provides low-income electric customer assistance programs for Ohioans. It proposes to pay less to the Fund by aggregating its electric load across its multiple facilities and accounts within an electric utility’s service territory. Kroger’s proposal to pay less would mean other customer classes, including residential consumers, would pay more. The Ohio General Assembly addressed this issue years ago in R.C. 4928.52(C), where it prohibited the shifting of the costs of the Fund among customer classes.

In this Reply, OCC will address the above comments by Kroger and a different issue raised by FirstEnergy.[[1]](#footnote-3)

# II. CONSUMER PROTECTION COMMENTS

## Kroger’s proposal to pay less for the costs of the low-income customer assistance programs (which would result in other customers paying more) is unlawful under R.C. 4928.52(C).

Ohio law states that the Universal Fund 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.”[[2]](#footnote-4) Under that law, a customer class (or customers within that class) cannot shift their payment of costs for the Universal Service Fund to other customers within another customer class. So Kroger’s cost-shifting proposal cannot be granted under R.C. 4928.52(C).

Under Kroger’s load aggregation proposal, Kroger would pay less for the Universal Service Fund than other similarly situated customers.[[3]](#footnote-5) This means that other customers, including residential and even low-income residential PIPP customers, would pay more. Specifically, Kroger proposes that it be allowed to combine the monthly electricity usage for the separately metered accounts of all its stores in a utility’s service territory into one customer account for purposes of calculating what it pays towards the USF.[[4]](#footnote-6) This would reduce the amount that Kroger contributes to support low-income Ohioans under the USF.

Kroger is proposing “application of the two-step declining block rate design methodology so that the two tiers apply to mercantile customers with multiple sites on an aggregated monthly consumption basis.”[[5]](#footnote-7) Under the two-tier rate design, all customers pay the same amount per kWh for all monthly consumption up to 833,000 kWh. The rate per kWh for energy usage above 833,000 kWh in the second block is based on PIPP rates in effect in October 1999. Kroger’s proposed rate design would essentially create a new class of customers for multi-site mercantile entities. Under the proposed revision, Kroger would be able to aggregate individual customer consumption for the sole purpose of taking advantage of the lower-priced, second-tier rate. Kroger’s plan would therefore benefit Kroger (to the detriment of other customer classes) by lowering its payment to the USF for funding low-income customer assistance programs.

Some history is in order. Kroger’s proposal in this case is virtually identical to the proposals that it made in the 2017 USF case[[6]](#footnote-8) and in the 2018 USF rider case.[[7]](#footnote-9) In both cases Kroger requested authority to aggregate its electric load across multiple facilities within an EDU service territory for the purpose of calculating its payment obligation towards the USF. In both cases, the PUCO correctly denied Kroger’s proposal, as contrary to Ohio law.[[8]](#footnote-10)

The Kroger proposal in this docket is no more developed now than it was when the PUCO rejected the proposal in October 2017. There are no additional details in Kroger’s filed comments for this year that would enable the PUCO to evaluate to determine the feasibility of aggregating Kroger load and to guarantee compliance with Ohio law.

Kroger’s comment, that even though each Kroger facility has its own electric account, they all operate under common control and ownership, works against what it is trying to accomplish.[[9]](#footnote-11) The two-block rate design for the USF is based on an individual account basis, and not common ownership and control of a corporate interest.

Kroger contends that multi-location customers like Kroger are not treated the same as other large commercial and industrial customers that use all their energy under a single account, with a single meter, and at a single location. But Kroger, with multiple locations and individual meters at each location, should not be treated the same as large-consumption customers served by a single meter. That is, Kroger’s proposal that its individual stores be able to aggregate their electric consumption across multiple facilities within the EDUs service territory and then apply that aggregated load to the USF Rider kWh rates defeats the two-step declining block rate methodology. And it causes unlawful cost-shifting between customer classes in violation of R.C. 4928.52(C).

Currently, any customer using less than 833,000 kWh per month pays the same USF per kWh charge in a given service territory.[[10]](#footnote-12) Any customer (including any Kroger facility) that uses more than 833,000 kWh on an individual account is provided a discount through a two-tier “declining block” rate structure, qualifying for electricity pricing based upon the declining second-block rate.[[11]](#footnote-13)

We note that a single-tier USF rate is likely the most appropriate under R.C. 4928.52(C). But OCC has generally not opposed the declining block two-tier rate design in the past. And for this year OCC is again not intending to oppose the two-tier USF rate design, in the circumstance where the PUCO again rejects the Kroger proposal.

The PUCO should approve the methodology outlined in the ODSA’s filing as soon as possible, so that ODSA can finalize its USF rate case filing regarding low-income customer assistance programs.

1. **FirstEnergy’s proposal to change how ODSA would calculate a reserve related to rates for the low-income assistance Fund should not be adopted.**

ODSA’s Notice of Intent (“NOI” or “Notice”) includes a reserve in its USF Rider revenue requirement methodology to account for PIPP-related cash flow fluctuation throughout the year.[[12]](#footnote-14) The reserve has historically been calculated using factors that include monthly deficits and projected beginning year accounts balances. In 2019, ODSA added an additional factor to the reserve calculation, to take into account other cash flow considerations based on ODSA’s experience.[[13]](#footnote-15) This factor is also a part of ODSA’s 2020 filing.[[14]](#footnote-16)

FirstEnergy objects to this third factor because, in the utility’s view, the proposal lacks defined parameters.[[15]](#footnote-17) But FirstEnergy makes no proposal to improve the methodology in calculating the reserve. Also, FirstEnergy alleges that the methodology used to calculate the reserve in the past is insufficient to address current volatility in the USF associated with the COVID-19 pandemic.[[16]](#footnote-18) But once again, FirstEnergy didn’t provide any current PIPP demographic or other financial information that can be used to evaluate the pandemic’s impact on the USF. FirstEnergy fails to make any proposals or ways to mitigate the financial impact associated with the coronavirus on the USF.

The amount of the reserve should be kept as accurate as possible so that customers are not subjected to substantial variances in overcollections or undercollections in the USF rates year by year. However, the rate case filing that ODSA will make later in 2020 should be an indicator of what should be the required level of the reserve going forward in 2021. When ODSA files the rate case in October 2020, the proposed rates will be based on test year data that includes the actual cost of PIPP since March 2020 when the pandemic began in Ohio. Any changes that ODSA made in the PIPP eligibility criteria to help customers remain on PIPP during these difficult times will be reflected in the test-year costs.

# iiI. CONCLUSION

 The USF Rider funds low-income customer assistance programs administered by the ODSA. This program provides a lifeline to hundreds of thousands of low-income Ohioans who otherwise are at risk of being unable to maintain their utility service. The program is all the more important for at-risk Ohioans during the current health and financial crises.

The funding of this low-income program was established by the legislature, which (in R.C. 4928.52(C)) anticipated and barred the prospect of customers seeking to reduce their payment to the Fund (by shifting their costs for other customers to pay). Under the law, the PUCO cannot approve any proposal, including Kroger’s proposal, to shift the costs of the low-income USF to other customer classes such as to residential customers. Kroger’s proposal should be denied.

The other issue is that FirstEnergy has an objection to a component of ODSA’s calculation of the revenue requirements for the low-income Fund. FirstEnergy did not substantiate its objection and it should be denied.

The process for enabling ODSA to proceed with the funding of the low-income customer assistance programs should proceed.

Respectfully submitted,

 Bruce Weston (0016973)

 Ohio Consumers’ Counsel

 */s/ Amy Botschner O’Brien*

 Amy Botschner O’Brien (0074423)

 Counsel of Record

 David Bergmann (0086027)

 Assistant Consumers’ Counsel

 **Office of the Ohio Consumers’ Counsel**

 65 East State Street, 7th Floor

 Columbus, Ohio 43215

Telephone [O’Brien] (614) 466-9575

Telephone [Bergmann]: (614) 466-9569

Amy.botschner.obrien@occ.ohio.gov

David.Bergmann@occ.ohio.gov

 (willing to accept service by e-mail)

**CERTIFICATE OF SERVICE**

 I hereby certify that a copy of these Reply Comments was served on the persons stated below via electronic transmission, this 6th day of July 2020.

 */s/ Amy Botschner-O’Brien*

 Amy Botschner-O’Brien

 Assistant Consumers’ Counsel

The PUCO’s e-filing system will electronically serve notice of the filing of this document on the following parties:

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1. Motion to Intervene and Objections and Comments by the Kroger Co. (“Kroger Comments”), Case No. 20-1103-EL-USF (June 26, 2020); Comments of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company (“First Energy Comments”), Case No. 20-1103-EL-USF (June 26, 2020). [↑](#footnote-ref-3)
2. R.C. 4928.52(C). [↑](#footnote-ref-4)
3. Kroger Comments at 7-9. [↑](#footnote-ref-5)
4. Kroger Comments at 8-9. [↑](#footnote-ref-6)
5. Kroger Comments at 8. [↑](#footnote-ref-7)
6. *In the Matter of the Application of the Ohio Development Services Agency for an Order Approving Adjustments to the Universal Service Fund Riders of Jurisdictional Ohio Electric Distribution Utilities*, (“2107 USF Rider Order”), Case No. 17-1377-EL-USF, Motion to Intervene and Objections and Comments by the Kroger Co. (June 30, 2017). [↑](#footnote-ref-8)
7. *In the Matter of the Application of the Ohio Development Services Agency for an Order Approving Adjustments to the Universal Service Fund Riders of Jurisdictional Ohio Electric Distribution Utilities*, (“2018 USF Rider Order”), Case No. 18-0976-EL-USF, Motion to Intervene and Objections and Comments by The Kroger Co. (June 29, 2018). [↑](#footnote-ref-9)
8. *In the Matter of the Application of the Ohio Development 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, Opinion and Order (Oct. 11, 2017 at 27-28)*.*  [↑](#footnote-ref-10)
9. Kroger Comments at 10. [↑](#footnote-ref-11)
10. 20-1103-EL-USF Entry at 3. [↑](#footnote-ref-12)
11. *Id*. [↑](#footnote-ref-13)
12. Case No. 20-1103-EL-USF, NOI at 8 (May 29, 2020). [↑](#footnote-ref-14)
13. Case No. 19-1270-EL-USF, NOI at 7 (May 30, 2019). [↑](#footnote-ref-15)
14. Case No. 20-1103-EL-USF, NOI at 8 (May 29, 2020). [↑](#footnote-ref-16)
15. FirstEnergy Comments at 2 (June 26, 2020). [↑](#footnote-ref-17)
16. *Id*. at 4. [↑](#footnote-ref-18)