BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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.	)	Case No. 09-906-EL-SSO

THE KROGER CO.'S INITIAL POST HEARING BRIEF

I. INTRODUCTION

On October 20, 2009, Ohio Edison Company ("Ohio Edison"), The Cleveland Electric Illuminating Company ("CEI") and The Toledo Edison Company ("Toledo Edison") (collectively "FirstEnergy") filed an application ("Application") for a market rate offer ("MRO") pursuant to Ohio Revised Code (R.C.) Section 4928.142. Generally, the MRO Application seeks approval of a competitive bidding process to procure customers standard service offer ("SSO") electric generation supply.

On November 3, 2009, The Kroger Co. intervened in the above captioned proceeding. The Kroger Co. is one of the largest grocers in the United States. The Kroger Co. receives distribution service from Ohio Edison and Toledo Edison, generally taking service under the General Primary ("GP") Rate. Previously a FirstEnergy generation customer, The Kroger Co. is currently procuring generation service from a Competitive Retail Electric Service ("CRES") supplier in the FirstEnergy service territory. The Kroger Co. does not have significant load in the CEI service territory.

The tariff rates all FirstEnergy customers pay (both shopping and non-shopping) should generally be based upon the cost incurred by FirstEnergy to serve those customers. Subsidies from shopping customers for the benefit of non-shopping customers should be eliminated. Special cost burdens assigned to GP and GS customers should also be eliminated. These are essential elements of any MRO as a matter of basic fairness as well as to facilitate the development of a vibrant market for retail electric choice in Ohio. To achieve these goals, The Kroger Co. recommends the following:

- The Cost Reconciliation Rider ("Rider GCR") must be made avoidable for shopping customers after May 31, 2011.
- The cost of FirstEnergy's proposed Economic Development Rider ("Rider EDR") must be shared by customer classes other than the GP and the General Service ("GS") class.
- Other proposals to "mitigate" rate increases by shifting costs solely to GP and GS must not be adopted.

For the reasons more fully set forth herein, the Commission should not approve the FirstEnergy's Application unless it is modified in accordance with The Kroger. Co.'s above listed recommendations. Lack of comment on a particular part of the MRO Application neither indicates The Kroger Co.'s support or opposition to that portion of the Application.

II. ARGUMENT

A. Rider GCR Must be Avoidable for Shopping Customers.

FirstEnergy seeks to utilize its existing Rider GCR in order to remain "revenue neutral in the procurement of SSO generation service".[1] FirstEnergy also proposes to modify

[1] Testimony of Santino L. Fanelli (October 20, 2009), PUCO Case No. 09-906-EL-SS0 ("Fanelli Testimony") at 8.

the current Rider GCR so that all lost revenues resulting from proposed time-differentiated pricing options are recovered through Rider GCR.[2] As structured in the Stipulation entered in the FirstEnergy ESP proceeding, Rider GCR is unavoidable until May 31, 2011.[3] Thus, customers taking service from a CRES supplier are also required to pay Rider GCR.

Generally, The Kroger Co. does not object to FirstEnergy remaining revenue neutral with respect to its procurement of SSO generation for those customers that do not shop with a CRES supplier. However, Rider GCR should only be recovered from customers taking SSO generation service from FirstEnergy. Customers not receiving generation supply from FirstEnergy do not cause any cost associated with procuring generation supply and thus Rider GCR is simply an unwarranted subsidy from shopping customers to non-shopping customers.[4]

This subsidy is exacerbated by the introduction of time-differentiated pricing options proposed in the Application. These pricing options will allow customers taking service on FirstEnergy's SSO generation rate to lower their costs by giving customers pricing incentives to reduce energy consumption during periods of peak demand. Generally, The Kroger Co. is supportive of time-differentiated pricing options since time differentiated pricing more accurately reflects cost of service. However the "lost revenue" that results from the proposed pricing options should not be recovered from shopping customers, as these "lost revenues" relate exclusively to FirstEnergy's SSO generation costs.[5]

FirstEnergy's SSO generation customers that select these new pricing options will benefit from lower electric rates as the dynamic price options reflect the lower cost to serve

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[2] Id. at 8-9.
[3] Rider GCR was made unavoidable in PUCO Case No. 08-935-EL-SSO.
[4] Testimony of Kevin C. Higgins (December 4, 2009), PUCO Case No. 09-906-EL-SSO ("Higgins Testimony") at 5.
[5] Id.

these customers. All FirstEnergy SSO generation customers, including those that do not select time-differentiated pricing options, will benefit from reduced consumption during periods of peak demand, as the cost to procure FirstEnergy's entire SSO load is reduced. As FirstEnergy's witness Mr. Fanelli admits "over time if these (time-differentiated pricing) options become more viable, and are determined to be appropriate to maintain, going forward, that the auction or the wholesale, would reflect that modified customer behavior in the, clearing price. . . generally speaking that could potentially put a downward pressure on the clearing price."[6]

In the FirstEnergy ESP the Commission acknowledged the cost causation basis for time-differentiated pricing, stating "FirstEnergy should work with Staff, and other stakeholders, to develop a means of transitioning FirstEnergy's generation rate schedules to a more appropriate rate structure which takes into consideration of *time-varying generation costs* of serving different customers" (emphasis added).[7] Thus, there is a cost-causative rationale for recovering the revenue loss from within the SSO group. Shopping customers, conversely, are not responsible for causing FirstEnergy's SSO generation procurement costs, will not benefit from the time differentiated pricing options, and thus should not be included in Rider GCR true-up mechanism.[8]

The subsidy to non-shopping customers created by an unavoidable Rider GCR also creates an undue barrier to purchasing generation from a CRES supplier by artificially inflating the price for CRES generation supply.[9] Artificially high prices for CRES generation supply hinders the development of competitive retail electric choice markets in Ohio, directly

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[6] Transcript Vol. 4 (January 5, 2010) PUCO Case No. 09-906-EL-SSO ("Tran. Vol. 4"), at 581-582.
[7] Opinion and Order (December 18, 2008) PUCO Case No. 08-835-EL-SSO, at 23.
[8] Higgins Testimony at 6.
[9] Id. at 5.

contrary to Ohio's stated policy set forth in R.C. 4928.02(H) to "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."

In order to ensure the development of a robust retail electric choice market as set forth in R.C. 4928.02, Rider GCR must be designed to eliminate unwarranted subsidies from shopping customers to non-shopping customers. Specifically, Rider GCR must be made avoidable for shopping customers after May 31, 2011.

B. The Cost of Rider EDR Must be Shared by Customer Classes Other than the GP and the GS Class.

FirstEnergy proposes to mitigate the impact of rate increases to lighting customers taking service under rate schedules STL and TRF by capping any increase to these rate schedules by 5% annually. FirstEnergy proposes to recover all lost revenues that result from the rate mitigation of schedules STL and TRF through Rider EDR, on a non-avoidable basis, solely from customers taking service under rate schedules GS and GP.[10] In the Application, FirstEnergy offers no basis for requiring only the GS and GP class to pay the cost of mitigating rates for lighting customers. When asked, FirstEnergy's witness Mr. Fanelli did not know of any benefit that GS and GP customers receive as a result of the STL and TRF rate caps.[11]

All customer classes, including commercial customers that receive electric service on the GS and GP rate schedule, have been burdened by higher energy costs and a difficult

[10] Fanelli Testimony at 10.
[11] Tran. Vol. 4. at 585:

> Q. . . . the fact that STL and TRF customers get a rate cap, that doesn't benefit GS and GP customers at all, does it?
> A. I can't think of a specific benefit.

economy. In addition, Ohio's commercial customers face increasing competition from outside of the state of Ohio as a result on increasing internet commerce and continued globalization. Increased rates will no less affect customers of the GS and GP class than the other customer classes served by FirstEnergy. For these reasons, if the Commission finds it in the public interest to mitigate the rate impact on Rates STL and TRF, then the burden of that cost should be borne proportionately by all customer classes.

C. Other Proposals to "Mitigate" Rate Increases by Shifting Costs to the GP and GS Customers Should Not be Adopted.

Similar to FirstEnergy's proposal to mitigate rates for the STL and TRF classes, other parties to this proceeding have proposed methods to "mitigate" rate increases of one rate class, by capping the percent rate increase that class may receive annually, and shifting the costs of the rate cap to GP and GS customers.[12] However, by "mitigating" the rate increases for one class of customers, the negative affects of the rate increase are amplified for GP and GS customers. As already noted, the commercial customers served on the GP and GS schedule are facing their own economic difficulties. Shifting all increased costs to certain "disfavored" classes is not a legitimate principle of rate making and risks overburdening GP and GS customers with obscenely high electric bills. Further, simply because the GP and GS classes previously have been required to subsidize the cost of service for other rate classes, does not mean these unwarranted subsidies must continue.[13] For these reasons, the Commission should not approve *any* proposal that caps rate increases to certain customers,

[12] For example, Ohio Energy Group's witness Baron proposes a rate cap for the General Transportation ("GT") class. Mr. Baron proposes that all lost revenues that results from the rate cap be recovered from the GP and GS classes through non-bypassable rider EDR. Testimony of Steven J. Baron (December 4, 2009), *PUCO* Case No. 09-906-EL-SSO at 13.

[13] Witness Baron states that one of the primary reasons he proposes shifting the cost of his rate cap proposal to the GP and GS classes is that it is consistent with the rates in FirstEnergy's current ESP. Trans. Vol. 4. at 469. It should be noted that FirstEnergy's current ESP is a product of a negotiated stipulation, the terms of which are a total package, and should not be viewed as precedent for future rate cases.

only to shift those rate increases to the GP and GS classes.

III. CONCLUSION

Before approving FirstEnergy's MRO The Kroger Co. respectfully requests that the Commission modify FirstEnergy's MRO application in accordance with the recommendations made herein.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of *The Kroger Co.'s Initial Post Hearing Brief* was served upon the following parties of record or as a courtesy, via U.S. Mail postage prepaid, express mail, hand delivery, or electronic transmission, on January 8th, 2010.

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