BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of Aligning Electric Distribution Utility Rate Structure With Ohio's Public Records Policies to Promote Competition, Energy Efficiency, and Distributed Generation.	)))))	Case No. 10-3126-EL-UNC

COMMENTS OF THE KROGER CO.

These comments are in response to an Order by the Public Utilities Commission of Ohio in the above-captioned matter, seeking comment on its review of Ohio's electric distribution utilities ("EDU") rate structures to determine whether modification of those structures would better align utility performance with Ohio's desired public policy outcomes.

The Kroger Co. ("Kroger") is one of the largest grocers in the United States, Headquartered in Ohio, Kroger operates approximately 2,500 grocery stores across the United States. As a large customer in mostly commercial rate classes, Kroger has a unique perspective which may prove valuable in evaluating the issues addressed in this docket. Additionally, Kroger is deeply committed to energy efficiency measures both as a way to manage costs and to operate in an environmentally responsible and sustainable manner.

As a preliminary matter, the Commission seeks here to deal specifically with the question of disincentives to EDU's; however, Kroger believes that the customer side of the equation is at least as important, both with respect to equity and efficiency concerns. Kroger would point out that to the extent an EDU must rely upon its customers and their consumption practices in order to meet statutory goals, non-cost based rate designs

that fail to appropriately incent customer behavior in favor of energy conservation will not assist an EDU in meeting its energy efficiency goals. To that end, Kroger supports the setting of proper price signals through time-of-use pricing and proper alignment of demand charges with demand-related costs as means of incentivizing customer behavior to assist in furthering Ohio's energy efficiency goals. Similarly, Kroger advises against the implementation of inappropriate non-bypassable charges for variable cost elements that distort price signals and fail to effectively or sufficiently encourage customer behavior in favor of the adoption of energy efficiency measures.

(3) If the Commission adopts a decoupling rate design, which rate design should it use: SFV, decoupling adjustment, lost revenue recovery adjustment, or some combination of these?

Kroger recommends against adoption of a conventional decoupling adjustment[1] or a lost revenue recovery adjustment.

Decoupling Adjustment

As a general proposition, revenue decoupling is an example of single-issue ratemaking, which occurs when utility rates are adjusted in response to a change in a single cost or revenue item considered in isolation. Single-issue ratemaking ignores the multitude of other factors that otherwise influence rates, some of which could, if properly considered, move rates in the opposite direction from the single-issue change. This concern notwithstanding, Kroger acknowledges that decoupling may be authorized by the Commission pursuant to Ohio Revised Code 4928.66 (2) (D).

In considering the merits of decoupling, the Commission should take into consideration that decoupling provides unwarranted insulation to the utility from the

[1] By "conventional decoupling adjustment," Kroger means a single-issue rate adjustment intended to retain a target recovery of utility fixed costs.

effects of price elasticity. Generally, all sellers of goods face a risk that price increases will reduce sales. But, with decoupling, if customers respond to utility rate hikes by reducing their electricity consumption, fixed charges are increased to compensate the utility for any resultant reduction in per-customer usage. Such an increase reflects an undue reduction of utility risk, unless it is properly coupled with a corresponding downward adjustment to the utility's allowed return on equity.

Perhaps the greatest problem with decoupling is that it leads to rate adjustments that have nothing to do with decoupling's stated objective of neutralizing a utility's financial disincentive to support energy efficiency. In some jurisdictions, decoupling is allowed to impact rates when customer consumption responds to influences such as weather, although decoupling can be implemented on a weather-normalized basis. To the extent that customers reduce usage in response to weather or adverse economic conditions, or such customers otherwise practice self-funded energy conservation, these behaviors will needlessly be captured in the decoupling adjustment and unduly increase rates to customers, even tough these factors are wholly unrelated to supporting energy efficiency measures. Because revenue decoupling captures the effects of far more phenomena than utility-sponsored efficiency programs, it is as much a generic "revenue assurance" mechanism as it is a conservation enabling tool.

Lost Revenue Recovery

Utilities sometimes argue that lost revenue recovery should accompany energy efficiency programs because such recovery would allow utilities to recoup fixed cost recovery that is foregone due to the sales reduction associated with utility-sponsored energy efficiency programs. Because a portion of fixed costs are included in volumetric rates, when sales volume changes, fixed-cost recovery is impacted, all other things being equal.

The primary problem with this argument is that it focuses on the sales impact of energy efficiency in isolation – and in the real world, all other things do not remain equal. In practice, the implementation of energy efficiency programs does not imply that a utility will be unable to fully recover its fixed costs. For example, even after mandated energy efficiency requirements are taken into account, retail load may continue to grow (or remain flat) for some utilities. Thus, utilities may not experience an absolute reduction in fixed-cost recovery relative to the fixed-cost recovery that is reflected in rates at any point in time, even in the presence of utility-sponsored energy efficiency programs.

Kroger does not dispute that the reduction in sales due to energy efficiency represents a lost opportunity for the utility to make a sale and earn margins (i.e., revenue in excess of variable cost) on that sale. However, for ratemaking purposes, such a lost opportunity is decidedly distinct from under-recovery of fixed costs. Rates are set to provide utilities a fair opportunity to recover their fixed costs (among other things), but customers are under no obligation to ensure that utilities are "made whole" for lost opportunities.

If a utility experiences material net reductions in load as a direct result of meeting statutory mandates, then the argument for recovery of lost revenues would have a more reasonable basis than for utilities whose retail loads are not declining. In such a case, the consideration of lost revenues should be limited to the net loss in load attributable to the Company's programs. That is, lost revenue treatment should be limited to the lesser of the absolute reduction in retail load (i.e., as offset by load growth) or the reduction in load attributable to the utility's energy efficiency programs.

SFV Rate Design

One advantage of SFV rate design is that it removes fixed cost recovery from rate components based on throughput (i.e., per kilowatt-hour or per-therm charges). Kroger supports the removal of fixed-cost recovery from charges based on throughput as a matter of good rate design, as it improves the alignment of costs and charges. It also has the effect of mitigating the utility disincentive to support energy conservation. To this extent, Kroger is supportive of principles embodied in SFV rate design.

However, Kroger also offers a note of caution. SFV rate design emphasizes customer charges as a means of recovering fixed costs. Two important distinctions must be made here:

(1) As a matter of principle, Kroger fully supports aligning customer-related costs with customer charges. However, proper determination of customer charges requires that identification of customer-related costs be accurately ascertained in the first instance. For electric service, this requires a distribution cost-of-service study that takes into account the fact that a significant portion of the investment required to provide distribution

facilities is directly related to the number of customers and their geographic dispersion on the utility's system; distribution cost-of-service methodologies that accomplish this objective are presented in the NARUC Electric Utility Cost Allocation Manual ("NARUC Manual") pages 86-99, but are not necessarily utilized in Ohio. Before customer charges can be more heavily-utilized as a means of recovering utility fixed cost, methodologies that allocate the cost of poles and conductors strictly on the basis of class demand should be replaced with one of the distribution cost-of-service methodologies that more accurately captures customer-related costs, such as one of the methods endorsed in the NARUC Manual.

(2) Costs that are determined to be demand-related and are allocated to customer classes based on a demand metric should not be recovered in a customer charge for demand-billed classes, but should be recovered in demand charge. Demand-related costs are associated with the amount of fixed costs each customer requires; thus, they are properly recovered on the basis of customer "size", i.e., customer billing demand. This is important both on the basis of fairness across customers, as well as the sending of proper price signals. Thus, Kroger recommends against adoption of an extreme variant of SFV rate design in which demand-related (or size-related) costs are shifted into the customer charge for demand-billed classes.

(4) If the Commission adopts a decoupling rate design in electric distribution rates:

(a) Should that rate design be applied only to residential rate classes? What other rate classes should be considered?

Kroger recommends against adoption of decoupling for any customer classes. If decoupling is adopted by the Commission, then it should not be applied to non-residential customers because it is particularly inappropriate for this group.[2]

The target metric commonly used in revenue decoupling is "average fixed-cost recovery per customer" – that is, this metric, or something similar to it, is typically targeted to be held constant by the operation of the decoupling rate adjustment. However, for non-residential customers, an adjustment mechanism that holds constant the "average fixed-cost recovery per customer" is highly problematic and without merit.

As a threshold matter, given the tremendous diversity among non-residential customers, the concept of an "average" non-residential customer in this context is meaningless: it simply is not a valid metric to be attempting to hold constant in the first place. The average fixed-cost recovery per non-residential customer will vary for several reasons wholly unrelated to energy efficiency. For one thing, it will be very sensitive to changes in the *composition* of the customers within a non-residential customer class; thus, the opening or closing of a major manufacturing plant would impact "average fixed-cost recovery per customer" without at all being representative of utility-sponsored conservation programs. Yet a decoupling mechanism would invariably trigger a rate change from such occurrences. Moreover, changes in the overall economy are far more likely to influence average fixed-cost recovery per customer for

[2] Kroger's discussion of decoupling in response to Questions 4, 5, and 6 refers to the decoupling rate adjustment in the conventional sense of a single-issue rate adjustment intended to retain a target recovery of utility fixed costs. Kroger's views on SFV are addressed in response to Question 3.

non-residential customers than energy conservation programs. Application of revenue decoupling to these customers would result in undue changes in rates in response to economic factors that are wholly unrelated to utility energy efficiency programs.

In addition, ORC 4928.66 (2) (c) provides that qualifying mercantile customers may commit their demand-response or other customer-sited capabilities for integration into the electric distribution utility's demand-response, energy efficiency, or peak demand reduction programs energy efficiency efforts. Because customers participating in such a program would be directing their own energy efficiency investments, there is no reasonable basis for adjusting the rates of these customers to rectify the *utility's* disincentive to support energy efficiency programs. Consequently, mercantile customers that are self-directing their energy efficiency efforts and which are exempt from utility cost recovery for energy efficiency should be specifically excluded from any decoupling rate adjustments.

(c) Should the company's return on equity be reduced to reflect a reduced risk to the company?

Yes. Decoupling reduces the volatility of a utility's revenue recovery. This reduction of risk should be reflected in a utility distribution company's allowed return on equity if a decoupling mechanism is adopted.

(5) If the Commission adopts some element of a decoupling rate design:

(a) Should adjustments be made on a total revenue, per customer revenue, or some other basis?

If a decoupling rate design is adopted, adjustments should be based on revenues required for fixed cost recovery (i.e., excluding commodity or generation costs) on a per-customer basis. (Kroger notes, however, that this metric is not reasonably applicable to

non-residential customers, as discussed above.) If fixed cost recovery is not normalized on a per-customer basis, then decoupling adjustments could occur based purely on changes in number of customers. This makes little sense and is not congruent with the stated purpose of decoupling as a means to neutralize utility disincentives to support energy efficiency. (This metric is also highly problematic if applied to non-residential customers, as decoupling adjustments would become very sensitive to changes in economic conditions.)

(b) Should adjustments be normalized for weather?

Yes. The stated purpose of decoupling is to remove utility disincentives to support energy efficiency. Weather-driven rate impacts are a side effect of decoupling that is unrelated to the purpose of decoupling.

(c) Should the Commission adopt any special features to shield consumers from volatile adjustments (e.g., caps, collars, bands)?

Yes. If decoupling is adopted, it is reasonable to adopt rate impact caps to mitigate unintended consequences. In no case should the percentage rate increase from decoupling exceed the target percentage increase in energy efficiency mandated for the utility.

(6) If the Commission determines that a decoupling rate design should be implemented to eliminate or mitigate the throughput incentive in electric distribution rates:

(a) When should this change occur (i.e., in what types of actions before the Commission should this change be implemented)?

Decoupling should only be implemented as part of a distribution rate case proceeding so that the implications for allowed return on equity can be considered by the Commission.

CONCLUSION

The Commission should consider consumer behavior in fashioning a remedy to the "throughput incentive" problem. Consumers are unlikely to commit to energy efficiency measures if a chosen rate design does not favor such commitment. The implementation of a "remedy" that would burden customers with non-bypassable charges that distort price signals fails to encourage customer behaviors that further Ohio's energy efficiency policy. Any rate design remedy to the "throughput incentive" must be carefully evaluated to make certain that the throughput incentive is accurately measured and requires costs to be equitably allocated.

Respectfully submitted,

John W. Bentine (0016388)
Email: jbentine@cwslaw.com
Direct Dial: 614.334.6121
Mark S. Yurick (0039176)
Counsel of Record
Email: myurick@cwslaw.com
Direct Dial: 614.334-7197
CHESTER WILLCOX & SAXBE LLP
65 E. State Street, Suite 1000
Columbus, Ohio 43215
Telephone: 614.221.4000
Facsimile: 614.221.4012
Attorneys for The Kroger Co.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing *Comments of The Kroger Co.* was served this 11th day of February, 2011 upon the following via electronic mail and U.S. regular mail, postage prepaid:

Mandy Willey
Attorney Examiner
The Public Utilities Commission of Ohio
180 E. Broad Street
Columbus, Ohio 43215
Email: mandy.willey@puc.state.oh.us

David F. Boehm
Michael L. Kurtz
Boehm, Kurtz & Lowry
36 East Seventh Street, Suite 1510
Cincinnati, Ohio 45202
Email: dboehm@BKLlawfirm.com
Email: mkurtz@BKLlawfirm.com

William T. Reisinger
Nolan Moser
Trent A. Dougherty
Elizabeth Camille Yancey
Ohio Environmental Council
1207 Grandview Avenue, Suite 201
Columbus, Ohio 43212-3449
Email: will@theoec.org
Email: Nolan@theoec.org
Email: trent@theoec.org
Email: Camille@theoec.org

Henry W. Eckhart
Sierra Club
50 West Broad Street, #2117
Columbus, Ohio 43215
Email: henryeckhart@aol.com

Christopher J. Allwein
Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215
Email; allwein@occ.state.oh.us

Samuel C. Randazzo
Joseph E. Oliker
Frank P. Darr
McNees Wallace & Nurick LLC
21 East State Street, 17th Floor
Columbus, Ohio 43215
Email: sam@mwncmh.com
Email: joliker@mwncmh.com
Email: fdarr@mwncmh.com

Joseph P. Meissner
The Legal Aid Society of Cleveland
1223 West 6th Street
Cleveland, Ohio 44113
Email: jpmeissn@lasclev.org

Michael K. Lavanga
Brickfield, Burchette, Ritts & Stone, P.C.
1025 Thomas Jefferson Street, N.W.
8th Floor, West Tower
Washington, DC 20007
Email: mkl@bbrslaw.com

Mark S. Yurick