

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of)	
Columbus Southern Power Company)	
and Ohio Power Company for)	Case No. 11-346-EL-SSO
Authority to Establish a Standard)	Case No. 11-348-EL-SSO
Service Offer Pursuant to §4928.143,)	
Ohio Rev. Code, in the Form of an)	
Electric Security Plan.)	

In the Matter of the Application of)	
Columbus Southern Power Company)	Case No. 11-349-EL-AAM
and Ohio Power Company for)	Case No. 11-350-EL-AAM
Approval of Certain Accounting)	
Authority.)	

THE KROGER CO.'S APPLICATION FOR REHEARING


Pursuant to Ohio Revised Code ("O.R.C.") Section 4903.10 and Ohio Administrative Code ("O.A.C.") Rule 4901-1-35, The Kroger Co. ("Kroger") submits this Application for Rehearing of the August 8, 2012 Opinion and Order ("Order") issued by the Public Utilities Commission of Ohio ("Commission") in AEP-Ohio's Application for Authority to Establish a Standard Service Offer in the form of an Electric Security Plan. Specifically, the Commission's Order is unreasonable because it failed to adequately address two issues that significantly impact Kroger and similarly situated customers in the AEP-Ohio service territory.

First, with respect to the Retail Stability Rider ("RSR"), the Commission failed to make a finding regarding Kroger's argument that the RSR improperly recovers capacity costs through an energy charge. Second, the Commission failed to make a finding with respect to Kroger's argument that the Distribution Investment Rider ("DIR") should be assigned to the former Ohio Power Company ("OP") rate zone and Columbus Southern

Power ("CSP") rates zone in a separate and distinct manner until such time as a distribution rate case provides a basis and a plan for merging the distribution rates.

Accordingly, Kroger respectfully requests that the Commission grants this Application for Rehearing and reverse its August 8, 2012 Order for the reasons set forth in the attached Memorandum in Support.

Respectfully submitted,


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MEMORANDUM IN SUPPORT

I. INTRODUCTION

On January 27, 2011, CSP and OP (jointly, "AEP-Ohio") filed an application for a standard service offer ("SSO"), pursuant to Section 4928.141, Revised Code ("ESP 2"). On September 7, 2011, a Stipulation and Recommendation ("Stipulation") was filed for the purpose of resolving all the issues raised in the ESP 2 cases and several other AEP-Ohio cases pending before the Commission. On December 14, 2011, the Commission issued its Opinion and Order in the consolidated cases, finding that the Stipulation, as modified, be adopted and approved.

On January 1, 2012, CSP and OP merged into a single entity, AEP-Ohio.

In light of issues raised on rehearing, on February 23, 2012, the Commission determined in its Entry on Rehearing that the Stipulation, as a package, did not benefit

ratepayers and the public interest and, thus, did not satisfy the three-part test for the consideration of stipulations.

On March 30, 2012, AEP-Ohio filed an Application for Authority to Establish a Standard Service Offer ("SSO") Pursuant to Section 4928.13 of the Ohio Revised Code, in the form of an Electric Security Plan ("ESP"). AEP-Ohio's application was for a modified ESP in accordance with Section 4928.143, Revised Code.

On May 17, 2012, an evidentiary hearing commenced for AEP-Ohio's modified ESP 2 Application.

On August 8, 2012, the Commission issued an Order on the merits of AEP-Ohio's Application for Authority to Establish an SSO in the form of an ESP. The Commission approved AEP-Ohio's ESP subject to modifications outlined in the Order. Of the numerous issues presented in the ESP, Kroger raised three major concerns with the ESP that are central to shopping customers and large commercial customers.

First, Kroger argued that the RSR should be rejected. (Kroger Brief at 3-5). Second, Kroger argued that AEP-Ohio's proposed two-tiered capacity charge for CRES providers serving shopping customers was unreasonable and anti-competitive. (Kroger Brief at 7-9). Third, Kroger argued that the Commission should reject AEP-Ohio's proposed DIR. (Kroger Brief at 10-12).

In the event that the Commission approved the RSR and DIR, Kroger provided the Commission with reasonable alternatives to further the goals of cost-based rate making and the articulated policy of the State of Ohio. First, with respect to the RSR, Kroger explained that AEP-Ohio's proposed cost recovery mechanism improperly collected a demand based cost allocation through an energy charge. Second, with

respect to the DIR, Kroger explained that the DIR should be assigned to the former Ohio Power Company rate zones and Columbus Southern Power rates zones in a separate and distinct manner in order to properly account for and recover the costs that are uniquely incurred to provide service to each of the rate zones, consistent with the fundamental ratemaking principle of assigning costs on the basis of cost causation.

These alternatives were noted by the Commission, but ultimately not addressed. (Order at 30, 43-44). Accordingly, the Commission's failure to make specific findings on these matters and to explain why these reasonable suggestions were not incorporated into the final order is unreasonable, unlawful, and requires a rehearing to correct.

II. ARGUMENT

A. The Commission's Order Unreasonably Requires Demand-billed Customers to Pay for RSR Costs Through an Energy Charge When the Costs in Question are Capacity-Related and are Allocated to Customer Classes in the First Instance on the Basis of Demand.

The Commission approved the RSR and held that a non-bypassable RSR "provides certainty for retail electric service, as is consistent with Section 4928.143(B)(2)(d), Revised Code." (Order at 32). In Kroger's Post-hearing Brief, Kroger argued that the RSR was an attempt for AEP-Ohio to recover fixed generation costs that were stranded due to customer shopping for generation service with competitive suppliers. (Kroger Brief at 3-4; Order at 28). In response to this argument, the Commission rejected Kroger's claim that the "RSR allows for the collection of inappropriate transition revenues or stranded costs that should have been collected prior to December 2010 pursuant to Senate Bill 3." (Order at 32). The Commission found that AEP-Ohio's new status as an FRR entity enables AEP-Ohio to recover its

actual costs of capacity, and “[t]herefore, anything over RPM auction capacity prices cannot be labeled as transition costs or stranded costs.” (Order at 32).

Additionally, Kroger argued that AEP-Ohio’s proposed return on equity for the RSR was excessive and should be reduced. (Kroger Brief at 7; Order at 30). Kroger submitted testimony and briefed the issue that the return on equity should be below 10.2 percent because the average return on equity for electric utilities is 10.2 percent and AEP-Ohio’s proposed two-tier capacity is above market. (Kroger Brief at 7; Order at 30). In response to Kroger’s (and other parties’) argument, the Commission held that AEP-Ohio failed to meet its burden to prove that its revenue target of \$929 million was reasonable. (Order at 32). Further, Commission found that a “reasonable revenue that would allow AEP-Ohio an opportunity to earn somewhere within the seven to 11 percent range” is reasonable. (Order at 33).

If the Commission accepted the RSR (as it did), Kroger argued that the RSR rate design for demand-billed customers is improper and should be modified to reflect actual cost causation. (Kroger at 5; Order at 30). The Commission stated: “Kroger argues that the RSR allocates costs to customers by demand, but recovers through an energy cost, resulting in cross subsidies amongst customers. Kroger recommends that costs and charges should be aligned and based on demand as opposed to energy usage.” (Order at 30, internal citations omitted). Unlike Kroger’s previous two arguments relating to the RSR, the Commission failed to address Kroger’s argument related to the improper energy charge to recover capacity costs. The Commission did not address on its merit whether the RSR charge should be structured as a demand charge for demand-billed customers under the RSR. This issue was a significant matter to Kroger, which raised the issue in testimony and briefing.

It is uncontroverted that AEP-Ohio allocates RSR-related costs to the “GS-2/3/4, SBS, EHG, EHS, SS” group on the basis of the group’s aggregate share of the 5 CP *demand*. AEP-Ohio then calculates a common *energy* charge for all customers in the group to recover this allocated cost. As a result of the Commission’s tacit approval of AEP-Ohio’s rate design, customers with high load factors will be forced to subsidize low load factor customers. If the Commission requires AEP to formulate a demand-based charge, cost-shifting among customers will be eliminated and appropriate cost-causers will pay their fair contribution to demand costs into the RSR.

The Commission’s failure to incorporate Kroger’s recommendation that demand costs be recovered through a demand charge is unreasonable and significantly impacts and jeopardizes Kroger’s right as an intervenor to protect its interests in this proceeding. Kroger respectfully requests that the Commission order a rehearing of the proceeding to rectify its failure to eliminate the RSR’s improper energy charge to demand-billed customers.

B. The Commission Unreasonably Permits AEP-Ohio to Aggregate the DIR Charge in OP’s and CSP’s Former Service Territories.

The Commission approved AEP-Ohio’s proposed DIR subject to modifications as outlined in the Order. (Order at 46-47). Kroger initially argued that the DIR was unreasonable because the ESP case was not the proper forum to consider the recovery of distribution infrastructure; rather the cost recovery is properly considered in the context of a base distribution rate case. (Kroger Brief at 9; Order at 43-44). The Commission found that O.R.C. § 4928.143(B)(2)(h) authorizes an ESP to include the recovery of capital cost for distribution infrastructure investment and allowed recovery through the rider. (Order at 46).

With respect to the DIR, Kroger also argued that if the DIR is approved, then it should be modified to incorporate Accumulated Deferred Income Taxes (Kroger Brief at 10-12; Order at 44). The Commission reviewed Kroger's request to include ADIT into the DIR and approved the change in the rate design. (Order at 47). The Commission found that "it is not appropriate to establish the DIR rate mechanism in a manner which provides the Company with the benefit of ratepayer supplied funds. Any benefits resulting from ADIT should be reflected in the DIR revenue requirement. Therefore, the Commission directs AEP-Ohio to adjust its DIR to reflect the ADIT offset." (Order at 47).

However, the Commission failed to properly address Kroger's argument that AEP-Ohio's proposal to aggregate the incremental investment in OP's and CSP's former service territory should be rejected. (Kroger Brief at 12). The Commission noted Kroger's objection: "In addition, Kroger asserts that the DIR for the CSP rate zone and the OP rate zone are distinct and the cost of each unique service area should be maintained and the distribution costs assigned on the basis of cost causation." (Order at 44). However, the Commission failed to incorporate this concept into its order without addressing its reasoning.

It is fair to all AEP-Ohio customers to assign distribution costs on the basis of cost causation. Indeed, the Commission determined appropriately that PIRR costs, which had been separately recorded in the two service areas, should be recovered via distinct charges in each rate zone, consistent with this principle. (Order at 55-56) The DIR, as approved, does not assign costs to customers on a reasonable basis because there are unique costs associated with CSP and OP distribution territories that are known and knowable to AEP-Ohio. These unique costs should be directly assigned to the customers in each service territory rather than blended into a single rate that will

assuredly force the customers in one of the rate zones to subsidize the costs of service in the other. AEP-Ohio can still operate as a single entity while maintaining separate distribution costs based on distribution assets specific to each territory. Consequently, Kroger requests that the Commission reverse its decision and provide a rehearing to appropriately address this unresolved issue.

III. CONCLUSION

For the reasons set forth herein, the Kroger Company respectfully requests that the Commission grant rehearing to address and make findings regarding 1) the improper energy charge to demand-billed customers under the RSR; and 2) the flawed aggregation of incremental distribution investment in OP's and CSP's former service territory.

Respectfully submitted,


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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading was served via electronic mail on this 7th day of September, 2012 upon counsel for all parties of record in this case.

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Summary: Application The Kroger Co.'s Application for Rehearing electronically filed by Mr. Zachary D. Kravitz on behalf of The Kroger Co.