**BEFORE THE**
**PUBLIC UTILITIES COMMISSION OF OHIO**

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| In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Authority to Provide for a Standard Service Offer Pursuant to R.C. 4928.143 in the Form of an Electric Security Plan. | ) ) ) ) ) ) ) | Case No. 14-1297-EL-SSO |

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# INITIAL POST-HEARING BRIEF OF THE KROGER COMPANY

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## I. INTRODUCTION

On December 1, 2015, Ohio Edison Company ("OE"), Cleveland Electric Illuminating Company ("CEI") and the Toledo Edison Company ("TE") (collectively referred to as the "Companies" or "FirstEnergy") and a diverse group of intervenors, including The Kroger. Co. ("Kroger"), filed the Third Supplemental Stipulation and Recommendation ("Third Supplemental Stipulation") in this proceeding. Companies Ex. 154. Kroger is a signatory party to the Third Supplemental Stipulation and supports Third Supplemental Stipulation.[1] Although the Third Supplemental Stipulation represents a comprehensive resolution of several different issues, Kroger files this brief to highlight two beneficial provisions contained in the Third Supplemental Stipulation: (1) the rate

[1] Unless expressly modified by the terms of the Third Supplemental Stipulation, the terms of the Second Supplemental Stipulation and Recommendation ("Second Supplemental Stipulation") (Companies Ex. 4), the Supplemental Stipulation and Recommendation ("Supplemental Stipulation")(Companies Ex. 3); and the Stipulation and Recommendation ("Stipulation")(Companies Ex. 2) are incorporated into the Third Supplemental Stipulation. *See* Companies Ex. 154 at p. 7. Therefore, the Commission's approval of the Third Supplemental Stipulation would constitute an approval of all of the unmodified terms of the preceding stipulations.

design of the RRS Rider and (2) the Commercial High Load Factor Experimental Time-of-Use Rate ("HLF Experimental Rate").

## II. ARGUMENT

### A. Commission criteria for considering stipulations.

Rule 4901-1-30, O.A.C. authorizes parties to Commission proceedings to enter into stipulations. While a stipulation does not bind the Commission, the terms of such agreements are accorded substantial weight. The ultimate issue for the Commission's consideration is whether the agreement, which embodies considerable time and effort by the signatory parties, is reasonable and should be adopted. In considering the reasonableness of a stipulation, the Commission has used the following criteria, commonly referred to as the three prong test:

1. Is the settlement a product of serious bargaining among capable, knowledgeable parties?

2. Does the settlement, as a package, benefit ratepayers and the public interest?

3. Does the settlement package violate any important regulatory principle or practice?

*Indus. Energy Consumers of Ohio Power* Co. v. *Pub. Util. Comm'n,* 68 Ohio St.3d 559 (1994).

Although Kroger submits that the first prong of the three prong test has been met, Kroger will only address second and third prong in this brief. As explained below, both the rate design of the RRS Rider and HLF Experimental Rate will benefit ratepayers and the public interest. Further, these proposals do not violate any important regulatory principle or practice.

### B. Kroger supports the rate design for the RRS Rider because it properly aligns the allocation of RRS Rider costs with the recovery of RRS Rider costs.

When the Companies filed their application in this case, the Companies initially proposed allocating the RRS Rider to each rate schedule on the basis of demand, but would then convert the allocated revenue requirement to an energy charge or credit for all rate schedules. Direct Testimony of Joanne M. Savage (Companies Ex. 43) at p. 4. This rate design would have caused a disconnect in the methods of allocating costs and recovering of costs.

The Stipulation, filed on December 22, 2014, remedied this issue by modifying the proposed rate design for the RRS Rider. Companies Ex. at 2 at p. 10. The Stipulation states that "RRS Rider rate for GS, GP, GSU, and GT will be based on billing demand." Companies Ex. 2 at p. 10.[2] Kroger supports this modified rate design for the RRS Rider. This modified rate design will properly align the allocation of costs for RRS Rider with the recovery of costs for RRS Rider for demand metered customers. As Companies witness Mikkelsen testified, the modification will help to properly align the costs and benefits RRS Rider with customers' unique load characteristics and capacity charges. Supplemental Testimony of Eileen M. Mikkelsen (Companies Ex. 8) at p. 4. This provision of the Stipulation benefits ratepayers and the public interest because it ensures customers pay their fair share of charges or receive their fair share of credits related to the RRS Rider. Further, this modification of the RRS Rider rate design is consistent with the important regulatory principle of cost causation.

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[2] Because the Third Supplemental Stipulation did not modify this provision of the Stipulation, this modified RRS Rider rate design is incorporated into the Third Supplemental Stipulation. Companies Ex. 154 at p. 7.

Kroger recommends that the Commission approve this rate design in this case, and also implement a similar rate design in any other proposed PPA-related rider case pending before the Commission. Implementing PPA-related riders that properly align the allocation of costs and recovery of costs will benefit the public interest by ensuring consistent rate treatment for customers in each EDU's service territory.

### C. Kroger supports the HLF Experimental Rate because it will encourage certain high load factor customers to improve their load profiles.

The terms of the HLF Experimental Rate are set forth in the Second Supplemental Stipulation, which was filed on June 4, 2015. Companies Ex. 4 at pp. 1-2. Under the HLF Experimental Rate, certain high load factor customers on the GS and GP rate schedules may be eligible to participate in a unique time-of-use rate, whereby these customers would pay a higher kWh charge during the summer midday hours and a lower kWh charge during all other hours of the year. Companies Ex. 4; Attachment 1. The HLF Experimental Rate will benefit the Companies' commercial high load factor customers that participate in this pilot by providing these customers an opportunity to reduce their overall energy bills and learn about the potential value of time-of-use rates. Fourth Supplemental Testimony of Eileen M. Mikkelsen (Companies Ex. 11) at p. 2. As Companies witness Mikkelsen testified, the HLF Experimental Rate will test certain high load factor customers' willingness to modify their peak load shapes as it relates to their generation service. Tr. Vol. II at p. 286. If the customers participating in the experimental program are able to further improve their consumption profile during peak periods, this will potentially result in more cost-efficient energy consumption by these customers by aligning these customers' consumption with capacity price signals. Tr. Vol. II at pp. 291 and 302.

This proposed pilot program benefits the public interest because it will encourage high load factor customers that participate in this program to find ways to further improve their load profile, which results in a reduction in demand levels during peak periods. Not only will the HLF Experimental Rate serve as an effective method of encouraging more efficient energy consumption in the Companies' service territory, but it could also serve as a model program for other EDUs and encourage these other EDUs to implement similar beneficial programs.

## III. CONCLUSION

Based on the foregoing, Kroger recommends that the Commission approve the Third Supplemental Stipulation.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was served this 16th day of February, 2016 upon the following via electronic mail.

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