

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

| | |
|--|-------------------------|
| In the Matter of the Application of the Ohio) | |
| Development Services Agency for an Order) | |
| Approving Adjustments to the Universal) | Case No. 16-1223-EL-USF |
| Service Fund Rider of Jurisdictional Ohio) | |
| Electric Distribution Utilities.) | |

**MOTION TO DEEM MOTION TO INTERVENE AND COMMENTS AND
OBJECTIONS AS TIMELY FILED
AND
REQUEST FOR EXPEDITED RULING
OF THE KROGER CO.**

Pursuant to Rule 4901-1-12, Ohio Administrative Code, the Kroger Co. (Kroger) respectfully requests that the Public Utilities Commission of Ohio (Commission) deem its motion to intervene and objections and comments as timely filed.¹ Kroger timely submitted the motion to intervene and objections and comments on June 30, 2016; however, due to a server error, the filing was not processed by the Commission's Docketing Information System (DIS). Kroger requests that this motion be granted on an expedited basis given that responses to objections and comments are due July 8, 2016. A memorandum in support is attached.

¹ Kroger's motion to intervene and objections and comments are being filed contemporaneously in this docket.

Respectfully submitted,

/s/ Kimberly W. Bojko

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Counsel for Kroger

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| Electric Distribution Utilities. |) | |

MEMORANDUM IN SUPPORT

Kroger respectfully requests that the Commission deem its motion to intervene and objections and comments as timely filed. Extraordinary circumstances exist to grant such motion and no parties to this proceeding will be prejudiced by this request.

On June 2, 2016, the Public Utilities Commission of Ohio (Commission) adopted a procedural schedule which provided that motions to intervene and comments and objections on the Ohio Development Services Agency's (ODSA) Notice of Intent (NOI) to file an Application to adjust the Universal Service Fund Rider should be filed by June 30, 2016.² In response to this Entry, Kroger submitted its motion to intervene and comments and objections for filing with the Commission's Docketing Information System (DIS) by the June 30th deadline. Kroger timely filed and served the document; however, it appears that DIS would not accept the filing for

² Entry at 3.

processing because Kroger received a processing error notification after 5:30 pm.³ Kroger also attempted to fax file the document.⁴

No parties will be prejudiced by deeming Kroger's motion to intervene and objections and comments as timely filed because the parties were served with a copy of the filing on June 30, 2016.⁵ Moreover, the filing will not unduly delay this proceeding. Rather, not accepting the filing will be prejudicial because it will deprive Kroger of the opportunity to provide valuable input to the Commission during the review of ODSA's NOI.

Good cause exists to grant this motion because in the absence of a server error, Kroger's filing would have been processed with DIS. Additionally, Kroger respectfully requests expedited consideration of its request to deem its motion to intervene and objections and comments as timely filed because responses to objections and comments are due July 8, 2016.

Respectfully submitted,

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Counsel for Kroger

³ See Attachment A ("Your e-filed document can not be processed currently. Please contact PUCO docketing Division at 614-466-4095.").

⁴ See Attachment B.

⁵ See Attachment C.

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was served upon the following parties via electronic mail on July 1, 2016.

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THE PUBLIC UTILITIES COMMISSION OF OHIO**

In The Matter of the Application of the Ohio)
Development Services Agency for an Order) Case No. 16-1223-EL-USF
Approving Adjustments to the Universal)
Service Fund Rider of Jurisdictional Ohio)
Electric Distribution Utilities.)

**MOTION TO INTERVENE
AND
OBJECTIONS AND COMMENTS
BY
THE KROGER CO.**

Pursuant to R.C 4903.221 and Ohio Adm. Code 4901-1-11, The Kroger Co. (Kroger) hereby moves to intervene in the above-captioned matter before the Public Utilities Commission of Ohio (Commission) with the full powers and rights granted by the Commission to intervening parties. As demonstrated in the attached Memorandum in Support, Kroger has a real and substantial interest in this proceeding which may be adversely affected by the outcome herein, and which cannot be adequately represented by any other party. Accordingly, Kroger satisfies the standard for intervention set forth in Ohio statutes and regulations.

By entry dated June 2, 2016, the Commission established June 30, 2016 as both the deadline to intervene and the deadline to file objections or comments.¹ In accordance with the Commission's entry, Kroger submits this timely motion to intervene and files its objections and comments to the application.

¹ Entry at 3 (June 2, 2016).

WHEREFORE, Kroger respectfully requests that the Commission grant its motion to intervene and modify the proposal as set forth herein.

Respectfully submitted,

/s/ Kimberly W. Bojko

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Counsel for The Kroger Co.

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Approving Adjustments to the Universal)
Service Fund Rider of Jurisdictional Ohio)
Electric Distribution Utilities.)

MEMORANDUM IN SUPPORT

I. Introduction.

On May 31, 2016, the Ohio Development Services Agency (ODSA) submitted its Notice of Intent to file an Application (NOI) to adjust the Universal Service Fund (USF) Rider of all Ohio jurisdictional electric distribution utilities.² As explained in the NOI and entry, the previous joint stipulation adopted by the Commission in the 2015 USF Case³ (2015 Adjustment Stipulation) set forth an NOI process whereby ODSA would file an NOI by May 31, 2016 and parties would then be afforded an opportunity to pursue methodological and other issues.⁴ ODSA timely filed its NOI and set forth the methodology that it intends to utilize to develop its USF Rider revenue requirement and rate design.⁵ ODSA proposed, among other things, to recover the annual USF Rider revenue requirement for each electric distribution utility (EDU) through a USF Rider that incorporates a two-step declining block rate design, where the first

² NOI at 1 (May 31, 2016).

³ *In re ODSA*, Case No. 15-1046-EL-USF, Opinion and Order (December 16, 2015) (2015 USF Case).

⁴ NOI at 2; Entry at 2-3;

⁵ NOI at 2.

block will apply to all monthly consumption up to and including 833,000 kWh and the second block will apply to all monthly consumption above 833,000 kWh.⁶

By entry dated June 2, 2016, the Commission found that Cleveland Electric Illuminating Company, Dayton Power and Light Company, Duke Energy Ohio Inc., Ohio Edison Company, Ohio Power Company, and Toledo Edison Company should be joined as indispensable parties.⁷ In that entry, the Commission also established June 30, 2016 as both the deadline to intervene and the deadline to file objections or comments.⁸ In accordance with the Commission's entry, Kroger submits this timely motion to intervene and its objections and comments to the NOI.

II. Intervention.

R.C. 4903.221 and Ohio Adm. Code 4901-1-11 establish the standards for intervention in Commission proceedings. R.C. 4903.221 provides, in pertinent part, that any person "who may be adversely affected" by a Commission proceeding is entitled to seek intervention in that proceeding. R.C. 4903.221(B) further requires the Commission to consider the nature and extent of the prospective intervenor's interest, the legal position advanced by the prospective intervenor and its probable relation to the merits of the case, whether the intervention by the prospective intervenor will unduly prolong or delay the proceeding, and the prospective intervenor's potential contribution to a just and expeditious resolution of the issues involved. Ohio Adm. Code 4901-1-11 permits intervention to a party who demonstrates a real and substantial interest in the proceeding and who is so situated that the disposition of the proceeding may impair or impede its ability to protect that interest and whose interest is not adequately represented by an existing party.

⁶ Id. at 11.

⁷ Entry at 1.

⁸ Id. at 3.

Kroger is one of the largest grocers in the United States, with numerous facilities spread across the state of Ohio. Kroger's electric and energy needs are considerable, and the costs associated with obtaining such service will be impacted by the outcome in this proceeding because Kroger pays the USF Rider.

For the foregoing reasons, Kroger has a direct, real, and substantial interest in the issues raised in this proceeding and is so situated that the disposition of the proceeding may, as a practical matter, impair or impede its ability to protect that interest. Kroger's interests will not be adequately represented by other parties to the proceeding. Finally, Kroger's intervention is timely and will not unduly delay or prolong the proceeding.

In sum, Kroger satisfies the criteria set forth in R.C. 4903.221 and Ohio Adm. Code 4901-1-11, and is, therefore, authorized to intervene with the full powers and rights granted by the Commission to intervening parties.

III. Objections and Comments.

Kroger's objections and comments concern ODSA's proposed rate design methodology.

As proposed, ODSA's methodology operates as follows:

ODSA will propose to recover the annual USF rider revenue requirement for each EDU through a USF rider that incorporates a two-step declining block rate design * * *. The first block of the rate will apply to all monthly consumption up to and including 833,000 Kwh. The second rate block will apply to all consumption above 833,000 Kwh per month. For each EDU, the rate per Kwh for the second block will be set at the lower of the PIPP charge in effect in October 1999 or the per Kwh rate that would apply if the EDU's annual USF rider revenue requirement were to be recovered through a single block per Kwh rate. The rate for the first block rate will be set at the level necessary to produce the remainder of the EDU's annual USF rider revenue requirement. Thus, in those instances where the EDU's October 1999 PIPP charge exceeds the per Kwh rate that would apply if the EDU's annual USF rider revenue requirement were to be recovered

through a single block per Kwh rate, the rate for both consumption blocks will be the same.⁹

ODSA proposes to recover the annual USF revenue requirement from each customer account through the USF Rider. The rider charge is levied against each customer account in two steps based on monthly consumption. Thus, each account or facility would be assessed a kWh rate consistent with the EDU's first block rate for all monthly consumption up to and including 833,000 kWh and a reduced kWh rate for all consumption in excess of 833,000 kWh. If an account or facility does not exceed the 833,000 kWh threshold, the account or facility is charged solely per the first block rate. The rationale for the implementation of a two-step declining block rate design was to limit the financial impact of the USF Rider on large electric consumers in the state when the universal service fund was established in Am. Sub. S. B. 3.¹⁰

Kroger agrees with the rationale of minimizing the financial impact on large consumers and continuing the historic two-step declining block rate design embedded in the NOI, but believes that the rationale should be extended to recognize commercial customers that consume large quantities of electricity within an EDU's service territory through numerous facilities and accounts and have multiple site locations within the EDU's service territory. R.C. 4928.01(A)(19) defines a "mercantile customer" as a "commercial or industrial customer if the electricity consumed is for nonresidential use and the customer consumes more than seven hundred thousand kilowatt hours per year or is part of a national account involving *multiple facilities in one or more states*."¹¹ Kroger qualifies as a mercantile customer under this definition as Kroger's facilities consume electricity for nonresidential purposes and are part of a national account involving multiple facilities in Ohio and elsewhere.

⁹ NOI at 11.

¹⁰ R.C. 4928.52.

¹¹ Emphasis added.

Consistent with the treatment of multi-site commercial and industrial customers in Ohio law and to ensure that single-site and multi-site customers are treated in a non-discriminatory manner, Kroger proposes a modification to the 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. Therefore, for purposes of determining a mercantile customer's charge under the USF rider two-tier declining rate blocks, a mercantile customer would be allowed to aggregate its load within the EDU's service territory and apply that aggregated load to the USF Rider kWh rates proposed by ODSA in its NOI.

To implement Kroger's proposal, no modifications to the two-tier declining block rate design are necessary. Instead, the *application* of the rate design is modified. To illustrate, assume that Kroger is a mercantile customer that has ten sites within an EDU's service territory, each of which consumes 100,000 kWh per month. Under the ODSA NOI proposal, each site would apply its monthly consumption of 100,000 kWh against the first rate block which applies to monthly consumption up to and including 833,000 kWh/month. Although Kroger's collective accounts and facilities consume more than 833,000 kWh/month under the example, none of Kroger's facilities or accounts would receive the benefit of the reduced kWh rate in the second block of the rate design.

But under Kroger's proposed application of the two-step declining block rate design, the consumption at each site or on each account would be aggregated and then applied to the two corresponding rate blocks. Specifically, in the example, the aggregated monthly consumption of 1,000,000 kWh/month¹² from the ten facilities would be applied to the two-step declining block rate design so that the first 833,000 kWh/month of consumption would be applied toward the

¹² 10 sites x 100,000 kWh/month = aggregate consumption of 1,000,000 kWh/month

first rate block and receive the EDU's USF Rider kWh rate associated with the first rate block. The remaining consumption balance of 167,000 kWh/month¹³ from the ten facilities would be applied toward the second rate block and receive the EDU's USF Rider kWh rate associated with the second rate block.

Kroger's proposal is firmly based on the principle embedded in the current rate design methodology as well as on prevailing regulatory concepts applied to mercantile customers. Consistent with the two-step declining block rate design, a reduction for mercantile consumers with monthly consumption in excess of 833,000 kWh/month in the aggregate for multiple sites further minimizes the proportion of energy costs that any single customer is obligated to contribute to the Universal Service Fund once the threshold is reached.

IV. Conclusion.

For the foregoing reasons Kroger respectfully requests that its motion for intervention be granted and that its objections and comments on ODSA's proposed rate design methodology be considered for adoption by the Commission.

Respectfully submitted,

/s/ Kimberly W. Bojko

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Counsel for The Kroger Co.

¹³ 1,000,000 kWh/month – 833,000 kWh/month = 167,000 kWh/month

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was served upon the following parties via electronic mail on June 30, 2016.

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Subject: Motion To Intervene And Objections And Comments By The Kroger Co.
Attachments: USF NOI - Kroger's MTI and Comments (16-1223).pdf

Attached please find the Motion To Intervene And Objections And Comments By The Kroger Co. filed today.

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Summary: Motion Motion to Deem Motion to Intervene and Comments and Objections as
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