

**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 Service	)	Case No. 17-1377-EL-USF
Fund Rider of Jurisdictional Ohio Electric	)	
Distribution Utilities.	)	

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**REPLY COMMENTS  
BY  
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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**I. INTRODUCTION**

The Office of the Ohio Consumers' Counsel ("OCC") files these Reply Comments on behalf of the 4.2 million residential electric customers who pay (through their electricity bills) for the programs that make up the Universal Service Fund ("USF") in Ohio. The USF provides funding for a number of low-income programs including the Percentage of Income Payment Plan ("PIPP") which is administered by the Ohio Development Services Agency ("ODSA").

On June 1, 2017, ODSA filed its Notice of Intent to file an application for adjustments to the USF Riders. On June 30, the Kroger Co. ("Kroger") filed comments seeking to change the way charges are collected for USF<sup>1</sup> in a manner that inappropriately shifts more costs to residential customers. OCC opposes those changes because they violate Ohio law and unnecessarily harm Ohio residential customers. Duke Energy Ohio ("Duke") also claims that due to an accounting adjustment from 2013, an

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<sup>1</sup> Motion to Intervene and Objections and Comments by The Kroger Co. at 6-7 (June 30, 2017).

accounting anomaly was created that resulted in the USF fund under reimbursing Duke for roughly \$1.5 million.<sup>2</sup>

## **II. COMMENTS**

### **A. Kroger's proposed rate design change violates R.C. 4928.52(C) by shifting costs to residential customers.**

Ohio law specifically states that the universal service fund rider “shall be set in such a manner so as not to shift among the customer classes of electric distribution utilities the costs of funding low-income customer assistance programs.”<sup>3</sup> This means that a certain specific customer class cannot shift the costs associated with its universal service fund obligation away from itself and onto another customer class. But this is precisely what Kroger is seeking to do, contrary to R.C. 4928.52(C).

Specifically, Kroger proposes “a modification to the application of the two-step declining block rate design methodology so that two tiers apply to mercantile customers with multiples sites on an aggregated monthly consumption basis.”<sup>4</sup> This rate design would essentially create a new class of customers for multi-site mercantile entities. They would be able to aggregate individual customer loads for the sole purpose of significantly lowering electric rates for the aggregated group on average than an individual mercantile customer pays.

Kroger's proposed modification unlawfully shifts costs away from large mercantile customers with multiple locations to other customers. The brunt of this cost shifting will be borne by customers who use less energy like small businesses and

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<sup>2</sup> Objections of Duke Energy Ohio at 2 (June 30, 2017).

<sup>3</sup> R.C. 4928.52(C).

<sup>4</sup> Motion to Intervene and Objections and Comments by The Kroger Co. at 9 (June 30, 2017).

residential customers. Additionally, while only Kroger has proposed this modified rate design, any other similarly situated multi-site mercantile customers would be able to take advantage of this unwarranted cost reallocation to residential customers.

Kroger claims that because it is simply asking to aggregate load for multiple facilities under “common control and ownership,”<sup>5</sup> it is not proposing to change the rate design methodology. However, the law is clear, it is not about the rate design methodology, but about whether the charges themselves shift the costs among the customer classes.<sup>6</sup> Kroger’s argument is a distinction without a difference; its proposal would have the effect of shifting costs to the residential customer class. It is unlawful under R.C. 4928.52.

Furthermore, it would likely necessitate expensive changes to the billing systems and processes of the utilities. Because of this, every Ohio electric utility objected last year when Kroger proposed this same methodology:

In fact, the process of aggregating monthly consumption from multiple Kroger facilities (and even more so if extended to other similarly situated customers) contained within each of the EDU service territories, determining within a given month whether the aggregate load falls within the mercantile class, and then preparing an aggregated bill for locations that are currently billed individually, would require either lengthy manual processing or internal system changes that would be costly and time consuming.<sup>7</sup>

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<sup>5</sup> Id. at 8.

<sup>6</sup> R.C. 4928.52.

<sup>7</sup> *In the Matter of the Application of the Ohio Development Services Agency for an Order Approving Adjustments to the Universal Service Fund Rider of Jurisdictional Ohio Electric Distribution Utilities*. Case No. 16-1223-EL-USF, Joint Comments of Duke Energy Ohio, Inc., Cleveland Electric Illuminating Company, Ohio Edison Company, Toledo Edison Company, Dayton Power and Light Company, and Ohio Power Company in response to Objections and Comments of the Kroger Company at 3 (July 8, 2016).

These utilities went on to state that these increased costs would likely be borne by customers other than Kroger.<sup>8</sup> Kroger's proposed cost shift and rate design is not an appropriate way to seek to reduce the costs of the USF Rider. The more appropriate focus should be to work to reduce the USF charges as a whole. But that is not what Kroger's proposal does.

The focus of the PUCO should be on reducing bills especially to residential customers, not trying to increase the bills (through cost shifting) of residential customers. This is especially important, because there is also a possibility that federal funding for the Low-Income Energy Assistance Program ("LIHEAP")<sup>9</sup> will be eliminated. The loss (or even reduction) of LIHEAP funding could significantly increase the amounts paid through the PIPP program, increasing costs for all customers. Therefore, the PUCO should reject Kroger's proposal.

**B. Duke's objections are vague and outside the scope of this proceeding.**

In a terse objection, Duke claims that an accounting adjustment required by the PUCO Staff in 2013, has resulted in an "accounting anomaly," which caused Duke to be under-reimbursed from the USF fund in the amount of \$1,560,871.49.<sup>10</sup> Duke provides no specific information or support for this "accounting anomaly." It is not even clear in which year the under-reimbursement occurred. Duke simply demands that all the parties to accept its version of events without any evidence and credit them \$1.5 million. The

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<sup>8</sup> Id.

<sup>9</sup> See David Sharp, *Congress is cool to Trump's proposal to end heating aid*, WASHINGTON POST (July 2, 2017), [https://www.washingtonpost.com/business/congress-is-cool-to-trumps-proposal-to-end-heating-aid/2017/07/02/62259d64-5f33-11e7-80a2-8c226031ac3f\\_story.html?utm\\_term=.881475fa7fc2](https://www.washingtonpost.com/business/congress-is-cool-to-trumps-proposal-to-end-heating-aid/2017/07/02/62259d64-5f33-11e7-80a2-8c226031ac3f_story.html?utm_term=.881475fa7fc2).

<sup>10</sup> Objections of Duke Energy Ohio at 2.

PUCO should require that Duke provide evidence of this “accounting anomaly” that would allow all parties involved to verify Duke’s claims.

Additionally, to the extent that this under-reimbursement occurred outside the 2017 USF rate adjustment, then this credit should be denied. ODSA’s application and the Notice of Intent process laid out by the PUCO encompass only those changes that occur in the test year.<sup>11</sup> To the extent that this 2013 “accounting anomaly” resulted in under-reimbursements four years outside the test year, Duke should not now be permitted to receive credit for those under-reimbursements.

### **III. CONCLUSION**

The USF Rider is intended to fund low-income assistance programs administered by the ODSA. This program provides a lifeline to low-income customers who would otherwise be unable to keep their lights on and heaters running. Kroger's proposal is unlawful under Ohio law, because it inappropriately shifts costs between customer classes. Additionally, Duke’s unsupported adjustment would likely increase the burden on residential consumers. Therefore, the PUCO should reject Kroger’s proposed changes and Duke’s proposed adjustments to the USF.

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<sup>11</sup> Ohio Development Services Agency Notice of Intent to File An Application For Adjustment to Universal Fund Riders at 4 (June 1, 2017).

Respectfully submitted,

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## **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the Reply Comments was served on the persons stated below via electronic transmission, this 10<sup>th</sup> day of July, 2017.

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Summary: Reply Reply Comments by The Office of the Ohio Consumers' Counsel electronically filed by Ms. Jamie Williams on behalf of Kumar, Ajay Mr.