

**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.)

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

This case should be about maximizing the benefits that low-income Ohioans receive under the programs funded by the Universal Service Fund ("USF"), resulting from the legislative process for Ohio's 1999 electric deregulation law.¹ But despite the 1999 law's prohibition (in R.C. 4928.52(C)) against shifting costs of the assistance program between customer classes, the case largely has become a forum for Kroger to propose shifting to other customers some of the costs that it pays to support universal electric service for Ohioans in need. The PUCO should abide by the 1999 law and reject Kroger's proposal.

I. KROGER'S PROPOSAL

A. Kroger wrongly claims that its proposal has an equal impact on residential, commercial, and industrial customers.

In its initial brief, Kroger asserts that its proposal does not shift costs among the customer classes "because the first and second block rates are applied consistently to residential, commercial, and industrial customers under Kroger's proposal."² Kroger

¹ The 1999 electric deregulation law is Senate Bill 3.

² Initial Brief of the Kroger Co. at 4.

similarly claims that even if its proposal increases the rate that customers pay under the first block, "all customer classes (i.e., residential, commercial, and industrial) would be equally affected given that each customer class under Kroger's proposal would pay the same rates for monthly consumption up to and including 833,000 kWh."³ These statements are wrong for several reasons.

First, Kroger itself has limited its proposal to mercantile customers.⁴ And as Kroger points out in its testimony, a mercantile customer is 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."⁵ Thus, Kroger's proposal explicitly prohibits residential customers from participating in its new aggregation program that would result in discounted Universal Service rates for Kroger.

Second, Kroger's proposal shifts costs to residential customers because they cannot benefit from the second block under the two-tier declining block rate design. The fact that large nonresidential customers also pay a portion of their Universal Service charges under the first block is irrelevant. The fact remains—residential customers would pay more under Kroger's proposal than they would if large nonresidential customers were unable to increase the benefit they derive from the lower second-tier rate.⁶ There is no debate here: Kroger is making a proposal to lower the charges it pays to fund Universal Service assistance for low-income Ohioans. That is why Kroger is making the proposal.⁷

³ *Id.* at 5.

⁴ Kroger Ex. 1 (Higgins Direct) at 4:9-12.

⁵ *See* Kroger Ex. 1 (Higgins Direct) at 7:1-4 (quoting R.C. 4928.01(A)(19)) (emphasis added).

⁶ EDU Ex. 1 (Ziolkowski Direct) at 6:18-7:2; OCC Ex. 1 (Williams Reply) at 10:6-7.

⁷ EDU Ex. 1 (Ziolkowski Direct) at 6:15-17.

Kroger's proposal, by definition, will result in a shift of Universal Service costs to other classes, including the residential class. That is contrary to the 1999 law.

Kroger's proposal violates the 1999 law because it shifts costs for Universal Service from nonresidential to residential customers. The PUCO should reject Kroger's proposal.

II. ODSA'S PROPOSAL

The Ohio Development Services Agency ("ODSA") counters Kroger by asserting that Kroger's proposal is unlawful because it "shifts costs that otherwise would be paid *under the current rate design*."⁸ ODSA is correct that Kroger's proposal is unlawful. But ODSA's reliance on the current rate design, for determining if there is a shifting of Universal Service costs, does not conform to the 1999 law.

Under the 1999 law (R.C. 4928.52(C)), Universal Service rates "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." R.C. 4928.52(C) has been in effect since October 5, 1999. The current rate design under the USF rider first came into effect by settlement in December 2001.⁹ R.C. 4928.52(C), which prohibits cost shifting for support of the Universal Service program, predates the current ODSA two-tier declining block rate structure. It thus would be impossible for the law to be tied to the PUCO's approved rate design.

⁸ Ohio Development Service Agency's Initial Post-Hearing Brief (the "ODSA Brief") at 3 (emphasis added).

⁹ *In re Application of the Ohio Department of Dev. for an Order Approving Adjustments to the Universal Serv. Fund Riders of Jurisdictional Ohio Elec. Distrib. Utils.*, Case No. 01-2311-EL-UNC, Opinion & Order (Dec. 20, 2001). *See also* ODSA Brief at 3 ("The two-step declining block rate structure has been in place since the initial USF rider rates were set in 2001.").

In its initial brief, the Ohio Providers of Affordable Energy (OPAE) asserts that Kroger's proposal violates the 1999 law against shifting to others the costs of assistance to Ohioans in need. OPAE asserts that ODSA's proposed two-tier declining block rate structure violates the law as well.¹⁰ OPAE is correct on both counts.

In support of the proposed two-tier declining block rate structure, ODSA (which bears the burden of proof in this case¹¹) essentially claims that the PUCO should approve its proposal because it has been approved in the past.¹² But the law, not past approvals, is dispositive. The plain language of the 1999 law is clear: there is to be no shifting of the costs for supporting Universal Service for Ohioans in need.¹³ The law does not merely prohibit "material" cost shifting, as some parties to this case suggest.¹⁴ The 1999 law prohibits all cost shifting.

III. CONCLUSION

The PUCO should reject Kroger's proposal because it violates R.C. 4928.52(C) in the 1999 electric deregulation law. Kroger's proposal will harm residential consumers.

¹⁰ Ohio Partners for Affordable Energy's Initial Brief at 5-6.

¹¹ *In re Duke Energy Ohio, Inc.*, 131 Ohio St.3d 487, 488-89 (2012) (utility bore the burden of proving that its charges to consumers were reasonable); *In re Application of the Ottoville Mut. Tel. Co.*, PUCO Case No. 73-356-Y, 1973 Ohio PUC LEXIS 3, at *4 ("the applicant must shoulder the burden of proof in every application proceeding before the Commission").

¹² ODSA Ex. 2 (Meadows Direct) at 5:4-8; ODSA Brief at 4 ("The NOI proposes the same rate design methodology that the Commission has approved since 2001 ..."); Initial Brief of Industrial Energy Users-OHIO at 3 ("In approving the jointly-sponsored stipulations in the prior USF proceedings, the Commission has found that the use of the recommended two-step declining block rate design does not violate R.C. 4928.52(C)."); Joint Initial Brief of [the Ohio Electric Distribution Utilities] (the "EDU Brief") at 3 ("the NOI proposes the very same rate-design methodology that the Commission has approved for some fifteen years, since 2001").

¹³ R.C. 4928.52(C) ("The universal service 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.").

¹⁴ EDU Brief at 12-15; ODSA Brief at 2-4.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this Reply Brief was served on the persons stated below via electronic transmission, this 8th day of September 2017.

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