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

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| In the Matter of the Application of Duke Energy Ohio, Inc. for an Increase in its Electric Distribution Rates. | ) ) ) | Case No. 17-0032-EL-AIR |
| In the Matter of Application of Duke Energy Ohio, Inc. for Tariff Approval. | ) ) | Case No. 17-0033-EL-ATA |
| In the Matter of the Application of Duke Energy Ohio, Inc. for Approval to Change Accounting Methods. | ) ) ) | Case No. 17-0034-EL-AAM |

# OBJECTIONS TO THE STAFF REPORT SUBMITTED BY THE KROGER CO.

## I. Introduction

On January 31, 2017, Duke Energy Ohio, Inc. (Duke) filed a notice of intent to file an application for increase in its electric distribution rates, and, on March 2, 2017, Duke filed its application for an increase in its electric distribution rates with the Public Utilities Commission of Ohio (Commission).[1] The Staff of the Commission (Staff) filed its Staff Report of Investigation (Staff Report) in the above-captioned proceeding on September 26, 2017. Thereafter, on October 12, 2017, Staff filed a supplement to its Staff Report. Pursuant to Section 4909.19, Ohio Revised Code, and Rule 4901-1-28, Ohio Administrative Code, The Kroger Co. (Kroger) hereby respectfully submits its objections to the Staff Report.

Kroger reserves the right to supplement or modify these objections in the event that Staff makes additional findings, conclusions, or recommendations with respect to the Staff Report and the supplement thereto. Kroger also reserves the right to respond to objections or other issues (either in support or opposition) raised by other parties in this proceeding.

[1] Pre-filing Notice of Duke Energy Ohio, Inc. at 1 (January 31, 2017); Application of Duke Energy Ohio, Inc. for an Increase in its Electric Distribution Rates at 1 (March 2, 2017) (Application).

## II. Objections

### A. Allocation of Staff's Recommended Revenue Requirement Among Customer Classes

As an initial matter, Kroger does not object to, and indeed supports, Staff's proposed rate reduction in the Staff Report.[2] Kroger also supports Duke's proposed movement towards cost as reflected in the Company's Cost-of-Service (COS) analysis.[3] However, Kroger objects to Staff's across the board application of the rate reduction such that each customer class receives approximately the same percentage reduction.[4] Rather, the spread of rates should be more representative of class cost of service results as proposed by Duke. Kroger proposes that Staff's recommended revenue requirement should be allocated among the customer classes using Duke's rate spread proposal as a starting point to establish each class's share of the overall distribution revenue requirement. This percentage share so established for each class would then be applied to the final distribution revenue requirement approved by the Commission. This would result in a more equitable and fair application of Staff's recommended revenue requirement for the customer classes.

### B. Delivery Capital Investment Rider (Rider DCI)

In this rate case proceeding, Duke requested modification of Rider DCI[5] to include recovery for all general, intangible, and common plant, among other modifications. Duke also requested to extend the term of Rider DCI indefinitely. In its Staff Report, Staff recommended

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2 Staff Report at 27.
3 Id. at 26-27.
4 See Staff's Supplement to Staff Report at Table 4 (October 12, 2017). The last column of Table 4 showing the percentage increase contains a formulaic error. In doing the calculations for each individual class, it shows that each customer class receives approximately the same percentage reduction.
5 Rider DCI was established in Duke's application for an electric security plan pursuant to R.C. 4928.143. See *In the Matter of Application of Duke Energy Ohio, Inc. for Authority to Establish a Standard Service Offer Pursuant to R.C. 4928.143 in the Form of an Electric Security Plan, Accounting Modifications, and Tariffs for Generation Service et al.*, Case Nos. 14-841-EL-SSO, et al., Opinion and Order at 71-72 (April 2, 2015) (Duke ESP III Order).

that the Commission reject Duke's proposed modifications to Rider DCI explaining that "[t]he proposed modifications are unnecessary and not germane to a distribution investment rider as has been adopted by the Commission in non-stipulated, previously contested cases in which it rendered a decision on each of the merits of such requests."[6] Notwithstanding the foregoing recommendation, Staff recommended in the Staff Report to continue Rider DCI in this proceeding through May 31, 2024 and to set new revenue caps.[7]

Kroger objects to Staff's recommendation to continue Rider DCI through May 31, 2024[8] in this proceeding and the recommended revenue caps. Kroger objects to Staff's failure to recommend that Rider DCI end and that Duke recover any costs associated with incremental plant through the rate case as set forth in R.C. 4909.18.

In its most recent electric security plan (ESP) case, Duke proposed, pursuant to R.C. 4928.413(B)(2)(h), the nonbypassable Rider DCI, seeking to recover a return on capital investment to support programs Duke considered vital to maintain customer reliability.[9] Staff and other parties to that proceeding recommended that the Rider sunset at the conclusion of the ESP and that Duke recover any incremental plant in its next rate case.[10] In its ESP III Order, the Commission approved Duke's proposed Rider DCI, as modified by the Order, and found that Rider DCI was authorized by R.C. 4928.143(B)(2)(h). The Commission also held that "general plant should not be included in the rider" and that "[t]he inclusion of general plant would go beyond the intent of the statute, which is geared towards reliability infrastructure."[11]

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[6] Staff Report at 9.
[7] Id.
[8] Staff recommends extending Rider DCI to May 31, 2024, provided that Duke files for a rate case by May 31, 2023. Id.
[9] See ESP III Order at 66.
[10] Id. at 69.
[11] Id. at 72.

R.C. 4928.143(B)(2)(h) governs which provisions described in division (B)(2)(h) of this statutory section may be included in an electric distribution utility's ESP. Duke's proposed changes to Rider DCI are improper in this proceeding because neither R.C. 4909.18, nor any related statutes, authorizes Duke to extend or modify Rider DCI.

In addition to Rider DCI not being statutorily authorized in this proceeding, Duke's request is duplicative of the extension and modification of Rider DCI in its ESP IV case.[12] In its ESP IV Application, like here, Duke is requesting an indefinite extension of Rider DCI and requesting to modify the structure of the Rider to include distribution-related common, general, and intangible plant.[13] Duke has not indicated whether it is requesting approval of its proposed extension and modification of Rider DCI in both this proceeding and the ESP proceeding. Duke has also failed to clarify whether any amount approved to be recovered under Rider DCI would be cumulative in the event the Commission grants approval in both the rate case and the ESP proceeding.

Additionally, as contemplated in the ESP III case, Rider DCI was only to be in effect until the next rate case. Upon implementation of new base rates, Rider DCI should be eliminated or, at a minimum, reset to $0. As such, Kroger objects to Staff's proposed revenue caps as set forth in the Staff Report.

In sum, Staff's recommendation to extend Rider DCI *in this proceeding* to at least June 1, 2023, is inconsistent with the statutory framework governing an application to increase electric distribution rates pursuant to R.C. 4909.18 and the fixation of those rates.[14]

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[12] *In the Matter of the Application of Duke Energy Ohio, Inc., for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan, Accounting Modifications and Tariffs for Generation Service, et al.*, Case Nos. 17-1263-EL-SSO, Application at 12 (June 1, 2017) (ESP IV Application).
[13] Id.
[14] See R.C. 4909.15.

Accordingly, Kroger objects to Staff's recommendation to continue Rider DCI beyond its current term in the Staff Report. The Commission should reject any extension of, or modification to, Rider DCI because a rate case is not the proper venue Duke requested changes. Further, because Duke's proposal to extend and modify Rider DCI is duplicative of its ESP Application, it would be unreasonable to litigate the merits of Duke's proposals regarding Rider DCI in this rate case proceeding. As such, the Commission should reject Duke's proposals regarding Rider DCI in this proceeding and find that Rider DCI should sunset on May 31, 2018, and any purported costs associated with infrastructure investment should be considered in the context of Duke's overall distribution revenues and expense.

### C. Distribution Decoupling Rider (Rider DDR)

Kroger objects to the Staff Report to the extent Staff fails to recommend denying Duke's proposal to continue Rider DDR in this proceeding becauseRider DDR is not properly before the Commission in an application to increase its electric distribution rates and because Rider DDR was intended to end upon the approval of new distribution rates in this proceeding.

Again, R.C. 4928.143(B)(2)(h) governs which provisions described in division (B)(2)(h) of this section may be included in an electric distribution utility's ESP. Neither R.C. 4909.18, nor related statutes, authorizes Duke to extend or modify Rider DDR. As such, Kroger objects to Staff's failure to recommend rejection of the continuation of Rider DDR.

Further, the Commission approved Rider DDR on the condition that it would continue until Duke's next distribution base rate case. The need to adjust rates between rates cases is lost with the implementation of new base rates. Accordingly, because Rider DDR was intended to terminate upon approval of base distribution rates in this proceeding, and because proposed modifications to this Rider are not proper in these distribution rate case proceedings, Staff should have recommended rejecting Duke's proposed continuation of Rider DDR. Therefore, Kroger objects to Staff's failure and recommends that the Commission reject any modifications to, and any continuation of, Rider DDR in this proceeding.

**D. Regulatory Mandates Rider (Rider RMR)**

In its application to increase distribution base rates pursuant to R.C. 4909.18, Duke seeks the Commission's approval to establish Rider RMR "to recover incremental costs associated with changes in federal, state, or local regulations or laws, including directives from the Commission, that result in costs that are not being recovered in base rates."[15] Although "Staff does not recommend approval of the proposed Regulatory Mandates Rider," Staff failed to explain that Rider RMR is not authorized by R.C. 4909.18 and related statutes, or that Duke cannot show that it has incurred any costs associated with changes in regulations or law or that any such costs are or could be attributed to the cost of rendering public utility service in the test period. Therefore, Kroger objects to the extent Staff failed to conclude specifically that Duke's proposed Rider RMR is unlawful and improper as no costs have been incurred. At a minimum, the Staff should have concluded that Rider RMR is premature because Duke cannot estimate costs associated with other regulatory proceedings or directives that may occur sometime in the future.

Staff also failed to recognize that approval of Rider RMR would be inconsistent with the Commission's holding in AEP Ohio's ESP III case where the Commission rejected AEP Ohio's proposed NERC compliance and cyber security rider (Rider NCCR), finding that the placeholder rider was premature and noting the lack of specificity of future potential costs for AEP Ohio.[16]

[15] Direct Testimony of William Don Wathen, Jr. at 6:16-21 (March 16, 2017).

[16] *In the Matter of the Application of Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to R.C. 4928.13 in the Form of an Electric Security Plan, et al.*, Case No. 13-2385-EL-SSO, et al., Opinion and Order at 62 (Feb. 25, 2015) (AEP ESP III Order).

Accordingly, Staff should have specifically stated that it would be more prudent for Duke to request, and for the Commission to review, specific cost recovery proposals associated with government initiatives and directives as they occur.

Further, Duke's proposed Rider RMR in this proceeding and in its ESP IV Application is also duplicative.[17] As discussed herein, litigating duplicative riders in the ESP IV proceedings and in this rate case proceeding is a waste of resources. Accordingly, Kroger objects to Staff's failure to recommend rejection of Rider RMR on these specific grounds, including the illegality and inappropriateness of seeking the rider through Duke's rate case.

**E. Customer Charges**

Finally, Kroger objects to Staff's failure to recommend a decrease in customer charges, particularly the DP customer charge. Although the Staff Report recommends a lower revenue requirement, Staff proposes that "customer charges should not be adjusted to a lower level . . . ."[18] Given that Staff found Duke's revenue requirements are lower, but has not recommended a decrease in customer charges, Duke's financial and business risks would be even lower in providing electric distribution service. Thus, a reduction of the customer charges, particularly the DP customer charge, would lead to a more fair and equitable result for the customers.

Respectfully submitted,

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[17] See ESP IV Application at 16.
[18] Staff Report at 33.

## 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 October 26, 2017.

/s/ Angela Paul Whitfield
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