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 Fund Rider of Jurisdictional Ohio Electric Distribution Utilities.	)))))	Case No. 18-976-EL-USF

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 4, 2018, the Commission established June 29, 2018 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.

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[1] Entry at ¶ 7 (June 4, 2018).

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

Respectfully submitted,

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MEMORANDUM IN SUPPORT

I. INTRODUCTION

On May 31, 2018, 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 stipulation adopted by the Commission in the 2017 USF Case[3] (2017 Adjustment Stipulation) set forth a NOI process whereby ODSA would file its NOI by May 31, 2018 and parties would then be afforded an opportunity to pursue methodological and other issues.[4] ODSA 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 block will

2 Notice of Intent to File an Application for Adjustments to Universal Service Fund Riders (May 31, 2018) (NOI).

3 In *The Matter of the Application of the Ohio Development Services Agency for an Order Approving Adjustments to the Universal Service Fund Riders of Jurisdictional Ohio Electric Distribution Utilities*, Case No. 17-1377-EL-USF, Opinion and Order at ¶ 24 (December 13, 2017) (2017 USF Case).

4 NOI at 1-3.

5 NOI at 11.

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]

In its June 4, 2018 Entry, 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 29, 2018 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.

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[6] Id. at 11.

[7] Entry at ¶ 2.

[8] Id. at ¶ 7.

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. Additionally, Kroger was granted intervention in previous USF cases, including the 2017 USF Case.[9]

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 submits these comments in an attempt to rectify the discriminatory practice of precluding mercantile customers from aggregating their electric loads across multiple facilities within the EDU's service territory and apply that aggregated load to the USF Rider kWh rates proposed by ODSA in its NOI. Inasmuch as load aggregation is widely accepted and permitted to modify rate application methodologies in other situations as discussed below, Kroger objects and comments on ODSA's proposed rate design methodology.

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9 See 2017 USF Case, Entry at ¶¶ 4-5 (July 28, 2017); see also *In The Matter of the Application of the Ohio Development Services Agency for an Order Approving Adjustments to the Universal Service Fund Riders of Jurisdictional Ohio Electric Distribution Utilities*, Case No. 16-1223-EL-USF, Entry at ¶4 (July 25, 2016).

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.[10]

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.[11]

The proposed rate design methodology is substantially the same as in the 2017 USF Case. In that case, Kroger ultimately agreed not to oppose the rate design methodology, but expressly reserved its right to object and/or provide comments regarding the application of the two-step

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[10] NOI at 11.

[11] R.C. 4928.52.

declining block rate design in future USF rider rate adjustment proceedings.[12] Kroger submits these comments in hopes that the parties can engage in resolving this discriminatory exclusion.

Similar with its position in the 2017 USF Case, 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.

A. Load Aggregation is Consistent with Ohio Law, Commission Rules, and Commission Precedent.

The Commission has previously approved aggregation of electric load by customers with multiple accounts or multiple meters. For example, the Commission has permitted multi-facility customers to aggregate their electric loads in order to qualify as a mercantile customer, thereby receiving benefits and avoiding costs. For instance, The Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, FirstEnergy), as part of their Mercantile Customer Program, permit customers such as schools to aggregate their consumption in order to meet the definition of a "mercantile customer" under R.C. 4928.01(A)(19).[13] By aggregating their energy consumption to meet the 700,000 Kwh threshold, schools and other aggregating customers can receive exclusive benefits and incentives that would not be available to unaggregated individual facilities.

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[12] 2017 USF Case, Stipulation at 3-5, n.2-4 (November 29, 2017); Opinion and Order at ¶ 19, n.5 (December 13, 2017).

[13] See *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan*, Case No. 10-388-EL-SSO, Opinion and Order at 38-39 (August 25, 2010).

Additionally, utilities have voluntarily agreed to allow commercial customers to aggregate their accounts in order to qualify for and receive certain benefits or to classify under certain rate design methodologies.[14] In other words, the utilities did not object to permitting Kroger to aggregate its load across numerous accounts under a similar two-tiered rate design as the one before the Commission in this case, in order to achieve the same rate as a comparable customer that consumed the same amount of energy as Kroger in the aggregate, but did so at a single facility and under a single account.

The utilities' agreement in various situations to aggregate a customer's load illustrates an EDU's ability to calculate a customer's aggregated load amount without significant difficulty. Those examples further illustrate that load aggregation is not unusual and may be used to assure one customer having multiple facilities is treated equal to a customer consuming the same load amount but at a single facility. It is noteworthy that each Kroger facility is not an independently owned franchise. Although Kroger facilities each have their own account, they all operate under common control and ownership.

Load aggregation is also in conformity with R.C. 4928.52 governing the USF. Kroger is not proposing to change the USF rate design methodology in order to shift the burden among customer classes in violation of R.C. 4928.52(C).[15] Kroger merely proposes that customers be able to aggregate their electric loads across multiple facilities within the EDU's service territory to then apply that aggregated load to the USF Rider kWh rates in order to ensure equal and

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[14] See *In the Matter of the Application of the Dayton Power and Light Company for Approval of Its Electric Security Plan, et al.*, Case Nos. 16-0395-El-SSO, et al., Amended Stipulation and Recommendation at 10 (March 13, 2017); *In the Matter of the Fuel Adjustment Clauses for Columbus Southern Power Company and Ohio Power Company, et al.*, Case Nos. 09-872-EL-FAC, et al., Joint Stipulation and Recommendation at 9-10 (December 21, 2016) (Global Settlement).

[15] R.C. 4928.52(C) states: "The universal service rider established under division (A) or (B) of this section 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."

nondiscriminatory treatment between customers having similar load in the aggregate. Not allowing Kroger and other customers with multiple facilities to aggregate their electric load discriminates against multi-facility/multi-account customers that consume large amounts of energy because they are treated differently than customers that consume similar amounts of energy, but do so under a single account and at a single facility.

For these reasons, the Commission should allow multi-facility commercial customers to aggregate their electric loads across multiple facilities within the EDU's service territory and apply that aggregated load to the USF Rider kWh rates proposed by ODSA in its NOI.

B. As a Mercantile Customer, Kroger Should Be Permitted to Aggregate its Load Across Multiple Facilities and Accounts to Apply the USF Rate Design.

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*."[16] 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.

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

[16] Emphasis added.

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.

Again, no modifications to the two-tier declining block rate design are necessary to implement Kroger's proposal. Instead, the *application* of the rate design is adjusted. 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/month[17] 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 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/month[18] 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.

[17] 10 sites x 100,000 kWh/month = aggregate consumption of 1,000,000 kWh/month.

[18] 1,000,000 kWh/month – 833,000 kWh/month = 167,000 kWh/month.

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.

In the 2017 USF Case, the Commission concluded, in part, that Kroger needed to provide more detail about the rate and customer impacts that would result from Kroger's proposal.[19] To that end, Kroger intends to work with the other parties to implement a procedure to study the impacts and obtain the additional detail from that study in this proceeding.

IV. Conclusion.

In order to treat single account/facility customers and multi-account/multi-facility customers, both of which consume large amounts of electric service equally, Kroger respectfully requests that its motion for intervention be granted and that its objections and comments on the application of ODSA's proposed rate design methodology be considered for adoption by the Commission.

Respectfully submitted,

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[19] 2017 USF Case, Opinion and Order at ¶ 53 (October 11, 2017).

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was served upon all parties of record via electronic mail on June 29, 2018.

/s/ Angela Paul Whitfield
Angela Paul Whitfield