

**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. 18-976-EL-USF
Fund Rider of Jurisdictional Ohio Electric)	
Distribution Utilities.)	

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

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 rider provides the funding that assists hundreds of thousands of low-income Ohio families maintain electric service. All customers, including low-income residential customers, pay for the USF through a per-kWh charge on their bill. The USF provides funding for low-income assistance programs including the Percentage of Income Payment Plan ("PIPP") and the Energy Efficiency and Weatherization Program.¹ PIPP is a critical lifeline that helps make electricity more affordable for low-income Ohioans. Without PIPP, many Ohioans would not have access to affordable electric service. Energy efficiency and weatherization services are provided for high usage PIPP customers through the electric partnership program.

The USF rider is included on the electric bill of all customers from the very largest users of electricity in the state to the income-eligible consumers who need

¹ R.C. 4928.54; R.C. 4928.55.

assistance from the programs. As the administrator of the USF, the Ohio Development Services Agency (“ODSA”) oversees the management of the PIPP program and other assistance programs designed to help consumers.

On May 31, 2018, ODSA filed its Notice of Intent (“NOI”) to make its next application for adjustments to the USF rider rates for each of the electric distribution utilities (“EDUs”) by October 31, 2018 for rates that will be effective on January 1, 2019. Through a settlement in Case 17-1377-EL-USF, ODSA was required to file the NOI by May 31, 2018 setting forth the methodology that it will employ to develop the USF revenue requirement and the rate design for the rate case filing.² This same process has been in place for many years.

On June 29, 2018 the Kroger Co. (“Kroger”) filed comments seeking to be permitted to aggregate its electric load across multiple facilities and accounts within an EDU’s service territory for the purpose of reducing the amount of money it pays towards the USF.³ The Ohio Partners for Affordable Energy (“OPAE”) also filed comments objecting to the ODSA’s proposed continuation of the two-block rate design that has generally been in effect since the USF was created in 1999.⁴ OCC opposes the Kroger proposal because it unfairly shifts additional costs to all other customers, including residential customers, in violation of Ohio law.

² 18-0976-EL-USF Entry, Finding 6.

³ Motion to Intervene and Objections and Comments by The Kroger Co. at 9-11 (June 29, 2018).

⁴ Motion to Intervene and Objections by the Ohio Partners for Affordable Energy at 3-6 (June 29, 2018).

II. COMMENTS

Kroger’s proposal to aggregate its electric load within an EDU service territory to reduce its obligation under the USF violates R.C. 4928.52(C) by shifting costs to all other customers, including residential customers.

Ohio law specifically states that the USF 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.”⁵ This means that a certain specific customer class (or customers within that class) cannot shift the costs associated with its universal service fund obligation away from itself and onto customers within another customer class. But this is precisely what Kroger is seeking to do, contrary to Ohio Rev. Code Ann. § 4928.52(C) (2007).

Under Kroger’s proposal, Kroger would pay less under the USF rider. This means that other customers, including residential customers, would pay more. OCC opposes Kroger’s proposal because it shifts additional costs to residential customers. Kroger proposes that it be allowed to combine the monthly electricity usage for the separate accounts of all its stores in a utility’s service territory into one customer account for purposes of calculating what it pays towards the USF. This would reduce the amount that Kroger contributes to support low-income Ohioans under the USF.

Specifically, Kroger is proposing “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.”⁶ This rate design would essentially create a new class of customers for multi-site mercantile

⁵ R.C. 4928.52(C).

⁶ Kroger Comments at 9.

entities. Under the proposed revision, they would be able to aggregate individual customer loads for the sole purpose of taking advantage of the lower-priced second tier rate; therefore, significantly lowering the amount of money the aggregated entity contributes to the USF.

Kroger's proposal is virtually identical to the proposal that it made in the 2017 USF case where it requested authority to aggregate its electric load across multiple facilities within an EDU service territory for the purpose of calculating its payment obligation towards the USF. The proposal does nothing but benefit Kroger. The PUCO correctly denied the Kroger proposal.⁷ In explaining its Order, the PUCO stated:

*“...compliance with R.C. 4928.52(C) requires more than a mere demonstration that costs shift from tier-two of the two-step declining block rate design to tier-one, but a **demonstration of a cost shift from one class of customers to another as a result of Kroger's proposal.** As part of its proposal, Kroger advised that the first and second blocks of the USF rider rates could be adjusted in the same proportion to accommodate the aggregation of mercantile customer loads or to limit the rate change strictly to the second-tier to accommodate Kroger's proposal and mitigate any impact to residential customers. However, Kroger did not propose any specific details to implement this aspect of their proposal, and, consequently, neither the parties to the case nor the Commission were afforded an opportunity to evaluate the feasibility of these aspects of Kroger's proposal, their reasonableness or compliance with R.C. 4928.52” (Order at 27-28; emphasis added).*

The Kroger proposal presented in their filed comments in this docket is no more developed now than it was when the PUCO rejected the proposal in October 2017. There are no additional details in the comments that Kroger filed for the parties in the case or for the PUCO to evaluate to determine the feasibility of aggregating Kroger load and to

⁷ *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. 17-1377-EL-USF, Opinion and Order (October 11, 2017 at 27-28).

ensure compliance with Ohio law. In fact, Kroger admits that details are unavailable, and that further study is needed within its comments:

*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. 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.*⁸

Kroger commented that even though each Kroger facility has its own electric account, they all operate under common control and ownership.⁹ Kroger's overarching concern is that multi-location customers like Kroger are not treated the same as other large commercial and industrial customers that use all their energy at a single location. However, the two-block rate design for the USF is based on an individual account basis and not common ownership and control of a corporate interest.

Currently, any customer using less than 833,000 kWh per month pays the same per kWh charge in a given service territory.¹⁰ Any customer (including any Kroger facility) that uses more than 833,000 kWh on an individual account is provided a discount through a two-tier "declining block" rate structure, qualifying for electricity pricing based upon the declining second-block rates.¹¹

The PUCO has already determined that ODSA has the authority to design USF rates on an individual account basis.¹² Therefore, the elimination of the declining second-block USF rate design (as proposed in the OPAA comments) is seemingly the only way

⁸ Motion to Intervene and Objections and Comments by The Kroger Co. at 11 (June 29, 2018).

⁹ Kroger Comments at 8.

¹⁰ 18-0976-EL-USF Entry at 3.

¹¹ 18-0976-EL-USF Entry at 3.

¹² 17-1377-EL-USF Opinion and Order at 27.

to assure Kroger that it is being treated identically to all other commercial and industrial customers. Under OPAE's approach, Kroger and all other commercial and industrial customers will be treated identically, so if Kroger wants to be treated the same as all the others, then adopting OPAE's approach accomplishes that goal.

While a single tier USF rate is the most fair and appropriate for customers, OCC has generally not opposed the declining block two-tier rate design in the past. OCC does not intend to oppose the existing USF rate design this year either, assuming that the PUCO does not adopt the Kroger proposal. The PUCO should approve the methodology outlined in the NOI as soon as possible so that ODSA can finalize the USF rate case filing.

III. CONCLUSION

The USF Rider is intended to fund low-income assistance programs administered by the ODSA. This program provides a lifeline to hundreds of thousands of low-income Ohioans annually who would otherwise be unable to maintain electric service. The PUCO should not approve any proposal to modify the existing rate design without a thorough understanding of the impact of such modification on the amount that other customer classes would pay for their electric service. The purpose of the Notice of Intent, after all, is to adopt a methodology for calculating USF rates for each of the electric utilities as accurately as possible and that complies with Ohio law. Kroger's proposal, by design, shifts costs from Kroger to all other customers, including customers in the residential class. Kroger has not provided any of the information necessary to assess the increased costs that residential and other customers will pay if its proposal were implemented. Kroger's 2018 proposal is merely a replay of the same proposal the PUCO

rejected in 2017. This proposal continues to be unlawful under Ohio law, because it inappropriately shifts costs between customer classes.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of these Reply Comments was served on the persons stated below via electronic transmission, this 10th day of July 2018.

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Summary: Reply Reply Comments by the Office of the Ohio Consumers' Counsel electronically filed by Ms. Deb J. Bingham on behalf of Botschner-O'Brien, Amy