

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of the)	
Ohio Developmental Services Agency for)	
an Order Approving Adjustments to the)	Case No. 18-976-EL-USF
Universal Service Fund Rider of)	
Jurisdictional Ohio Electric Distribution)	
Utilities)	

**JOINT REPLY COMMENTS OF OHIO EDISON COMPANY,
THE CLEVELAND ELECTRIC ILLUMINATING COMPANY, THE TOLEDO EDISON
COMPANY, DUKE ENERGY OHIO, INC., OHIO POWER COMPANY,
AND THE DAYTON POWER AND LIGHT COMPANY**

I. INTRODUCTION AND BACKGROUND

Ohio Edison Company, The Cleveland Electric Illuminating Company, The Toledo Edison Company (collectively, “FE Utilities”), Duke Energy Ohio, Inc., Ohio Power Company, and The Dayton Power and Light Company (collectively, the “Ohio EDUs”), hereby file these Reply Comments pursuant to the Attorney Examiner’s Entry dated June 4, 2018. On May 31, 2018, the Ohio Development Services Agency (“ODSA”) filed a Notice of Intent to File an Application for Adjustments to Universal Service Fund Riders (“NOI”) consistent with its obligations under the Stipulation in Case No. 17-1377-EL-USF. On June 4, 2018, the Attorney Examiner issued an Entry joining all jurisdictional Ohio electric distribution utilities as indispensable parties to the proceeding and ordering all other interested parties to file motions to intervene and objections or initial comments by June 29, 2018. Additionally, the Attorney Examiner ordered that all reply comments be filed no later than July 10, 2018.

Pursuant to the Attorney Examiner’s directive, four entities filed motions to intervene in this proceeding and two (Ohio Partner’s for Affordable Energy (“OPAE”) and The Kroger Company (“Kroger”)) filed objections and comments. The Ohio EDUs file these Joint Reply

Comments in response to several arguments raised by OP&E and Kroger regarding the application of the current declining block-rate design.

II. DISCUSSION

In this proceeding, OSDA has proposed to continue the use of a two-tier, declining block-rate mechanism to allocate universal service fund costs to customers of the Ohio electric distribution utilities.¹ As proposed, all customers pay one rate for monthly usage up to and including 833,000 kWh and another, presumably lower, rate for usage above 833,000 kWh.² This design strikes a balance that ensures all the Ohio EDUs' customers pay a share of the cost to assist some of Ohio's most vulnerable individuals.

In their objections and comments, which are substantively identical to the objections and comments filed last year in Case No. 17-1377-EL-USF, OP&E again argues that the two-step declining block rate design violates R.C. 4928.52.³ In addition, Kroger again asks the Commission to upset the balance that the USF's rate design strikes by modifying "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."⁴ Put simply, Kroger wants the Commission to modify the rate design so that Kroger may aggregate its loads together and shift costs of the universal service fund to other customers. Kroger reasons that such a modification is necessary because: (1) "load aggregation is widely accepted and permitted to modify rate

¹ See *In the Matter of the Application of the Ohio Developmental Service Agency for an Order Approving Adjustments to the Universal Service Fund Rider of Jurisdictional Ohio Electric Distribution Utilities*, Case No. 18-976-EL-USF ("2018 USF Case"), Application ("NOI"), at 11 (May 31, 2018).

² *Id.*

³ Although OP&E's objections purport to focus, without explanation, on Ohio Power Company's USF rates, OP&E's argument more broadly applies to the two-block USF rate design generally.

⁴ 2018 USF Case, Motion to Intervene and Objections and Comments By The Kroger Co. ("Kroger Initial Comments"), at 9 (June 29, 2018).

application methodologies”⁵; and (2) the current declining block-rate design is “discriminatory” against high-use customers with multiple accounts and locations.⁶ For the reasons set forth below, the Commission should again reject OPAE’s and Kroger’s arguments and their proposed modifications to the declining block-rate design.

A. The Commission Has Already Rejected OPAE’s And Kroger’s Arguments; It Should Do So Again Here.

OPAE and Kroger have raised the very arguments advanced in their objections and comments before – in fact, they did so as recently as last year in Case No. 17-1377-EL-USF. The Commission squarely rejected those arguments in its October 11, 2017 Opinion and Order regarding the NOI phase of that proceeding.⁷ Specifically, the Commission rejected OPAE’s theoretical argument that the two-step declining block rate design, on its face, violates R.C. 4928.52(C).⁸ Likewise, the Commission rejected Kroger’s identical aggregation proposal presented in that docket.⁹ Neither OPAE nor Kroger has raised any new argument or identified any new evidence that would warrant the Commission’s reconsideration of its decision on these issues. Accordingly, the Commission should disregard OPAE’s and Kroger’s proposed modifications to the longstanding USF rate design.

⁵ *Id.* at 5.

⁶ *Id.* at 8-9.

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 (“2017 USF Case”), Opinion and Order at ¶ 29-53.

⁸ *Id.* at ¶ 52.

⁹ *Id.* at ¶ 53.

B. Kroger's Claim That "Load Aggregation Is Widely Accepted And Permitted To Modify Rate Application Methodologies" Is Incorrect.

Kroger's aggregation proposal is also substantively without merit. Kroger first argues that the aggregation of customer loads is common place and has been used by commercial customers "to qualify for and receive certain benefits or to classify under certain rate design methodologies."¹⁰ Kroger is incorrect. Indeed, the cases cited by Kroger in support of this proposition indicate that the aggregation of customer loads *is not* a common, recurring utility practice. Rather, in the cases cited by Kroger, aggregation was permitted for specific, limited purposes (and only through settlement) that did not require monthly re-aggregation of the customer's load to simply issue a bill.¹¹

For example, Kroger cites to a small portion of the Commission's order in the FE Utilities' second electric security plan case which discusses a stipulation provision permitting aggregation of certain customers' loads.¹² Kroger, however, ignores two pertinent facts about that stipulation.¹³

¹⁰ Kroger Initial Comments at 5, 8.

¹¹ 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* ("FE Utilities' ESP II Case"), Case No. 10-388-EL-SSO, Opinion and Order at 38-39 (Aug. 25, 2010) (permitting load aggregation for the limited purpose of determining whether the customer's usage on a single campus qualifies the customer as a "mercantile customer" under R.C. 4928.66); see also *In the Matter of the Application of Dayton Power and Light Company for Approval of Its Electric Security Plan, et al.*, Case No. 16-0395-EL-SSO, et al., Amended Stipulation and Recommendation at 10 (Mar. 14, 2017) ("DP&L Stipulation") (permitting load aggregation for the limited purpose of determining a customer's eligibility for an economic development credit); see also *In the Matter of the Fuel Adjustment Clauses for Columbus Southern Power Company and Ohio Power Company, et al.*, Case No. 09-0872-EL-FAC, et al., Joint Stipulation and Recommendation at 14-15 (Dec. 21, 2016) ("AEP Stipulation") ("AEP Ohio agrees, for administrative billing and efficiency (given that Kroger has over 100 accounts involving different locations), to fund a *one-time* aggregated rate mitigation credit to Kroger in an amount equal to the projected impact of the RSR rate change for all of Kroger's accounts during the RSR Collection Period.") (emphasis added).

¹² See Kroger Initial Comments at 7; see also FE Utilities' ESP II Case at 38-39.

¹³ Kroger also ignores that the stipulation in the FE Utilities' ESP II Case, which it signed as a non-opposing party, explicitly provides that "[t]his Stipulation is submitted for purposes of this proceeding only, and is not deemed binding in any other proceeding, and except as otherwise provided herein, nor is it to be offered or relied upon in any other proceedings, except as necessary to enforce the terms of this Stipulation." See FE Utilities' ESP II Case, Application and Stipulation at 34 (Mar. 23, 2010).

First, aggregation was only permitted where the accounts were located on a single campus, a practice arguably already contemplated by statute.¹⁴ And second, aggregation was permitted only for a limited, one-time purpose, *i.e.* determining eligibility as a mercantile customer under Section 4928.66 of the Revised Code.¹⁵ These circumstances are far more limited than suggested by Kroger in its initial comments and do not justify the modification proposed by Kroger here.

Kroger also cites two stipulations to which it was a signatory party in support of its argument. To begin, Kroger's citation to these stipulations is improper. Each stipulation contained provisions restricting the use of its terms in other proceedings.¹⁶ Kroger ignores this fact and, instead, attempts to use these stipulations to support the proposition that "utilities have voluntarily agreed to allow commercial customers to aggregate their accounts."¹⁷ This is improper and does not support Kroger's allegation that "load aggregation is widely accepted and permitted to modify rate application methodologies."¹⁸

Regardless, these provisions do not support the type of load aggregation sought by Kroger here. Again, these provisions allowed aggregation for limited, one-time purposes, namely determining whether a customer qualified for an economic development incentive.¹⁹ Indeed,

¹⁴ See FE Utilities' ESP II Case, Opinion and Order at 38-39; *see also* FE Utilities' ESP II Case, Application and Stipulation at 25.

¹⁵ *Id.*

¹⁶ See DP&L Stipulation at 37 ("This Stipulation is submitted for purposes of this proceeding only, and is not deemed binding in any other proceeding, except as expressly provided herein, nor is it to be offered or relied upon in any other proceedings, except as necessary to enforce the terms of this Stipulation."); *see also* AEP Stipulation at 22-23 ("Except for enforcement purposes or to establish the terms of the Global Establishment are lawful, neither this Global Settlement nor the information and data contained herein or attached hereto shall be cited as a precedent in any future proceeding or before the General Assembly for or against any Signatory Party or non-opposing party, if the Commission approves the Global Settlement.").

¹⁷ Kroger Initial Comments at 8.

¹⁸ *Id.* at 5.

¹⁹ See DP&L Stipulation at 10; *see also* AEP Stipulation at 15-16.

Kroger is undoubtedly aware of this, considering it was the beneficiary of each stipulation provision.²⁰ These limited circumstances do not support Kroger's broad assertion that load aggregation is a widely-accepted practice or justify the implementation of a complex monthly aggregated billing system.²¹

As discussed above, in the cases cited by Kroger, aggregation of customer loads was only permitted for specific purposes that were not related to monthly billing of individual customer accounts. In contrast, Kroger now appears to ask the Commission to require the Ohio EDUs to calculate a separate item each month on its (and every other mercantile customer's) bill based upon aggregate usage on multiple accounts. This is simply not a regular utility practice which the Ohio EDUs can perform "without significant difficulty."²² Accordingly, the Commission should reject Kroger's argument that load aggregation is justified here because it is a "widely accepted" practice.

C. The Proposed Declining Block-Rate Design Is Not Unduly Discriminatory.

Kroger next argues that the current declining block-rate design is "discriminatory" because it treats customers with multiple facilities different from customers with a single facility.²³ "However, the law recognizes that rate forms must be manageable and that it is not feasible to design individual rates for specific application to individual customers."²⁴ Moreover, the

²⁰ *See id.*

²¹ Indeed, as discussed herein, Kroger's proposal is very difficult, costly, and burdensome to implement. *See, infra* §II.B.1.

²² *See* Kroger Initial Comments at 8.

²³ *See id.* at 9.

²⁴ *In the Matter of the Application of Columbia Gas of Ohio, Inc. for an Increase in Rates to be Charged and Collected for Gas Service within the Central Region of its Service Area Encompassing the Counties of Allen, Champaign, Clark, Delaware, Fairfield, Franklin, Hardin, Knox, Licking, Logan, Madison, Marion, Morrow, Pickaway, and Union, Ohio*, Case No. 84-0067-GA-AIR, 1985 Ohio PUC LEXIS 37, Opinion and Order at *61 (May 21, 1985).

Commission has recognized “that all rates are inherently discriminatory.”²⁵ Accordingly, Ohio law only prohibits *undue discrimination*.²⁶ Here, there is no evidence that the failure to allow aggregation in the current declining block-rate design is unduly discriminatory against Kroger or any other mercantile customer. Indeed, as discussed below, aggregation, in the form proposed by Kroger, is not and should not be allowed because: (1) it is difficult, costly, and burdensome to implement; (2) it shifts costs to other customers, including residential customers; and (3) Kroger is treated no differently than other mercantile customers under the current declining block-rate design. Indeed, just last year, the Commission expressly rejected this very argument by Kroger, finding that “it is not discriminatory to apply the USF rates per customer account,” correctly noting that “the vast majority of electricity utility rates are designed on the same basis.”²⁷ The Commission should again reject Kroger’s proposed modification to the current declining block-rate design.

1. Kroger’s proposal is difficult, costly, and burdensome to implement.

As briefly discussed above, Kroger again asks the Commission to adopt a modification to the current declining block-rate design that would presumably require the Ohio EDUs to calculate a separate item on each Kroger account’s (and each mercantile customer’s) bill based on aggregate usage across an indefinite and constantly changing amount of accounts. Contrary to Kroger’s assertions, this process is not capable of being performed “without significant difficulty.”²⁸ In fact, the process of aggregating monthly consumption from multiple Kroger facilities contained

²⁵ See *In the Matter of the Applications of Columbia Gas of Ohio, Inc. to Establish a Uniform Rate for Natural Gas Service within the Company’s Northwest Region, Lake Erie Region, Central Region, Eastern Region, Southeastern Region, et al.*, Case No. 89-0616-GA-AIR, 1989 Ohio PUC LEXIS 1396, Entry on Rehearing at *37 (May 24, 1989).

²⁶ See *id.*

²⁷ 2017 USF Case, Opinion and Order at ¶ 53.

²⁸ See Kroger Initial Comments at 8.

within each of the Ohio EDUs' 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 the development of internal system changes that would be both costly and time consuming. Moreover, this process would be further complicated by the launch and closure of Kroger stores, an occurrence which is not infrequent.

The cost of implementing these changes for Kroger alone would be significant. But, perhaps correctly, Kroger does not request that it alone receive special treatment and, instead, requests that the declining block-rate design be modified to allow *all* mercantile customers to aggregate their loads.²⁹ Accordingly, there is no way to determine just how great the cost to implement these changes may be. Indeed, it is easy to anticipate that, at a minimum, additional grocery stores and other types of chains will also seek to qualify for this special treatment by aggregating their loads. Multitudes of such customers cannot be manually billed and system changes to accomplish such processes would be costly.

Moreover, it is not necessarily even possible to automate the billing that is expected to be required by Kroger's proposal or the process that would be required to identify and verify "multi-facility" customers that could be allegedly linked to a single account for purposes of the USF Rider. This process would likely require applications by mercantile customers and some form of

²⁹ See *id.* at 9. Notably, Kroger asks the Commission for two similar, but different, modifications to the current declining block-rate structure. First, Kroger requests that the Commission "allow multi-facility commercial customers to aggregate their 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." Subsequently, Kroger requests that "the two-step declining block rate design methodology [be modified] so that the two tiers apply to mercantile customers with multiple sites on an aggregated monthly consumption basis." Of course, not all commercial customers with multiple facilities qualify as mercantile customers. Similarly, not all mercantile customers are commercial customers with multiple facilities. For purposes of these Joint Reply Comments, the Ohio EDUs presume that Kroger intended all customers be allowed to aggregate their monthly usage to determine whether they are mercantile customers that would, therefore, qualify for Kroger's proposed special billing treatment.

verification by the Ohio EDUs that could only be done manually, adding to the cost and administrative burden of the process. Ultimately, all these additional costs would have to be borne by someone, likely the Ohio EDUs' other customers. Kroger's request for this special billing treatment does not justify either the increased operational burden this "modification" will place on the Ohio EDUs or the costs that will ultimately flow to other customers. Accordingly, the Commission should reject Kroger's proposal.

2. Kroger's proposal shifts costs to other customers, including residential customers.

OSDA proposes a two-step declining block rate design that is consistent with rate design methodologies approved by the Commission in all other OSDA USF rider adjustment applications. As discussed above, the first block applies to all monthly consumption up to and including 833,000 kWh per month. The second rate block applies to all monthly consumption above 833,000 kWh. In the NOI, OSDA further explains that, for each of the Ohio EDUs, the rate per kWh for the second block will be set at the lower of the Percentage of Income Payment Plan ("PIPP") charge in effect in October 1999 or the per kWh rate that would apply for the utility's annual rider revenue requirement to be recovered through a single block per kWh rate.³⁰ The rate for the first block then is set at the level necessary to produce the remainder of the utility's annual USF rider revenue requirement.³¹

Here, the modification sought by Kroger would effectively move Kroger (and other similarly situated customers) from the first block to the second block for billing purposes. This would shift costs to customers in the first block, *e.g.* residential, commercial, and small industrial customers, causing them to pay more for the universal service fund. This outcome would be

³⁰ See NOI at 11.

³¹ *Id.*

unprecedented and contrary to the standard rate design that has been in place since the USF was first established. Moreover, as Kroger would be directly benefitting at the expense of other customers, there is no doubt that other similarly situated businesses would likewise seek out the opportunity to receive the same special advantage. There is no compelling reason to make such a change, and the Commission should decline to do so.

3. Kroger is treated no differently than other mercantile customers under the current declining block-rate design.

In its initial comments, Kroger repeatedly emphasizes the fact that it is a mercantile customer to support its allegation that the current declining block-rate design is discriminatory.³² What Kroger does not identify, however, is how it is treated differently than any other mercantile customer under the current rate design. Indeed, the current rate design applies the same way to ***all customers*** of the Ohio EDUs. All customers pay one rate for the first 833,000 kWh of electricity consumed each month on each of their accounts. All customers then pay a different rate for each kWh of electricity consumed thereafter on each of their accounts. This does not change regardless of a customer's class, size, or geographic location. Kroger cannot claim that such a design is unduly discriminatory when, in fact, it is being treated the exact same way as all of the Ohio EDUs' other customers. Accordingly, the Commission should reject Kroger's claim that the current declining block-rate design is unduly discriminatory and decline to implement Kroger's proposed modification.

³² See Kroger Initial Comments at 9-10.

III. CONCLUSION

For these reasons, the Ohio EDUs respectfully request that the Commission deny the proposal set forth by Kroger in its Comments and Objections.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Joint Reply Comments of Ohio Edison Company, The Cleveland Electric Illuminating Company, The Toledo Edison Company, Duke Energy Ohio, Inc., Ohio Power Company, and The Dayton Power and Light Company to the Kroger Company was served by electronic mail this 10th day of July, 2018.

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