THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF ESTABLISHING THE NONBYPASSABLE RECOVERY MECHANISM FOR NET LEGACY GENERATION RESOURCE COSTS PURSUANT TO R.C. 4928.148.	**CASE NO. 19-1808-EL-UNC**

ENTRY ON REHEARING

Entered in the Journal on January 15, 2020

I. SUMMARY

{¶ 1} The Commission denies the joint application for rehearing filed by The Ohio Manufacturers' Association Energy Group and the Kroger Company on December 23, 2019.

II. DISCUSSION

A. Procedural Background

{¶ 2} Am. Sub H. B. 6 (H.B. 6), which became effective on October 22, 2019, required the Commission to establish a nonbypassable rate mechanism for the retail recovery of prudently incurred costs related to a legacy generation resource for the period up to December 31, 2030. R.C. 4928.148

{¶ 3} With respect to the nonbypassable rate mechanism, the Commission was required to: (1) determine the prudence of the actions of electric distribution utilities with legacy generation ownership (OVEC EDUs); (2) determine the proper rate design for recovering or remitting the prudently incurred costs related to legacy generation; (3) provide for the discontinuation of the nonbypassable rate mechanism on December 31, 2030, subject to final reconciliation; and, (4) determine the manner in which charges collected by utilities without legacy generation are remitted to those with legacy generation resources. R.C. 4928.148

{¶ 4} On November 21, 2019, the Commission established the Legacy Generation Resource Rider (LGR Rider) in compliance with the H.B. 6 mandates. Among other terms, LGR Rider was established such that nonresidential account customers shall not be

aggregated for purposes of applying the rate caps provided in R.C. 4928.148 (A)(2). Entry at ¶¶27, 33.

{¶ 5} Pursuant to R.C. 4903.10, any party to a Commission proceeding may apply for rehearing with respect to any matters determined by the Commission within 30 days after the Commission's order is journalized.

{¶ 6} The Ohio Manufacturers' Association Energy Group (OMAEG) and the Kroger Company (Kroger) (Joint Applicants) filed a joint application for rehearing on December 23, 2019, seeking the Commission's reconsideration of our decision to preclude aggregation of nonresidential account customers for purposes of applying the statutory rate caps.

{¶ 7} Memoranda contra were filed by the Ohio Consumers' Counsel (OCC), and jointly by The Dayton Power and Light Company, Duke Energy Ohio, Inc., and Ohio Power Company (EDUs), on January 2, 2020.

B. Summary of the Application for Rehearing and Memoranda Contra

{¶ 8} Joint Applicants assert one assignment of error – that the Commission erred by imposing the LGR Rider monthly cap on a "per account" instead of a "per customer" basis. Consistent with their previously filed comments in this case, Joint Applicants claim that the legislature intended to allow customers with multiple facilities to combine their accounts into a single customer account in order to avoid paying above an aggregated $1,500 per month charge. In support of this legislative interpretation argument, Joint Applicants cite to the change in H.B. 6 from the "as introduced" language of "per account" to the "final enacted" language of "per customer" as evidence that the legislature considered and rejected capping charges on the basis of individual accounts.

{¶ 9} EDUs oppose the rehearing argument on multiple grounds. Initially, they argue that there is no statutory ambiguity within R.C. 4928.148, emphasizing that the legislature utilized many amendments and language changes in crafting H.B. 6, and there is

no evidence surrounding the decision to replace the language "per account" with the final phrase "per customer" that suggests ambiguity or a legislative intent to deviate from traditional practices for collecting customer tariffs. EDUs point out that during the entire time when H.B. 6 was under consideration, that the term "customer" was already defined to mean "any person who has an agreement, by contract and/or tariff with an electric utility * * * to receive service." Ohio Adm.Code 4901:1-10-01(I). Applying this definition of "customer," EDUs assert that there is no ambiguity in the H.B. 6 language, as each consumer billing account is pursuant to a contract and/or tariff such that "account" and "customer" are synonymous under the Commission's rules. EDUs also emphasize that Joint Applicants' position would unreasonably deviate from tariff-based billing practices in a manner that would: be expensive to administer; and, result in significant cost shifting or deferred cost recoveries not intended by the legislature.

{¶ 10} OCC emphasizes that Joint Applicants' position creates an unintended windfall for commercial customers with multiple places of business that would inflate deferred cost recoveries to the point where residential customers would be at risk for added costs either through increased monthly charges up to the residential cap or additional contribution periods beyond 2030.

C. Commission Conclusion

{¶ 11} We reject the argument raised by Joint Applicants and affirm our decision from November 21, 2019. We find that R.C. 4928.148, as enacted in H.B. 6, is clear and unambiguous.

{¶ 12} The legislature was aware of the definition of "customer" when it determined to replace the undefined term "account" from an earlier legislative draft. A "customer" is broadly defined as "any person who has an agreement, by *contract and/or tariff* with an electric utility * * * to receive such service." Ohio Adm.Code 4901:1-10-01 (emphasis added). Thus, the determination of "customer" status is dependent on the contractual relationship between an electric utility and its consumer, which is reflected on the basis of the individual

billing account that is used to collect for distributed electricity, and Commission-approved tariffs. Consistent with the Ohio Administrative Code definition of "customer," and historic utility practices utilized to collect Commission-approved tariffs, we find that it is clear and unambiguous that a "customer" is synonymous with an "account" for purposes of administering R.C. Title 49.

{¶ 13} In further support of this finding, we note that the legislature has previously acted to modify the definition of "customer" where it intended to alter the meaning of the term. For example, in the limited context of providing the right to opt in or out of a competitive retail electric service portfolio plan as provided in R.C. 4928.6611 to 4926.6615, the legislature defined "customer" to include circumstances where "[t]he customer receives electricity through a meter of an end user *or through more than one meter at a single location* in a quantity that exceeds * * *." R.C. 4928.6610(A)(2)(b)(i) (emphasis added.) In the present case, the legislature declined to define "customer" on a more broad, pooled-account basis, for purposes of administering R.C. 4928.148. Given the alternative legislative treatment of the definition of "customer" with R.C. Title 49, the Commission finds that R.C. 4928.148 is clear, and there is no legislative intent to allow for the pooling of accounts in the manner advocated by Joint Applicants.

{¶ 14} Finally, we note that Joint Applicants are aware that this Commission previously rejected an argument by Kroger in favor of account aggregation in a case involving the proper assessment of a Universal Service Fund (USF) rider. *In Re the Application of The Ohio Development Services Agency for an Order Approving Adjustments to the Universal Service Fund Rider of Jurisdictional Electric Distribution Utilities*, Case No. 17-1377-EL-UNC, Opinion and Order at ¶53 (October 11, 2017). In that case, Kroger argued that it was unfairly discriminatory to deny the company the right to aggregate its accounts for purposes of determining its USF rider obligations. We rejected that argument, finding that "[i]t is not discriminatory to apply the USF rates per customer account. Indeed, the vast majority of electric utility rates are designed on the same basis." In addition to upholding

the denial of Kroger's claimed right to pool accounts for purposes of mitigating its USF rider obligations, we also emphasized that Kroger's pooling request would unreasonably create "the likelihood that customers who are not able to aggregate their accounts will incur significantly greater USF charges * * * " as a result of Kroger's pooling proposal. Opinion and Order at ¶ 53. As in the USF case, the Commission again finds that public policy does not favor the pooling of individual accounts for purposes of allowing customers to shift their funding requirements to customers that are ineligible for such pooling claims.[1] Had the legislature intended to allow for such disparity in establishing the statutory rate caps, it surely would have done so by providing a specific definition of "customer" as to this intention, as it did in R.C. 4928.6610(A)(2)(b)(i).

{¶ 15} For the reasons stated above, the Commission finds that Joint Applicants' application for rehearing should be denied.

III. ORDER

{¶ 16} It is, therefore,

{¶ 17} ORDERED, That the application for rehearing file by Joint Applicants on December 23, 2019, be denied, It is, therefore,

[1] Based on Kroger's assertion in the USF rider case that it has 240 separate facilities, the Commission estimates that Kroger's annual rate cap amounts pursuant to LGR rider would decrease from $4.32 million ($1,500 x 240 facilities x 12 months) to $18,000 ($1,500 x 12) if its pooling proposal were adopted. USF Order at ¶38.

{¶ 18} ORDERED, That a copy of this Entry on Rehearing be served upon all parties of record.

COMMISSIONERS:
Approving:
Sam Randazzo, Chairman
M. Beth Trombold
Lawrence K. Friedeman
Daniel R. Conway
Dennis P. Deters

MLW/hac

Summary: Entry that the Commission denies the joint application for rehearing filed by The Ohio Manufacturers' Association Energy Group and the Kroger Company on December 23, 2019 electronically filed by Docketing Staff on behalf of Docketing