

August 25, 2020

Ms. Tanowa Troupe, Secretary
Public Utilities Commission of Ohio
180 East Broad Street, 11th Floor
Columbus, Ohio 43215

Re: *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. 20-1103-EL-USF

Dear Ms. Troupe:

I am submitting this correspondence on behalf of The Kroger Co. (Kroger) to correct several inaccuracies, misrepresentations, and misstatements contained in the August 12, 2020 letter inappropriately and unnecessarily docketed in this proceeding by the Office of the Ohio Consumers' Counsel (OCC). OCC's letter is not within the spirit of the settlement and does not simply note its non-opposition to the settlement filed in the docket. Instead, OCC inappropriately states its legal positions and re-argues its comments filed in the docket. In doing so, OCC misstates Kroger's litigation proposal submitted in the case and mischaracterizes confidential settlement discussions that occurred.

First, to clarify the record, contrary to OCC's claims, Kroger never proposed to shift costs to the residential class. As set forth in Kroger's comments, Kroger is seeking the exact same treatment that other large, similarly-sized customers already receive under the current practice and as the law has been applied. Kroger is not creating a new rate design methodology or a new class of customers. Rather, Kroger is asking to be treated in the same manner on an aggregated basis as a customer that consumes similar quantities of electricity at a single site. More specifically, Kroger's proposal is for the two-step declining block rate design methodology to be applied in a non-discriminatory fashion, which would allow multi-site customers to be treated as a single customer for purposes of applying the USF Rider's two-step declining block rate design similar to the application to similarly-sized single-site customers. For OCC to claim in its August 12, 2020 letter that Kroger's proposal would shift costs to other customer classes is factually incorrect, and to imply that Kroger is proposing to violate the law is similarly not accurate.

Moreover, contrary to OCC's claims, Kroger's proposal in this proceeding was *not* rejected. It was not even litigated as a settlement was reached, just as the respective litigation

positions of the other parties were not litigated or rejected. Instead, the parties agreed to sign or not oppose the Joint Stipulation and Recommendation (Stipulation) filed on July 28, 2020 in lieu of litigating their respective positions. By its terms, the Stipulation is not a determination of the parties' respective litigation positions: "This Stipulation represents a compromise involving a balancing of competing positions, and it does not necessarily reflect the position that one or more of the Signatory Parties would have taken if these issues had been fully litigated. The Signatory Parties believe that this Stipulation represents a reasonable compromise of varying interests." Stipulation at ¶ 3. For OCC to claim otherwise is a direct violation of the terms of the Stipulation.

Finally, as set forth above, OCC's August 12, 2020 letter does not reflect, and in fact, contradicts, the express language of the Stipulation. Instead, it discloses, albeit inaccurately, the content of specific settlement discussions, which disclosure violates the Commission's rules and the spirit of confidential settlement discussions.

Given that the Stipulation speaks for itself and the content of any specific settlement discussions leading up to that Stipulation are confidential and irrelevant, Kroger respectfully requests that the Commission disregard the third paragraph of OCC's August 12, 2020 letter that contains misstatements and purported confidential settlement discussions and note the record stands corrected.

Respectfully submitted,

/s/ Kimberly W. Bojko
Kimberly W. Bojko (0069402)
Attorney for The Kroger Co.

cc: Parties of Record
Attorney Examiner

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

8/25/2020 4:55:16 PM

in

Case No(s). 20-1103-EL-USF

Summary: Correspondence electronically filed by Mrs. Kimberly W. Bojko on behalf of Kroger