

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke)
Energy Ohio, Inc. for Authority to Adjust) Case No. 21-12-EL-RDR
Rider PF.)
)
)

**MOTION TO INTERVENE AND
INITIAL COMMENTS
OF
THE KROGER CO.**

The Kroger Co. (Kroger) hereby respectfully submits its motion to intervene in the above-captioned proceeding to the Public Utilities Commission of Ohio (Commission), with the full powers and rights granted to intervening parties, pursuant to R.C. 4903.221 and Ohio Adm. Code 4901-1-11. 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 existing parties. Accordingly, Kroger satisfies the standard for intervention and respectfully requests that the Commission grant its timely motion to intervene and make Kroger a full party of record in these proceedings.

In addition, in accordance with the attorney examiner's directive, Kroger hereby submits its initial comments in the attached Memorandum in Support.

Respectfully submitted,

/s/ Angela Paul Whitfield

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**BEFORE
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**MEMORANDUM IN SUPPORT
AND COMMENTS**

I. INTRODUCTION

Duke Energy Ohio, Inc. (Duke) seeks to recover \$3.5 million from customers through Component Two of its Power Future Initiatives Rider (Rider PF).¹ As such, Duke filed its Application and supporting testimony regarding Component Two on March 31, 2021. Commission Staff subsequently issued a Review and Recommendation (Staff Report) on February 7, 2022.² By Entry dated March 10, 2022, the attorney examiner set an April 1, 2022 deadline for interested parties to intervene and file initial comments.

As explained in more detail below, given the impact this case could have on customers, Kroger has a real and substantial interest in the outcome of this proceeding. As such, Kroger satisfies the standard for intervention in this case, and requests that the Commission make it a full party of record and accept its comments for consideration.

¹ Application at 1 (Mar. 31, 2021).

² Review and Recommendation (Feb. 7, 2022) (Staff Report).

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.

Kroger is one of the largest grocers in the United States, with numerous facilities served by Duke. The facilities operated by Kroger use electricity for food storage, lighting, heating, cooling, and distribution, often 24 hours a day, 7 days a week. Kroger’s electric distribution needs associated with its facilities in Duke’s service territory are considerable. Since Duke proposes to adjust Rider PF to recover additional costs of Component Two from customers,³ the outcome of this proceeding will directly impact Kroger’s electric service and the costs associated with obtaining such service from Duke. Kroger has participated in other cases before the Commission

³ See Application at 8 (Mar. 31, 2022).

involving rates charged by Duke,⁴ including Duke's previous consolidated electric security plan and rate case, which established Rider PF.⁵

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. Accordingly, Kroger respectfully requests that its motion to intervene be granted and that Kroger be made a full party of record in this proceeding.

III. COMMENTS

Additionally, pursuant to the directive of the attorney examiner, Kroger submits the following initial comments on Duke's Application for the Commission's consideration.

A. The Commission should use a fixed-charge rate design.

Consistent with past decisions, Staff recommendation, and the underlying Stipulation, Duke should continue to charge Rider PF as a fixed monthly charge. In its Application, Duke noted that it "seeks to adjust its Rider PF to recover the costs of Component Two incurred through December 31, 2020, whose recovery has not already been sought in Case No. 20-666-EL-RDR."⁶

⁴ See, e.g., *In the Matter of the Application of Duke Energy Ohio, Inc., for Approval of its Temporary Plan and Waiver of Tariffs and Rules Related to the COVID-19 State of Emergency*, Case No. 20-599-GE-UNC; *In the Matter of the Application of Duke Energy Ohio, Inc. for an Increase in its Electric Distribution Rates*, Case No. 17-0032-EL-AIR; *In the Matter of the Application of Duke Energy, Ohio Inc. for a Waiver to File a New Energy Efficiency and Peak Demand Reduction Portfolio Application*, Case No. 16-576-EL-WVR; *In the Matter of the Application of Duke Energy Ohio, Inc. for Adjustments to the Rider MGP Rates*, Case Nos. 14-375-GA-RDR, et al.; *In the Matter of the Application of the Duke Energy Ohio for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan, Accounting Modifications and Tariffs for Generation Service*, Case Nos. 14-841-EL-SSO et al.

⁵ See, e.g., *In the Matter of the Application of the Duke Energy Ohio for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan, Accounting Modifications and Tariffs for Generation Service*, Case Nos. 17-1263-EL-SSO et al., Motion To Intervene Of The Ohio Manufacturers' Association Energy Group (June 19, 2017); *id.*, Entry (Sept. 28, 2017); *id.*, Stipulation and Recommendation at 16-18, 31 (Apr. 13, 2018) (joining as a non-opposing party).

⁶ Application at 8 (Mar. 31, 2021).

Duke filed supporting testimony, which included a calculation of the revenue requirement Duke proposes for Rider PF.⁷ Neither the Application nor the supporting testimony contains proposed customer charges, but supporting testimony did note that the proposed revenue requirement amounts to 0.78% of base distribution revenue. While Duke does not specify in its Application *how* this revenue requirement will be billed to customers, it appears that Duke is suggesting to bill Rider PF as a percentage of base distribution revenue.⁸

Instead, Duke should continue to bill Rider PF to customers as a fixed monthly charge. Duke currently bills Rider PF as a monthly charge.⁹ Duke currently charges residential customers \$0.36 per month, and non-residential customers \$2.22 per month.¹⁰ According to the Staff Report, the adjustment will result in a fixed customer charge of \$0.27 per month for residential and \$1.68 per month for non-residential customers.¹¹ Retaining the current fixed-charge rate structure will ensure continued rate stability for customers.

Furthermore, as noted by Staff, the current fixed-charge rate structure is consistent with prior stipulations and Orders regarding Rider PF.¹² Duke's first annual filing for Component Two was resolved through a stipulation. As part of that stipulation, the parties agreed to the fixed-charge rate structure for Rider PF.¹³ The Commission adopted the stipulation without

⁷ Direct Testimony of Jay P. Brown at Attachment JPB-1 (Mar. 31, 2021).

⁸ Staff Report at 4 ("Duke has also suggested that costs approved in this Rider be billed to customers as a percentage of base distribution revenues, at a rate of 0.780%.").

⁹ See *In the Matter of the Application of Duke Energy Ohio, Inc., for Approval to Amend its Rider PF Tariff*, Case No. 21-1215-EL-ATA, Application at Exhibit B (Dec. 3, 2021); *id.*, Finding and Order at ¶ 10 (Jan. 12, 2022).

¹⁰ *Id.*

¹¹ Staff Report at 5.

¹² *Id.*

¹³ See *In the Matter of the Application of Duke Energy Ohio, Inc., for Authority to Adjust its Power Future Initiatives Rider*, Case No. 20-0666-EL-RDR, Stipulation and Recommendation at 5-6 (Aug. 18, 2021).

modification.¹⁴ The Commission subsequently accepted Duke's tariffs containing the fixed-charge rate design.¹⁵

As such, the Commission should retain the current fixed-charge rate design for Rider PF. Doing so will assist in rate stability and will be consistent with the stipulation in Case No. 20-0666-EL-RDR and with prior Commission orders.

B. The Commission should retain the current customer class allocation for Rider PF.

In its Application and supporting testimony, Duke did not specify how the proposed updated revenue requirement would be allocated among customer classes. However, the current customer class allocation of the Rider PF revenue requirement is fair and reasonable, and supported by Staff.¹⁶ As such, the Commission should retain this allocation for any updates to Rider PF.

The Commission initially authorized Rider PF pursuant to a global settlement, which resolved a number of consolidated cases, including an application by Duke to increase base distribution rates.¹⁷ Accordingly, in Duke's first annual filing for Rider PF Component Two, the stipulating parties agreed to use the allocation of base distribution rates among customer classes adopted in the previous global settlement.¹⁸ The Commission adopted the stipulation without modification.¹⁹

¹⁴ *Id.*, Finding and Order at ¶¶ 33-35 (Nov. 17, 2021).

¹⁵ See *In the Matter of the Application of Duke Energy Ohio, Inc., for Approval to Amend its Rider PF Tariff*, Case No. 21-1215-EL-ATA, Application at Exhibit B (Dec. 3, 2021); *id.*, Finding and Order at ¶ 10 (Jan. 12, 2022).

¹⁶ Staff Report at 5 ("Staff recommends that the rates resulting from this Rider be calculated as a fixed monthly charge, with 61.99648 percent of the revenue requirement allocated to the residential class.").

¹⁷ *In the Matter of the Application of the Duke Energy Ohio for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan, Accounting Modifications and Tariffs for Generation Service*, Case Nos. 17-1263-EL-SSO et al., Stipulation and Recommendation at 16-18 (Apr. 13, 2018); *id.*, Opinion and Order (Dec. 19, 2018).

¹⁸ See *In the Matter of the Application of Duke Energy Ohio, Inc., for Authority to Adjust its Power Future Initiatives Rider*, Case No. 20-0666-EL-RDR, Stipulation and Recommendation at 5-6 (Aug. 18, 2021).

¹⁹ *Id.*, Finding and Order at ¶¶ 33-35 (Nov. 17, 2021).

The current allocation is fair and reasonable, and reflects the cost of service allocated to rate classes. Modifying this allocation could result in increased subsidization between rate classes and not comport with cost causation principles. Maintaining the current allocation is consistent with the prior stipulations and Commission orders and maintains rate stability for Ohio customers.

IV. CONCLUSION

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. Accordingly, Kroger respectfully requests that its motion to intervene be granted and that Kroger be made a full party of record in this proceeding. Additionally, Kroger respectfully requests that any adjustments to Rider PF maintain the current fixed-charge rate structure and customer class allocation used in previous adjustments.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The Public Utilities Commission of Ohio's e-filing system will electronically serve notice of the filing of this document on the parties referenced on the service list of the docket card who have electronically subscribed to the case. In addition, the undersigned hereby certifies that a copy of the foregoing document also is being served via electronic mail on April 1, 2022, upon the parties of record listed below.

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Case No(s). 21-0012-EL-RDR

Summary: Motion Motion to Intervene and Initial Comments of The Kroger Co.
electronically filed by Mrs. Angela Whitfield on behalf of The Kroger Co.