BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Duke Energy Ohio, Inc., for an Increase in Electric Distribution Rates.	))))	Case No. 21-887-EL-AIR
In the Matter of the Application of Duke Energy Ohio, Inc., for Tariff Approval.	)))	Case No. 21-888-EL-ATA
In the Matter of the Application of Duke Energy Ohio, Inc., for Approval to Change Accounting Methods.	))))	Case No. 21-889-EL-AAM

OBJECTIONS TO THE STAFF REPORT
OF
THE KROGER CO.

I. INTRODUCTION

Pursuant to R.C. 4909.18, R.C. 4909.19, R.C. 1.14, Ohio Adm.Code 4901-1-28, and the Public Utilities Commission of Ohio's (Commission) May 20, 2022 Entry, The Kroger Co. (Kroger) hereby respectfully submits its objections to the Staff Report of Investigation (Staff Report).[1] The Staff Report addresses the Application filed by Duke Energy Ohio, Inc. (Duke) on October 1, 2021.[2]

Duke's Application seeks Commission approval for an increase in Duke's electric base distribution rates, and to modify and continue a number of riders that were established under Duke's current Electric Security Plan (ESP IV), such as its Delivery Capital Investment Rider (Rider DCI), Rider Power Future Initiatives (Rider PF), Distribution Storm Rider (Rider DSR),

---

[1] *See* Staff Report of Investigation at (May 19, 2022) (Staff Report).

[2] *See* Application (Oct. 1, 2021).

and Electric Service Reliability Rider (Rider ESRR).[3] As part of its request for an increase in base distribution rates, Duke seeks to increase its current total base distribution revenues by 10.0%, or $54.7 million annually.[4]

Pursuant to R.C. 4909.19(C), "the burden of proof to show that the increased rates or charges are just and reasonable shall be on the public utility."[5] The Commission shall fix and determine the just and reasonable rate, fare, charge, toll, rental, or service to be rendered, charged, demanded, exacted, or collected.[6] After reviewing the Application, the Staff Report recommended a significantly lower increase in the range of 0.33% to 2.72% over test year operating revenue.[7] This represents an increase between $1,861,525 to $15,279,698 to base distribution revenue.[8]

R.C. 4909.19 and Ohio Adm.Code 4901-1-28(B) require that objections to the Staff Report be filed within thirty days after such filing.[9] The Commission issued an Entry on May 20, 2022, deeming the Staff Report filed as of May 19, 2022, and, pursuant to R.C. 4909.19 and Ohio Adm.Code 4901-1-28(B), directing interested parties to file objections within thirty days of that date.[10]

Kroger supports many findings, recommendations, and proposed adjustments contained in the Staff Report regarding Duke's Application. That being said, in order to protect customers from unjust and unreasonable rates and charges, Kroger believes that the Staff Report could have and

---

[3] Application at ¶¶ 11, 16, 17, 20 (Oct. 1, 2021).

[4] Staff Report, Attachment A-1.

[5] R.C. 4909.19(C).

[6] R.C. 4909.15(E).

[7] Application at Schedule A-1 (Oct. 1, 2021).

[8] *Id.*

[9] R.C. 4909.19(C); Ohio Adm.Code 4901:1-19-07(F)(1)(a); Ohio Adm.Code 4901-1-28(B).

[10] Entry at ¶¶ 4-5 (May 20, 2022).

should have made additional recommendations as the Staff Report results in unjust, unreasonable, and excessive rates and charges. Accordingly, and pursuant to R.C. 1.14, Kroger submits the following objections to the Staff Report.

Kroger reserves the right to supplement or modify these objections in the event that Duke files additional information or modifies its Application or if Staff makes additional findings, conclusions, or recommendations with respect to the Staff Report. Kroger also reserves the right to address objections or other issues raised by other parties in these proceedings.

II. OBJECTIONS

A. Kroger Objects to the Staff Report's Failure to Propose an Appropriate Revenue Allocation and Rate Design Based on Duke's Cost of Service Study.

The results of a cost of service study form the basis for many of the factual findings in a rate case. Accordingly, a utility seeking an increase to base distribution rates must submit a cost of service study to comply with the Commission's standard filing requirements.[11] The Staff Report noted that "rate schedules should, to the extent practicable, reflect the cost associated with a particular service rendered."[12] The Staff Report further explained that:

> Cost of service studies approximate the costs incurred by a utility in providing service to rate classes and identify the cause of the costs. These are determined by assigning the costs to the customer class relative to what each class imposes on the system. There are several steps involved: functionalization, classification, and allocation.
>
> ***
>
> Normally, and to the extent sufficient information is available, cost of service studies and related expense analyses are necessary to determine the appropriate level of revenue to be generated and the appropriate recovery of such revenue.[13]

---

[11] *See* Ohio Adm.Code 4901-7-01, Appendix A (Standard Filing Requirements) at 118.

[12] Staff Report at 25.

[13] *Id.* at 24-25.

The cost of service study submitted by Duke as part of its Application demonstrated that nonresidential customers currently pay a larger portion of the total revenue requirement than the costs they cause. According to Duke's study, the revenue allocation between the customer classes does not reflect the actual cost of service for each class.[14] In its Application, Duke proposed to re-allocate the revenue requirement to more closely align the revenue allocation to the appropriate classes.[15] Although the Staff Report represents better alignment of the costs in order to reflect the cost of service for each class,[16] the allocation of the revenue requirement still does not fully align with the results of the cost of service study.

Kroger also objects to the customer charges and demand charges recommended by the Staff Report. This includes both the nonresidential customer charges, and[17] the per-kW demand charge for several nonresidential customer classes.[18] Kroger objects to the proposed customer charges and demand charges to the extent they would result in unjust and unreasonable charges to customers.

Although the Staff Report states that a cost of service study should be used to determine "the appropriate level of revenue to be generated and the appropriate recovery of such revenue,"[19] the revenue allocation and rate design recommendations from the Staff Report do not sufficiently take into account the allocation of costs between rate classes. By failing to do so, the Staff Report recommends a revenue allocation, customer charges, and demand charges that are excessive and

---

[14] Application at Schedule E-3.2, Page 1 (Total operating expense is $451,268,86, amount allocated to residential rate class is $315,643,378); Staff Report at 28.

[15] *Id.*

[16] *Id.*

[17] *See id.* at 32.

[18] *See id.* at 36, 38.

[19] Staff Report at 24-25.

would cause nonresidential customers to pay a share of the revenue requirement that does not reflect their cost of service. To that extent, Kroger objects to the Staff Report.

B. Objects to the Staff Report's Excessive, Unjust, and Unreasonable Recommended Rate of Return.

Duke's unreasonable and unjust proposed customer charges are based in part on the unreasonable and unlawful return on equity and rate of return requested by Duke. While the Staff Report properly rejected Duke's proposed return on equity and rate of return, the Staff Report's recommended return on equity and rate of return remain unreasonable and unjust. This excessive and unjust rate of return will also result in an unreasonable and unjust revenue requirement.

The Staff Report recommended a rate of return in the range of 6.52% to 7.03%.[20] It also recommended a return on equity in the range of 8.84% to 9.85%.[21] Duke had proposed a rate of return of 7.26%, based on a return on equity of 10.30%.[22] Although Staff's recommendation is a move in the right direction from Duke's proposal, it still fails to account for the reduced risk faced by Duke. The Staff Report fails to account for the reduced risk to Duke as the sole provider of electric distribution service within its service territory, the various nonbypassable riders approved in Duke's ESP IV that Duke receives increased revenue from, and the current economic environment.

For example, Duke's Distribution Decoupling Rider (Rider DDR) enables Duke to collect additional amounts from customers in the event base rates fail to meet the annual revenue requirement.[23] This Rider insulates Duke from financial risk if its revenues fall short of

---

[20] Staff Report, Schedule A-1.

[21] Staff Report at 20.

[22] *See* Application at 4.

[23] *Id.* at ¶ 18.

expectations. While Kroger objects to the continuation of Rider DDR, Duke is proposing to reset the Rider DDR revenue requirement based on the outcome of this rate case.[24] Furthermore, in its Application, Duke seeks to continue various riders such as its Rider DCI, Rider PF, Rider DSR, and Rider ESRR.[25] These nonbypassable riders allow Duke to obtain timely, guaranteed cost recovery of certain costs, which lowers Duke's financial risk.

Duke also benefits from the capital structure and cost of equity enjoyed by its parent company. Duke itself is not responsible for issuing equity and obtaining capital, as "Duke is a wholly owned subsidiary of [Duke] Energy Corporation, which is a utility holding company that is publicly traded."[26] As such, Duke's financial performance is not the determining factor of whether or not it obtains capital, since investors purchase equity not in Duke itself, but in Duke Energy Corporation. Since Duke Energy Corporation owns several different companies, this lowers the financial risk faced by Duke's Ohio regulated utility.

Kroger therefore objects to the Staff Report's recommended rate of return in the range of 6.52% to 7.03%. The Staff Report should have recommended a lower range. At a minimum, the Staff Report should have recommended that the Commission adopt a rate of return at the lower end of the Staff Report's range. Duke benefits from decreased financial risk due to a number of nonbypassable riders and guaranteed cost recovery.

C. Kroger Objects to the Staff Report's Excessive, Unjust, and Unreasonable Recommended Revenue Requirement.

The Commission determines fair and reasonable rates based on applying a fair and reasonable return on the valuation of the public utility's property that is used and useful in

[24] Staff Report at 42.

[25] Application at ¶¶ 11, 16, 17, 20 (October 1, 2021).

[26] Staff Report at 18.

rendering the public utility service for which rates are to be fixed and determined.[27] As discussed above, the Staff Report recommends an unreasonable and unjust rate of return of 6.52% to 7.03%, which results in an increase to the revenue requirement.

Not only does Kroger object to the Staff Report's excessive, unreasonable, and unjust rate of return, it also objects to the overall revenue requirement recommended in the Staff Report. The Staff Report recommended a revenue requirement in the range of $563,932,707 to $577,350,880.[28] The excessive revenue requirement is also the result of including unjust costs in Duke's rate base. For example, Kroger objects to the extent any costs associated with the MGP site[29] are included in rate base or operating income. Kroger further objects to the inclusion of unreasonable vegetation management[30] and incentive compensation[31] expenses and the Staff Report's failure to make the associated adjustments to rate base and operating income.

However, Kroger does support the adjustments made in the Staff Report to Duke's proposed rate base and operating income to the extent Staff Report's recommendation represents a decrease in Duke's proposed revenue requirement and resulting increase to rates of $54,686,965, a net increase of 10% to base distribution rates.[32] For example, the Staff Report recommended removing $13,184,293 from plant-in-service for portions of Duke's Silverhawk Electric System Operations facility that serves Kentucky,[33] $2,352,669 from distribution rate base for the amount

---

[27] *See* R.C. 4909.15.

[28] Staff Report, Schedule A-1.

[29] *Id.* at Attachment B-6.

[30] *See id.* at 41.

[31] *Id.* at 15.

[32] *Id.*, Schedule A-1.

[33] Staff Report at 9.

of incentive compensation attributable to financial performance metrics,[34] and $9,649,258 in working capital for Duke's failure to perform a lead-lag study.[35] The Staff Report also increased Duke's test year revenue by $16,765,993 by eliminating various rider revenues from Duke's adjusted test year operating income.[36]

Accordingly, Kroger objects to the extent that the Staff Report failed to recommend that the Commission find that Duke failed to meet its burden of proof to demonstrate that it is entitled to the rate base, rate of return, or overall revenue requirement it proposes in its Application.

D. Kroger Objects to the Staff Report to the Extent it Fails to Reject Duke's Proposal to Continue or Establish Certain Riders.

As previously discussed, in its Application, Duke seeks Commission approval through this rate case to modify and continue a number of ESP riders that were established or approved under Duke's ESP IV, such as its Rider DCI, Rider PF, Rider DSR, and Rider ESRR.[37] Not only is this unlawful, it would afford Duke guaranteed cost recovery of unjust and unreasonable amounts on top of the unjust, unreasonable, and excessive increases to base distribution rates that Duke proposes.

While Kroger supports the recommendations made by the Staff Report to Duke's proposed rider increases or the creation of new riders, such as the Staff Report's rejection of the Community Driven Investment Rider,[38] the removal of all capital costs from Rider DCI that are recovered elsewhere by Duke to ensure no double recovery of these costs is occurring,[39] and the rejection of

[34] Staff Report at 9.

[35] *Id.* at 12.

[36] *Id.* at 13.

[37] Application at ¶¶ 11, 16, 17, 20 (Oct. 1, 2021).

[38] Staff Report at 40.

[39] *Id.* at 10-11.

the Retail Reconciliation Rider,[40] Kroger objects to the extent that the Staff Report does not go far enough to protect customers from unreasonable or excessive rates.

Kroger further objects to the Staff Report's recommendation to continue Rider DCI through May 31, 2025.[41] R.C. 4909.18 establishes the framework for utilities to recover costs of used and useful property through increases to base distribution rates. The Staff Report's recommendation to extend Rider DCI in this proceeding through at least May 31, 2025, is inconsistent with this statutory framework. Instead, the Staff Report should recommend that Rider DCI terminate and that Duke instead recover costs associated with incremental plant through a future base distribution rate case.

To the extent the Staff Report does recommend continuing Rider DCI, Kroger also objects to the unjust and unreasonable revenue caps recommended in the Staff Report. Duke proposed to increase its Rider DCI annual revenue caps to $12 million for the last six months of 2022, $46 million in 2023, $75 million in 2024, and $40 million for the first five months of 2025.[42] Previously, the Commission had only approved Duke to increase DCI revenue caps by $18.7 million annually.[43] Such a large increase proposed in the current Staff Report has not been substantiated and should be rejected.

While the Staff Report recommended rejection of Duke's proposed revenue caps, the Staff Report still recommended increased Rider DCI revenue caps that are excessive: $17 million for 2022 (prorated based on when new base distribution rates go into effect), $34 million for 2023, $51 million for 2024, $28 million for the first five months of 2025, and $0 after May 31, 2025 (the

---

[40] Staff Report at 41.

[41] *Id.* at 10.

[42] *Id*.

[43] See *In the Matter of the Application of Duke Energy Ohio, Inc. for an Increase in Electric Distribution Rates*, Case No. 17- 32-EL-AIR, et al., Opinion and Order at ¶ 113 (Dec. 19, 2018).

end date of Duke's current ESP IV).[44] Kroger objects to the Staff Report to the extent that its recommended rate caps would still fail to adequately protect customers from unreasonable or excessive rates. To the extent the Staff Report recommends continuation of Rider DCI at all, it should have also recommended lower revenue caps to afford protection to customers from excessive spending by Duke.

Kroger further objects to the Staff Report's recommended approval, without substantial discussion, of Duke's proposal to continue and significantly modify Rider ESRR and change the mechanics of the rider regarding the over and under recovery provisions.[45] This would enable Duke to increase Rider ESRR charges to customers, which could lead to substantial increases and bill impacts. Kroger further objects to the continuation of Rider PF and Rider DSR for similar reasons. These riders are unnecessary as Duke can already recover the expenses in future base distribution rate cases. Indeed, Duke has proposed to do so here for all three riders.[46]

Lastly, Kroger objects to the Staff Report's recommendation that Duke be allowed to continue its decoupling rider, Rider DDR, as energy efficiency mandates have been eliminated and the Commission has since ordered electric distribution utilities to wind-down their EE/PDR portfolio plan programs.[47] Given that decoupling mechanisms were created to receive compensation for lost distribution revenue associated with lower demand due to energy efficiency mandates,[48] Rider DDR is no longer necessary and continuation of it would be unreasonable.

---

[44] Staff Report at 10.

[45] Application at ¶ 16 (emphasis original).

[46] Staff Report at 41.

[47] *In the Matter of the Application of Duke Energy Ohio, Inc. for Approval of its 2017-2019 Energy Efficiency and Peak Demand Reduction Program Portfolio Plan*, Case Nos. 16-576-EL-POR, et al., Finding and Order at ¶ 1 (Feb. 26, 2020).

[48] *In the Matter of Application of Duke Energy Ohio, Inc. 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. 11-3549-EL-SSO, et al., Opinion and Order at 46 (Nov. 22, 2011).

III. CONCLUSION

As explained herein, Kroger objects to the Staff Report recommendations in various respects and recommends that the Commission instead adopts Kroger's recommendations as it evaluates Duke's Application for an increase in electric distribution rates.

Respectfully submitted,

/s/ Angela Paul Whitfield

Angela Paul Whitfield (0068774)
Carpenter Lipps & Leland LLP
280 North High Street, Suite 1300
Columbus, Ohio 43215
Telephone: (614) 365-4100
Email: paul@carpenterlipps.com
(willing to accept service by email)

Counsel for The Kroger Co.

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 June 21, 2022 upon the parties listed below.

*/s/ Angela Paul Whitfield*________
Angela Paul Whitfield (0068774)

mkurtz@BKLlawfirm.com
kboehm@BKLlawfirm.com
jkylercohn@BKLlawfirm.com
William.Michael@occ.ohio.gov
Ambrosia.wilson@occ.ohio.gov
Amy.botschner.obrien@occ.ohio.gov
Robert.eubanks@ohioAGO.gov
Werner.margard@ohioAGO.gov
Rocco.dascenzo@duke-energy.com
Jeanne.kingery@duke-energy.com
ebrama@taftlaw.com
Bethany.allen@igs.com
michael.nugent@igs.com
evan.betterton@igs.com
mwarnock@bricker.com
ktreadway@oneenergyllc.com
jdunn@oneenergyllc.com
jlang@calfee.com
gjewell@calfee.com
dromig@nationwideenergypartners.com
dborchers@bricker.com
kherrnstein@bricker.com

Attorney Examiners:

Nicholas.Walstra@PUCO.Ohio.gov
Matthew.Sandor@PUCO.Ohio.gov