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October 24, 2008

Public Utility Commission of Oregon
550 Capitol Street NE, Suite 215
Salem, Oregon 97310
Attn: Carol Hulse

Re: Case No. UE-197

Dear Ms. Hulse:

Please find enclosed the original and five (5) copies of the BRIEF OF THE FRED MEYERS STORES AND QUALITY FOOD CENTERS, DIVISIONS OF KROGER CO. in the above referenced matter.

Copies have been served on all parties of record. Please place this document of file.

Very truly yours,

Michael L. Kurtz, Esq.
Kurt J. Boehm, Esq.
BOEHM, KURTZ & LOWRY

MLKkew
Enclosure
cc: Certificate of Service

CERTIFICATE OF SERVICE

I hereby certify that true copy of the foregoing was served via electronic mail (when available) and regular U.S. Mail (unless otherwise noted), this 24TH day of October, 2008.

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Kurt J. Boehm, Esq.

BEFORE THE PUBLIC UTILITY COMMISSION
OF THE STATE OF OREGON

Portland General Electric	)	
General Rate Case Filing	)	**Docket No. UE-197**

BRIEF OF KROGER CO.

I. INTRODUCTION

Comes now Fred Meyers Stores and Quality Food Centers, Divisions of Kroger Co. ("Kroger") and submits this Brief in the above-captioned matter. Kroger recommends that the Commission adopt the Stipulation Regarding Rate Spread and Rate Design Issues and that the Commission reject the Company's revenue decoupling proposal.

II. ARGUMENT

1. Kroger Supports The Stipulation Regarding Rate Spread And Rate Design Issues.

Kroger has signed and fully supports the Stipulation Regarding Rate Spread and Rate Design Issues of October 8, 2008. The Stipulation strikes a fair balance between the interests of PGE's customers.

2. The Commission Should Reject The Company's Revenue Decoupling Proposal.

On page 17 of PGE witness James J. Piro's Direct Testimony, PGE proposes the adoption of a revenue decoupling mechanism called the Sales Normalization Adjustment ("SNA"). The SNA would be implemented through a new rate schedule, Schedule 123. It would be applicable to residential customers, small non-residential customers, and large non-residential customers.

Kroger recommends against adoption of PGE's decoupling proposal both as a general matter as well as on grounds specific to the Company's proposal. At the most fundamental level, decoupling is as much a "revenue assurance" mechanism as it is a "conservation enabling" mechanism. Under conventional ratemaking practice, the risk associated with declining usage per customer is borne by the utility in between rate cases. Under revenue decoupling, utilities shed this risk. Yet utilities typically resist accepting a reduced return-on-equity to reflect this risk reduction. In this proceeding, PGE has not proposed recognizing the diminished risk from decoupling through a reduction in its return on equity.[1]

Decoupling also provides unwarranted insulation to the utility from the effects of price elasticity. Generally, all sellers of goods face a risk that price increases will reduce sales. But, with decoupling, if PGE customers respond to the Company's rate hikes by reducing their electric consumption, Schedule 123 will be increased to compensate PGE for any resultant reduction in per-customer usage. The transfer of this risk is a clear benefit to the utility for which no compensation is being offered to customers. If consumption per customer declines due to energy conservation PGE is not precluded from reflecting that phenomenon in rates if revenue decoupling or "lost revenues" adjustments are not adopted. Declining usage per customer should be addressed through a general rate case rather than through a single-item rider.[2]

When regulatory commissions determine the appropriateness of a rate or charge that a utility seeks to impose on its customers, the standard practice is to review and consider all relevant factors, rather than just a single factor. To consider some costs in isolation might cause a commission to allow a utility to increase rates to recover higher costs in one area without recognizing counterbalancing savings in another area. For this reason, single-issue ratemaking, absent a compelling public interest, is generally not sound regulatory practice. PGE's claim that decoupling removes the utility's disincentive to promote energy conservation does not constitute a compelling public interest.[3]

[1] Direct Testimony of Kevin Higgins, pp. 9-10.
[2] *Id.* p. 10.
[3] *Id.* p. 11.

The very fact that utilities can claim in the first instance that they have disincentives to promote energy conservation is due, in part, to past regulatory efforts to reduce utility risk. In the current era of relatively high marginal costs of energy (relative to embedded costs), utilities would have an economic incentive to promote energy conservation if the utilities were fully exposed to the fuel cost risk associated with high today's marginal energy costs. However, because many utilities (including PGE) are protected in whole or part from fuel cost exposure through power cost adjustment mechanisms, the incentive utilities would otherwise have to promote energy conservation is reduced or even neutralized, as an unintended consequence of having adopted the power cost adjustment mechanisms. Therefore, in many respects, utility insistence on the need for decoupling is a second generation argument for further utility risk reduction that takes as given the prior regulatory actions to reduce utility risk through power cost adjustment mechanisms. This gives rise to the following policy question: viewed in the context of the entire package of utility risk reduction measures that have been adopted over the years, including power cost adjustment mechanisms, is it in the public interest to adopt additional single-issue ratemaking treatment that would extend utility risk reduction to the potential effects of energy conservation? Kroger believes that the answer is no. It is reasonable for regulators to draw a line on the degree of risk mitigation that will be provided to utilities through single-issue ratemaking.[4]

Further, the utility case for special ratemaking treatment is especially weak in Oregon, as Oregon has made the effort of creating a non-utility administrator of energy conservation programs in the Energy Trust. One of the benefits of a non-utility administrator is that conservation program management is not placed in hands of the party which claims to have a disincentive to realize program success. Adopting revenue decoupling now to ameliorate utility disincentives for conservation ignores this advantage of having established an independent program administrator in the first instance.[5]

Aside from these general objections to revenue decoupling, there is an additional problem present in PGE's proposal. The proposed Schedule 123 would recover, among other things, fixed costs associated with PGE's generation facilities. According to the Company's decoupling proposal, these fixed generation costs would

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[4] *Id*. pp. 11-12.
[5] *Id*. p. 12.

be recovered from customers taking both cost-based service and direct access service. Charging fixed generation costs to shopping customers through a decoupling mechanism is particularly unreasonable. If a decoupling mechanism is adopted, then the fixed generation cost component should not be applied to direct access service.[6]

III. CONCLUSION

Kroger believes that the Stipulation Regarding Rate Spread and Rate Design Issues strikes a fair balance between the interests of PGE's customers and should be approved by the Commission.

Kroger also recommends against adoption of PGE's decoupling proposal, both as a general matter as well as on grounds specific to the Company's proposal. Under conventional ratemaking practice, the risk associated with declining usage per customer is borne by the utility. Under revenue decoupling, utilities shed this risk. Decoupling also provides unwarranted insulation to the utility from the effects of price elasticity. If revenue decoupling is adopted, there should be some recognition of this risk reduction in allowed return on equity. Further, according to the Company's decoupling proposal, fixed generation costs would be recovered from customers taking both cost-based service and direct access service. Charging fixed generation costs to shopping customers through a decoupling mechanism is particularly unreasonable. If a decoupling mechanism is adopted by the Commission then the fixed generation cost component should not be applied to direct access service.

Respectfully submitted,

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October 24, 2008

[6] *Id*. p. 13.