

FILE

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of the Application of Ohio Edison)
Company, The Cleveland Electric Illuminating)
Company and The Toledo Edison Company for)
Authority to Establish a Standard Service Offer)
Pursuant to Section 4928.143, Revised Code in)
the Form of an Electric Security Plan)

Case No. 08-935-EL-SSO

**PRELIMINARY RESPONSE AND OBJECTION OF THE KROGER CO. TO MOTION
OF OHIO EDISON COMPANY, THE CLEVELAND ELECTRIC ILLUMINATING
COMPANY AND THE TOLEDO EDISON COMPANY FOR A STAY OF THE
EFFECTIVE DATE OF THE COMMISSION ORDER OF JANUARY 7, 2009 PENDING
RESOLUTION OF APPEALS AND REQUEST FOR A RULING ON AN EXPEDITED
BASIS AND APPLICATION FOR REHEARING AND REQUEST FOR EXPEDITED
RULING**

On January 9, 2008, in Case No. 08-935-EL-SSO, the Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company (collectively "Companies") filed a motion requesting that the portion of a January 7, 2009 finding and order which requires the Companies to file tariffs on January 12, 2009 be stayed. (Motion to Stay and Request for Expedited Ruling filed Jan. 9, 2009) Coincident with their request for a stay of filing the tariffs the Companies filed a motion for a stay of the Commission's January 7, 2009 finding and order in this case, as well as an application for rehearing of that order. (Motion to Stay; Application for Rehearing and Request for Expedited Ruling filed Jan. 9, 2009) The Companies assert in the motions to stay and motion for rehearing that due to "exigent circumstances and extremely limited time" and "extenuating circumstances" they were "unable" to contact all of the parties to the proceeding prior to requesting the expedited ruling.

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Also on January 9, 2009, Attorney Examiner Pirik granted the Companies' request to stay that portion of the Commission's January 9, 2009 order that required the Companies to file revised tariffs on January 12, 2009. January 9, 2009 Commission Entry, at paragraph 6. The request for expedited ruling on other aspects of the Companies' filing, including the Companies' request that the Commission set a January 12, 2009 deadline for responding to the Companies' motion to stay were not addressed in Attorney Examiner Pirik's January 9, 2009 entry.

The Kroger Co. was not contacted prior to the filing of the Companies' motion for a ruling on an expedited basis, either by e-mail or telephone and did not agree to an expedited ruling. Since the January 9, 2009 order states no accelerated time for response to the Companies' motions for a stay or motion for rehearing, The Kroger Co. will respond to the Companies' motion for a stay within 7 days, as set forth in OAC 4901-1-12(C) and will respond to the motion for rehearing within 10 days. The Kroger Co. otherwise specifically objects to the issuance of any expedited ruling in this case.

The Kroger Co. notes that OAC 4901-1-12(C) requires a party making a request for an expedited ruling state the grounds for such request in the memorandum. An examination of the Companies' motion reveals that the only basis stated for the request is "exigent circumstances and extremely limited time" and "extenuating circumstances." These summary statements are insufficient "grounds" upon which to grant the request for an expedited ruling and the reduction of time to respond. The motion fails to explain which circumstances are exigent or extenuating and time is always "limited." The Companies articulate no specific set of facts justifying an expedited ruling in the motion or a reduction of time to respond.

Since the January 9, 2009 order did not address the request for an expedited ruling on other matters or a reduction in time to respond, and since the Companies have failed to articulate any specific set of facts justifying an expedited ruling on the balance of the motion to stay and motion for a rehearing, The Kroger Co. will file its response to the motion to stay the effective date of the January 7, 2009 order within 7 days as permitted by OAC 4901-1-12(C) and will file its response to the motion for rehearing within 10 days, as permitted by OAC 4901-1-35(B), unless otherwise ordered to respond within a shorter period of time by the Commission.

Respectfully submitted,


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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading was served upon the following parties of record or as a courtesy, via electronic transmission, on January 12, 2009.



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