

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke Energy Ohio, Inc., for an Adjustment to Rider MGP Rates	)	Case No. 14-0375-GA-RDR
	)	
In the Matter of the Application of Duke Energy Ohio, Inc., for Tariff Approval	)	Case No. 14-0376-GA-ATA
	)	
In the Matter of the Application of Duke Energy Ohio, Inc., for an Adjustment to Rider MGP Rates	)	Case No. 15-0452-GA-RDR
	)	
In the Matter of the Application of Duke Energy Ohio, Inc., for Tariff Approval	)	Case No. 15-0453-GA-ATA
	)	
In the Matter of the Application of Duke Energy Ohio, Inc., for an Adjustment to Rider MGP Rates	)	Case No. 16-0542-GA-RDR
	)	
In the Matter of the Application of Duke Energy Ohio, Inc., for Tariff Approval	)	Case No. 16-0543-GA-ATA
	)	
In the Matter of the Application of Duke Energy Ohio, Inc., for an Adjustment to Rider MGP Rates	)	Case No. 17-0596-GA-RDR
	)	
In the Matter of the Application of Duke Energy Ohio, Inc., for Tariff Approval	)	Case No. 17-0597-GA-ATA
	)	
In the Matter of the Application of Duke Energy Ohio, Inc., for an Adjustment to Rider MGP Rates	)	Case No. 18-0283-GA-RDR
	)	
In the Matter of the Application of Duke Energy Ohio, Inc., for Tariff Approval	)	Case No. 18-0284-GA-ATA
	)	
In the Matter of the Application of Duke Energy Ohio, Inc., for an Adjustment to Rider MGP Rates.	)	Case No. 19-174-GA-RDR
	)	
In the Matter of the Application of Duke Energy Ohio, Inc., for Tariff Approval.	)	Case No. 19-175-GA-ATA

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**MOTION TO INTERVENE OF  
THE KROGER CO.**

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Pursuant to Section 4903.221, Revised Code, and Rule 4901-1-11, Ohio Adm. Code, and in accordance with the Attorney Examiner's August 13, 2019 Entry,<sup>1</sup> The Kroger Co. (Kroger) respectfully moves the Public Utilities Commission of Ohio (Commission) for leave to intervene with the full powers and rights granted to intervening parties in Case Nos. 19-174-GA-RDR and 19-175-GA-ATA (*2018 Rider MGP Adjustment*) which recently were consolidated, *sua sponte*, with the other above-captioned matters.<sup>2</sup> While Kroger already is involved in these consolidated proceedings by way of its previously-filed motion to intervene in Case Nos. 17-0596-GA-RDR and 17-0597-GA-ATA (*2016 Rider MGP Adjustment*),<sup>3</sup> its Reply Comments for the Commission's consideration,<sup>4</sup> and its Memorandum Contra Duke's motion to continue Rider MGP,<sup>5</sup> the August 13, 2019 Entry instructed any interested parties to intervene separately in the *2018 Rider MGP Adjustment*.<sup>6</sup> As demonstrated in the attached Memorandum in Support, Kroger has a real and substantial interest in these proceedings 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 set forth in Ohio statutes and regulations.

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<sup>1</sup> The Attorney Examiner's August 13, 2019 Entry (August 13, 2019 Entry) requires that "Motions to intervene in the *2018 Rider MGP Adjustment* shall be filed by September 13, 2019." *Id.* at ¶ 20(a).

<sup>2</sup> *Id.* at ¶ 18.

<sup>3</sup> See *2016 Rider MGP Adjustment*, Kroger's Motion To Intervene (April 19, 2017).

<sup>4</sup> See Kroger's Reply Comments (October 30, 2018).

<sup>5</sup> See Kroger's Memorandum Contra Duke's Motion to Continue Rider MGP Recovery of Costs Incurred Since 2014 (May 28, 2019).

<sup>6</sup> *Id.* at ¶ 20(a).

Therefore, Kroger respectfully requests that the Commission grant this motion to intervene and that Kroger be made a full party of record in these proceedings.

Respectfully submitted,

/s/ Angela Paul Whitfield

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	)	
In the Matter of the Application of Duke Energy Ohio, Inc., for an Adjustment to Rider MGP Rates.	)	Case No. 19-174-GA-RDR
	)	
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## MEMORANDUM IN SUPPORT

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On March 29, 2019, Duke Energy Ohio, Inc. (Duke) filed an application seeking approval to adjust its Manufactured Gas Plant Rider (Rider MGP) to recovery 2018 costs for environmental investigation and remediation of manufactured gas plant (MGP) sites.<sup>7</sup> Shortly thereafter, on May 10, 2019, Duke filed a motion to continue Rider MGP to recover costs incurred since 2014.<sup>8</sup> Kroger and other parties opposed that motion.<sup>9</sup> By way of the August 13, 2019 Entry, the Attorney Examiner denied Duke's motion, consolidated the *2018 Rider MGP Adjustment* with the previously consolidated proceedings, and set a procedural schedule for a hearing.<sup>10</sup> The Attorney Examiner recently amended the procedural schedule, allowing Duke to file supplemental testimony regarding the filed Staff reports by October 4, 2019 and rescheduling the evidentiary hearing to November 18, 2019.<sup>11</sup> As explained in more detail below, Kroger has a real and substantial interest in the outcome of these proceedings.

Section 4903.221, Revised Code, and Rule 4901-1-11, Ohio Administrative Code, establish the standard for intervention in the above-captioned proceedings. Section 4903.221, Revised Code, provides, in part, that any person “who may be adversely affected” by a Commission proceeding is entitled to seek intervention in that proceeding. Section 4903.221(B), Revised Code, 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

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<sup>7</sup> Application of Duke Energy Ohio, Inc. at 1 (March 29, 2019).

<sup>8</sup> See Duke's Motion to Continue Rider MGP Recovery of Costs Incurred Since 2014 (May 10, 2019).

<sup>9</sup> See Kroger's Memorandum Contra Duke's Motion to Continue Rider MGP Recovery of Costs Incurred Since 2014 (May 28, 2019).

<sup>10</sup> See August 13, 2019 Entry.

<sup>11</sup> See Entry (September 4, 2019).

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.

Rule 4901-1-11, Ohio Adm. Code, permits intervention by 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, cooling, and distribution, often 24 hours a day, 7 days a week. Kroger's electric and energy needs associated with its facilities in Duke's service territory are considerable, and its electric service and the costs associated with obtaining such service from Duke will be impacted by the outcome of these proceedings. Kroger was granted intervention in the case where the Rider MGP originally was approved<sup>12</sup> and is already an active participant in these consolidated proceedings by way of its intervention in the *2016 Rider MGP Adjustment*,<sup>13</sup> its filing of Reply Comments,<sup>14</sup> and its opposition to Duke's motion to continue Rider MGP to recover costs incurred since 2014.<sup>15</sup>

Therefore, Kroger has a direct, real, and substantial interest in the issues raised in these proceedings and is so situated that the disposition of these proceedings may, as a practical matter, impair or impede its ability to protect that interest. Kroger is regularly and actively

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<sup>12</sup> See *In the Matter of the Application of Duke Energy Ohio, Inc. for an Increase in Gas Rates*, Case No. 12-1685-GA-AIR et al., Entry at 2 (January 18, 2013) (Entry granting Kroger's Motion to Intervene).

<sup>13</sup> See August 13, 2019 Entry at ¶ 18 (consolidating the *2018 Rider MGP Adjustment* with the other previously consolidated above-referenced proceedings); see also Kroger's Motion to Intervene in the *2016 Rider MGP Adjustment* (April 19, 2017).

<sup>14</sup> See Kroger's Reply Comments (October 30, 2018).

<sup>15</sup> See Kroger's Memorandum Contra Duke's Motion to Continue Rider MGP Recovery of Costs Incurred Since 2014 (May 28, 2019).

involved in Commission proceedings,<sup>16</sup> and as in previous proceedings, Kroger's unique knowledge and perspective will contribute to the full development and equitable resolution of the factual issues in these proceedings, and Kroger's interest will not be adequately represented by other parties to these proceedings. Finally, this timely intervention will not unduly delay or prolong these proceedings.

Kroger satisfies the criteria set forth in Section 4903.221, Revised Code, and Rule 4901-1-11, Ohio Adm. Code, and is, therefore, authorized to intervene with the full powers and rights granted by the Commission to intervening parties.

Accordingly, Kroger respectfully requests that the Commission grant this motion for leave to intervene and that Kroger be made a full party of record.

Respectfully submitted,

/s/ Angela Paul Whitfield

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*Counsel for The Kroger Co.*

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<sup>16</sup> See e.g., *In the Matter of the Application of Duke Energy Ohio, Inc. for Approval to Continue Cost Recovery Mechanism for Energy Efficiency Programs through 2016*, Case No. 14-1580-EL-RDR; *In the Matter of the Application of the Duke Energy Ohio for Authority to Establish a Standard Service Officer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Service Plan, Accounting Modifications and Tariffs for Generation Service et al.*, Case Nos. 14-841-EL-SSO et al.; and *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.

**CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of the foregoing was served via electronic mail on all parties of record on September 12, 2019.

/s/ Angela Paul Whitfield  
Angela Paul Whitfield

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Summary: Motion MOTION TO INTERVENE OF THE KROGER CO. electronically filed by Mrs. Angela Whitfield on behalf of The Kroger Co.