

FILE

BOEHM, KURTZ & LOWRY
ATTORNEYS AT LAW
36 EAST SEVENTH STREET
SUITE 2110
CINCINNATI, OHIO 45202
TELEPHONE (513) 421-2255
TELECOPIER (513) 421-2764

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PUCO

VIA OVERNIGHT MAIL

February 8, 2007

Public Utilities Commission of Ohio
PUCO Docketing
180 E. Broad Street, 10th Floor
Columbus, Ohio 43215

In re: Case No. 06-986-EL-UNC, 03-93-EL-ATA, et. al.

Dear Sir/Madam:

Please find enclosed an original and twenty (20) copies of the Kroger Co.'s Motion to Limit Scope of OCC Deposition to be filed in the above-referenced matter.

Copies have been served on all parties on the attached certificate of service. Please place this document of file.

Respectfully yours,


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

MLKkew
Encl.

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CERTIFICATE OF SERVICE

I hereby certify that true copy of the foregoing was served by electronic mail (when available) and regular U.S. mail, this 8th day of February, 2007 to the following:

Duke Energy Ohio
Rocco O. D'Ascenzo Esq.
139 E. Fourth St P O Box 960
Cincinnati Oh 45201-0960

Colbert, Paul
Cinergy Corporation
155 E. Broad Street
Columbus Oh 43215

Rinebolt, David
Law Director
231 West Lima Street P.O. Box 1793
Findlay Oh 45839-1793

City Of Cincinnati
David E Rager
Room 152, City Hall 801 Plum Street
Cincinnati Oh 45202-5706

Ohio Manufacturers Association
Eric L. Burkland, President
33 North High Street
Columbus Oh 43215-3005

Industrial Energy Users-Ohio
Samuel C. Randazzo, General Counsel
Manes Wallace & Nurick LLC 21 East State Street 17th
Floor
Columbus Oh 43215

Office Of The Consumers Counsel
Larry Sauer
10 West Broad Street, Suite 1800
Columbus Oh 43215-3485

Ohio Hospital Association
Richard L. Sites
155 E. Broad Street 15th Floor
Columbus Oh 43215-3620

Pahutski, Michael
Cinergy Corp.
139 E. Fourth St. Room 25 At 11 P.O. Box 960
Cincinnati Oh 45201-0960

O'Brien, Thomas Attorney-At-Law
Bricker & Eckler LLP
100 South Third Street
Columbus Oh 43215

Bloomfield, Sally Attorney At Law
Bricker & Eckler LLP
100 South Third Street
Columbus Oh 43215-4291

Strategic Energy, L.L.C.
Carl W. Boyd
Two Gateway Center
Pittsburgh Pa 15222

Schafer, Anita , Paralegal
Cinergy Corp. 139 E. Fourth St. P.O. Box 960
Cincinnati Oh 45201-0960

Skidmore Sales & Distributing Company, Inc.
Roger Losekamp
9889 Cincinnati-Dayton Rd.
West Chester Oh 45069-3826

Cognis Corporation
35 E. 7th Street Suite 600
Cincinnati Oh 45202-2446

Constellation NewEnergy, Inc.
Terry S. Harvill
1000 Town Center Suite 2350
Southfield Mi 48075

Constellation Power Source, Inc.
Michael D Smith
111 Marketplace, Suite 500
Baltimore Ma 21202

Hotz, Ann , Attorney At Law
Office Of Consumers' Counsel 10 W. Broad Street,
Suite 1800
Columbus Oh 43215

Dominion Retail, Inc.
Gary A. Jeffries, Senior Counsel
1201 Pitt Street
Pittsburgh Pa 15221

FirstEnergy Solutions Corp.
Irene Prezelj, Manager, Marketing
395 Ghant Road Ghe-408
Akron Oh 44333

Cincinnati Gas & Electric Company
Paul G. Smith
139 E. Fourth Street
Cincinnati Oh 45202

Eagle Energy, LLC
Donald I. Marshall, President
4465 Bridgetown Road Suite 1

City Of Cincinnati
Julia Larita McNeil, Esq.
805 Central Ave Ste 150
Cincinnati Oh 45202-5756

MidAmerican Energy Company
Barbara Hawbaker, Balancing & Settlement
Analyst
4299 Nw Urbandale Drive
Urbandale IA 50322

Stinson, Dane Esq.
Bailey Cavalieri LLC
10 W. Broad St. Suite 2100
Columbus Oh 43215

Green Mountain Energy Company
John Bui
600 W. 6th Street Suite 900
Austin TX 78701

Royer, Barth
Bell, Royer & Sanders Co., L.P.A.
33 South Grant Avenue
Columbus Oh 43215-3900

Korkosz, Arthur
First Energy, Senior Attorney
76 South Main Street
Legal Dept., 18th Floor
Akron Oh 44308-1890

Morgan, Noel
Legal Aid Society Of Cincinnati
215 E. Ninth Street Suite 200
Cincinnati Oh 45202

National Energy Marketers Association
Craig G. Goodman, Esq.
3333 K Street N.W. Suite 110
Washington Dc 20007

People Working Cooperatively, Inc.
Michael Watson
4612 Paddock Rd
Cincinnati Oh 45229


WPS Energy Services, Inc.
Daniel Verbanac
1716 Lawrence Drive
De Pere WI 54115

Leyden, Shawn Attorney At Law
PSEG Energy Resources & Trade LLC
80 Park Plaza 19th Fl
Newark NJ 07102

Goodman, Craig
National Energy Marketers Assoc.
3333 K Street, N.W. Suite 110
Washington Dc 20007

Christensen, Mary Attorney At Law
Christensen & Christensen
401 N. Front Street Suite 350
Columbus Oh 43215

Howard, Stephen Attorney At Law
Vorys, Sater, Seymour And Pease
52 East Gay Street P.O. Box 1008
Columbus Oh 43216-1008



Michael L. Kurtz, Esq.
Kurt J. Boehm, Esq.

**BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO**

In The Matter Of The Application Of Duke Energy Ohio To Modify Its Market-Based Standard Service Offer	:	Case No. 06-986-EL-UNC
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In The Matter Of The Application Of The Cincinnati Gas & Electric Company To Modify Its Non-Residential Generation Rates To Provide For Market-Based Standard Service Offer Pricing And To Establish An Alternative Competitively Bid Service Rate Option Subsequent To Market Development Period	:	Case No. 03-93-EL-ATA
	:	
	:	
In The Matter Of The Application Of Cincinnati Gas & Electric Company For Authority To Modify Current Accounting Procedures For Certain Costs Associated With The Midwest Independent Transmission System Operator	:	Case No. 03-2079-EL-AAM
	:	
	:	
In The Matter Of The Application Of Cincinnati Gas & Electric Company For Authority To Modify Current Accounting Procedures For Capital Investment In Its Electric Transmission And Distribution System And To Establish A Capital Investment Reliability Rider To Be Effective After The Market Development Period	:	Case No. 03-2081-EL-AAM Case No. 03-2080-EL-ATA
	:	
	:	
In The Matter Of The Application Of Duke Energy Ohio, Inc. To Modify Its Fuel And Economy Purchased Power Component Of Its Market-Based Standard Service Offer	:	Case No. 06-1068-EL-UNC
	:	
	:	
In The Matter Of The Application Of The Cincinnati Gas & Electric Company To Modify Its Fuel And Economy Purchased Power Component Of Its Market-Based Standard Service Offer	:	Case No. 05-725-EL-UNC
	:	
	:	
In The Matter Of The Application Of Duke Energy Ohio, Inc. To Adjust And Set Its System Reliability Tracker	:	
	:	
	:	
In The Matter Of The Application Of Duke Energy Ohio, Inc. To Adjust And Set Its System Reliability Tracker Market Price	:	Case No. 06-1069-EL-UNC
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In The Matter Of The Application Of Duke Energy Ohio, Inc. To Adjust And Set The Annually Adjusted Standard Service Offer	:	Case No. 05-724-EL-UNC
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	:	Case No. 06-1085-EL-UNC
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**KROGER'S MOTION TO LIMIT
SCOPE OF OCC DEPOSITION**

On February 5, 2007 the Office of Ohio Consumers' Counsel (OCC) filed a Notice to take the deposition of a representative of the Kroger Co. That notice states that the OCC seeks to question Kroger with respect to any agreements for electric service between Kroger and Duke Energy, Inc. entered into since January 1, 2000.

OCC's Motion is overbroad and not calculated to lead to the discovery of relevant or admissible evidence. Discovery relating to agreements since January 1, 2000 is well beyond the scope of this remand proceeding.

Respectfully submitted,



Michael L. Kurtz, Esq.

Kurt J. Boehm, Esq.

BOEHM, KURTZ & LOWRY

36 East Seventh Street, Suite 1510

Cincinnati, Ohio 45202

Ph: (513) 421-2255 Fax: (513) 421-2764

E-Mail: mkurtz@BKLawfirm.com

kboehm@BKLawfirm.com

COUNSEL FOR THE KROGER CO.

February 8, 2007

MEMORANDUM IN SUPPORT

On January 10, 2003, Duke Energy Ohio (DE, Ohio) filed its application before the Public Utilities Commission of Ohio (Commission) to establish its market-based standard service offer (MBSSO). On December 9, 2003 the Commission advised DE-Ohio to file a Rate Stabilization Plan (RSP) because the competitive retail market for electric generation had not developed in Ohio. DE-Ohio's RSP was filed on January 26, 2004. On May 19, 2004 a Stipulation regarding the RSP was submitted to the Commission by multiple parties. The Commission rejected the Stipulation. The Commission developed its own RSP in its November 23, 2004 Entry on Rehearing.

On November 22, 2006, the Ohio Supreme Court remanded this case to the Commission on two grounds. First, the Court found that the Commission failed to cite the evidentiary basis to support the RSP it developed. Second, the Court found that the Commission should have granted OCC's discovery request "to provide copies of all agreements between CG&E and a party to these consolidated cases (and all agreements between CG&E and an entity that was at any time a party to these consolidated cases) that were entered into on or after January 26, 2004." January 26, 2004 being the date the RSP was filed.

OCC seeks to depose Kroger on electric service agreements between it and Duke Energy, Inc. entered into since January 1, 2000. January 1, 2000 is before DE-Ohio filed its MBSSO, before DE-Ohio filed its RSP, before the RSP Stipulation, and before the November 23, 2004 Order on Rehearing where the Commission developed its own RSP.

On January 1, 2000 no one had even heard of the concept of an RSP. OCC's request is well beyond the scope of the Court's remand.

In December 2006, OCC requested from Kroger the production of documents from January 1, 2003. OCC's request was:

"RP1 Please provide copies of all agreements (all forms, including, by way of example only, memoranda of understanding) between DE-Ohio or its affiliates and Kroger that were entered into by either party on or after January 1, 2003 that contain provisions regarding RTC, FPP, RSC, AAC, IMF, SRT charges or the Insufficient Return Notice Fee. This request asks for final agreements, and does not seek information regarding offers to compromise a disputed matter or documents used in compromise negotiations."

On January 15, 2007 Kroger provided OCC with its requested documents from January 1, 2003 and deposition questioning regarding the documents already supplied in response to OCC's discovery is appropriate. But that is as far back as discovery should be allowed. Going back three full years to January 1, 2000 is well beyond the scope of the Court remand, is overbroad and cannot lead to the discovery of relevant or admissible evidence. There is nothing which occurred on January 1, 2000 which could possibly impact the reasonableness on an RSP developed by the Commission on November 23, 2004.

Respectfully submitted,



Michael L. Kurtz, Esq.

Kurt J. Boehm, Esq.

BOEHM, KURTZ & LOWRY

36 East Seventh Street, Suite 1510

Cincinnati, Ohio 45202

Ph: (513) 421-2255 Fax: (513) 421-2764

E-Mail: mkurtz@BKLawfirm.com

kboehm@BKLawfirm.com

February 8, 2007

COUNSEL FOR THE KROGER CO.