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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:

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Michael L. Kurtz, Esq.
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**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,



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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,



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February 8, 2007

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