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July 18, 2008

VIA HAND DELIVERY

Renee Jenkins  
Chief of Docketing  
Public Utilities Commission of Ohio  
180 East Broad Street  
Columbus, OH 43266

RECEIVED-DOCKETING DIV  
2008 JUL 19 PM 3:48  
PUCO

Re: In the matter of the application of Duke Energy Ohio, Inc. for an Increase in Electric Distribution Rates, for Tariff Approval and for Approval to Change Accounting Methods.

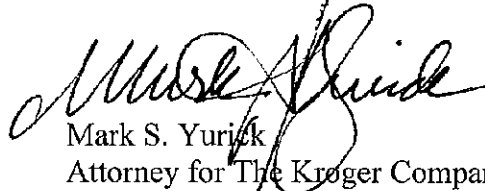
Case Nos. 08-709-EL-AIR, 08-710-EL-ATA, 08-711-EL-AAM.

Dear Ms. Jenkins:

Enclosed please find an original and twenty (20) copies of The Kroger Company, Inc.'s *Motion for Intervention and Memorandum in Support* to be filed in the above-captioned docket.

Please contact me if you have any questions.

Very truly yours,

  
Mark S. Yurick  
Attorney for The Kroger Company, Inc.

Enclosure

ND: 4812-7795-3282, v. 1

This is to certify that the images appearing are an accurate and complete reproduction of a case file document delivered in the regular course of business  
Technician Am Date Processed 7/18/08

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of )  
Duke Energy Ohio, Inc. for an ) Case No. 08-709-EL-AIR  
Increase in Electric Distribution Rates )

In the Matter of the Application of )  
Duke Energy Ohio, Inc. for Tariff ) Case No. 08-710-EL-ATA  
Approval )

In the Matter of the Application of )  
Duke Energy Ohio, Inc. for Approval ) Case No. 08-711-EL-AAM  
to Change Accounting Methods )

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**MOTION FOR INTERVENTION AND MEMORANDUM IN SUPPORT OF THE  
KROGER COMPANY, INC.**

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**Attorneys for The Kroger Company, Inc.**

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

|   |             |                        |
|---|-------------|------------------------|
| In the Matter of the Application of<br>Duke Energy Ohio, Inc. for an<br>Increase in Electric Distribution Rates | )<br>)<br>) | Case No. 08-709-EL-AIR |
| In the Matter of the Application of<br>Duke Energy Ohio, Inc. for Tariff<br>Approval                            | )<br>)<br>) | Case No. 08-710-EL-ATA |
| In the Matter of the Application of<br>Duke Energy Ohio, Inc. for Approval<br>to Change Accounting Methods      | )<br>)<br>) | Case No. 08-711-EL-AAM |

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**MOTION FOR INTERVENTION AND MEMORANDUM IN SUPPORT OF THE  
KROGER COMPANY, INC.**

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**I. MOTION FOR INTERVENTION**

Pursuant to Ohio Revised Code (“RC”) § 4903.221 and Ohio Administrative Code (“OAC”) 4901-1-11, the Kroger Company, Inc. (“Kroger”) respectfully moves the Commission for leave to intervene in the above-captioned docket, for the reasons more fully set forth in the below Memorandum in Support.

**II. MEMORANDUM IN SUPPORT**

From the standpoint of both the substantive merits and timeliness of its request, Kroger respectfully submits that it is entitled to intervene in these proceedings. For purposes of considering requests for leave to intervene in a Commission proceeding, OAC 4901-1-11(A) provides that:

Upon timely motion, any person shall be permitted to intervene in a proceeding upon a showing that: ... (2) The person has a real and substantial interest in the proceeding, and the person is so situated that the disposition of the proceeding may, as a practical matter, impair or impede his or her ability to protect that interest, unless the person's interest is adequately represented by existing parties.

Further, RC § 4903.221(B) and OAC 4901-1-11(B) provide that the Commission, in ruling upon applications to intervene in its proceedings, shall consider the following criteria:

(1) The nature and extent of the prospective intervener's interest; (2) The legal position advanced by the prospective intervener and its probable relation to the merits of the case; (3) Whether the intervention by the prospective intervener will unduly prolong or delay the proceedings; (4) Whether the prospective intervener will significantly contribute to full development and equitable resolution of the factual issues.

OAC 4901-1-11(B) also provides that an additional factor in considering a request to intervene will be the extent to which the person's interest is represented by existing parties.

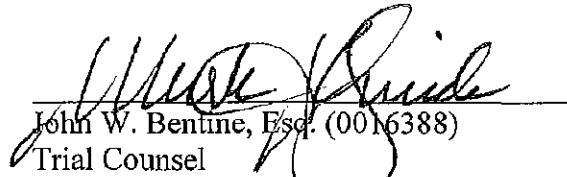
Kroger is a large consumer of electricity delivered to it in a large number of locations in Duke's service territory by Duke Energy, Ohio, Inc. ("Duke"). In the above-captioned proceeding, Duke is proposing to substantially increase its electric distribution rates to all of its distribution customers. Duke's proposed distribution increase will directly affect the rates paid by Kroger. Accordingly, Kroger has direct, real, and substantial interests in this proceeding. The disposition of this proceeding without Kroger's full participation will prejudice and impede Kroger's ability to protect its substantial business interests in this proceeding.

Further, others participating in this proceeding do not represent Kroger's interests. Inasmuch as others participating in these proceedings cannot adequately protect Kroger's interests, it would be inappropriate to determine this proceeding without Kroger's participation. Kroger submits that its unique perspectives will contribute to the full, equitable, and expeditious resolution of these proceedings. Finally, Kroger's timely intervention will not unduly delay the proceedings, or unjustly prejudice the interests of any existing party to this proceeding.

### **III. CONCLUSION**

For the reasons set forth above, Kroger respectfully requests the Commission grant Kroger's request to intervene in the above-captioned docket.

Respectfully submitted,



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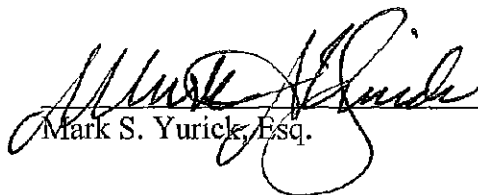
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(614) 221-4012 (Facsimile)

**Attorneys for The Kroger Company, Inc.**

## 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 U.S. Mail postage prepaid, express mail, hand delivery, or electronic transmission, on July 18, 2008.



Mark S. Yurick, Esq.

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