

FILE

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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In the Matter of the Application for)	
Recovery of Costs, Lost Margin, and)	
Performance Incentive Associated with)	Case No. 09-283-EL-UNC
the Implementation of Electric)	
Residential and Non-Residential Demand)	
Side Management Programs by Duke)	
Energy Ohio)	

**MOTION FOR INTERVENTION AND MEMORANDUM IN SUPPORT OF
THE KROGER CO.**

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I. MOTION FOR INTERVENTION

Pursuant to Ohio Revised Code ("R.C.") § 4903.221 and Ohio Administrative Code ("O.A.C.") 4901-1-11, The Kroger Co. respectfully moves the Commission for leave to intervene in the above-captioned docket, for the reasons more fully set forth below in the Memorandum in Support.

II. MEMORANDUM IN SUPPORT

The Kroger Co. respectfully submits that it is entitled to intervene in this proceeding. For purposes of considering requests for leave to intervene in a Commission proceeding, O.A.C. 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, R.C. § 4903.221(B) and O.A.C. 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 intervenor's interest; (2) The legal position advanced by the prospective intervenor and its probable relation to the merits of the case; (3) Whether the intervention by the prospective intervenor will unduly prolong or delay the proceedings; (4) Whether the prospective intervenor will significantly contribute to full development and equitable resolution of the factual issues.

O.A.C. 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.

In the above-captioned proceeding, Duke Energy Ohio ("Duke") applied for approval to recover costs associated with its Demand Side Management ("DSM") programs. Duke also seeks approval to charge the costs of the DSM programs to Duke's ratepayers. The Kroger Co. is a consumer of significant amounts of electric service provided by Duke in numerous locations throughout Duke's service territories. If the Commission were to grant Duke's Application, the rates The Kroger Co. pays for electric service could be substantially affected in the future. Accordingly, The Kroger Co. has direct, real, and substantial interests in this proceeding. The disposition of this proceeding without The Kroger Co.'s full participation will prejudice and impede The Kroger Co.'s ability to protect its substantial business interests in this proceeding.

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

III. CONCLUSION

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

Respectfully submitted,



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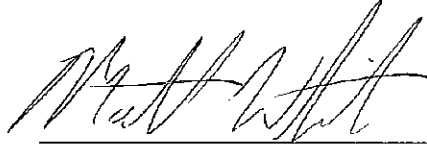
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CERTIFICATE OF SERVICE

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 or U.S. First Class mail, on April 2, 2009.

A handwritten signature in black ink, appearing to read 'Matthew S. White', written over a horizontal line.

Matthew S. White, Esq.

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