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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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In the Matter of the Application of Duke Energy Ohio to Adjust and Set its Gas and Electric Recovery Rate for SmartGrid Deployment Under Riders AU and DR-IM.)	Case No. 09-543-GE-UNC
)	
)	
)	
)	Case No. 09-544-GE-ATA
In the Matter of the Application of Duke Energy Ohio for Tariff Approval.)	
)	
)	
In the Matter of the Application of Duke Energy Ohio to Change its Accounting Methods.)	Case No. 09-545-GE-AAM
)	

**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 dockets, 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 these proceedings. 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 proceedings, Duke Energy Ohio ("Duke") applied to adjust the gas and electric recovery rates for SmartGrid deployment, pursuant to the processes approved in the Gas Distribution Rate Case and the Electric Service Plan ("ESP") Case. The Kroger Co. is a consumer of significant amounts of electric service and gas distribution service provided by Duke in numerous locations throughout Duke's service territories. If the Commission adopts Duke's application, the rates The Kroger Co. pays for electricity and gas could be substantially affected. Accordingly, The Kroger Co. has direct, real, and substantial interests in these proceedings. The disposition of these proceedings without The Kroger Co.'s full participation will prejudice and impede The Kroger Co.'s ability to protect its substantial business interests in these proceedings.

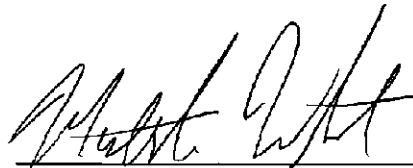
Further, others participating in these proceedings do not represent The Kroger Co.'s

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

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 dockets.

Respectfully submitted,



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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 September 16, 2009.

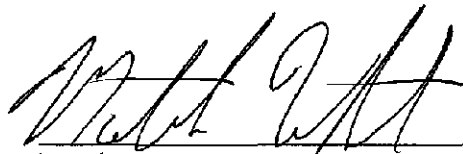
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