

**FILE**

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**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of Application of Duke  
Energy Ohio for Approval of a Market  
Rate Offer to Conduct a Competitive  
Bidding Process for Standard Service  
Offer Electric Generation Supply,  
Accounting Modifications, and Tariffs  
for Generation Service.

Case No. 10-2586-EL-SSO

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**THE KROGER CO.'S  
MOTION TO INTERVENE**

**I. MOTION FOR INTERVENTION**

Pursuant to Ohio Revised Code ("RC") § 4903.221 and Ohio Administrative Code ("OAC") 4901-1-11, The Kroger Co. ("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**

Kroger respectfully submits that it is entitled to intervene in this proceeding. 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.

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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 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.

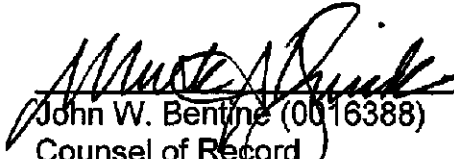
In the above-captioned proceeding, Duke Energy Ohio, Inc. ("Duke") is seeking approval from the Commission to conduct a competitive bidding process and make a market rate offer ("MRO") for standard service offer electric generation supply. Kroger is a consumer of significant amounts of electric service in Duke's service territory. If the Commission approves Duke's application, the price and reliability of Kroger's electric generation service may be substantially impacted. Accordingly, Kroger has direct, real, and substantial interests in this proceeding.

Kroger's intervention will also not unduly delay this proceeding. Further, Kroger is regularly and actively involved in Commission proceedings, and as in previous proceedings, Kroger's unique knowledge and perspective will contribute to the equitable, and expeditious resolution of this proceeding. Kroger is so situated that without Kroger's ability to fully participate in this proceeding Kroger's substantial interest will be prejudiced. Others participating in this proceeding do not represent Kroger's interests. Inasmuch as others participating in this proceeding cannot adequately protect Kroger's interests, it would be inappropriate to determine this proceeding without Kroger's participation.

III. CONCLUSION

For the reasons set forth above, Kroger respectfully requests the Commission grant this Motion to Intervene.

Respectfully submitted,



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John W. Bentine (0016388)  
Counsel of Record  
Email: [jbentine@cwslaw.com](mailto:jbentine@cwslaw.com)  
Direct: (614) 334-6121  
Mark S. Yurick (0039176)  
Email: [myurick@cwslaw.com](mailto:myurick@cwslaw.com)  
Direct: (614) 334-7197  
Matthew S. White (0082859)  
Email: [mwhite@cwslaw.com](mailto:mwhite@cwslaw.com)  
Direct: (614) 334-6172  
Chester Willcox & Saxbe, LLP  
65 East State Street, Suite 1000  
Columbus, Ohio 43215  
Telephone: (614) 221-4000  
Facsimile: (614) 221-4012  
**Attorneys for The Kroger Co.**

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing *The Kroger Co.'s Motion to Intervene* was served this 18<sup>th</sup> day of November, 2010 upon the following via electronic mail and U.S. regular mail, postage prepaid.

Christine M. T. Pirik  
Katie Stenman  
Attorney Examiners  
The Public Utilities Commission of Ohio  
180 E. Broad Street  
Columbus, Ohio 43215  
Email: Christine.Pirik@puc.state.oh.us  
Email: Katie.Stenman@puc.state.oh.us


Amy B. Spiller  
Elizabeth H. Watts  
Rocco D'Ascenzo  
2500 Atrium II  
Cincinnati, Ohio 45201-0960  
Email: Amy.Spiller@duke-energy.com

Steven Beeler  
John Jones  
Assistant Attorney General  
Public Utilities Division  
180 E. Broad Street  
Columbus, Ohio 43215  
Email: Steven.Beeler@puc.state.oh.us  
Email: John.Jones@puc.state.oh.us

Samuel C. Randazzo  
Joseph E. Oliker  
McNees Wallace & Nurick LLC  
21 East State Street, 17<sup>th</sup> Floor  
Columbus, Ohio 43215  
Email: sam@mwncmh.com  
Email: joliker@mwncmh.com

David F. Boehm  
Michael L. Kurtz  
Boehm, Kurtz & Lowry  
36 East Seventh Street, Suite 1510  
Cincinnati, Ohio 45202  
Email: dboehm@BKLawfirm.com  
Email: mkurtz@BKLawfirm.com

David C. Rinebolt  
Colleen L. Mooney  
Ohio Partners for Affordable Energy  
231 West Lima Street  
Findlay, Ohio 45839  
Email: cmooney2@columbus.rr.com  
Email: drinebolt@ohiopartners.org

  
Mark S. Yurick