

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of)
Duke Energy Ohio, Inc. for Authority)
to Establish a Standard Service Offer)
Pursuant to § 4928.143, Ohio Rev.)
Code, in the Form of an Electric)
Security Plan, Accounting)
Modifications, and Tariffs for)
Generation Service.)

Case No. 11-3549-EL-SSO

In the Matter of the Application of)
Duke Energy Ohio for Authority to)
Amend its Certified Supplier Tariff,)
P.U.C.O. No. 20.)

Case No. 11-3550-EL-ATA

In the Matter of the Application of)
Duke Energy Ohio for Authority to)
Amend its Corporate Separation Plan.)

Case No. 11-3551-EL-UNC

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THE KROGER CO.'S MOTION TO INTERVENE
AND MEMORANDUM IN SUPPORT

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 below in the Memorandum in Support.

II. MEMORANDUM IN SUPPORT

Kroger respectfully submits that it is entitled to intervene in these proceedings because Kroger has a real and substantial interest in the proceedings, the disposition of which may impair or impede Kroger's ability to protect that interest. For purposes of considering requests for leave to intervene in a Commission proceeding, the Ohio

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Administrative Code 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.

OAC 4901-1-11(A).

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.

In the above-captioned proceeding, Duke Energy Ohio, Inc. is seeking (1) authority from the Commission to establish a standard service offer ("SSO") in the form an electric security plan ("ESP"), (2) to amend its certified supplier tariff, and (3) to amend its corporate separation plan. Kroger is one of the largest grocers in the United States. Kroger has over 65 facilities served by Duke Energy Ohio ("Duke") that collectively consume over 255 million kWh per year. 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.

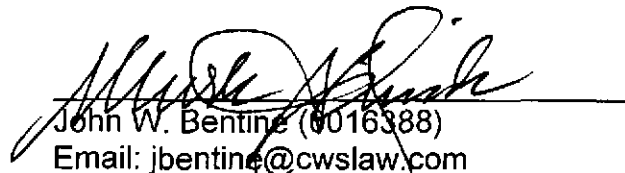
Kroger's intervention will not unduly delay this proceeding. Further, Kroger is regularly and actively involved in Commission proceedings, and as in previous

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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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing *The Kroger Co.'s Motion to Intervene and Memorandum in Support* was served this 29th day of June, 2011 upon the following via electronic mail and U.S. regular mail, postage prepaid.

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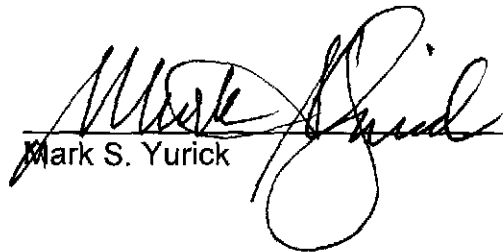
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