



## **MEMORANDUM IN SUPPORT**

Kroger respectfully requests leave 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 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.

O.A.C § 4901-1-11(A).

Further, R.C. § 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.

Under Ohio Power Company's ("AEP-Ohio") 2011 Electric Security Plan ("ESP") Case (No. 11-346-EL-SSO), the Commission approved, with certain modifications, Ohio Power Company's application for a standard service offer in the form of an ESP. Among the provisions approved in the ESP, the Commission modified and approved AEP-Ohio's proposed Distribution Investment Rider ("DIR"). The DIR mechanism that AEP-Ohio proposed and the Commission approved aggregated the incremental distribution investment in both service territories and calculates an aggregated DIR charge.

In the ESP case, Kroger objected to this plan because, *inter alia*, the cost of providing distribution service varies among distribution service territories based on the characteristics of the load being served, the geography of the territories being served, including population densities, and the age of the distribution plant. The costs of each respective service distribution territory are known to AEP-Ohio and should continue to be assigned to the customers in their respective territories consistent with the fundamental tenets of cost causation.

On September 7, 2012, Kroger filed an application for rehearing in the ESP case. One of the bases of that the application was that the Commission unreasonably permitted AEP-Ohio to aggregate the DIR charge in Ohio Power's and Columbus Southern Power's former service territories. (Application for Rehearing at 7-9.) On October 3, 2012, the Commission issued its Entry on Rehearing granting Kroger's Application for Rehearing. A rehearing schedule has not yet been established and many issues surrounding the DIR remain unresolved. Accordingly, Kroger moves to intervene to protect its interest in regarding the implementation of the DIR.

Kroger is one of the largest grocers in the United States and has numerous facilities served by Ohio Power Company that consume significant amounts of electric service. The DIR will have a significant impact on the price of Kroger's electric service. Kroger will be substantially impacted by the outcome of this proceeding. Accordingly, Kroger has direct, real, and substantial interests in this proceeding.

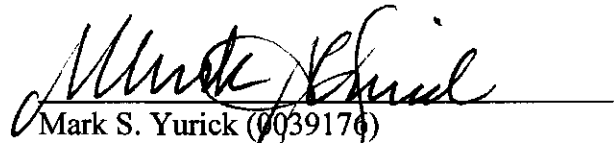
Kroger's intervention will not unduly delay this proceeding. Further, Kroger is regularly and actively involved in Commission proceedings, and as in previous proceedings, Kroger's unique knowledge and perspective will contribute to the equitable and expeditious resolution of this proceeding. Kroger is so situated that without Kroger's ability to fully participate in this

proceeding, Kroger's substantial interest will be prejudiced. 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 20<sup>th</sup> day of December, 2012 via electronic mail or U.S. regular mail, postage prepaid upon the following:

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