

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke)
Energy Ohio, Inc. for Authority to Defer) Case No. 16-1106-GA-AAM
Environmental Investigation and Remediation)
Costs.)

In the Matter of the Application of Duke) Case No. 16-1107-GA-UNC
Energy Ohio, Inc. for Tariff Approval)

**MOTION TO INTERVENE
OF
THE KROGER CO.**

Pursuant to Section 4903.221, Revised Code, and Rule 4901-1-11, Ohio Administrative Code, The Kroger Co. (Kroger) hereby respectfully moves the Public Utilities Commission of Ohio (Commission) for leave to intervene in the above-captioned matter with the full powers and rights granted to intervening parties.

As demonstrated in the attached Memorandum in Support, Kroger has a real and substantial interest in this proceeding which may be adversely affected by the outcome herein, and which cannot be adequately represented by any other party. Accordingly, Kroger satisfies the standard for intervention set forth in Ohio statutes and regulations.

WHEREFORE, Kroger respectfully requests that the Commission grant this motion to intervene and that Kroger be made a full party of record in this proceeding.

Respectfully submitted,

/s/ Kimberly W. Bojko
Kimberly W. Bojko (0069402)
Carpenter Lipps & Leland LLP
280 Plaza, Suite 1300
280 North High Street
Columbus, Ohio 43215
Telephone: (614) 365-4100
Email: Bojko@carpenterlipps.com

Counsel for The Kroger Co.

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke)
Energy Ohio, Inc. for Authority to Defer) Case No. 16-1106-GA-AAM
Environmental Investigation and Remediation)
Costs.)

In the Matter of the Application of Duke) Case No. 16-1107-GA-UNC
Energy Ohio, Inc. for Tariff Approval)

MEMORANDUM IN SUPPORT

On May 16, 2016, Duke Energy Ohio, Inc. (Duke or the Company) filed an application seeking to continue deferring environmental investigation and remediation costs beyond the December 31, 2016 deadline established by the Commission in its November 13, 2013 Opinion and Order and to continue recovering costs associated with the environmental investigation and remediation costs under the Rider MGP recovery mechanism with respect to its East End site.¹ In Duke's initial application for deferral of environmental investigation and remediation costs, the Commission authorized Duke to recover such reasonable and prudent costs incurred by the Company between 2008 and 2012 through December 31, 2016.² Duke avers, however, that exigent circumstances at both the federal and state level have necessitated this request to continue the deferral and cost recovery under Rider MGP.³

Kroger is a substantial consumer of natural gas in Duke's service area. The application filed by Duke, if granted by the Commission, may directly or indirectly impact the provision of

¹ Application of Duke Energy Ohio, Inc. for Authority to Defer Environmental Investigation and Remediation Costs and For Approval to Amend Rider MGP at 12 (May 16, 2016) (Application).

² *In the Matter of the Application of Duke Energy Ohio, Inc., for Authority to Defer Environmental Investigation and Remediation Costs*, Case No. 09-712-GA-AAM, Finding and Order, at 4 (November 12, 2009).

³ Application at 2-5.

natural gas service to Kroger, and could significantly impact prices paid by it for natural gas service.

Section 4903.221, Revised Code, and Rule 4901-1-11, Ohio Administrative Code, establish the standard for intervention in the above-captioned proceeding. Section 4903.221, Revised Code, provides, in part, that any person “who may be adversely affected” by a Commission proceeding is entitled to seek intervention in that proceeding. Section 4903.221(B), Revised Code, further requires the Commission to consider the nature and extent of the prospective intervenor’s interest, the legal position advanced by the prospective intervenor and its probable relation to the merits of the case, whether the intervention by the prospective intervenor will unduly prolong or delay the proceeding, and the prospective intervenor’s potential contribution to a just and expeditious resolution of the issues involved.

Rule 4901-1-11, Ohio Administrative Code, permits intervention to a party who demonstrates a real and substantial interest in the proceeding and who is so situated that the disposition of the proceeding may impair or impede its ability to protect that interest and whose interest is not adequately represented by an existing party.

Kroger is one of the largest grocers in the United States, with numerous facilities served by Duke. The grocery stores operated by Kroger use natural gas and electricity for food storage, lighting, heating, cooling, and distribution, often 24 hours a day, 7 days a week. Therefore, Kroger has a direct, real, and substantial interest in the issues raised in this proceeding and is so situated that the disposition of the proceeding may, as a practical matter, impair or impeded its ability to protect that interest. Kroger is regularly and actively involved in Commission proceedings, and as in previous proceedings, Kroger’s unique knowledge and perspective will contribute to the full development and equitable resolution of the factual issues in this

proceeding, and Kroger's interest will not be adequately represented by other parties to the proceeding. Finally, this timely intervention will not unduly delay or prolong the proceeding.

Kroger satisfies the criteria set forth in Section 4903.221, Revised Code, and Rule 4901-1-11, Ohio Administrative Code, and is, therefore, authorized to intervene with the full powers and rights granted by the Commission to intervening parties.

WHEREFORE, Kroger respectfully requests that the Commission grant this motion for leave to intervene and that Kroger be made a full party of record.

Respectfully submitted,

/s/ Kimberly W. Bojko
Kimberly W. Bojko (0069402)
Carpenter Lipps & Leland LLP
280 Plaza, Suite 1300
280 North High Street
Columbus, Ohio 43215
Telephone: (614) 365-4100
Email: Bojko@carpenterlipps.com

Counsel for The Kroger Co.

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was served upon the following parties via electronic mail on November 23, 2016.

/s/ Kimberly W. Bojko
Kimberly W. Bojko

Amy.spiller@duke-energy.com
Elizabeth.watts@duke-energy.com
william.wright@ohioattorneygeneral.gov
Thomas.mcnamee@ohioattorneygeneral.gov
cmooney@ohiopartners.org
Christopher.healey@occ.ohio.gov
Ajay.kumar@occ.ohio.gov

Attorney Examiner:
Megan.addison@puc.state.oh.us

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

11/23/2016 4:32:26 PM

in

Case No(s). 16-1106-GA-AAM, 16-1107-GA-UNC

Summary: Motion Motion to Intervene of The Kroger Co. electronically filed by Ms. Cheryl A Smith on behalf of The Kroger Co.