

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio )	
Power Company for Approval of its )	Case No. 20-0602-EL-UNC
Temporary Plan for Addressing the COVID- )	
19 State of Emergency. )	
)	
In the Matter of the Application of Ohio )	
Power Company for Waiver of Tariffs and )	Case No. 20-0603-EL-WVR
Rules Related to the COVID-19 State of )	
Emergency. )	
)	
In the Matter of the Application of Ohio )	
Power Company for Approval of Certain )	Case No. 20-0604-EL-AAM
Accounting Authority. )	
)	
In the Matter of the Application of Ohio )	
Power Company for Approval of a )	Case No. 20-0734-EL-AEC
Reasonable Arrangement. )	

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**MOTION TO INTERVENE  
AND COMMENTS  
BY  
THE KROGER CO.**

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The Kroger Co. (Kroger) hereby respectfully submits its motion to intervene in the above-captioned matter to the Public Utilities Commission of Ohio (Commission), with the full powers and rights granted to intervening parties, pursuant to R.C. 4903.221 and Ohio Adm. Code 4901-1-11 and 4901:1-38-03(E). 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 existing parties. Accordingly, Kroger satisfies the standard for intervention set forth in Ohio statutes and regulations.

By entry dated April 17, 2020, the Commission established April 27, 2020 as both the deadline to intervene and the deadline to file comments to assist the Commission in its review of the Ohio Power Company's (AEP Ohio) Second Amended Application, which includes approval of a reasonable arrangement.<sup>1</sup> In accordance with the Commission's Entry, Kroger submits this timely motion to intervene and files its comments to AEP Ohio's Second Amended Application.

Therefore, Kroger respectfully requests that the Commission grant its motion to intervene and incorporate its comments on AEP Ohio's proposals as set forth herein. A memorandum in support is attached hereto.

Respectfully submitted,

/s/ Angela Paul Whitfield  
Angela Paul Whitfield (0068774)  
Carpenter Lipps & Leland LLP  
280 North High Street, Suite 1300  
Columbus, Ohio 43215  
Telephone: (614) 365-4100  
Email: [paul@carpenterlipps.com](mailto:paul@carpenterlipps.com)  
(willing to accept service by email)

*Counsel for The Kroger Co.*

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<sup>1</sup> See Entry at ¶ 13 (April 17, 2020).

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**MEMORANDUM IN SUPPORT**

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**I. INTRODUCTION**

On March 17, 2020, the Ohio Power Company (AEP Ohio) filed an Application proposing a plan<sup>2</sup> to implement the Commission’s mandates in its March 12, 2020 Entry directing utilities to review requirements and policies imposing a “service continuity hardship on residential and non-residential customers” during the COVID-19 emergency.<sup>3</sup> In its Application, AEP Ohio requested accounting authority and a recovery mechanism for the costs associated with its Plan.<sup>4</sup> Thereafter,

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<sup>2</sup> *In the Matter of the Application of Ohio Power Company for Approval of its Temporary Plan for Addressing the COVID-19 State of Emergency*, Case Nos. 20-0602-EL-UNC, et al., Application (March 17, 2020) ( Plan).

<sup>3</sup> *In the Matter of the Proper Procedures and Process for the Commission’s Operations and Proceedings During the Declared State of Emergency and Related Matters*, Case No. 20-591-AU-UNC, Entry at ¶ 7 (March 12, 2020) (State of Emergency Proceeding).

<sup>4</sup> Application at 8.

on March 24, 2020, AEP Ohio filed an Amended Application to update its Plan.<sup>5</sup> And, on April 9, 2020, AEP Ohio filed a Second Amended Application requesting approval of its Plan and adoption of a reasonable arrangement under R.C. 4905.31 to allow minimum demand charges to be temporarily reset at lower usage levels during the declared emergency, which added Case No. 20-0734-EL-AEC to this case caption.<sup>6</sup> As explained in more detail below, given that this proceeding may directly or indirectly impact the provision of electric service to Kroger's facilities in AEP Ohio's service territory and the costs of those services, Kroger has a real and substantial interest in the outcome of these proceedings, including, but not limited to, the amount of costs being deferred and the future allocation and recovery of such costs. Kroger's interests cannot be adequately represented by any other party.

In its April 17, 2020 Entry, the Commission established April 27, 2020 as both the deadline to intervene and the deadline to file comments on AEP Ohio's Second Amended Application.<sup>7</sup> In accordance with the Commission's Entry, Kroger submits this timely motion to intervene and its comments to the Second Amended Application.

## **II. INTERVENTION**

R.C. 4903.221 and Ohio Adm. Code 4901-1-11 and 4901:1-38-03(E) establish the standards for intervention in Commission proceedings. R.C. 4903.221 provides, in pertinent part, that any person "who may be adversely affected" by a Commission proceeding is entitled to seek intervention in that proceeding. R.C. 4903.221(B) 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

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<sup>5</sup> See Amended Application (March 24, 2020).

<sup>6</sup> See Second Amended Application (April 9, 2020).

<sup>7</sup> See Entry at ¶ 13 (April 17, 2020).

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. Ohio Adm. Code 4901-1-11 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. Ohio Adm. Code 4901:1-38-03(E) permits intervention by a party affected by the reasonable arrangement application.

Kroger is one of the largest grocers in the United States, with numerous facilities served by AEP Ohio. The facilities operated by Kroger use electricity for food storage, lighting, heating, cooling, and distribution, often 24 hours a day, 7 days a week. Kroger's electric distribution needs associated with its facilities in AEP Ohio's service territories are considerable, and its electric service and the costs associated with obtaining such service from AEP Ohio will be impacted by the outcome in this proceeding. Indeed, Kroger has been a participant in other cases before the Commission involving rates charged by AEP Ohio and costs recovered from customers.<sup>8</sup> The costs associated with AEP Ohio's request for deferral authority and a reasonable arrangement, including the allocation and recovery mechanism of those costs, directly implicate the interests Kroger seeks to protect.<sup>9</sup> Kroger recognizes that the Commission will address requests for deferral

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<sup>8</sup> See *In the Matter of the Application of Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to R.C. 4928.143, in the Form of an Electric Security Plan*, Case Nos. 16-1852-EL-SSO, et al., Opinion and Order (April 25, 2018) and *In the Matter of the Application Seeking Approval of Ohio Power Company's Proposal to Enter into an Affiliate Power Purchase Agreement for Inclusion in the Power Purchase Agreement Rider, et al.*, Case Nos. 14-1693-EL-RDR, et al. Opinion and Order (March 31, 2016). Also see *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company, Individually and, if Their Proposed Merger is Approved, as a Merged Company (collectively, AEP Ohio) for an Increase in Electric Distribution Rates, et al.*, Case Nos. 11-351-EL-AIR, et al., Entry (November 1, 2011).

<sup>9</sup> See Second Amended Application at 15.

authority and cost recovery on a case-by-case basis, unlike other proposals directly responding to the State of Emergency Proceeding Entry.<sup>10</sup>

### **III. COMMENTS**

On March 9, 2020, Governor DeWine declared a state of emergency as a result of the COVID-19 pandemic crisis.<sup>11</sup> In response to that declaration of a state of emergency, the Commission acted swiftly in directing all public utilities to review their service disconnection policies and practices and otherwise act to minimize any service continuity hardship on residential, commercial, and industrial customers throughout the State of Ohio as a result of the COVID-19 pandemic.<sup>12</sup> AEP Ohio instituted this proceeding in accordance with the Commission's directive.<sup>13</sup>

As an initial matter, Kroger applauds the Commission for acting quickly during this state of emergency. In these unprecedented times, everyone -- public utilities, companies, and individuals alike -- should all do their part to minimize the impact of the pandemic. Indeed, Kroger has been on the "front lines" of this pandemic crisis in remaining open and operational to provide essential food, pharmacy, toiletries, disinfectants, and other items to the public. In doing so, Kroger has initiated social distancing guidelines, installed protective barriers, enhanced cleaning and disinfecting protocols, offered exclusive shopping hours for higher-risk customers, and offered "hero pay" of a \$2.00 per hour premium above the standard base rate of pay for all hourly frontline grocery, supply chain, manufacturing, pharmacy, and call center associates.<sup>14</sup> In addition to the foregoing, Kroger's Zero Hunger/Zero Waste Foundation has committed more than \$6 million to support its neighbors during the COVID-19 pandemic to fund local food banks and ensure children

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<sup>10</sup> See State of Emergency Proceeding, Entry at ¶ 13 (March 20, 2020).

<sup>11</sup> See State of Emergency Proceeding, Entry at ¶ 5 (March 12, 2020).

<sup>12</sup> Id. at ¶ 7.

<sup>13</sup> See Second Amended Application at 2.

<sup>14</sup> See <https://www.kroger.com/i/coronavirus-update>.

with school closures have access to nutritious meals.<sup>15</sup> Kroger has taken all of these actions without a guarantee that its revenue would cover all of these expenses or that it would maintain its pre-pandemic profits because these were the right things to do.

The same holds true for AEP Ohio. As the Staff of the Commission (Staff) recognized, it is the right thing for AEP Ohio to suspend its disconnections and remove financial barriers to reconnection or continuity of service and to expand its customer assistance program.<sup>16</sup> And, Kroger applauds AEP Ohio for taking these actions in accordance with the Commission's directives.

However, Kroger does not support AEP Ohio's use of a "reasonable arrangement rider" to recover its costs associated with responding to the COVID-19 pandemic. As Staff noted, "this is not a typical reasonable arrangement, but rather, is a result of the current COVID-19 Emergency."<sup>17</sup> Allowing AEP Ohio to use a "reasonable arrangement rider" under R.C. 4905.31 would create bad precedent and a slippery slope where utilities could seek a reasonable arrangement any time their revenues may not be as anticipated. This is not the purpose and intent of reasonable arrangements.

Moreover, Kroger has significant concerns regarding the level and type of operating costs and foregone revenue for which AEP Ohio is seeking deferral authority. Kroger also is concerned as to how those costs and foregone revenue will be allocated and recovered from customers in the future. While AEP Ohio's reasonable arrangement proposal would allow minimum demand charges for commercial and industrial customers to be temporarily reset at lower usage levels,<sup>18</sup> that will not provide assistance to all commercial and industrial customers. Indeed, commercial

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<sup>15</sup> Id.

<sup>16</sup> See Staff Recommendation and Report (Staff Report), at 3 (April 15, 2020).

<sup>17</sup> Id. at 6.

<sup>18</sup> Id. at 4.

customers, like Kroger, who have maintained 24/7 operations during the COVID-19 pandemic may not have lower usage levels, and thus, their utility costs will not have decreased. While AEP Ohio's proposal may be reasonable and appropriate for those customers facing lower usage levels, it may not be appropriate to recover the costs associated with the reasonable arrangement proposal from all other customers through the Economic Development Rider. As Staff explained, there are other recovery options available that may be more appropriate, including a repayment of the relief received by those who received the relief.<sup>19</sup> There may also be other government assistance specifically related to the pandemic that may not require other customers to face more or increased costs during the pandemic or during the recovery phase of the pandemic. AEP Ohio also has requested deferral authority for future recovery of other categories of foregone revenue. But, in its application, AEP Ohio has not projected or estimated the level of foregone revenues that it anticipates deferring for future recovery. Kroger is concerned with the uncertainty associated with these foregone revenues that AEP Ohio will request to recover in the future and the impact on Kroger.

Finally, Kroger shares Staff's concerns about the potential for double recovery by AEP Ohio of expenses incurred as part of the Plan. It is unclear at this time whether and which costs that AEP Ohio is seeking deferral authority are already covered in base rates. The example cited by Staff is instructive. AEP Ohio is requesting deferral authority for the expense of an IT employee working to suspend disconnections; however, the expense of that IT labor already is fully recovered in base rates.<sup>20</sup> Therefore, the Commission should review all the costs for which AEP Ohio is seeking deferral authority to ensure they are not already covered in base rates because AEP

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<sup>19</sup> Staff Report at 5.

<sup>20</sup> Id.



Ohio is not entitled to double recovery and customers should not have to absorb costs not incremental to base rates that they already are paying.

In sum, Kroger understands and agrees with Staff's concerns about the financial pressure being exerted on customers and the potential for utility rate increases at this time and after the emergency.<sup>21</sup> As such, Kroger requests that the Commission consider and incorporate its comments here in addressing AEP Ohio's Second Amended Application.

#### **IV. CONCLUSION**

For the foregoing reasons, 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 impede its ability to protect that interest. Kroger's interests will not be adequately represented by other parties to the proceeding. Finally, Kroger's intervention is timely and will not unduly delay or prolong the proceeding. Accordingly, Kroger respectfully requests that its motion to intervene be granted and that its comments on AEP Ohio's Second Amended Application be considered for adoption by the Commission.

Respectfully submitted,

/s/ Angela Paul Whitfield  
Angela Paul Whitfield (0068774)  
Carpenter Lipps & Leland LLP  
280 North High Street, Suite 1300  
Columbus, Ohio 43215  
Telephone: (614) 365-4100  
Email: [paul@carpenterlipps.com](mailto:paul@carpenterlipps.com)  
(willing to accept service by email)

*Counsel for The Kroger Co.*

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<sup>21</sup> Id.

## **CERTIFICATE OF SERVICE**

The Public Utilities Commission of Ohio's e-filing system will electronically serve notice of the filing of this document on the parties referenced on the service list of the docket card who have electronically subscribed to the case. In addition, the undersigned hereby certifies that a copy of the foregoing document also is being served via electronic mail on April 27, 2020 upon the parties listed below.

/s/ Angela Paul Whitfield  
Angela Paul Whitfield  
*Counsel for The Kroger Co.*

[stnourse@aep.com](mailto:stnourse@aep.com)  
[cblend@aep.com](mailto:cblend@aep.com)  
[mpritchard@mcneeslaw.com](mailto:mpritchard@mcneeslaw.com)  
[rglover@mcneeslaw.com](mailto:rglover@mcneeslaw.com)  
[Mkurtz@BKLawfirm.com](mailto:Mkurtz@BKLawfirm.com)  
[Kboehm@BKLawfirm.com](mailto:Kboehm@BKLawfirm.com)  
[Jkylercohn@BKLawfirm.com](mailto:Jkylercohn@BKLawfirm.com)  
[William.Michael@OCC.gov](mailto:William.Michael@OCC.gov)  
[Ambrosia.Wilson@OCC.gov](mailto:Ambrosia.Wilson@OCC.gov)  
[rdove@KeglerBrown.com](mailto:rdove@KeglerBrown.com)  
[Jasonfox@astralenergyllc.com](mailto:Jasonfox@astralenergyllc.com)  
[Bethany.allen@igs.com](mailto:Bethany.allen@igs.com)  
[Joe.oliker@igs.com](mailto:Joe.oliker@igs.com)  
[michael.nugent@igs.com](mailto:michael.nugent@igs.com)  
[john.jones@ohioattorneygeneral.gov](mailto:john.jones@ohioattorneygeneral.gov)

Attorney Examiners:  
[Sarah.parrot@puco.ohio.gov](mailto:Sarah.parrot@puco.ohio.gov)  
[Greta.see@puco.ohio.gov](mailto:Greta.see@puco.ohio.gov)

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Summary: Motion to Intervene And Comments by The Kroger Co. electronically filed by Mrs. Angela Whitfield on behalf of The Kroger Co.