

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke)	
Energy Ohio, Inc., for Approval of its)	Case No. 20-0599-GE-UNC
Temporary Plan and Waiver of Tariffs and)	
Rules Related to the COVID-19 State of)	
Emergency.)	
)	
In the Matter of the Application of Duke)	
Energy Ohio, Inc., Under the Commission's)	
Proceedings During the Declared State of)	
Emergency, for a Reasonable Arrangement)	Case No. 20-0856-EL-AEC
with Customers Served Under Rates DS, DP,)	
and TS.)	
)	
In the Matter of the Application of Duke)	
Energy Ohio to Modify its Economic)	Case No. 20-0857-EL-RDR
Competiveness Fund Rider and Request for)	
Waivers.)	

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

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 Chapter 4901:1-38. 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 27, 2020, the Commission established May 7, 2020 as both the deadline to intervene and the deadline to file comments to assist the Commission in its review of Duke Energy Ohio, Inc.'s (Duke) Plan for approval of a reasonable arrangement.¹ In accordance with the Commission's Entry, Kroger submits this timely motion to intervene and also files its comments to Duke's Plan for a reasonable arrangement.

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

Respectfully submitted,

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¹ See Entry at ¶ 13 (April 27, 2020).

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke)	
Energy Ohio, Inc., for Approval of its)	Case No. 20-599-GE-UNC
Temporary Plan and Waiver of Tariffs and)	
Rules Related to the COVID-19 State of)	
Emergency.)	

In the Matter of the Application of Duke)	
Energy Ohio, Inc., Under the Commission's)	
Proceedings During the Declared State of)	
Emergency, for a Reasonable Arrangement)	Case No. 20-0856-EL-AEC
with Customers Served Under Rates DS, DP,)	
and TS.)	

In the Matter of the Application of Duke)	
Energy Ohio to Modify its Economic)	Case No. 20-0857-EL-RDR
Competiveness Fund Rider and Request for)	
Waivers.)	

MEMORANDUM IN SUPPORT

I. INTRODUCTION

On March 12, 2020, the Commission issued an Entry directing public utilities to suspend policies and Ohio Administrative Code requirements imposing burdens on customers during the COVID-19 emergency.² Thereafter, on April 16, 2020, as supplemented on April 17, 2020, Duke filed, pursuant to R.C. 4905.31, an application for a reasonable arrangement with the Commission.³

² *In the Matter of the Proper Procedures and Processes for the Commission's Operations and Proceedings During the Declared State of Emergency and Related Matters*, Case No. 20-591-AU-UNC, Entry at ¶ 1 (March 12, 2020) (State of Emergency Proceeding).

³ *In the Matter of the Application of Duke Energy Ohio, Inc., Under the Commission's Proceedings During the Declared State of Emergency, for a Reasonable Arrangement with Customers Served Under Rates DS, DP, and TS*, Case No. 20-0856-EL-AEC (April 16, 2020) as supplemented (April 17, 2020) (Plan).

On May 4, 2020, Duke supplemented its Plan in Case No. 20-0599-GE-UNC.⁴ Duke stated that it would begin waiving late fees and return-check charges for all customers.⁵ Duke proposed to reduce the minimum billings provisions for Rate Schedules DS, DP, and TS.⁶ The demand ratchet reduction of 85% to 50% of the summer peak for 2019 would last until the September 2020 billing cycle.⁷ Duke conditioned its proposal to adjust minimum billing demand provisions “on Commission approval of its entire Plan, including deferral recovery and waiver requests.”⁸

Furthermore, Duke proposed an economic development reasonable arrangement to defer the difference between amounts billed to customers under the reduced minimum demand billing and the amounts that would have been billed under the currently applicable minimum billing provisions.⁹ Duke sought to fully recover the delta revenue through its revised demand charges through its Economic Competitiveness Fund Rider (Rider ECF).¹⁰ Duke proposed to recover the delta revenue accumulated for bills render from May 1, 2020 through September 30, 2020, over a period not to exceed twelve months, starting on January 1, and 2021.¹¹ As a result of Duke’s purported temporary reduction of cash revenue, Duke requests to charge commercial and industrial customers, who are also operating in the midst of the emergency and will continue to face challenges after COVID-19, interest on the unrecovered balance of the delta revenue until it is fully recovered from customers.¹² Also, Duke requested a waiver of Ohio Adm. Code 4901:1-38-

⁴ *In the Matter of the Application of Duke Energy Ohio, Inc., for Approval of its Temporary Plan and Waiver of Tariffs and Rules Related to the COVID-19 State of Emergency*, Case No. 20-599-GE-UNC, Motion of Duke Energy Ohio, Inc. to Suspend Certain Requirements for the Duration of the State of Emergency Declared in Executive Order 2020-01D (May 4, 2020) (Plan Supplement).

⁵ See Plan and Plan Supplement.

⁶ Plan at ¶ 16.

⁷ Id. at ¶ 17.

⁸ Id. at ¶ 16.

⁹ Id. at ¶¶ 21-23.

¹⁰ Id. at ¶¶ 24-26.

¹¹ Id. at ¶ 25.

¹² Id. at ¶ 26.

08(A)(4) to forego compliance with annual reporting requirements and to recover the delta revenue solely from customers who benefit from the demand ratchet reduction.¹³ On April 24, 2020, the Commission Staff filed its review and recommendation of Duke’s Plan, as corrected on April 28, 2020.¹⁴

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 Duke’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 27, 2020 Entry, the Commission established May 7, 2020 as both the deadline to intervene and the deadline to file comments on Duke’s proposed reasonable arrangement.¹⁵ In accordance with the Commission’s Entry, Kroger submits this timely motion to intervene and its comments to the Plan.

II. INTERVENTION

R.C. 4903.221, Ohio Adm. Code Chapter 4901-1-11, and Ohio Adm. Code Chapter 4901:1-38, 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,

¹³ Id. at ¶¶ 31-32.

¹⁴ See Staff Recommendation (Staff Report) (April 24, 2020).

¹⁵ See Entry at ¶ 13 (April 27, 2020).

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. Ohio Adm. Code Chapter 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. Various provisions of Ohio Adm. Code Chapter 4901:1-38 permit a party affected by a reasonable arrangement to intervene and file comments and objections to the application.

Kroger is one of the largest grocers in the United States, with numerous facilities served by Duke. 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 service territories are considerable, and its electric service and the costs associated with obtaining such service from Duke 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 Duke and costs recovered from customers.¹⁶ The costs associated with Duke's request for a reasonable arrangement, including the allocation and recovery mechanism of delta revenue, directly implicate the interests Kroger seeks to protect.¹⁷ Kroger recognizes that the Commission will address requests for deferral authority and cost recovery on a case-by-case basis, unlike other proposals directly responding to the State of Emergency Proceeding Entry.¹⁸

¹⁶ See e.g., *In the Matter of the Application of Duke Energy Ohio, Inc. for Approval to Continue Cost Recovery Mechanism for Energy Efficiency Programs through 2016*, Case No. 14-1580-EL-RDR; *In the Matter of the Application of the Duke Energy Ohio for Authority to Establish a Standard Service Officer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Service Plan, Accounting Modifications and Tariffs for Generation Service et al.*, Case Nos. 14-841-EL-SSO et al.; and *In the Matter of the Application of Duke Energy Ohio, Inc. for a Waiver to File a New Energy Efficiency and Peak Demand Reduction Portfolio Application*, Case No. 16-576-EL-WVR.

¹⁷ See Plan at ¶¶ 23-26.

¹⁸ See State of Emergency Proceeding, Entry at ¶ 13 (March 20, 2020).

Therefore, Kroger meets the standards for intervention established in R.C. 4903.221, Ohio Adm. Code 4901-1-11, and Ohio Adm. Code Chapter 4901:1-38. Kroger respectfully requests that the Commission grant this motion, allow Kroger to intervene with the full powers and rights that the Commission grants intervening parties, and make Kroger a full party of record.

III. COMMENTS

On March 9, 2020, Governor DeWine declared a state of emergency as a result of the COVID-19 pandemic.¹⁹ 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 pandemic.²⁰ Duke instituted this proceeding in accordance with the Commission's directive.²¹

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.²² In addition to the foregoing, Kroger's Zero Hunger/Zero Waste Foundation has committed more than \$6 million to

¹⁹ See State of Emergency Proceeding, Entry at ¶ 5 (March 12, 2020).

²⁰ Id. at ¶ 7.

²¹ See Plan at ¶ 10.

²² See <https://www.kroger.com/i/coronavirus-update>.

support its neighbors during the COVID-19 pandemic to fund local food banks and ensure children with school closures have access to nutritious meals.²³ 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 Duke and all of the electric utilities. Electric utilities should be expected to bear a significant portion of the costs and burdens associated with the pandemic in the same manner as customers will have to bear its share of costs and burdens. A utility is authorized to “earn” up to a defined rate of return on its investment, but such returns are not guaranteed. Just as other business segments will feel the financial burden of the pandemic, so too must utilities. Utility customers are not insurers of utility profit; utilities cannot simply revise their rates or add charges (“riders”) to recover all costs when customers do not have that same ability. The pass-through of all utility costs onto its customers will have a detrimental economic impact to customers, many of whom are already struggling with personal safety and economic recovery.

Nonetheless, as public utilities, Kroger agrees that utilities should be permitted to recover the one-time reasonable and prudently incurred costs associated with ensuring its employees were safe (i.e., minimizing the chance of disease) while delivering service reliability during the pandemic, much in the same manner as the utility would recover reasonable costs associated with extraordinary weather events and other “one-time” issues. As the Staff of the Commission (Staff) recognized, it is the right thing for Duke to suspend its disconnections and remove financial barriers to reconnection or continuity of service and to expand its customer assistance program.²⁴ And, Kroger applauds Duke for taking these actions in accordance with the Commission’s directives.

²³ Id.

²⁴ See Staff Report, at 3 (April 24, 2020).

However, Kroger does not support Duke’s use of a “reasonable arrangement rider” to recover its foregone revenue plus carrying costs associated with its response to the COVID-19 emergency. Unlike utilities, Duke’s customers will not be able to defer for future recovery expenses or lost revenue associated with the COVID-19 emergency. Even without potential rate increases, customers are and will continue to be under great financial pressure. Adding carrying costs to the deferral until the unrecovered balance is fully recovered will only worsen this already difficult situation.

Moreover, Kroger has significant concerns regarding the level and type of operating costs and delta revenue for which Duke is seeking deferral authority. Here Duke is seeking cost recovery for all of its foregone, discretionary revenue that it would not have received but for the pandemic. A utility should not be allowed to tout its efforts to discontinue disconnections and/or waive late fees as a goodwill and simultaneously seek cost recovery for those efforts.

Kroger also is concerned as to how those costs and foregone revenue will be allocated and recovered from customers in the future. While Duke’ reasonable arrangement proposal appears to reduce the financial burden for some commercial and industrial customers by temporarily allowing minimum demand charges for commercial and industrial customers to be reset at lower usage levels,²⁵ it will not provide assistance to all commercial and industrial customers. Indeed, commercial 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. The Commission recognized as much when it rejected the Ohio Power Company’s (AEP Ohio) reasonable arrangement proposal in relation to forgone revenues with its emergency plan.²⁶ The

²⁵ Plan at ¶ 13.

²⁶ *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 No. 20-602-EL-UNC, et al., Opinion and Order at ¶ 40 (May 6, 2020).

Commission directed AEP Ohio to institute an optional payment plan program for an accumulated bill payment arrearage to maintain service, while eliminating the arrearage over a reasonable period of time measured against Ohio's efforts to lessen the requirements of the Stay at Home Order.²⁷ Kroger requests that the Commission reach a similar determination in this proceeding and consider Staff's suggestion of an alternative to the reasonable arrangement proposal.²⁸

While Duke's minimum demand billing proposal may be reasonable and appropriate for those customers facing lower usage levels, it would be inappropriate to fully recover the delta revenue and carrying costs associated with the proposal through a reasonable arrangement. Duke's proposal is not a typical reasonable arrangement, but rather, is a result of the current Emergency. Allowing Duke 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. It is not appropriate to collect foregone revenue that is discretionary and often times waived under normal circumstances through the reasonable arrangement rider or some other mechanism. Each electric utility's ability to recover pandemic-related revenue shortfalls is parallel to the same challenge possessed by nearly every business, large or small. As with the entire economy, full utility revenue recovery is more a matter for State and Federal policy to address. The Commission should defer to the General Assembly or Congress on the issue of a utility's recovery of revenue shortfall associated with the pandemic through non-rate options.

Kroger is further concerned with the uncertainty associated with these amounts that Duke will request to recover in the future and the impact on Kroger, as Duke has not projected or

²⁷ Id.

estimated the level of delta revenue or the amount of carrying costs that it plans on deferring for future recovery from customers. Duke has also neglected to include in its Plan, information that allows the Commission to evaluate a proposed economic development reasonable arrangement.²⁹ If the Commission grants Duke deferral authority, Kroger requests that Commission limit the Duke's proposal to a ninety-day period and prohibit Duke's collection of carrying costs.

Finally, if recovery of pandemic-related costs through a rider is permitted, the Commission should ensure that the rider bears the same demand charge/energy charge composition as the utility's underlying base rates for that type and kind of revenue (i.e., revenue/costs normally recovered in a demand charge should still be recovered in a demand charge). Additionally, the Commission should examine each utility's pre-pandemic earnings and rate of return to determine if excess earnings exist that can be used to offset any alleged revenue shortfalls. Adherence to these principles will provide for a fair and reasonable share of cost responsibility in a socially conscious manner for all stakeholders and provide for a stable and effective re-start of the economy.

The Commission should recognize the financial pressures being exerted on customers during the pandemic and the potential impact that utility rate increases will have on customers at this time and after the emergency. As such, Kroger requests that the Commission consider and incorporate its comments in addressing Duke's Plan, to ensure that only just, reasonable, and prudent costs are deferred for potential future recovery.

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

²⁹ Ohio Adm. Code Chapter 4901:1-38; Ohio Adm. Code Chapter 4901:1-38-03.

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 Duke's Plan be considered for adoption by the Commission.

Respectfully submitted,

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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 May 7, 2020 upon the parties listed below.

/s/ Angela Paul Whitfield
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This foregoing document was electronically filed with the Public Utilities

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5/7/2020 5:24:47 PM

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Case No(s). 20-0599-GE-UNC, 20-0856-EL-AEC, 20-0857-EL-RDR

Summary: Motion To Intervene and Comments By The Kroger Co. electronically filed by Mrs. Angela Whitfield on behalf of The Kroger Co.