

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke Energy Ohio, Inc., for an Increase in Electric Distribution Rates.	)	Case No. 21-887-EL-AIR
	)	
In the Matter of the Application of Duke Energy Ohio, Inc., for Tariff Approval.	)	Case No. 21-888-EL-AIR
	)	
In the Matter of the Application of Duke Energy Ohio, Inc., for Approval to Change Accounting Methods.	)	Case No. 21-889-EL-AIR

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**REPLY TO THE MEMORANDUM CONTRA OF OHIO MANUFACTURERS’  
ASSOCIATION ENERGY GROUP AND KROGER CO.  
BY  
OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

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The Ohio Manufacturers’ Association Energy Group<sup>1</sup> and the Kroger Co. oppose OCC’s request to file out of time a Memorandum Contra OMA-EG/Kroger’s motion to strike portions of OCC’s Initial Brief. But there is good cause, per O.A.C. 4901-1-13(A) and 4901-1-38(B), to allow OCC to file its Memorandum Contra two business days out of time.<sup>2</sup> No party will be prejudiced by the brief extension requested by OCC. In fact, OMA-EG and Kroger, represented by the same law firm, are the only parties that filed an opposition to OCC’s Motion for Leave. The PUCO should grant OCC’s Motion for Leave and consider OCC’s November 21, 2022 Memorandum Contra.

OMA-EG/Kroger claim that OCC’s Motion for Leave should be denied because “OCC failed to cite to any *extraordinary circumstance* that exists to allow it to file its

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<sup>1</sup> “OMA-EG.”

<sup>2</sup> OCC Motion for Leave (November 21, 2022), Memorandum in Support, at 2.

Memo Contra four days late.”<sup>3</sup> But OMA-EG/Kroger’s proposed standard is not the PUCO’s standard. As OMA-EG/Kroger concede,<sup>4</sup> O.A.C. 4901-1-13(A) permits extensions “upon motion by any party for *good cause shown* ...” (Emphasis added.) And O.A.C. 4901-1-38(B) allows the PUCO to “waive any requirement of this chapter for *good cause shown*.” (Emphasis added.)

The PUCO has in the past granted motions for leave to file pleadings out of time for good cause shown, including similar motions filed by OMA-EG.<sup>5</sup> OMA-EG/Kroger’s arguments in opposition to OCC’s Motion for Leave should be rejected.

As OCC explained in its Motion for Leave, good cause exists for the extension.<sup>6</sup> Other regulatory matters were stressing OCC’s limited resources, such as the Columbia Gas hearing on the settlement in Case No. 21-637-GA-AIR that OCC joined. The press of business regrettably contributed to OCC’s oversight regarding the special three-day response time instead of the usual fifteen days. OCC certainly intends to meet PUCO due dates.

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<sup>3</sup> OMA-EG/Kroger Memo Contra at 2. (Emphasis added).

<sup>4</sup> *Id.*

<sup>5</sup> See e.g. *In the Matter of the Application of Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company for Authority to Provide a Standard Service Offer Pursuant to R.C. 4928.143 in the Form of an Electric Security Plan*, Case No. 14-1297-EL-SSO, Entry (June 30, 2016), at ¶¶ 1, 31-33 (granting OMA-EG’s motion for leave to file testimony out of time), and *In the Matter of the Commission Review of the Capacity Charges of Ohio Power Company and Columbus Southern Power Company*, Case No. 10-2929-EL-UNC, Entry (April 13, 2012), ¶¶ 6, 9 (granting OMA-EG’s motion for leave to file testimony out of time when its paralegal was out of the office and the filing was not completed); *In the Matter of the Complaint of the City of Huron v. Ohio Edison Company*, Case No. 03-1238-EL-CSS, et al., Entry (August 2, 2005), ¶ 13 (granting Ohio Edison’s motion for leave to file testimony out of time, citing no prejudice to the complainant); *In the Matter of the City of Toledo v. FirstEnergy Solutions, Corp.*, Case No. 14-1944-EL-CSS, Entry (January 6, 2016), ¶¶ 6, 8 (granting City of Toledo’s request to file a memorandum in opposition to FES’s motion to dismiss out of time).

<sup>6</sup> OCC Motion for Leave (November 21, 2022), Memorandum in Support, at 2.

OMA-EG/Kroger also claim that OCC filed its Motion for Leave and Memorandum Contra “four days late.”<sup>7</sup> However, two of those four days were a Saturday and Sunday. Any filing on those days by OCC would not have been considered filed by docketing until the following business day because it was closed.

OMA-EG/Kroger claim that they have been prejudiced because they had to respond to OCC’s arguments that they believe are unsupported and irrelevant.<sup>8</sup> That argument should be rejected too. As OCC explained in its Memorandum Contra, OCC’s arguments in its Initial Brief are based on PUCO orders where Commissioners discussed Dr. Ned Hill’s testimony in previous cases.

Moreover, the PUCO should reject OMA-EG/Kroger’s claims that they are prejudiced because they “are forced to reply to [OCC’s] pleading before the holidays.”<sup>9</sup> OCC does not control the procedural schedule in this case, or when OMA-EG/Kroger filed their motion to strike. In addition, to serve residential utility consumers, OCC regularly works after business hours, on weekends, and before and during holidays.

For these reasons, OCC respectfully requests that the PUCO grant OCC’s Motion for Leave to file out of time to consider the merits of OCC’s Memorandum Contra OMA-EG/Kroger’s motion to strike.

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<sup>7</sup> OMA-EG/Kroger Memo Contra at 2.

<sup>8</sup> OMA-EG/Kroger Memo Contra at 2.

<sup>9</sup> *Id.*

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## **CERTIFICATE OF SERVICE**

I hereby certify that a copy of this Reply to the Memorandum Contra of Ohio Manufacturers' Association Energy Group and Kroger Co. was served on the persons stated below via electronic transmission, this 28<sup>th</sup> day of November 2022.

/s/ Angela D. O'Brien

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Summary: Reply Reply to the Memorandum Contra of Ohio Manufacturers' Association Energy Group and Kroger Co. by Office of the Ohio Consumers' Counsel electronically filed by Ms. Alana M. Noward on behalf of O'Brien, Angela D.