

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the OVEC Generation Purchase)
Rider Audits Required by R.C. 4928.148 for)
Duke Energy Ohio, Inc., the Dayton Power and) Case No. 21-477-EL-RDR
Light Company d/b/a AES Ohio, and Ohio)
Power Company d/b/a AEP Ohio.)

**MOTION FOR LEAVE TO FILE REPLY BRIEF OUT OF TIME
OF
THE KROGER CO.**

Pursuant to Ohio Adm. Code 4901-1-12, and 4901-1-13, The Kroger Co. (“Kroger”) respectfully requests that the Public Utilities Commission of Ohio (“Commission”) accept the Reply Brief of The Kroger Co. filed in Case No. 21-477-EL-RDR less than thirty minutes after the Commission’s offices closed. The late filing was due to an unexpected illness and administrative oversight, and no party will be prejudiced by granting this motion as further discussed in the attached Memorandum in Support.

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MEMORANDUM IN SUPPORT

Pursuant to Ohio Adm.Code 4901-1-12, and 4901-1-13, Kroger hereby respectfully moves the Commission for leave to file out of time its Reply Brief in the above-caption case. The Attorney Examiners set a deadline in the above-captioned case of March 5, 2024, for parties to file reply briefs.¹ However, due to an unexpected illness and administrative oversight, Kroger did not electronically file its Reply Brief in Case No. 21-477-EL-SSO until 5:59 p.m. on March 5, 2024, twenty-nine minutes out of time. Kroger immediately filed its Reply Brief upon learning that its Reply Brief had not been filed due to the unexpected illness and administrative oversight that had occurred. Kroger also immediately drafted and filed this motion and served all parties with both documents.

A filing that is less than thirty minutes past the close of the Commission offices does not serve to prejudice any parties in this matter or otherwise delay the Commission's ability to render a timely decision in this case. Granting Kroger leave to file out of time is consistent with many other occasions where the Commission has granted motions for leave to accept filings out of time due to technical difficulties or extraordinary circumstances.² Indeed, the Commission has

¹ Entry at ¶ 30 (January 24, 2024).

² See, e.g., *In the Matter of the Application of the Dayton Power and Light Company d/b/a AES Ohio to Update its Transmission Cost Recovery Rider-Nonbypassable*, Case No. 21-224-EL-RDR, Finding and Order at ¶ 11 (May 19, 2021); *In the Matter of the Application of Duke Energy Ohio, Inc., for Recovery of Program Costs, Lost Distribution*

previously granted a motion for leave to file a motion to intervene that was several days past the Commission-ordered deadline with no substantive explanation (like the extraordinary circumstance that presented itself in this scenario) for the delay.³

The failure to file before 5:30 p.m. was an inadvertent administrative error, did not prejudice any parties, and good cause exists for the Commission to accept the Reply Brief out of time. Therefore, for all the foregoing reasons, Kroger respectfully requests that the Commission grant its motion to file its Reply Brief out of time for good cause shown given the extraordinary circumstance that occurred.

Respectfully submitted,

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Revenue, and Performance Incentives Related to its Energy Efficiency and Demand Response Programs, Case No. 14-457-EL-RDR, Finding and Order at 4 (May 20, 2015) (where Duke’s request to file comments out of time was found to be reasonable and granted).

³ *In the Matter of the Application of Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan*, Case Nos. 23-23-EL-SSO, et al., Entry at ¶ 10 (May 30, 2023) (Finding that “Given that the motion was filed three business days after the deadline, the attorney examiner finds Direct Energy’s motion for leave to intervene to be reasonable under the circumstances and, therefore, the motion should be granted”).

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 March 5, 2024 upon the parties listed below.

/s/ Angela Paul Whitfield
Angela Paul Whitfield

Counsel for The Kroger Co.

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Summary: Motion Motion for Leave to File Out of Time of The Kroger Co.
electronically filed by Mrs. Angela Whitfield on behalf of The Kroger Co..