

FILE

5

**BOEHM, KURTZ & LOWRY**

ATTORNEYS AT LAW  
36 EAST SEVENTH STREET  
SUITE 2110  
CINCINNATI, OHIO 45202  
TELEPHONE (513) 421-2255  
TELECOPIER (513) 421-2764

RECEIVED-DOCKETING DIV

2004 FEB 17 PM 12:07

PUCO

VIA OVERNIGHT MAIL

February 16, 2004

Public Utilities Commission of Ohio  
PUCO Docketing  
180 E. Broad Street, 10th Floor  
Columbus, Ohio 43215

In re: Case No. 03-2081-EL-AAM & 03-2080-EL-ATA

Dear Sir/Madam:

Please find enclosed an original and twenty (20) copies of the Petition to Intervene of The Kroger Co. filed in the above-referenced matter.

Copies have been served on all parties on the attached certificate of service. Please place this document of file.

Respectfully yours,



Michael L. Kurtz, Esq.  
**BOEHM, KURTZ & LOWRY**

MLKkew  
Encl.

This is to certify that the images appearing are an accurate and complete reproduction of a case file document delivered in the regular course of business  
Technician ADN Date Processed 2/17/04

**CERTIFICATE OF SERVICE**

I hereby certify that true copy of the foregoing was served by regular mail, unless otherwise noted, this 16<sup>th</sup> day of February, 2004 to the following:

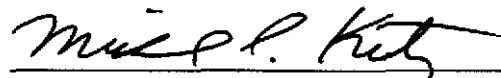
CINCINNATI GAS & ELECTRIC COMPANY  
BERNARD F. ROBERTS, V.P. & COMPTROLLER  
139 EAST FOURTH STREET  
CINCINNATI, OH 45202

COLBERT, PAUL  
CINERGY CORPORATION  
155 E. BROAD STREET  
COLUMBUS, OH 43215

CONSUMERS' COUNSEL, OFFICE OF  
10 WEST BROAD STREET  
SUITE 1800  
COLUMBUS, OH 43215

ANN M. HOLZ  
ATTORNEY AT LAW  
OFFICE OF CONSUMERS' COUNSEL  
10 W. BROAD STREET, SUITE 1800  
COLUMBUS, OH 43215

SAMUEL C. RANDAZZO, ESQ.  
MCNEES WALLACE & NURICK LLC  
21 EAST STATE STREET  
17TH FLOOR  
COLUMBUS, OH 43215



---

Michael L. Kurtz, Esq.

**BEFORE THE  
PUBLIC UTILITY COMMISSION OF OHIO**

**In the Matter of the Application of The )  
Cincinnati Gas & Electric Company for )  
Authority to Modify Current Accounting )  
Procedures for Capital Investment in its )  
Electric Transmission And Distribution )  
System And to Establish a Capital )  
Investment Reliability Rider to be )  
Effective After the Market Development )  
Period )**

**Case No. 03-2081-EL-AAM  
Case No. 03-2080-EL-ATA**

---

**THE KROGER CO.'S  
MOTION FOR LEAVE TO INTERVENE**

---

Pursuant to the Ohio Rev. Code §4903.22.1 and Ohio Admin. Code §4901-1-11, the Kroger Co. ("Kroger") moves for leave to intervene in this proceeding. The Public Utility Commission of Ohio ("Commission") should grant Kroger leave to intervene because Kroger has a real and substantial interest in the proceeding, and the Commission's disposition of this proceeding may impair or impede Kroger's ability to protect that interest.

Respectfully submitted,



Michael L. Kurtz, Esq.  
**BOEHM, KURTZ & LOWRY**  
36 East Seventh Street, Suite 2110  
Cincinnati, Ohio 45202  
Ph: (513) 421-2255 Fax: (513) 421-2764  
E-Mail: [mkurtzlaw@aol.com](mailto:mkurtzlaw@aol.com)

February 16, 2004

**COUNSEL FOR THE KROGER CO.**

**BEFORE THE  
PUBLIC UTILITY COMMISSION OF OHIO**

<b>In the Matter of the Application of The</b>	)	
<b>Cincinnati Gas &amp; Electric Company for</b>	)	
<b>Authority to Modify Current Accounting</b>	)	<b>Case No. 03-2081-EL-AAM</b>
<b>Procedures for Capital Investment in its</b>	)	<b>Case No. 03-2080-EL-ATA</b>
<b>Electric Transmission And Distribution</b>	)	
<b>System And to Establish a Capital</b>	)	
<b>Investment Reliability Rider to be</b>	)	
<b>Effective After the Market Development</b>	)	
<b>Period</b>	)	

---

**MEMORANDUM IN SUPPORT OF  
THE KROGER CO.'S  
MOTION TO INTERVENE**

---

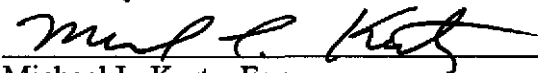
Pursuant to Ohio Rev. Code §4903.22.1 and Ohio Admin. Code §4901-01-11, the Public Utility Commission of Ohio ("Commission") should grant The Kroger Co. ("Kroger") leave to intervene in this proceeding.

Kroger operates approximately 50 grocery stores in the service territory of CG&E. Kroger consumes more than 100 million kWh annually in the service territory of CG&E and is one of CG&E's largest commercial customers. The grocery stores operated by Kroger are high load factor facilities that use energy for food storage, lighting, heating, cooling and distribution, often on a 24 hour a day, 7 day a week basis. Kroger is currently purchasing generation service from a Certified Retail Electric Service (CRES) provider and the issues being considered in this case could have a significant financial impact on Kroger.

No other party to this proceeding can adequately represent Kroger's interest. Intervention would not unduly delay the proceeding nor unjustly prejudice any existing party.

Accordingly, Kroger has a real and substantial interest and is entitled to intervene in this action under Ohio Rev. Code §4903.22.1 and Ohio Admin. Code §4901-1-11.

Respectfully submitted,



Michael L. Kurtz, Esq.

**BOEHM, KURTZ & LOWRY**

36 East Seventh Street, Suite 2110

Cincinnati, Ohio 45202

Ph: (513) 421-2255 Fax: (513) 421-2764

E-Mail: [mkurtzlaw@aol.com](mailto:mkurtzlaw@aol.com)

**COUNSEL FOR THE KROGER CO.**

February 16, 2004