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Via Overnight Mail

February 24, 2009

Ms. Susan Duffy, Executive Director  
Kansas Corporation Commission  
1500 SW Arrowhead Road  
Topeka, KS 66604-4027

STATE CORPORATION COMMISSION

FEB 25 2009

**Re: Docket No. 09-WSEE-641-GIE**


 Docket  
Room

Dear Ms. Duffy:

Enclosed please find an original and seven (7) copies each of the PETITION TO INTERVENE OF THE KROGER CO. in the above-referenced matter. A Pro Hac Vice Motion of Michael L. Kurtz and Kurt J. Boehm will follow shortly.

Copies have been served on all parties of record.

Very truly yours,

  
Michael L. Kurtz, Esq.  
Kurt J. Boehm, Esq.

**BOEHM, KURTZ & LOWRY**

MLKkew  
Enclosure

**CERTIFICATE OF SERVICE**

I hereby certify that true copy of the foregoing was served by electronic mail (when available) or regular U.S. mail (unless otherwise noted), this 24<sup>th</sup> day of February, 2009 the following:

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Michael L. Kurtz, Esq.  
Kurt J. Boehm, Esq.

**BEFORE THE STATE CORPORATION COMMISSION  
OF THE STATE OF KANSAS**

Before Commissioners:

Thomas E. Wright, Chairman  
Michael C. Moffet  
Joseph F. Harkins

STATE CORPORATION COMMISSION

FEB 25 2009

 Docket  
Room

In the Matter of the Applications of Westar )  
Energy, Inc. and Kansas Gas and Electric )  
Company for to Consider the Issue of Rate )  
Consolidation and Resulting Rate Design )

**Docket No. 09-WSEE-641-GIE**

**PETITION TO INTERVENE**

COMES NOW, the Kroger Co. ("Kroger") and moves the Corporation Commission of the State of Kansas ("Commission") for an order granting Kroger intervention in the above-captioned matter. In support of its Petition, Kroger states the following:

1. On May 27, 2008 Westar Energy, Inc. filed its Application to consider the issue of rate consolidation.
2. Kroger is a corporation engaged in the business of selling groceries at retail throughout the United States. Doing business as the *Dillon's* grocery store chain, Kroger has approximately 85 accounts in Westar's service territory. Kroger purchases more than 150 million kWh of electricity from the Company annually. Petitioner is one of the largest commercial customers served by the Company. 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.

3. If the Company's application is granted, the cost for electric power service to Petitioner could be substantially impacted. Accordingly, Petitioner has a substantial and vital interest in the outcome of this proceeding which cannot be adequately represented by any other party.
4. It is respectfully requested that all pleadings and other documents issued in this proceeding by the Commission, the Commission Staff, or a party be served as counsel for the Kroger Co., to Michael L. Kurtz, Esq., Kurt J. Boehm, Esq., Boehm, Kurtz & Lowry, 36 E. Seventh St., Suite 1510, Cincinnati, Ohio 45202 and our consultant, Kevin C. Higgins, Energy Strategies, LLC, Parkside Towers, 215 South State Street, Suite 200, Salt Lake City, Utah 84111 and that the Commission's official service list be modified to reflect the same.
5. A Pro Hac Vice Motion of Michael L. Kurtz and Kurt J. Boehm will be filed shortly.

WHEREFORE, the Kroger Co. respectfully requests the Commission grant its Petition for Intervention in this Matter.

Respectfully submitted,



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Michael L. Kurtz, Esq.  
Kurt J. Boehm, Esq.  
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**COUNSEL FOR THE KROGER CO.**

February 24, 2009