

**In The  
SUPREME COURT OF OHIO**

The Kroger Company, <i>et. al.</i> ,	:	Case No. 13-521
	:	
Appellants,	:	On appeal from the Public Utilities
	:	Commission of Ohio, Case Nos. Case
v.	:	No. 11-346-EL-SSO, Case No. 11-348-
	:	EL-SSO, Case No. 11-349-EL-AAM,
Public Utilities Commission of Ohio,	:	and 11-350-EL-AAM, <i>In the Matter of</i>
	:	<i>the Application of Columbus Southern</i>
Appellee,	:	<i>Power Company and Ohio Power</i>
	:	<i>Company for Authority to Establish a</i>
and	:	<i>Standard Service Offer Pursuant to</i>
	:	<i>§4928.143, Ohio Rev. Code, in the Form</i>
Ohio Power Company,	:	<i>of an Electric Security Plan, et al.</i>
	:	
Cross-Appellant.	:	

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**MOTION FOR AN ORDER  
MODIFYING THE TIME FOR ORAL ARGUMENT  
SUBMITTED ON BEHALF OF APPELLEE,  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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Pursuant to Rule 4.01(A)(1) of the Supreme Court Rules of Practice, the Public Utilities Commission of Ohio (“Commission”) requests that the Court amend its Entry of April 9, 2015 to exclude Industrial Energy Users-Ohio (“IEU-OH”) from the third ordered argument position. This motion should be granted because IEU-OH has already been allotted time for argument, the Commission and IEU-OH stand in diametrically opposite positions as to virtually every issue in the case, and an appellee should not reasonably be expected to agree to a time-sharing arrangement with an appellant,

particularly where, as here, the Commission is faced with addressing myriad claims for multiple parties while permitted only 10 minutes to do so.

Respectfully submitted,

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*/s/Werner L. Margard III*

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	:	
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**MEMORANDUM IN SUPPORT**

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On April 9, 2015, the Court issued an Entry that specified the procedure to be followed during oral argument in this case. Appellants Kroger Co., Industrial Energy Users-Ohio (“IEU-OH”), the Office of the Ohio Consumers' Counsel, and the Ohio Energy Group were grouped together first, and were permitted ten minutes of oral argument time. The first 10-minute segment of time providing for appellants to share time is reasonable and practical, given the substantial alignment of interests among appellants.

Cross-Appellant Ohio Power Company is scheduled to argue second, and likewise permitted ten minutes of oral argument time. The second 10-minute segment of time permits the sole cross-appellant/appellee to present its unique arguments.

In the third segment of argument, the Entry provides that the Public Utilities Commission of Ohio (“Commission”), appellee, share 10 minutes of oral argument time with IEU-OH. The Commission objects to this aspect of the scheduling order and asks that it be modified such that the Commission retains 10 minutes of oral argument time without the requirement to share that time with appellant IEU-OH.

While all of the appellants are nominally cross-appellees (based on Ohio Power Company’s cross-appeal), they share virtually nothing in common with the Commission on the larger issues presented in the appeal. IEU-OH is an appellant that is broadly attacking the Commission’s decision below. As an appellant, the Court has already provided an opportunity for IEU-OH to present oral argument along with the other appellants as part of the first segment of oral argument. That is appropriate and practical, given the number of challenges being presented by IEU-OH and the other appellants. Giving an appellant an opportunity to argue during the appellee’s only opportunity to defend its decision denies appellee the same opportunity to present its case as the appellants have. Furthermore, it effectively grants appellants an opportunity for rebuttal without the need to reserve any of its initial argument time.

The Commission’s interest in this case is, of course, to defend its decision in totality – and the Commission alone presents that view before this Court. Accordingly, it should not be required to share time with an appellant, especially given the significant

number of issues that the Commission must address during its otherwise already truncated allotment of argument time.

## CONCLUSION

The third 10-minute segment of time should be modified to provide that the Commission alone can present its unique perspective of defending its order against the varied and numerous challenges being raised before this Court. As an appellant, IEU-OH should present its oral argument as part of the first segment, and the Commission should not be required to share its time with IEU-OH as part of the third segment.

Respectfully submitted,

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## PROOF OF SERVICE

I hereby certify that a true copy of the foregoing Motion for an Order Modifying the Time for Oral Argument on Behalf of Appellee Public Utilities Commission of Ohio, was served by regular U.S. mail, postage prepaid, or hand-delivered, upon the following parties of record, this 20<sup>th</sup> day of April, 2015.

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