

# INTERVENTION ORIGINAL

BOEHM, KURTZ & LOWRY

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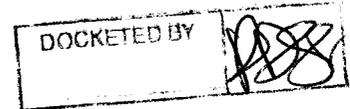
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AZ CORP COMMISSION  
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Arizona Corporation Commission  
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Via Overnight Mail

July 7, 2011

Arizona Corporation Commission  
Attn: Docket Filing Window  
1200 Washington Street  
Phoenix, AZ 85007

**Re: Docket No. E-01345A-11-0224**

Dear Sir or Madam:

Attached please find the original and 13 copies each of: 1) PETITION TO INTERVENE OF THE KROGER CO., 2) MOTION TO ASSOCIATE COUNSEL PRO HAC VICE and 3) proposed ORDER RE: MOTION TO ASSOCIATE COUNSEL PRO HAC VICE to be filed in the above-referenced matter.

All parties of record have been served. Please place this document of file.

Very Truly Yours,

Kurt J. Boehm, Esq.  
BOEHM, KURTZ & LOWRY

John William Moore, Jr., (Az. Bar No. 021942)

**COUNSEL FOR THE KROGER CO.**

KJB/kew  
Attachments

**CERTIFICATE OF SERVICE**

I hereby certify that true copy of the foregoing was served by regular U.S. mail (unless otherwise noted), this 7<sup>th</sup> day of 2011 on the parties listed below.

  
\_\_\_\_\_  
Kurt J. Boehm, Esq.

<b>Company</b>	<b>Contact</b>	<b>Address</b>	<b>Date Added</b>
	Arizona Reporting Service, Inc.	2200 N. Central Ave. -502 Phoenix, Arizona 85004-1481	7/1/2011
	Timothy Hogan	202 E. McDowell Rd. - 153 Phoenix, Arizona 85004	7/1/2011
	David Berry	P.O. Box 1064 Scottsdale, Arizona 85252-1064	7/1/2011
	Barbara Wyllie-Pecora	14410 W. Gunsight Dr. Sun City West, Arizona 85375	7/1/2011
	Michael Curtis	501 East Thomas Road Phoenix, Arizona 85012-3205	6/28/2011
	Daniel Pozefsky	1110 West Washington, Suite 220 Phoenix, Arizona 85007	6/17/2011
	C. Webb Crockett	3003 N. Central Ave. - 2600 Phoenix, Arizona 85012-2913	6/17/2011
	Janice Alward	1200 W. Washington Phoenix, Arizona 85007	6/1/2011
	Steve Olea	1200 W. Washington St. Phoenix, Arizona 85007	6/1/2011
Arizona Corporation Commission	Lyn Farmer	1200 W. Washington Phoenix, Arizona 85007-2927	6/1/2011
	Meghan Grabel	P.O. Box 53999, Station 8695 Phoenix, Arizona 85072-3999	6/1/2011



**1. Name and Addresses of Petitioner:**

The Kroger Co.  
Attn: Corporate Energy Manager (G09)  
1014 Vine Street  
Cincinnati, Ohio 45202  
Telephone: 513-762-4538 Facsimile: 513-762-4012  
E-mail: [dgeorge@kroger.com](mailto:dgeorge@kroger.com)

**2. Name and Address of Attorneys Representing Petitioner:**

Kurt J. Boehm, Esq.  
**BOEHM, KURTZ & LOWRY**  
36 East Seventh Street, Suite 1510  
Cincinnati, Ohio 45202  
Telephone: 513-421-2255 Facsimile: 513-421-2764  
E-mail: [kboehm@BKLLawfirm.com](mailto:kboehm@BKLLawfirm.com)

John William Moore, Jr. (Arizona Bar No. 021942)  
7321 North 16<sup>th</sup> Street  
Phoenix, AZ 85020  
Ph: 702-743-5431  
E-mail: [Johnnymo22@hotmail.com](mailto:Johnnymo22@hotmail.com)

**3. Name and Address of Consultant Representing Petitioner:**

Stephen J. Baron  
J. Kennedy & Associates  
570 Colonial Park Drive, Suite 305  
Roswell, GA 30075  
Ph: 770 992-2027 Fax: 770-992-0806  
E-mail: [sbaron@jkenn.com](mailto:sbaron@jkenn.com)

Mr. Boehm is an out-of-state attorney licensed to practice in Ohio and Kentucky. John William More, Jr., Esq., will serve as local counsel to The Kroger Co. and has filed a pro hac vice motion seeking permission to have Mr. Boehm participate in this case.

**4. Identify the Petitioner:**

Petitioner is a retail electric customer of the Arizona Public Service Company (the "Company"). Petitioner has numerous grocery stores and other facilities that purchase their electric supply from the Company.

**5. Petitioner's Interest in this Proceeding:**

Kroger is a corporation engaged in the business of selling groceries at retail throughout the United States. One of the largest retail food companies in the United States, Kroger operates numerous grocery stores in the state of Arizona that purchase their electric supply from the Company. These stores purchase millions of 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. If the Company's application is granted, then 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.

**6. Issues To Be Raised:**

The primary issue the Petitioner intends to address in this case will be whether the rate increase sought by the Applicant is reasonable and cost justified. We also intend to address whether the proposed allocation of the rate increase and the design of the new rates are just and reasonable.

**WHEREFORE**, for the reasons set forth above, Petitioner requests that this Petition to Intervene be granted.

DATED this 7<sup>th</sup> day of July, 2011.



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Kurt J. Boehm, Esq.  
BOEHM, KURTZ & LOWRY  
36 East Seventh Street, Suite 1510  
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7321 North 16<sup>th</sup> Street  
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Ph: 702-743-5431  
E-mail: [Johnnymo22@hotmail.com](mailto:Johnnymo22@hotmail.com)

**COUNSEL FOR THE KROGER CO.**

Kurt J. Boehm, Esq.  
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Ph: 513-421-2255 Fax: 513-421-2764  
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Ph: 702-743-5431  
E-mail: [Johnnymo22@hotmail.com](mailto:Johnnymo22@hotmail.com)  
COUNSEL FOR THE KROGER CO.

**BEFORE THE  
ARIZONA CORPORATION COMMISSION**

In The Matter Of The Application Of Tucson Electric Power Company For The Establishment Of Just And Reasonable Rates And Charges Designed To Realize A Reasonable Rate Of Return On The Fair Value Of Its Operations Throughout The State Of Arizona	:	Docket No. E-01345A-11-0224
	:	MOTION TO ASSOCIATE COUNSEL PRO HAC VICE

John William Moore, Jr., Esq., pursuant to Rule 38(a), Arizona R. Sup. Ct. moves the court to associate Kurt J. Boehm, Esq. as counsel pro hac vice in this action. In support of this motion and pursuant to Rule 38(a)(3)(C), the following documents are attached.

1. Verified Application;
2. Certificate(s) of Good Standing; and
3. State Bar of Arizona Notice of Receipt of Complete Application.

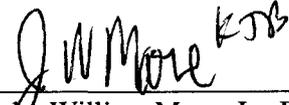
John William Moore, Jr., Esq. hereby agrees to serve as local counsel in this matter and accepts the responsibilities detailed in Rule 39(a)(2), Ariz. R. Sup. Ct.

DATED this 7<sup>th</sup> day of July, 2011.

  
\_\_\_\_\_  
John William Moore, Jr.  
7321 North 16<sup>th</sup> Street  
Phoenix, AZ 85020  
Ph: 702-743-5431  
Arizona Bar No. 021942

**CERTIFICATE OF SERVICE**

Copies of the foregoing were mailed via regular U.S. Mail to all parties listed on the attached Certificate of Service this 7<sup>th</sup> day of July, 2011.

  
\_\_\_\_\_  
John William More, Jr., Esq.

Copies of the foregoing were mailed via regular U.S. Mail this 7<sup>th</sup> day of July, 2011 to:

<u>Company</u>	<u>Contact</u>	<u>Address</u>	<u>Date Added</u>
	Arizona Reporting Service, Inc.	2200 N. Central Ave. -502 Phoenix, Arizona 85004-1481	7/1/2011
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	Steve Olea	1200 W. Washington St. Phoenix, Arizona 85007	6/1/2011
Arizona Corporation Commission	Lyn Farmer	1200 W. Washington Phoenix, Arizona 85007-2927	6/1/2011
	Meghan Grabel	P.O. Box 53999, Station 8695 Phoenix, Arizona 85072-3999	6/1/2011

1 **Arizona Corporation Commission**

2 Fair Value of Utility Property Ratemaking )  
3 Purposes, )  
4 Plaintiff )  
5 v. )  
6 Defendant. )

CASE # E 01345A110224

SBA App #1006243

**NOTICE OF RECEIPT OF  
COMPLETE APPLICATION**

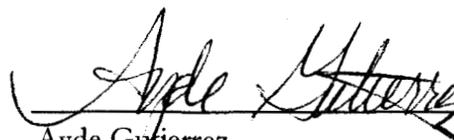
7 NOTICE IS HEREBY given by THE STATE BAR OF ARIZONA that it has received the  
8 verified application and fee from Kurt Boehm.

9 In addition to this application, applicant has made the following applications to appear pro hac  
10 vice, pursuant to Rule38 (a), within the previous three (3) years:

Title of Matter	Court/Agency	Date	Granted?
Application of APS to determine value v	Arizona Corporation Commission	10/14/2008	Y

11  
12 Exhibit A, the original verified application and Exhibit B, the original Certificate(s) of Good  
13 Standing are attached hereto.

14 DATED this 30<sup>st</sup> day of June 2011

15 

16 Ayde Gutierrez  
17 Resource Center  
18 State Bar of Arizona

19 Original Mailed on this 30<sup>st</sup> day of June 2011 to:

20 John W Moore  
21 Moore Benham & Beaver PLC  
22 7321 N 16th St  
23 Phoenix, AZ 85020-0001



For Official Use Only  
 App# 1006243  
 Bar Number# P168730

Attn: Pro Hac Vice Dept  
 PO Box 53099  
 Phoenix, AZ 85072-3099  
 Phone: 602-340-7239

**Application for Appearance Pro Hac Vice**

**PART I: Applicant Information**

Name of Applicant: KURT J. BOEHM, ESQ.

Firm/Company Name: BOEHM, KURTZ & LOWRY

Office Address: 36 E. SEVENTH ST., SUITE 1510, CINCINNATI, OHIO 45202

Telephone: 513-421-2255 Fax: 513-421-2764 Email Address: kboehm@BKLawfirm.com

Residence Address: 6082 CRITTENDEN DRIVE, CINCINNATI, OHIO 45244

Title of cause or case where applicant seeks to appear: Application of Arizona Public Service for Hearing to Determine Fair Value of Utility Property of the Co.

Docket Number: E-01345A-11-0224 for Ratemaking Purposes, to Fix a Just and Reasonable Rate of Return & to Approve Rate Schedules

Court, Board, or Administrative Agency: ARIZONA CORPORATION COMMISSION

Party on whose behalf applicant seeks to appear: THE KROGER CO.

Pursuant to Arizona Supreme Court Rule 38(i)(3), the applicant shall complete the information below:

Courts to Which Applicant Has Been Admitted: <i>(Attach additional pages if needed)</i>	Date of Admission:	Bar Number:
<u>KENTUCKY</u>	<u>OCTOBER 11, 2002</u>	<u>89327</u>
<u>OHIO</u>	<u>MAY 9, 2003</u>	<u>0076047</u>

Applicant is a member in good standing in such courts.

Applicant is not currently disbarred or suspended in any court.

Applicant  is /  is not (select one) currently subject to any pending disciplinary proceeding or investigation by any court, agency or organization authorized to discipline attorneys at law.

In the preceding three (3) years, applicant has filed applications to appear as counsel under AZ ST S.Ct., Rule 38(a) in the following:

Title of Matter:	Docket #:	Court or Agency:	App Granted? (Y/N)
<u>App. of Arizona Public Service Co. for Rate Increase</u>	<u>E-01345A-08-0172</u>	<u>Corporation Commission</u>	<u>Yes</u>

This case or cause  is /  is not (select one) a related or consolidated matter for which applicant has previously applied to appear pro hac vice in Arizona. If this matter is a related or consolidated with any previous application, Applicant certifies that he/she will review and comply with appropriate rules of procedure as required in the underlying cause.  
 If applicable, please provide related or consolidated matter application or docket# \_\_\_\_\_

JUN 24 2011  
 17520F  
 460.00

**PART II: Local Counsel Information**

Name of Arizona Local Counsel: JOHN WILLIAM MOORE, JR.

State Bar of Arizona Number: 021942

Address: 7321 NORTH 16th STREET, PHOENIX, AZ 85020

Telephone: 702-743-5431 Fax: \_\_\_\_\_ Email Address: johnnymo22@hotmail.com

Local Counsel is a member in good standing.

Local Counsel associating with a nonresident attorney in a particular cause shall accept joint responsibility with the nonresident attorney to the client, to opposing parties and counsel, and to court, board, or administrative agency in that particular cause.

**PART III: Parties and Certification**

Name(s) of each party in this cause and name and address of all counsel of record:

Party:	Counsel of Record:	Address:
<u><del>Attached Certificate of Service</del></u>	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Applicant is including with this application a nonrefundable application fee, payable to the State Bar of Arizona, in the amount of  \$460.00. Fifteen percent of the non-refundable application fee paid pursuant to this section shall be deposited into a civil legal services fund to be distributed by the Arizona Foundation for Legal Services and Education entirely to approved legal services organizations, as that term is defined in subparagraph (f) of this rule.

Applicant is furnishing a certificate from the state bar or from the clerk of the highest admitting court of each state, territory, or  insular possession of the United States in which the nonresident attorney has been admitted to practice law certifying the nonresident attorney's date of admission to such jurisdiction and the current status of the nonresident attorney's membership or eligibility to practice therein. The certificate furnished shall be no more than forty-five (45) days old.

Applicant certifies the following:

1. Applicant shall be subject to the jurisdiction of the courts and agencies of the State of Arizona and to the State Bar of Arizona with respect to the law of this state governing the conduct of attorneys to the same extent as an active member of the State Bar of Arizona, as provided in Rule 46(b) Rules of the Supreme Court.
2. Applicant will review and comply with appropriate rules of procedure as required in the underlying cause.
3. Applicant understands and shall comply with the standards of conduct required of members of the State Bar of Arizona.

**Verification**

STATE OF OHIO )  
County of HAMILTON ) ss.

I, KURT J. BOEHM, swear that all statements in the application are true, correct and complete to the best of my knowledge and belief.

Dated: 6/20/2011

Applicant's Signature: [Handwritten Signature]

SUBSCRIBED AND SWORN TO before me this

KURT Boehm  
Name of Applicant



Kimberly Walton  
Notary Public, State of Ohio  
My Commission Expires 08-28-2014  
[Handwritten Signature]  
Notary Public

**Service List, Docket No. E-01345A-11-0224**

<b>Company</b>	<b>Contact</b>	<b>Address</b>	<b>Date Added</b>
	Daniel Pozefsky	1110 West Washington, Suite 220 Phoenix, Arizona 85007	6/17/2011
	C. Webb Crockett	3003 N. Central Ave. - 2600 Phoenix, Arizona 85012- 2913	6/17/2011
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	Steve Olea	1200 W. Washington St. Phoenix, Arizona 85007	6/1/2011
Arizona Corporation Commission	Lyn Farmer	1200 W. Washington Phoenix, Arizona 85007- 2927	6/1/2011
	Meghan Grabel	P.O. Box 53999, Station 8695 Phoenix, Arizona 85072- 3999	6/1/2011

# The Supreme Court of Ohio

## C E R T I F I C A T E

I, SUSAN B. CHRISTOFF, Director of the Attorney Services Division of the Supreme Court of Ohio, do hereby certify that I am the custodian of the records of the Office of Attorney Services of the Supreme Court and that the Attorney Services Division is responsible for reviewing Court records to determine the status of Ohio attorneys. I further certify that, having fulfilled all of the requirements for admission to the practice of law in Ohio,

Kurt Joseph Boehm

was admitted to the practice of law in Ohio on May 09, 2003; has registered as an active attorney pursuant to the Supreme Court Rules for the Government of the Bar of Ohio; is in good standing with the Supreme Court of Ohio; and is entitled to practice law in this state.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed the seal of the Supreme Court, this 7th day of June, 2011.

SUSAN B. CHRISTOFF  
*Director, Attorney Services Division*

  
Shel Woods  
*Attorney Services Specialist*

# KENTUCKY BAR ASSOCIATION

514 WEST MAIN STREET  
FRANKFORT, KENTUCKY 40601-1812  
(502) 564-3795  
FAX (502) 564-3225  
[www.kybar.org](http://www.kybar.org)

## OFFICERS

Bruce K. Davis  
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W. Douglas Myers  
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Charles E. English, Jr.  
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John N. Billings  
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## EXECUTIVE DIRECTOR

John D. Meyers

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M. Gail Wilson

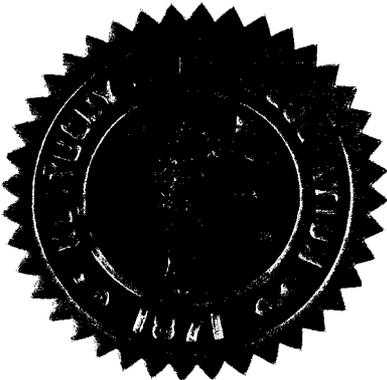


## *THIS IS TO CERTIFY THAT*

**KURT JOSEPH BOEHM**  
*36 East Seventh Street, Suite 1510*  
*Cincinnati, Ohio 45202*

**Membership No. 89327**

*is an active member in good standing with the Kentucky Bar Association as required by the Rules of the Supreme Court of Kentucky. Dated this 14<sup>th</sup> day of June, 2011.*



**JOHN MEYERS**  
**REGISTRAR**

By: \_\_\_\_\_  
*Michele M. Pogrotsky, Deputy Registrar*

Kurt J. Boehm, Esq.  
BOEHM, KURTZ & LOWRY  
36 East Seventh Street, Suite 1510  
Cincinnati, Ohio 45202  
Ph: 513-421-2255 Fax: 513-421-2764  
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John William Moore, Jr. (Arizona Bar No. 021942)  
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Phoenix, AZ 85020  
Ph: 702-743-5431  
E-mail: [Johnnymo22@hotmail.com](mailto:Johnnymo22@hotmail.com)

**COUNSEL FOR THE KROGER CO.**

**BEFORE THE  
ARIZONA CORPORATION COMMISSION**

COMMISSIONERS:

**Gary Pierce, Chairman**  
**Bob Stump**  
**Sandra D. Kennedy**  
**Paul Newman**  
**Brenda Burns**

In The Matter Of The Application Of Arizona Public Service Company For A Hearing To Determine The Fair Value Of The Utility Property Of The Company For Ratemaking Purposes, To Fix A Just And Reasonable Rate Of Return Thereon, To Approve Rate Schedules Designed To Develop Such Return	:	Docket No. E-01345A-11-0224
	:	ORDER RE: MOTION TO ASSOCIATE
	:	COUNSEL PRO HAC VICE
	:	

Based upon the Motion to Associate Counsel Pro Hac Vice of John William Moore, Jr., Esq. and the consent of John William More, Jr., Esq. to appear as local counsel, it is hereby ordered that Kurt J. Boehm, Esq. be admitted pro hac vice as counsel for The Kroger Co. in this matter.

DATED this \_\_\_ day of July, 2011.

Judge \_\_\_\_\_

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