

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of The Dayton Power and Light Company For Approval of Its Electric Security Plan.	)	Case No. 16-395-EL-SSO
	)	
In the Matter of the Application of The Dayton Power and Light Company for Approval of Revised Tariffs.	)	Case No. 16-396-EL-ATA
	)	
In the Matter of the Application of The Dayton Power and Light Company for Approval of Certain Accounting Authority Pursuant to Ohio Rev. Code § 4905.13.	)	Case No. 16-397-EL-AAM

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**THE KROGER CO.'S MOTION FOR PROTECTIVE ORDER**

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Pursuant to Rules 4901-1-02(D)(2), 4901-1-12, and 4901-1-24(D), Ohio Administrative Code (O.A.C.), The Kroger Co. (Kroger) hereby files this motion for protective order with the Public Utilities Commission of Ohio (Commission), seeking a protective order regarding information asserted to be confidential by The Dayton Power and Light Company (DP&L or the Company). As part of discovery, including its submission of direct testimony, in this proceeding, DP&L provided certain information to Kroger, subject to a protective agreement, which DP&L asserts constitutes trade secret information under Ohio law.

Kroger hereby requests that, in accordance with Rule 4901-1-02(D)(2), O.A.C., the Commission issue such order as is necessary to protect the information contained in the redacted portions of the Direct Testimony of Kevin C. Higgins, which are asserted to be confidential by DP&L. Pursuant to Kroger's rights under the protective agreement, Kroger is filing the Direct Testimony of Kevin C. Higgins under seal, and is also filing a public version of Mr. Higgins' testimony which includes all information not claimed by DP&L to be confidential.

By filing this motion for protective order, Kroger does not concede that the information for which protection is sought constitutes trade secret information; however, Kroger acknowledges that it has obtained said information pursuant to a protective agreement with DP&L that provides for such information to be treated as confidential and protected (subject to Kroger's right under the protective agreement to initiate a process by which the Commission may determine whether the information should be afforded confidential treatment under Ohio law). The grounds for this motion are more fully discussed in the accompanying memorandum in support.

Respectfully submitted,

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Approval of Certain Accounting Authority )  
Pursuant to Ohio Rev. Code § 4905.13.

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**MEMORANDUM IN SUPPORT**

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Kroger files its motion for protective order contemporaneously with the Direct Testimony of Kevin C. Higgins in this proceeding. In filing this motion, Kroger does not concede that the information in the Direct Testimony of Kevin C. Higgins is trade secret information pursuant to R.C. 1333.61(D), and further does not concede that the information is deserving of protection from public disclosure under Rule 4901-1-24(D), O.A.C.

Kroger understands that DP&L considers the information contained in the redacted portions of the Direct Testimony of Kevin C. Higgins to be confidential and deserving of protection as trade secret information pursuant to R.C. 1333.61(D). Kroger's understanding is based on claims by DP&L that the information (1) derives economic value, actual or potential, from not being known to, and not being readily ascertainable by proper means by others, and (2) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.<sup>1</sup>

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<sup>1</sup> See R.C. 1333.61.

Under the assertions made by DP&L, at this time, confidential treatment of the information contained in the redacted portions of the Direct Testimony of Kevin C. Higgins would be appropriate, subject to Kroger's rights under its protective agreement with DP&L to initiate a process to determine whether the information should be protected. In addition, Kroger is filing a public version of the Direct Testimony of Kevin C. Higgins so that all information not claimed by DP&L to be confidential is accessible to the public.

For the aforementioned reasons, the Commission should grant the motion for protective order sought herein.

Respectfully submitted,

/s/ Angela Paul Whitfield

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*Counsel for The Kroger Co.*

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was served electronically upon those persons listed below this 21<sup>st</sup> day of November, 2016.

/s/ Angela Paul Whitfield  
Angela Paul Whitfield

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## Debra Gauder

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**From:** Danielle M. Ghiloni  
**Sent:** Monday, November 21, 2016 4:10 PM  
**To:** Debra Gauder  
**Subject:** copies  
**Attachments:** Motion for Protective Order.DOCX; Higgins Testimony in DPL ESP 16-395 - Attachment KCH-1 (676893).DOCX; Higgins Testimony in DPL ESP 16-395 - Attachment KCH-2 (676894).DOCX; Higgins Testimony DPL ESP 16-395 - PUBLIC.docx

These will need to be filed electronically on behalf of Kroger:

1. The protective order
2. The public version of the testimony with the 2 attachments

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**Case No(s). 16-0395-EL-SSO, 16-0396-EL-ATA, 16-0397-EL-AAM**

Summary: Motion The Kroger Co.'s Motion For Protective Order electronically filed by Ms. Cheryl A Smith on behalf of The Kroger Co.