

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of The Dayton	)	
Power and Light Company's Implementation	)	Case No. 19-572-EL-UNC
of Certain Matters Relating to the Tax Cuts and	)	
Jobs Act of 2017	)	
	)	
In the Matter of the Application of The Dayton	)	
Power and Light Company to Establish the Tax	)	Case No. 19-568-EL-ATA
Savings Credit Rider	)	

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**MOTION TO INTERVENE OF  
THE KROGER CO.**

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Pursuant to Section 4903.221, Revised Code, and Rule 4901-1-11, Ohio Adm. Code, The Kroger Co. (Kroger) respectfully moves the Public Utilities Commission of Ohio (Commission) for leave to intervene in the above-captioned matter with the full powers and rights granted to intervening parties. Kroger has a real and substantial interest in this proceeding which may be adversely affected by the outcome herein, and which cannot be adequately represented by any other existing parties. Accordingly, Kroger satisfies the standard for intervention set forth in Ohio statutes and regulations.

Therefore, Kroger respectfully requests that the Commission grant this motion to intervene and that Kroger be made a full party of record in this proceeding. A memorandum in support is attached hereto.

Respectfully submitted,

/s/ Angela Paul Whitfield

Angela Paul Whitfield (0068774)

Stephen E. Dutton (0096064)

Carpenter Lipps & Leland LLP

280 Plaza, Suite 1300

280 North High Street

Columbus, Ohio 43215

(614) 365-4100

[Paul@carpenterlipps.com](mailto:Paul@carpenterlipps.com)

[Dutton@carpenterlipps.com](mailto:Dutton@carpenterlipps.com)

(willing to accept service by email)

*Counsel for Kroger*

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**MEMORANDUM IN SUPPORT**

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On March 1, 2019, the Dayton Power and Light Company (DP&L) filed an Application seeking approval from the Public Utilities Commission of Ohio (Commission) to establish the Tax Savings Cost (TSC) Rider.<sup>1</sup> DP&L states that this rider will allow it to return certain benefits associated with the Tax Cuts and Jobs Act of 2017 (TCJA) to DP&L's customers.

Section 4903.221, Revised Code, and Rule 4901-1-11, Ohio Administrative Code, establish the standard for intervention in the above-captioned proceeding. Section 4903.221, Revised Code, provides, in part, that any person "who may be adversely affected" by a Commission proceeding is entitled to seek intervention in that proceeding. Section 4903.221(B), Revised Code, further requires the Commission to consider the nature and extent of the prospective intervenor's interest, the legal position advanced by the prospective intervenor and its probable relation to the merits of the case, whether the intervention by the prospective intervenor will unduly

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<sup>1</sup> See Application of the Dayton Power and Light Company (March 1, 2019).

prolong or delay the proceeding, and the prospective intervenor's potential contribution to a just and expeditious resolution of the issues involved.

Rule 4901-1-11, Ohio Adm. Code, permits intervention by a party who demonstrates a real and substantial interest in the proceeding and who is so situated that the disposition of the proceeding may impair or impede its ability to protect that interest and whose interest is not adequately represented by an existing party.

Kroger is one of the largest grocers in the United States, with numerous facilities served by DP&L. The facilities operated by Kroger use electricity for food storage, lighting, heating, cooling, and distribution, often 24 hours a day, 7 days a week. Kroger's electric distribution needs associated with its facilities in DP&L's service territories are considerable, and the costs associated with obtaining such services from DP&L will be impacted by the outcome of this proceeding.

Therefore, Kroger has a direct, real, and substantial interest in the issues raised in this proceeding and is so situated that the disposition of this proceeding may, as a practical matter, impair or impede its ability to protect that interest. Kroger is regularly and actively involved in Commission proceedings, including, but not limited to, proceedings involving DP&L's rates and services.<sup>2</sup> As it has in previous proceedings, Kroger's unique knowledge and perspective will contribute to the full development and equitable resolution of the factual issues in this proceeding, and Kroger's interest will not be adequately represented by other parties to this proceeding. Finally, this timely intervention will not unduly delay or prolong this proceeding.

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<sup>2</sup> See e.g., *In the Matter of the Application of The Dayton Power and Light Company for Approval of its Energy Efficiency and Peak Demand Reduction Portfolio Plan for 2018-2020*, Case No. 17-1398-EL-POR, et al., Entry at ¶ 5 (September 29, 2017); *In the Matter of Application of The Dayton Power and Light Company for Approval of its Electric Security Plan*, et al., Case No. 16-395-EL-SSO, et al., Entry at ¶ 5 (August 16, 2016); *In the Matter of the Application of the Dayton Power and Light Company for an Increase in Electric Distribution Rates*, et al., Case No. 15-1830-EL-AIR, et al, Entry at ¶ 4 (April 30, 2018).

Kroger satisfies the criteria set forth in Section 4903.221, Revised Code, and Rule 4901-1-11, Ohio Adm. Code, and is, therefore, authorized to intervene in the above-captioned proceeding with the full powers and rights granted by the Commission to intervening parties. Accordingly, Kroger respectfully requests that the Commission grant this motion for leave to intervene and that Kroger be made a full party of record.

Respectfully submitted,

/s/ Angela Paul Whitfield

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(willing to accept service by email)

*Counsel for Kroger*

**CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of the foregoing was served upon all parties of record via electronic mail May 9, 2019.

/s/ Angela Paul Whitfield  
Angela Paul Whitfield

**This foregoing document was electronically filed with the Public Utilities**

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Summary: Motion To Intervene Of The Kroger Co. electronically filed by Mrs. Angela Whitfield on behalf of The Kroger Co.