

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of the)
Significantly Excessive Earnings Test under)
Section 4928.143(F), Ohio Revised Code, and) Case No. 20-1041-EL-UNC
Rule 4901:1-35-03(C)(10), Ohio)
Administrative Code for The Dayton Power)
and Light Company.)

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

Pursuant to R.C. 4903.221 and Ohio Adm. Code 4901-1-11, The Kroger Co. (Kroger) respectfully moves the Public Utilities Commission of Ohio (Commission) to intervene in this matter with the full powers and rights granted to intervening parties. As demonstrated in the attached Memorandum in Support, Kroger has a real and substantial interest in this proceeding that may be adversely affected by the outcome herein, and which cannot be adequately represented by any other party. 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 for the reasons stated herein and as more fully set forth in the attached Memorandum in Support. Kroger also requests that it be made a full party of record in these proceedings.

Respectfully submitted,

/s/ Angela Paul Whitfield

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MEMORANDUM IN SUPPORT

Dayton Power & Light Company (DP&L) filed an Application on May 15, 2020, for administration of the significantly excessive earnings test under R.C. 4928.143(F) for calendar year 2019, asking the Public Utilities Commission of Ohio (Commission) to determine that it did not have significantly excessive earnings.¹ As part of its Application, DP&L stated that its calculation excluded distribution modernization rider (DMR) revenues for calendar year 2019.² As a customer of DP&L, Kroger has a real and substantial interest in the outcome of this proceeding.

R.C. 4903.221 and Ohio Adm. Code 4901-1-11 permit Kroger’s intervention in the above-captioned proceedings. R.C. 4903.221 provides, in part, that any person “who may be adversely affected” by a Commission proceeding is entitled to seek intervention in that proceeding. R.C. 4903.221(B) 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

¹ Application at 1.

² Direct Testimony of Karin M. Nyhuis, at 4-5 (May 15, 2020).

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

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, cooling, and distribution, often 24 hours a day, 7 days a week. Kroger's electric and energy needs associated with its facilities in DP&L's service territory are considerable, and its electric service and the costs associated with obtaining such service from DP&L will be impacted by the outcome of this proceeding. By improperly excluding DMR revenues from its SEET calculations, DP&L seeks to prevent Kroger from collecting refunds for excessive charges. As a consumer of significant amounts of energy in DP&L's service territory, Kroger has been involved in numerous DP&L cases previously.³ Kroger has also participated in previous proceedings involving SEET review of DP&L.⁴

For these reasons, 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 has regularly participated in Commission proceedings, and will be able to provide input that will contribute to an equitable outcome in this proceeding. Kroger's interest will not be adequately represented by other parties and its timely intervention will not unduly delay or prolong these proceedings.

³ See, e.g., *In the Matter of the Application of The Dayton Power and Light Company for Extension of Distribution Modernization Rider*, Case No. 19-0162-EL-RDR; *In the Matter of the Application of The Dayton Power and Light Company for Approval of Its Electric Security Plan*, Case Nos. 16-0395-EL-SSO, et al.; *In the Matter of the Application of The Dayton Power and Light Company for an Increase in its Electric Distribution Rates*, Case Nos. 15-1830-EL-AIR, et al.; *In the Matter of the Application of The Dayton Power and Light Company for Approval of its Electric Security Plan*, Case Nos. 12-0426-EL-SSO, et al.; *In the Matter of the Application of The Dayton Power and Light Company for Approval of Its Electric Security Plan*, Case Nos. 08-1094-EL-SSO, et al.

⁴ *In the matter of the Application The Dayton Power and Light Company's Application for a Finding that Its Current Electric Security Plan Passes the Significantly Excessive Earnings Test and More Favorable in the Aggregate Test in R.C. 4928.143(E)*, Case No. 20-680-EL-UNC, Kroger's Motion to Intervene (May 26, 2020).

Because Kroger satisfies the requisite criteria, R.C. 4903.221 and Ohio Adm. Code 4901-1-11, authorize Kroger to intervene in this proceeding with the full powers and rights granted by the Commission to intervening parties. Kroger respectfully requests that the Commission grant this motion for leave to intervene and make Kroger a full party of record.

Respectfully submitted,

/s/ Angela Paul Whitfield

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CERTIFICATE OF SERVICE

The Public Utilities Commission of Ohio's e-filing system will electronically serve notice of the filing of this document on the parties referenced on the service list of the docket card who have electronically subscribed to the case. In addition, the undersigned hereby certifies that a copy of the foregoing document also is being served via electronic mail on July 2, 2020 upon the parties listed below.

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