

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of the Dayton)
Power and Light Company for an Increase in) Case No. 20-1651-EL-AIR
its Electric Distribution Rates.)

In the Matter of the Application of The)
Dayton Power and Light Company for) Case No. 20-1652-EL-AAM
Accounting Authority.)

In the Matter of the Application of Dayton)
Power and Light Company for Approval of) Case No. 20-1653-EL-ATA
Revised Tariffs.)

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

The Kroger Co. (Kroger) hereby respectfully submits its motion to intervene in the above-captioned matter to the Public Utilities Commission of Ohio (Commission), with the full powers and rights granted to intervening parties, pursuant to R.C. 4903.221 and Ohio Adm. Code 4901-1-11. On October 30, 2020, the Dayton Power and Light Company (DP&L) filed a notice of intent to increase its electric distribution rates (Notice of Intent).¹ As demonstrated in the attached Memorandum in Support, 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 and respectfully requests that the Commission grant its motion to intervene.

¹ Notice of the Dayton Power and Light Company's Intent to File an Application to Increase its Rates for Electric Distribution Service (Oct. 30, 2020) (Notice of Intent).

Respectfully submitted,

/s/ Angela Paul Whitfield

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MEMORANDUM IN SUPPORT

On October 30, 2020, Dayton Power & Light Company (DP&L) filed its Notice of Intent, indicating that it plans to file an application to increase rates by November 30, 2020.² In a separate motion, also filed with the Commission on October 30, 2020, DP&L proposed a twelve-month test period beginning June 1, 2020 and ending May 31, 2021.³ The Commission granted DP&L’s motion to set a test period and date certain.⁴

R.C. 4903.221 and Ohio Adm. Code 4901-1-11 establish the standards for intervention in Commission proceedings. R.C. 4903.221 provides, in pertinent 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

² Notice of Intent, PFN Exhibit 5, page 2.

³ Motion to Establish a Test Period and Date Certain at 1 (Oct. 30, 2020).

⁴ Entry at ¶ 1 (Nov. 18, 2020).

intervenor will unduly prolong or delay the proceeding, and the prospective intervenor's potential contribution to a just and expeditious resolution of the issues involved. Ohio Adm. Code 4901-1-11 permits intervention to 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 territory are considerable. Since DP&L proposes significant rate increases for several classes of customers⁵ across its entire service area,⁶ the outcome of this proceeding will directly impact Kroger's electric service and the costs associated with obtaining such service from DP&L. Kroger has participated in other cases before the Commission involving rates charged by DP&L, including DP&L's previous application to increase rates.⁷

For the foregoing reasons, Kroger has a direct, real, and substantial interest in the issues raised in this proceeding and is so situated that the disposition of the proceeding may, as a practical matter, impair or impede its ability to protect that interest. Kroger's interests will not be adequately represented by other parties to the proceeding. Finally, Kroger's intervention is timely and will

⁵ Notice of Intent, PFN Exhibit 5 at 5 (Summary of Rates) (Oct. 30, 2020).

⁶ *Id.*, PFN Exhibit 1 at 2 (Oct. 30, 2020).

⁷ See *In the Matter of the Application of The Dayton Power and Light Company to Increase its Rates for Electric Distribution*, Case Nos. 15-1830-EL-AIR *et al.*, The Kroger Co.'s Motion to Intervene (Dec. 9, 2015); see also *In the Matter of the Application of The Dayton Power and Light Company 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, Motion to Intervene of the Kroger Co. (May 26, 2020); *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, Motion To Intervene Of The Kroger Co. (Mar. 29, 2019).

not unduly delay or prolong the proceeding. Accordingly, Kroger respectfully requests that its motion to intervene be granted and that Kroger be made a full party of record in this proceeding.

Respectfully submitted,

/s/ Angela Paul Whitfield

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Counsel for The Kroger Co.

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 November 25, 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.