

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of The)	
Dayton Power and Light Company d/b/a AES)	Case No. 22-900-EL-SSO
Ohio for Approval of Its Electric Security)	
Plan.)	
)	
In the Matter of the Application of The)	
Dayton Power and Light Company d/b/a AES)	Case No. 22-901-EL-ATA
Ohio for Approval of Revised Tariffs.)	
)	
In the Matter of the Application of Dayton)	
Power and Light Company d/b/a AES Ohio)	Case No. 22-902-EL-AAM
for Approval of Accounting Authority)	
Pursuant to Ohio Rev. Code § 4905.13.)	

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

The Kroger Co. (Kroger) hereby respectfully submits its motion to intervene in the above-captioned proceeding 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 and Chapter 4901:1-38.

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 party. Accordingly, Kroger satisfies the standard for intervention set forth in Ohio statutes and regulations.

By an Entry dated September 30, 2022, the Commission established a procedural schedule in this proceeding, including setting dates for both a technical conference and prehearing

conference.¹ Additionally, the Commission established November 28, 2022 as the deadline to intervene.² In accordance with the Commission's Entry, Kroger submits this timely motion to intervene in the above-captioned proceeding.

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 cases.

Respectfully submitted,

/s/ Angela Paul Whitfield
Angela Paul Whitfield (0068774)
(Counsel of Record)
Carpenter Lipps & Leland LLP
280 North High Street, Suite 1300
Columbus, Ohio 43215
(614) 365-4100
Paul@carpenterlipps.com
(willing to accept service by email)

Counsel for The Kroger Co.

¹ *In the Matter of the Application of The Dayton Power and Light Company d/b/a AES Ohio for Approval of Its Electric Security Plan*, Entry at ¶ 5 (September 30, 2022).

² *Id.*

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of The Dayton Power and Light Company d/b/a AES Ohio for Approval of Its Electric Security Plan.)	Case No. 22-900-EL-SSO
)	
In the Matter of the Application of The Dayton Power and Light Company d/b/a AES Ohio for Approval of Revised Tariffs.)	Case No. 22-901-EL-ATA
)	
In the Matter of the Application of Dayton Power and Light Company d/b/a AES Ohio for Approval of Accounting Authority Pursuant to Ohio Rev. Code § 4905.13.)	Case No. 22-902-EL-AAM

MEMORANDUM IN SUPPORT

The Dayton Power and Light Company d/b/a AES Ohio (AES) filed an application for approval of its fourth electric security plan (ESP IV) on September 26, 2022.³ AES' ESP IV will run for a proposed term of three years,⁴ and AES seeks an accelerated review and approval of its application. Through its application, AES seeks to establish, modify, and continue a dozen riders to recover costs purportedly associated with investments into AES' distribution system, smart grid, and transmission system.⁵ These riders include, but are not limited to, a Distribution Investment Rider, an Infrastructure Investment Rider, a Proactive Reliability Optimization Rider, a Consumer Programs Rider, and a Distribution Decoupling Rider.⁶

³ See *In the Matter of the Application of The Dayton Power and Light Company d/b/a AES Ohio for Approval of Its Electric Security Plan*, Application at 1 (September 26, 2022).

⁴ *Id.*

⁵ *Id.* at 1.

⁶ *Id.* at 17.

For the reasons stated herein, Kroger has a real and substantial interest in the outcome of this proceeding given the multitude of riders AES seeks to impose on customers' distribution rates and the associated impact of those above-market charges on customers. As such, Kroger should be made an intervening party to the proceeding.

R.C. 4903.221 and Ohio Adm. Code 4901-1-11 establish the standard for intervention in the above-captioned proceeding. 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 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 similarly 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 AES. The facilities operated by Kroger use electricity for food storage, lighting, heating, cooling, and distribution, often 24 hours a day, 7 days a week. Consequently, the electricity needs associated with Kroger's facilities in AES' service territories are considerable, meaning that its electric service and the costs associated with obtaining such service from AES will be impacted by the outcome in this proceeding. Indeed, Kroger has been a participant in other cases before the Commission involving rates charged by AES and costs recovered from customers, including prior

ESP cases.⁷ Therefore, Kroger has a substantial interest in the above-captioned proceeding to ensure that AES continues providing its customers—such as Kroger—with reliable service at reasonable rates.

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 not unduly delay or prolong the proceeding.

Since Kroger satisfies the criteria set forth in R.C. 4903.221 and Ohio Adm.Code 4901-1-11, it is authorized to intervene with the full powers and rights granted by the Commission to intervening parties. Therefore, Kroger respectfully requests that the Commission grant its motion to intervene and designate Kroger as a full party of record in the above-captioned cases.

Respectfully submitted,

/s/ Angela Paul Whitfield
Angela Paul Whitfield (0068774)
(Counsel of Record)
Carpenter Lipps & Leland LLP
280 North High Street, Suite 1300
Columbus, Ohio 43215
(614) 365-4100
Paul@carpenterlipps.com
(willing to accept service by email)

Counsel for The Kroger Co.

⁷ See, e.g., *In the Matter of the Application of The Dayton Power and Light Company for Approval of Its Electric Security Plan, et al.*, Case Nos. 08-1094-EL-SSO, et al., Application (October 10, 2008); *In the Matter of the Application of The Dayton Power and Light Company to Establish a Standard Service Offer in the Form of an Electric Security Plan, et al.*, Case Nos. 12-426-EL-SSO, et al., Opinion and Order at 5 (September 4, 2013); *In the Matter of the Application of The Dayton Power and Light Company for Approval of Its Electric Security Plan, et al.*, Case Nos. 16-395-EL-SSO, et al., Application (February 22, 2016).

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 October 17, 2022 upon the parties listed below.

/s/ Angela Paul Whitfield
Angela Paul Whitfield

Service List:

christopher.hollon@aes.com
jsharkey@ficlaw.com
djireland@ficlaw.com
mwatt@ficlaw.com
mkurtz@BKLlawfirm.com
kboehm@BKLlawfirm.com
jkylercohn@BKLlawfirm.com
Stephanie.Chmiel@ThompsonHine.com
Mary.Csarny@ThompsonHine.com
Stacie.cathcart@igs.com
mnugent@igsenergy.com
evan.betterton@igs.com
bojko@carpenterlipps.com
mpritchard@mcneeslaw.com
bmckenney@mcneeslaw.com
henry.eyman@armadapower.com

Attorney Examiner:

Patricia.Schabo@puco.ohio.gov

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

Case No(s). 22-0900-EL-SSO, 22-0901-EL-ATA, 22-0902-EL-AAM

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