

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of
Columbus Southern Power Company for
Approval of its Peak Demand Reduction
Program Portfolio Plan and Request for
Waiver and Request for Amendment of the
2009 Peak Demand Reduction Benchmark
Pursuant to Section 4928.66(A)(2)(b) of
the Ohio Revised Code.

Case No. 09-578-EL-EEC

In the Matter of the Application of Ohio
Power Company for Approval of its Peak
Demand Reduction Program Portfolio Plan
and Request for Waiver and Request for
Amendment of the 2009 Peak Demand
Reduction Benchmark Pursuant to Section
4928.66(A)(2)(b) of the Ohio Revised
Code.

Case No. 09-579-EL-EEC

**MOTION TO INTERVENE AND OPPOSITION TO AEP'S REQUESTS
REGARDING PEAK DEMAND REDUCTION BENCHMARKS
BY
THE OHIO ENVIRONMENTAL COUNCIL**

This case concerns the proper calculation of the of the peak demand reduction benchmarks established by S.B. 221. As more fully discussed in the accompanying memorandum, the Ohio Environmental Council ("OEC") has a real and substantial interest in this proceeding, and the disposition of this case may impede its ability to protect that interest. The interests of OEC, Ohio's largest non-profit environmental advocacy organization, are not currently represented by any existing party, and its participation in this proceeding will contribute to a just and expeditious resolution of the issues involved. OEC's participation will not unduly delay the proceeding or unjustly

prejudice any existing party. Accordingly, OEC hereby moves to intervene in this proceeding pursuant to R.C. 4903.221 and O.A.C. 4901-1-11.

WHEREFORE, OEC respectfully requests that the Commission grant its motion to intervene.

Respectfully Submitted,

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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Energy Efficiency
and Peak Demand Reduction Program
Portfolio of Ohio Edison Company,
The Cleveland Electric Illuminating
Company, and The Toledo Edison
Company.

Case No. 09-384-EL-EEC
09-385-EL-EEC
09-386-EL-EEC

**MEMORANDUM IN SUPPORT OF MOTION TO INTERVENE AND
OPPOSITION TO AEP'S REQUESTS**

I. MOTION TO INTERVENE

R.C. Section 4903.221 provides that any “person who may be adversely affected by a public utilities commission proceeding may intervene in such proceeding.” The OEC is a non-profit, charitable organization comprised of a network of over 100 affiliated member groups whose mission is to secure a healthier environment for all Ohioans. Throughout its 40-year history, OEC has been a leading advocate for fresh air, clean water, and sustainable land and energy use. OEC was an active participant in the effort that led to the inclusion of demand reduction and energy efficiency requirements in S.B. 221. OEC has a real and substantial interest in assuring that the demand reduction benchmarks established by R.C. 4928.66(A)(1)(b) are properly calculated. Thus, there can be no question that OEC has an interest in and may be adversely affected by the disposition of this case.

R.C. 4903.221(B) outlines four factors that the Commission shall consider when ruling on a motion to intervene in a proceeding. First, pursuant to R.C. 4903.221(B)(1), the Commission shall consider “The nature and extent of the prospective intervenor’s

interest.” OEC is interested in the proper calculation of demand reduction benchmarks to ensure that those calculations comport with the letter and intent of S.B. 221. OEC, as an environmental advocacy organization, has a special interest in the outcome of this case because of the direct impact that decisions on the calculation of these benchmarks will have on the implementation and effectiveness of S.B. 221.

Second, pursuant to R.C. 4903.221(B)(2), the Commission shall consider “The legal position advanced by the prospective intervenor and its probable relation to the merits of the case.” Although OEC does not outline its full legal argument in this section, OEC maintains that AEP’s request to avoid required peak demand reduction benchmarks for 2009 is based on an improper interpretation of R.C. 4928.66. OEC strongly opposes AEP’s request to avoid peak demand reduction benchmarks for 2009 and its alternative request to have those benchmarks reduced to zero.

Third, pursuant to R.C. 4903.221(B)(3), the Commission shall consider “Whether the intervention by the prospective intervenor will unduly prolong or delay the proceedings.” OEC has significant experience dealing with electric utilities questions before the Commission and will not seek to delay the proceeding. OEC’s intervention will not unduly prolong or delay these proceedings.

Fourth, pursuant to R.C. 4903.221(B)(4), the Commission shall consider “Whether the prospective intervenor will significantly contribute to full development and equitable resolution of the factual issues.” OEC has actively participated in the implementation of the efficiency and peak demand reduction benchmarks established by S.B. 221. As an active participant in cases before the Commission, the OEC has developed expertise that will contribute to the full development of the legal questions

involved in this proceeding. Finally, as Ohio's leading environmental advocate, OEC will be able to assure that the environmental impacts of benchmark calculations are fully developed in this proceeding.

OEC also satisfies the intervention requirements outlined in the Commission's rules. The criteria for intervention established by O.A.C. 4901-1-11(A) are identical to those provided by R.C. 4903.221, with the exception that the rules add a fifth factor that the Commission shall consider when ruling on a motion to intervene. Pursuant to O.A.C. 4901-1-11(A)(5), the Commission shall consider "The extent to which the [intervenor's] interest is represented by existing parties." OEC's interest is not fully represented by the existing parties. OEC is the leading advocate for Ohio's environment. No other party to this proceeding has the mission of securing healthy air for all Ohioans, and no other party has been a continuous participant in cases before the Commission for the purpose of furthering this mission.

Finally, it is the Commission's stated policy "to encourage the broadest possible participation in its proceedings" (*see, e.g., Cleveland Elec. Illum. Co.*, Case No. 85-675-EL-AIR, Entry dated January 14, 1986, at 2). The Commission should not apply its intervention criteria in a manner that would favor one environmental or consumer advocate to the exclusion of others.

OEC meets all the criteria established by R.C. 4903.221 and O.A.C. 4901-1-11(A)(5) and therefore should be granted intervenor status in this proceeding.

II. MOTION IN OPPOSITION

AEP's application requests that the Commission determine that AEP's statutory demand reduction obligations have been satisfied for 2009, or in the alternative, that the

Commission use its authority to reduce AEP's 2009 obligations to zero. The Commission should reject both AEP's request to avoid demand reduction benchmarks for 2009 as well as its alternative request to have the Commission use its authority to reduce those benchmarks to zero. As explained more fully below, AEP's two arguments are based on improper interpretations of the requirements of S.B. 221 and the Commission's authority to adjust demand reduction benchmarks.

AEP first requests "that the Commission determine, for compliance purposes, that the PDR benchmark obligation be interpreted...to preclude the need for additional programs" in part due to the reduced peak load caused by the national economic downturn.¹ This request, however, is a misinterpretation of the statute. R.C. 4928.66(A)(1)(b), effective July 31, 2008, provides that "Beginning in 2009, an electric distribution utility shall implement peak demand reduction programs designed to achieve a one per cent reduction in peak demand in 2009 and an additional seventy-five hundredths of one per cent reduction each year through 2018" (emphasis added).

By using the commanding "shall," the statute clearly mandates that utilities implement demand reduction programs in 2009 and that the programs themselves must be designed to achieve reductions in 2009. The core of this section of the statute is the requirement that utilities implement programs that reduce demand. Any demand reductions caused by the national economic downturn are unplanned, fortuitous reductions—not reductions caused by implemented programs. Further, the reduction benchmarks were not enacted merely for the purpose of reducing peak demand, but also to require utilities to implement programs that would continue to reduce demand and provide future rate stability.

¹ Application at 2.

The Commission should reject AEP's attempt to avoid its demand reduction obligations under R.C. 4928.66(A)(1)(a) because of the economic downturn. AEP should be required to meet its statutory obligations to implement peak demand reduction programs.

AEP's application also requested, in the alternative, that the Commission reduce its 2009 benchmark obligations to zero in part "based on...economic reasons beyond [AEP's] control."² AEP requests that the Commission use its authority under R.C. 4928.66(A)(2)(b) to waive AEP's obligation to implement demand reduction programs. R.C. 4928.66(A)(2)(b) gives the Commission the Commission to amend the benchmarks if a utility "cannot reasonably achieve the benchmarks."

AEP has not demonstrated, however, that it "cannot reasonably achieve the benchmarks." Most importantly, AEP's application does not allege that it cannot reasonably meet the requirements of the statute. Instead, AEP alleges that it has already met the benchmarks because the national economic downturn has reduced peak demand more than one percent and because "the goal of the General Assembly" has been satisfied by these reductions.³ This argument, again, confuses the incidental load reductions caused by the economic downturn with the statutory requirement that utilities implement demand reduction programs. Further, AEP admits in its application that "AEP Ohio has been planning and developing its compliance" with the benchmarks. Presumably, AEP has been aware of the benchmarks at least since May 31, 2008, the date on which the bill was signed into law, and has been planning its compliance accordingly.

² Id. at 6.

³ Id. at 7.

AEP's application does not demonstrate that it "cannot reasonably achieve the benchmarks" required by statute, and the Commission should deny this alternative request.

WHEREFORE, OEC respectfully requests that the Commission grant its motion to intervene and reject the requests to avoid the requirements of R.C. 4928.66(A)(1)(b) advanced by AEP.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing has been served upon the following parties by electronic mail, this 17th day of August, 2009.

S/Will Reisinger

Will Reisinger

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Summary: Motion Motion to Intervene electronically filed by Mr. Nolan M Moser on behalf of
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