

**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. 09-951-EL-EEC
09-952-EL-EEC
09-953-EL-EEC

**MOTION TO INTERVENE
BY
THE OHIO ENVIRONMENTAL COUNCIL**

This case concerns the proper calculation of the of the energy efficiency 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 leading 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 without unduly delaying the proceeding or unjustly prejudicing 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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MEMORANDUM IN SUPPORT

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 group members, whose mission is to secure a healthier environment for all Ohioans. Over 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 energy efficiency mandates and renewable and alternative energy standards in SB 221. OEC has a real and substantial interest in assuring that these benchmarks are realized and that the efficiency measures are properly calculated. Thus, there can be no question that OEC 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. 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 energy efficiency benchmarks, to ensure that those

benchmarks 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 energy efficiency benchmarks will have on Ohio's air quality.

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 memorandum, OEC maintains that S.B. 221 does not contemplate the inclusion of "T&D infrastructure improvement projects" as part of a utility's compliance strategy. OEC will oppose the inclusion of these projects as part of a utility's compliance with efficiency benchmarks.

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 efficiency question before the Commission, will not seek to delay the proceeding, and this case has just commenced. Therefore, 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 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 efficiency 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, except 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 person'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 efficiency cases before the Commission for the purpose of furthering this mission. Further, 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, 2986, at 2); thus the Commission should not apply its intervention criteria in a manner that would favor one environmental or consumer advocate over others.

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

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

S/NOLAN MOSER

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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 first class mail, postage prepaid, this 2nd day of November, 2009.

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Summary: Motion for Intervention electronically filed by Mr. Nolan M Moser on behalf of The Ohio Environmental Council