

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke)	
Energy Ohio – W.H. Zimmer Generating)	
Station for Certification as an Eligible Ohio)	Case No. 09-1878-EL-REN
Renewable Energy Resource Generating)	
Facility.)	

**DUKE ENERGY OHIO, INC.
MEMORANDUM CONTRA
MOTION TO INTERVENE
BY
THE OHIO CONSUMERS' COUNSEL**

I. Introduction

On December 1, 2009, Duke Energy Ohio, Inc. (Duke Energy Ohio) filed an application for certification of its W.H. Zimmer Generating Station as an eligible Ohio renewable energy resource generating facility. On December 30, 2009, the Ohio Consumers' Counsel (OCC) filed a motion to intervene in that application process, together with comments on the substance of the application. For the reasons explained below, Duke Energy Ohio submits that the Commission should deny the OCC's motion to intervene and grant Duke Energy Ohio's application for certification.

II. Argument

Paragraph (A) of Rule 4901:1-40-04, Ohio Administrative Code (O.A.C.), lists various types of resources or technologies that are qualified resources for meeting the renewable energy resource benchmarks applicable to electric utilities. One of those, set forth in subparagraph (6), identifies biomass as a qualified resource. Paragraph (F) of Rule 4901:1-40-04, O.A.C., requires

an entity seeking qualification of its resource to file an application for Commission approval. The application under consideration in this proceeding is Duke Energy Ohio's application for qualification of its W.H. Zimmer Generating Station for use with between one percent and ten percent of its fuel to be supplied by biomass sources.

The OCC has moved to intervene in the proceeding on the ground that certification as an eligible renewable energy resource "*could* result in residential electric customers paying the extra costs of a renewable resource without receiving the long-term benefits of renewable resources" OCC Motion to Intervene at 2 (emphasis added).

Reviewing the standard intervention criteria, the OCC first claims that the purpose of its proposed intervention is to ensure that, when customers pay a premium for a renewable resource, they will receive a long-term benefit from reduced energy costs. The OCC also asserts that its position is directly related to the merits of the pending case. OCC Motion to Intervene at 3. Duke Energy Ohio has no disagreement that the OCC could move to intervene in a proceeding to determine any premium to be charged to residential consumers. However, the OCC is apparently confused by the nature of the current application. Duke Energy Ohio has not asked for cost recovery at this time. Indeed, paragraph (F)(6) of Rule 4901:1-40-04, O.A.C., specifically states that certification of a resource "does not constitute any commission position regarding cost recovery." All that the Commission is determining in this application process is that Duke Energy Ohio's application demonstrates that its facility satisfies the requisite criteria to become certified as an eligible Ohio renewable energy resource generating facility. The OCC suggests that Duke Energy Ohio will not be able to obtain sufficient biomass material to operate the facility as it proposes in the application. OCC Motion to Intervene at 6. That concern, even if valid, would go to the question of the viability of the proposed biomass facility, not to whether

the facility meets the criteria to be designated as a renewable resource. If Duke Energy Ohio is unable to operate the facility as planned, the Commission would likely consider that fact and the reasons therefor in the context of any subsequent application for cost recovery. As the current proceeding is not the proceeding in which the Commission will determine the viability of Duke Energy Ohio's renewable facility, this is also not the time for the OCC's intervention.

The OCC also asserts that its intervention will not unduly delay this proceeding and that it will significantly contribute to the full development of the facts. OCC Motion to Intervene at 3. Of course, the OCC's intervention, as it describes it, would clearly delay the Commission's approval of the application and, consequently, Duke Energy Ohio's initiation of its use of this facility as a renewable resource. In addition, the OCC's "contribution" to development of the facts is questionable, given that even the OCC had to qualify its own claim by asserting that its "contribution" would be "consistent with any matters that *OCC determines* to be issues for PUCO consideration" OCC Motion to Intervene at 4 (emphasis added). The Commission has, by adoption of Rule 4901:1-40-04, O.A.C., and through its previous processing of numerous similar applications, determined the issues for its consideration. Determining issues for consideration by the Commission is not the function of the OCC.

III. Conclusion

In summary, the OCC's motion to intervene is based on the fallacious notion that the certification of W.H. Zimmer Generating Station as a renewable energy resource generating facility has any current relation to charges to be paid by residential consumers. Therefore, its motion to intervene should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served via ordinary mail, postage prepaid, on the all parties of record this ____ day of January, 2010.

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Summary: Motion In the Matter of the Application of Duke Energy Ohio – W.H. Zimmer
Generating Station for Certification as an Eligible Ohio Renewable Energy Resource
Generating Facility. electronically filed by Carys Cochern on behalf of Watts, Elizabeth H