

FILE

BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Ohio Edison )  
Company, The Cleveland Electric Illuminating )  
Company and The Toledo Edison Company )  
for Authority to Establish a Standard Service ) 10-388-EL-SSO  
Offer Pursuant to R.C. § 4928.143 in the )  
Form of an Electric Security Plan )

PUCO

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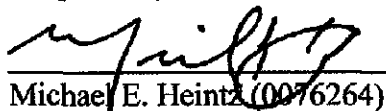
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MOTION TO INTERVENE BY  
THE ENVIRONMENTAL LAW AND POLICY CENTER

Pursuant to Ohio Revised Code (ORC) §4903.221 and Ohio Administrative Code (OAC) §4901-1-11, the Environmental Law and Policy Center (ELPC) respectfully moves to intervene in the above-captioned proceeding. As explained in the attached Memorandum in Support, ELPC has a real and substantial interest in this proceeding. Additionally, ELPC's interests are not adequately represented by any other party to this matter, and its participation will contribute to a just and expeditious resolution of the issues and questions. Further, ELPC's participation will not unduly delay the proceedings or prejudice any other party thereto.

Consequently, ELPC respectfully requests this Commission grant its motion to intervene for these reasons and those set forth in more detail in the attached Memorandum in Support.

Respectfully submitted,

  
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**MEMORANDUM IN SUPPORT OF  
THE ENVIRONMENTAL LAW & POLICY CENTER'S  
MOTION TO INTERVENE**

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Ohio Revised Code (ORC) §4903.221 provides, "Any other person who may be adversely affected by a public utilities commission proceeding may intervene in such proceeding," provided the Public Utility Commission of Ohio (PUCO or "the Commission") makes certain determinations. The Environmental Law & Policy Center (ELPC) is a non-profit environmental advocacy organization whose mission is to improve the Midwest's environmental quality and economic development. ELPC is an advocate for both environmental health and sustainable economic development. As an organization with a presence and members in Ohio, ELPC and its members may be adversely affected by the outcome of this proceeding and is not adequately represented by the other parties hereto.

Ohio Revised Code §4903.221 requires the Commission to consider four factors when presented with a motion to intervene. In addition, PUCO's procedural rules at Ohio Administrative Code (OAC) §4901-11-1 similarly provides it shall consider five factors when weighing a motion to intervene. ELPC's motion meets each of the factors required by statute or rule.

Pursuant to ORC §4903.221, the Commission must consider:

- (1) The nature and extent of the prospective intervenor's interest;
- (2) The legal position advanced by the prospective intervenor and its probable relation to the merits of the case;
- (3) Whether the intervention by the prospective intervenor will unduly prolong or delay the proceedings; [and]
- (4) Whether the prospective intervenor will significantly contribute to full development and equitable resolution of the factual issues.

O.R.C. §4903.221(B). As to the first factor, ELPC's interest in the case is to ensure the effective and thorough implementation of Am. Sub. SB No. 221 (SB 221), the requirements for utilities to provide alternative and renewable energy to customers in Ohio, including solar energy resources, reflected at ORC §4928.64. Because the Application and Stipulation under consideration addresses some of FirstEnergy's responsibilities under SB 221, ELPC's interest in this proceeding is to ensure that the Commission holds those utilities subject to the requirements of SB 221 to reasonable expectations of fulfillment. Further, ELPC has members in Ohio and has an office in Ohio that focuses on Ohio energy and environmental issues, both subjects of FirstEnergy's Application. As to the second factor, because of the potential impacts on ELPC and its Ohio members, ELPC wants to ensure FirstEnergy's Application meets the applicable legal requirements, specifically those in SB 221, and if not, recommend appropriate solutions. Under the third factor, ELPC's inclusion will not unduly delay or prolong the proceeding. The Commission allowed parties to intervene anytime before April 5, 2010, and ELPC is meeting that deadline. Moreover, ELPC is committed to working within the schedule set by this Commission to achieve the efficient and orderly disposition of the questions presented. Finally, ELPC will significantly contribute to the full development and resolution of the proceeding by bringing its unique perspective to bear. ELPC has expertise and experience regarding SB 221 subjects that will contribute to resolving the pending issues. For example, ELPC intervened in

cases involving energy efficiency benchmarks and commented on applications from FirstEnergy and other Ohio utilities address solar renewable energy resource requirements.

Similarly, ELPC meets the requirements set forth in OAC §4901-11-1:

- (1) The nature and extent of the prospective intervenor's interest;
- (2) The legal position advanced by the prospective intervenor and its probable relation to the merits of the case;
- (3) Whether the intervention by the prospective intervenor will unduly prolong or delay the proceedings;
- (4) Whether the prospective intervenor will significantly contribute to full development and equitable resolution of the factual issues;
- [and]
- (5) The extent to which the person's interest is represented by existing parties.

Ohio Admin. Code §4901-11-1(B). The first four factors mirror those in ORC §4903.221 and for the same reasons as stated above, ELPC meets those factors. As to the fifth, ELPC maintains that no other party can adequately represent its interests as a regional environmental advocacy organization that also focuses on "green" economic development, including new manufacturing and job creation. ELPC is interested in how the programs will affect Ohio and the Midwest. No other party focuses its efforts on regional environmental health or economic development. ELPC is interested in both the environmental health of Ohio and that SB 221 is used as an economic development tool. Ohio is positioned to be a leader in the region for economic gain through efficiency and renewable energy technologies. ELPC wants to ensure that Ohio receives the economic and job creation benefits promised by SB 221, while protecting the area's environmental health. Because no other party advocates at the intersection of Ohio's environmental health and economic development, no other party represents ELPC's interests.

Finally, this Commission's policy is 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 Supreme Court of Ohio, in a 2006 case addressing motions to

intervene before the PUCO, reinforced this "inclusive" standard. In that case, the Ohio Consumer's Counsel's appealed the PUCO's decision to deny intervention under O.R.C. §4903.221 and O.A.C. §4901-1-11-01. In reversing the PUCO, and granting OCC's motion to intervene, the Court held, "intervention ought to be liberally allowed so that the positions of all persons with a real and substantial interest in the proceedings can be considered by the PUCO." *Ohio's Consumer Counsel v. PUCO*, (2006) 111 Ohio St. 3d 384, 388. The Court determined that the OCC showed the necessary facts needed to meet the statutory and regulatory requirements:

The Consumers' Counsel explained her interest in the cases in her motions to intervene and also explained that her views would not be adequately represented by the existing parties. In the absence of some evidence in the record calling those claims into doubt or showing that intervention would unduly prolong or delay the proceedings, intervention should have been granted.

*Id.* ELPC's inclusion will contribute to this goal of broad participation in PUCO proceedings.

Because ELPC meets the criteria set forth in both ORC §4903.221 and OAC §4901-11-1, it asks this Commission to grant its motion to intervene in the above-captioned proceedings.

Respectfully submitted,




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## CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing Motion to Intervene has been served upon the following parties, via electronic mail, this 1st day of April, 2010.

  
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