

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the matter of the alternative energy	)	Case No. 10-495-EL-ACP
resources report for calendar year 2009 for	)	
Constellation New Energy, Inc.	)	
	)	
	)	

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

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The Ohio Environmental Council (“OEC”) hereby moves to intervene in this case in which Constellation New Energy, Inc. (“CNE”) describes efforts to comply with the 2009 renewable energy benchmarks associated with R.C. section 4928.64(B)(2). 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,

\_\_\_\_\_  
/s/ Nolan Moser

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**MEMORANDUM IN SUPPORT**

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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. 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 renewable energy and solar energy requirements in S.B. 221. OEC has a real and substantial interest in assuring the 2009 compliance efforts of CNE were reasonable, consistent with statute, and resulting in the renewable energy production intended by the passage of SB221. 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 ensuring that the renewable energy benchmarks are met in a manner which comports 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 the implementation of SB221 will have tangible impacts on renewable energy production and emission levels resulting from traditional energy sources in Ohio.

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.” This case involves the review of the reasonableness and lawfulness of the efforts of CNE to comply with renewable energy benchmarks. The legal positions of the OEC on those compliance efforts will be developed after review of evidence submitted in this case which can only be accessed by the OEC after successful intervention.

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, renewable energy, 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.

OEC also satisfies the intervention requirements outlined in the Commission’s rules. The criteria for intervention established by O.A.C. 4901-1-11(B) 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(B)(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 sole 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(B)(5) and therefore should be granted intervenor status in this proceeding.

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

Respectfully Submitted,

/s/ Nolan Moser  
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**Attorneys for the OEC**

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing has been served upon the following parties by first class and/or electronic mail this 13<sup>th</sup> day of May, 2010.

/s/ Nolan Moser

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