

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Report of Duke Energy Ohio, Inc. Concerning Its Advanced and Renewable Energy Baseline and Benchmarks	)	Case No. 10-511-EL-ACP
	)	
	)	
	)	
In the Matter of the Request by Duke Energy Ohio, Inc. For A One Time Waiver of Rule 4901:1-40-0(D)(1)	)	Case No. 10-512-EL-WVR
	)	
	)	
	)	
In the Matter of the Request for Force Majeure Determination By Duke Energy Ohio Pursuant to Rule 4901:1-40-06	)	Case No. 10-513-EL-ACP
	)	

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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 these cases in which Duke Energy Ohio, Inc. (“Duke”) seeks a revision of its 2009 renewable energy benchmark obligations under R.C. 4928.64. Duke asks the Commission to either allow it to count “non-Ohio” solar renewable energy credits (“SRECs”) to satisfy its in-state solar requirements, or for the Commission to grant a force majeure request pursuant to 4928.64(C).

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/ Will Reisinger

Will Reisinger, Counsel of Record  
Nolan Moser  
Trent A. Dougherty  
Megan De Lisi

Ohio Environmental Council  
1207 Grandview Avenue, Suite 201  
Columbus, Ohio 43212-3449  
(614) 487-7506 - Telephone  
(614) 487-7510 - Fax  
[will@theoec.org](mailto:will@theoec.org)  
[nolan@theoec.org](mailto:nolan@theoec.org)  
[trent@theoec.org](mailto:trent@theoec.org)  
[megan@theoec.org](mailto:megan@theoec.org)

**Attorneys for the OEC**

**BEFORE  
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In the Matter of the Report of Duke Energy	)	Case No. 10-511-EL-ACP
Ohio, Inc. Concerning Its Advanced and	)	
Renewable Energy Baseline and Benchmarks	)	
	)	
In the Matter of the Request by Duke Energy	)	Case No. 10-512-EL-WVR
Ohio, Inc. For A One Time Waiver of Rule	)	
4901:1-40-0(D)(1)	)	
	)	
In the Matter of the Request for Force	)	Case No. 10-513-EL-ACP
Majeure Determination By Duke Energy	)	
Ohio Pursuant to Rule 4901:1-40-06	)	

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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 clean air and sustainable land and energy use. OEC was an active participant in the effort that led to the inclusion of the renewable energy benchmark requirements in S.B. 221. OEC has a real and substantial interest in assuring that Duke’s requests will not diminish the quantity or quality of renewable energy resource deployment in Ohio. OEC has a real and substantial interest in assuring that the renewable generation benchmarks established by R.C. 4928.64(B)(2) are properly calculated and enforced and that robust, long-term sources of renewable electricity generation are sited in Ohio. The attainment or non-attainment of these benchmarks will have a direct effect on the air quality within Ohio and the amount of renewable generation distributed in the

state. 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 has several distinct interests in the disposition of this case. First, OEC is interested in the proper calculation of utility solar deployment. This application represents one of the first applications for a waiver of alternative energy requirements filed under the provisions of S.B. 221, and consequently the disposition of this case will inform how future applications are considered by the Commission. More specifically, this case could set precedent for how force majeure requests pursuant to 4928.64(C)(4) are handled and how the Commission considers the use of non-Ohio RECs to satisfy the in-state solar requirement. 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 current and future implementation and effectiveness of S.B. 221, and thus, the further deployment of cleaner sources of electricity 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.” Although OEC does not outline detailed legal arguments in this section, OEC maintains that Duke’s request for a force majeure determination should be subject to high scrutiny because of the clear language and intent behind S.B. 221’s solar production requirement.

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 has been consistently engaged in the development and enactment of S.B. 221 and the associated rules, including as a party in numerous cases before the Commission. OEC’s intervention will not unduly prolong or delay these proceedings; to the contrary, OEC’s expertise and unique interest will add value to the development of this case.

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, peak demand reduction, and renewable energy 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.

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 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 specific purpose of furthering this mission.

Finally, we point out that it is the Commission's stated policy "to encourage the broadest possible participation in its proceedings."<sup>1</sup> 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.

WHEREFORE, OEC respectfully requests that the Commission grant its motion to intervene in the above captioned matter.

Respectfully Submitted,

/s/ Will Reisinger

Will Reisinger, Counsel of Record  
Nolan Moser  
Trent A. Dougherty  
Megan De Lisi

Ohio Environmental Council  
1207 Grandview Avenue, Suite 201  
Columbus, Ohio 43212-3449  
(614) 487-7506 - Telephone  
(614) 487-7510 - Fax  
[will@theoec.org](mailto:will@theoec.org)  
[nolan@theoec.org](mailto:nolan@theoec.org)  
[trent@theoec.org](mailto:trent@theoec.org)  
[megan@theoec.org](mailto:megan@theoec.org)

**Attorneys for the OEC**

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<sup>1</sup> *Cleveland Elec. Illum. Co.*, Case No. 85-675-EL-AIR, Entry dated January 14, 1986, at 2.

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 14<sup>th</sup> day of May, 2010.

/s/ Will Reisinger

Elizabeth Watts  
Assistant General Counsel  
DUKE ENERGY OHIO  
155 East Broad Street, 21<sup>st</sup> Floor  
Columbus, Ohio 43215  
Phone: 614-222-1330  
Fax: 513-419-1846  
Elizabeth.Watts@duke-energy.com

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Summary: Motion Motion to Intervene with Memorandum in Support electronically filed by Mr. Will Reisinger on behalf of Ohio Environmental Council