

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Applications of Various	)	Case No. 10-833-EL-EEC
Mercantile Companies and Electric Utilities	)	
for Approval of Special Arrangements and	)	
Exemptions from Payment of Energy	)	
Efficiency and Peak Demand Reduction	)	
Riders	)	
	)	
In the Matter of the Application for Approval	)	Case No. 10-834-EL-EEC
of a Pilot Program Regarding Mercantile	)	
Applications for Special Arrangements with	)	
Electric Utilities and Exemptions from	)	
Energy Efficiency and Peak Demand	)	
Reduction Riders.	)	

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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 the Public Utilities Commission of Ohio (“PUCO” or “Commission”) seeks to develop procedures to streamline the approval of applications filed pursuant to R.C. 4928.66(a)(2)(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 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. 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**

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**MEMORANDUM IN SUPPORT**

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**INTRODUCTION**

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.” 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 demand reduction and energy efficiency requirements in S.B. 221. OEC has a real and substantial interest in assuring that the approval process for mercantile opt-out applications filed pursuant to 4928.66(a)(2)(c) is fair and efficient. There can be no question that OEC has an interest in and may be adversely affected by the disposition of this case.

## **ARGUMENT**

### **A. The Nature Of OEC's Interest**

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 energy efficiency and demand reduction 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 the special arrangement provision may directly impact the quality of programs by which utilities will meet the energy efficiency benchmarks required under R.C. 4928.66. OEC wants to ensure that the mercantile opt-out application process is fair and efficient, and that all approved applications represent verifiable energy savings projects.

### **B. The Legal Position Advanced By OEC**

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.” OEC maintains that the proposed energy efficiency projects to be undertaken by a mercantile customer contained in special arrangement applications, authorized under R.C. §4928.66(A)(2)(c), should be subject to a thorough review. Failure of any mercantile project to produce the stated energy efficiency savings could result in a failure of the electric distribution utility to comply with the statutory energy efficiency benchmarks. The OEC believes that a standard application form, outlining the necessary criteria, would make the application process more efficient and verify energy savings projects.

**C. OEC Will Not Unduly Prolong These Proceedings**

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 energy efficiency questions before the Commission and will not seek to delay the proceeding. OEC has been an active participant in the special arrangement dockets and has provided detailed comments regarding the approval process. OEC looks forward to providing additional comment on this docket. OEC’s intervention will not unduly prolong or delay these proceedings.

**D. The OEC Will Significantly Contribute To 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 mercantile exemption provision of 4928.66(a)(2)(c) by reviewing and commenting on dozens of applications. OEC, in comments filed jointly with the Office of the Ohio Consumers’ Counsel, recommended that the Commission convene a technical workshop and develop a standard application form for more efficient review of mercantile opt-out applications. OEC looks forward to commenting on the application approval process, which is the subject of docket. As an active participant in the mercantile opt-out application cases before the Commission, OEC has developed expertise that will contribute to the full development of the legal questions involved in this proceeding. The Commission has recognized the value of OEC’s participation in numerous cases, and has granted leave for OEC to intervene in other mercantile opt-out dockets.<sup>1</sup>

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<sup>1</sup> See Case No. 09-1103-EL-EEC, Finding and Order at 3, (“The Commission finds that OEC...[has] set forth reasonable grounds to intervene in this proceeding. Accordingly, [its] motion to intervene should be granted.”)

**E. The OEC Satisfies The Criteria Outlined In The Commission's Rules**

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.

**CONCLUSION**

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. The OEC appreciates the Commission's decision to open this docket for the purpose of streamlining the approval process for mercantile opt-out applications, and OEC looks forward to participating in this case.

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

Respectfully Submitted,

/s/ Will Reisinger

Will Reisinger, Counsel of Record  
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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 OEC**

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing has been served upon the following parties by first class or electronic mail this 17<sup>th</sup> day of June, 2010.

/s/ Will Reisinger

Duane Luckey  
Assistant Attorney General  
Public Utilities Commission of Ohio  
180 East Broad Street, 6th Floor  
Columbus, Ohio 43215



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Summary: Motion Motion to Intervene and Memorandum in Support by the OEC. electronically filed by Ms. Megan De Lisi on behalf of Ohio Environmental Council