

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of)	Case No. 10-0468-EL-ACP
FirstEnergy Solutions Corp. for Ten-Year)	
Alternative Energy Compliance Plan.)	

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

The Ohio Environmental Council (“OEC”) hereby moves to intervene in this case in which the FirstEnergy Solutions Corporation (“FES” of “Company”) describes its plan to comply with the alternative and renewable energy benchmarks for the next ten years (herein referred to as the “Plan”). 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 the 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. The OEC’s participation will not unduly delay the proceeding or unjustly prejudice any existing party. Accordingly, the OEC hereby moves to intervene in this proceeding pursuant to R.C. 4903.221 and O.A.C. 4901-1-11.

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

Respectfully Submitted,

/s/ William T. Reisinger

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MEMORANDUM IN SUPPORT

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, the OEC has been a leading advocate for fresh air, clean water, and sustainable land and energy use. The OEC was an active participant in the effort that led to the inclusion of renewable energy and solar energy requirements in S.B. 221. This case involves the review of FES’s plans to meet Ohio’s advanced energy and renewable energy benchmarks for the next ten years. The OEC has a real and substantial interest in assuring that FES’s Plan is reasonable, consistent with statute, and will likely result in the renewable energy production intended by the passage of S.B. 221. Thus, there can be no question that OEC has an interest in this case that 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.” As a general proposition, the OEC is interested in the achievement of maximum cost-effective

energy efficiency and renewable energy implementation. The OEC is also interested in ensuring that the renewable energy benchmarks are met in a manner which comports with the letter and intent of S.B. 221. As an environmental advocacy organization, the OEC has a special interest in the outcome of this case because whether or not FES's ten-year plan to meet the S.B. 221 benchmarks is realistic and reasonable will directly impact FES's ability to actually achieve these goals. FES's compliance with S.B. 221 will have tangible impacts on renewable energy production and emission levels resulting from traditional energy sources in Ohio, and may affect the development of diverse electricity options available 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 FES's future plans regarding its deployment of alternative energy in Ohio. Significantly, on November 17, 2010, FirstEnergy Corp. announced that it is canceling plans to repower units 4 and 5 at its R.E. Burger Plant in Shadyside, Ohio, to generate electricity principally with biomass and will instead permanently shut down the units by the end of 2010.¹ The expected REC's that would have been generated at R.E. Burger are included in FES's Plan, and therefore the plan may need to be updated to reflect this new development. It is important that interested parties and the Commission receive accurate, detailed information regarding FES's non-solar generation fleet and purchase agreements that FES will use to comply with future annual advanced and renewable energy benchmarks. The OEC maintains that FES's Plan should be properly scrutinized by interested parties to ensure that it includes realistic and accurate assessments of energy efficiency and clean energy resource potentials.

¹ See FirstEnergy Press Release, "FirstEnergy, Citing Lower Market Prices, Cancels Plans for Biomass Conversion Project," November 17, 2010.

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.” The OEC has significant experience dealing with electric utilities questions before the Commission and will not seek to delay the proceeding. The OEC’s intervention will not unduly prolong or delay these proceedings. The OEC has been consistently involved in the development and enactment of S.B. 221 and the associated rules, including as a party in numerous cases before the Commission. The OEC’s intervention will not unduly prolong or delay these proceedings; to the contrary, the 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.” The 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.

The 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.” The OEC’s interest is not fully represented by the existing parties. The 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.

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

Respectfully Submitted,

/s/ WilliamT. Reisinger
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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 19th day of November, 2010.

/s/ William T. Reisinger

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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