

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio)	Case No. 11-0126-EL-EEC
Edison Company, the Cleveland Electric)	Case No. 11-0127-EL-EEC
Illuminating Company, and the Toledo)	Case No. 11-0128-EL-EEC
Edison Company to Amend Their Energy)	
Efficiency and Peak Demand Reduction)	
Benchmarks.)	

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

The Ohio Environmental Council (“OEC”) moves to intervene in this case in which the Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company (collectively “FirstEnergy”) request that the Public Utilities Commission of Ohio (“PUCO” or “Commission”) grant a waiver of their 2010 Energy Efficiency and Peak Demand Reduction (“EE/PDR”) benchmark requirements. As more fully discussed in the accompanying memorandum in support, the OEC has a real and substantial interest in this proceeding. The OEC has an interest in assuring that utilities fully comply with the EE/PDR benchmarks codified in R.C. 4928.66, and accordingly, has an interest in reviewing utility requests for waivers of those benchmarks. The interests of the OEC, Ohio’s largest non-profit environmental advocacy organization, are not represented by any existing party. The OEC’s participation in this proceeding will contribute to a just and expeditious resolution of the issues involved, without unduly delaying the proceeding or unjustly prejudicing 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 in the above captioned matter.

Respectfully Submitted,

/s/ William T. Reisinger
William T. Reisinger, Counsel of Record
Nolan Moser
Trent A. Dougherty
Elizabeth Camille Yancey

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

Attorneys for the OEC

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio)	Case No. 11-0126-EL-EEC
Edison Company, the Cleveland Electric)	Case No. 11-0127-EL-EEC
Illuminating Company, and the Toledo)	Case No. 11-0128-EL-EEC
Edison Company to Amend Their Energy)	
Efficiency and Peak Demand Reduction)	
Benchmarks.)	

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 member groups 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 has been an active participant in energy efficiency and other matters before the Commission. The OEC has a real and substantial interest in participating in this proceeding to ensure that FirstEnergy’s waiver application is carefully scrutinized.

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.” The OEC has several distinct interests in the disposition of this case. As a general proposition, the OEC is interested in the achievement of maximum cost-effective energy efficiency by Ohio utilities. The OEC, as an environmental advocacy organization, has a special interest in the outcome of this case because of the direct impact the Commission’s decision could have on FirstEnergy’s EE/PDR efforts, and thus on Ohio’s air quality and environment.

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 the OEC does not outline detailed legal arguments in this section, the OEC maintains that any application for a waiver of EE/PDR benchmarks should be properly scrutinized by interested parties. To date, FirstEnergy has not demonstrated that it is eligible for a waiver pursuant to R.C. 4928.66(A)(2)(b). The Company has not shown that it was unable to implement cost-effective energy efficiency programs that would have satisfied its requirements under Ohio law.

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 issues at the Commission. The 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.” The OEC has actively participated in the implementation of Ohio’s energy efficiency standards and in related matters before the Commission. As an active participant in cases before the Commission, the OEC has accrued expertise that will contribute to the full development of the legal questions and desired public policy outcomes involved in this proceeding. Finally, as Ohio’s leading environmental advocate, the OEC will be able to assure that the environmental impacts of this request are fully developed.

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(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.” The OEC’s interest is not fully represented by any existing party. The OEC is the leading advocate for Ohio’s environment. No other party to this proceeding has the mission of securing a healthy environment 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.”¹ 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(A)(5) and therefore should be granted intervenor status in this proceeding.

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

Respectfully Submitted,

/s/ William T. Reisinger
William T. Reisinger, Counsel of Record
Nolan Moser
Trent A. Dougherty
Elizabeth Camille Yancey

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

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

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 or electronic mail this 18th day of January, 2011.

/s/ William T. Reisinger

Kathy J. Kolich
Carrie Dunn
FirstEnergy Service Company
76 South Main Street
Akron, OH
kjkolich@firstenergycorp.com
cdunn@firstenergycorp.com

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

1/18/2011 11:36:19 AM

in

Case No(s). 11-0126-EL-EEC

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