

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Ohio)	
Edison Company, the Cleveland Electric)	
Illuminating Company, and the Toledo)	Case No. 10-2891-EL-ACP
Edison Company for Approval of Request)	
for Proposal to Purchase Renewable Energy)	
Credits Through Ten-Year Contract)	

THE ENVIRONMENTAL LAW AND POLICY CENTER’S MOTION TO INTERVENE

Pursuant to Ohio Revised Code §4903.221 and Ohio Administrative Code §4901-1-11, the Environmental Law and Policy Center (ELPC) respectfully moves to intervene in the above-captioned proceeding. As explained in the attached Memorandum in Support, ELPC has a real and substantial interest in this proceeding. The interests of ELPC are not adequately represented by any other party to this matter, and its participation in this proceeding will contribute to a just and expeditious resolution of the issues and questions. Further, ELPC’s participation will not unduly delay the proceedings or prejudice any other party.

Accordingly, ELPC respectfully requests the Public Utilities Commission of Ohio grant its motion to intervene.

Respectfully submitted,

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**MEMORANDUM IN SUPPORT OF
THE ENVIRONMENTAL LAW & POLICY CENTER'S
MOTION TO INTERVENE**

On December 2, 2010, Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company (collectively referred to as “FirstEnergy”) filed an Application for Approval of a Request for Proposal to Purchase Renewable Energy Credits (“Application”). In its Application, FirstEnergy requests that the Public Utilities Commission of Ohio (“PUCO” or “Commission”) approve the initial Renewable Energy Credits (“REC’s”) Request for Proposal (“RFP”) and authorize FirstEnergy to seek competitive bids to purchase REC’s through ten year contracts. ELPC seeks to intervene in this case and is an interested party pursuant to Ohio Revised Code (“ORC”) §4903.221 and Ohio Administrative Code (“OAC”) §4901-1-11.

ORC §4903.221 provides, “Any other person who may be adversely affected by a public utilities commission proceeding may intervene in such proceeding,” provided the Commission makes certain determinations. ELPC is a non-profit environmental advocacy organization whose mission is to improve the Midwest’s environmental quality and economic development. ELPC is an advocate for both environmental health and sustainable economic development. As a regional organization with a presence and members in Ohio, ELPC and its members may be adversely affected by the outcome of this proceeding. ELPC is not adequately represented by the other parties in this case.

Ohio Revised Code §4903.221 requires the Commission to consider four factors when presented with a motion to intervene. In addition, PUCO’s procedural rules at OAC §4901-1-11

similarly provide that it shall consider five factors when weighing a motion to intervene.

ELPC's motion meets each of the factors required by statute or rule.

Pursuant to ORC §4903.221(B), the Commission must consider:

- (1) The nature and extent of the prospective intervenor's interest;
- (2) The legal position advanced by the prospective intervenor and its probable relation to the merits of the case;
- (3) Whether the intervention by the prospective intervenor will unduly prolong or delay the proceedings; [and]
- (4) Whether the prospective intervenor will significantly contribute to full development and equitable resolution of the factual issues.

ORC §4903.221(B). As to the first factor, ELPC's interest in the case is to ensure that FirstEnergy's Application is as thorough and reasonable as possible. FirstEnergy submitted its Application pursuant to Section A, II of the Electric Security Plan ("ESP") Supplemental Stipulation, filed in Docket No. 10-388-EL-SSO on July 22, 2010 ("Stipulation"). That Stipulation was negotiated and drafted by a collaborative group, including ELPC. ELPC was an active participant in negotiations and signed the Stipulation as a non-opposing party. The Stipulation set forth a framework for FirstEnergy to work with signatory parties and non-opposing parties to assist in developing a REC RFP to purchase REC's through ten year contracts. The Stipulation was filed with and approved by the PUCO. FirstEnergy's Application is tailored to align with the language set forth in the Stipulation.

Further, ELPC has an interest in the successful implementation of Am. Sub. SB No. 221 (SB 221), which establishes requirements for utilities to provide energy efficiency programs in Ohio. FirstEnergy's Application addresses one method of complying with SB 221 and will help FirstEnergy achieve their RES benchmarks, a goal that ELPC is interested in promoting. As to the second factor, FirstEnergy's Application contains a "Change of Law" provision. ELPC's goal in negotiating the Stipulation in Docket No. 10-388-EL-SSO and in intervening in this case

is to ensure that investors are attracted to renewable energy projects and that renewable energy is successfully implemented in Ohio. ELPC's involvement in this proceeding, specifically regarding the FirstEnergy's Change of Law provision, will be to help ensure that investors will avoid uncertainty and risk when entered ten year contracts to the extent practicable. Any unnecessary risk or uncertainty would be a disincentive for developers and could prevent construction of renewable facilities, a goal which ELPC promotes. Under the third factor, ELPC's inclusion will not unduly delay or prolong the proceeding. ELPC is committed to working within any schedule this Commission sets to achieve the efficient and orderly disposition of the questions presented¹. Finally, ELPC will significantly contribute to the full development and resolution of the proceeding by bringing its unique perspective. ELPC was an active participant in Stipulation negotiations in Docket No. 10-388-EL-SSO. Further, ELPC has expertise and experience regarding renewable energy and energy efficiency regulation that will contribute to resolving the pending issues.

Similarly, ELPC meets the requirements set forth in OAC §4901-1-11:

- (1) The nature and extent of the prospective intervenor's interest;
- (2) The legal position advanced by the prospective intervenor and its probable relation to the merits of the case;
- (3) Whether the intervention by the prospective intervenor will unduly prolong or delay the proceedings;
- (4) Whether the prospective intervenor will significantly contribute to full development and equitable resolution of the factual issues;
- [and]
- (5) The extent to which the person's interest is represented by existing parties.

OAC §4901-11-1(B). The first four factors mirror those in ORC §4903.221 and for the reasons stated above, ELPC meets those factors. As to the fifth factor, ELPC provided input in Docket No. 10-388-EL-SSO, of which FirstEnergy's Application is based, and participated on behalf of

¹ ELPC is simultaneously filing Comments in accordance with the Commission's February 25, 2011 Order establishing a comment deadline of March 18, 2011.

Solar Alliance members including Community Energy, Standard Energy, and Solar World. ELPC's involvement in this case will contribute to the resolution of issues regarding solar advancement in Ohio. Also, ELPC maintains that no other party can adequately represent its interests as a regional environmental advocacy organization that also focuses on "green" economic development, including new manufacturing and job creation.

Finally, the Commission's policy is 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). ELPC's inclusion in this proceeding will contribute to the goal of broad participation in PUCO proceedings.

Because ELPC meets the criteria set forth in both ORC §4903.221 and OAC §4901-1-11, it respectfully asks this Commission to grant its motion to intervene in the above-captioned case.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing Motion to Intervene has been served upon the following parties, electronically or via regular U.S. mail, postage prepaid, this 18th day of March, 2011.

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Summary: Motion to Intervene electronically filed by Tara Santarelli on behalf of
Environmental Law & Policy Center