

FILE

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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PUCO

In the Matter of the 2011 Electric Long-)
Term Forecast and an Integrated) Case No. 11-1439-EL-FOR
Resource Plan for Duke Energy Ohio,)
Inc.)

REVISED MOTION TO INTERVENE OF THE
NATURAL RESOURCES DEFENSE COUNCIL AND THE SIERRA CLUB

For the reasons set forth in the accompanying Memorandum in Support, the Natural Resources Defense Council ("NRDC") and The Sierra Club ("Sierra Club") (collectively "Movants") move the Public Utilities Commission of Ohio for leave to intervene in the above-captioned case pursuant to Ohio Revised Code 4903.221 and 4935.04(E)(1), and Ohio Administrative Code 4901-1-11, and to grant to the intervening parties the full powers and rights specifically authorized by statute or by the provisions of the Ohio Administrative Code.

The Movants provide the following Memorandum in Support of the foregoing Motion.

Respectfully submitted,



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AUG 09 2011

**Attorney for Natural Resources Defense Council
Attorney for Sierra Club**

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In the Matter of the 2011 Electric Long-)	
Term Forecast and an Integrated)	Case No. 11-1439-EL-FOR
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**MEMORANDUM IN SUPPORT OF MOTION TO INTERVENE OF THE
NATURAL RESOURCES DEFENSE COUNCIL AND THE SIERRA CLUB**

I. Introduction

The Natural Resources Defense Council and The Sierra Club ("Movants") seek intervention in this proceeding regarding Duke Energy's proposed Integrated Resource Plan ("IRP") because they may be adversely affected by the Public Utilities Commission of Ohio ("Commission") ruling in this matter. This IRP process presents critical issues regarding what is Duke's most cost-effective and reasonable plan for meeting its customers' energy needs, the implementation of Senate Bill 221, compliance with existing and expected environmental regulations, the proposed retirement of the Walter C. Beckjord generating station, and the provision of an equitable economic transition for the employees and community impacted by that retirement. In addition, the IRP plays an important role in determining the extent to which Duke will pursue energy efficiency, renewable resources, combined heat and power, and low carbon generation sources, rather than dirtier energy resources. These questions directly impact the NRDC's and Sierra Club's interests in protecting public health and the environment, and the interests of their members who reside in Duke's service territory and/or live near Duke's power generation sources. As such, Movants are entitled to intervene in this proceeding.

II. Legal Standard

Ohio law states that a party may intervene in a Commission proceeding if that party “may be adversely affected by a public utilities commission proceeding.”¹ In the determination of whether a party may be adversely affected for purposes of intervention, the Commission is required to evaluate:

- (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.²

The Commission’s rules similarly provide that any person may intervene where “[t]he person has a real and substantial interest in the proceeding.”³ The PUCO regulations set forth the same four standards that are established in Ohio Revised Code 4903.221(B) for determining whether a party may be “adversely affected,” and also purport to add a fifth factor regarding “the extent to which the person’s interest is represented by existing parties.”⁴

As the Ohio Supreme Court recently held, intervention in Commission proceedings “ought to be liberally allowed so that the positions of all persons with a real and substantial interest in the proceedings can be considered by the [Commission].”⁵ The

¹ R.C. 4903.221

² R.C. 4903.221(B)

³ Ohio Adm. Code 4901-1-11(A)(2)

⁴ Ohio Adm. Code 4901-1-11(B).

⁵ *Ohio Consumers’ Counsel v. Pub. Util Comm’n of Ohio* (2006), 111 Ohio St. 3d 384, 388, 2006 Ohio 5853, 856 N.E.2d 940.

Commission has consistently maintained a policy to “encourage the broadest possible participation” in its proceedings, even under extenuating circumstances.⁶ NRDC and Sierra Club satisfy these liberal intervention standards and respectfully request that intervention be granted to both Movants in this case.

III. NRDC and Sierra Club are entitled to intervene under §4935.04(E)(1) because the organizations and their members have an interest in this proceeding.

The Movants are entitled to intervene as a matter of right because they have “an interest in the proceeding.” O.R.C. 4935.04(E)(1). NRDC is a non-profit environmental organization that has worked for its 40 year history to, among other things, promote energy efficiency and renewable energy sources, and to protect air and water quality. NRDC has more than 11,300 members in Ohio, many of whom reside in Duke Energy’s service area and/or live near Duke’s existing or proposed power generating facilities. Sierra Club is a non-profit environmental organization which has 1.4 million members and supporters in the United States and over 25,000 members and supporters in Ohio. Sierra Club was founded in 1892 and has been actively concerned with electric utility issues since it first engaged in protection of America’s scenic resources from hydropower development. Sierra Club has been actively involved in the Duke Energy Community Partnership and was active in the Cincinnati Gas and Electric Collaborative which operated from 1992 through 1996. Sierra Club has also been granted intervention in numerous Ohio cases.

This proceeding presents numerous issues that are directly relevant to the interests of NRDC and Sierra Club and their members, including the identification of a least cost,

⁶ See e.g. *In the Matter of the Application of The Dayton Power and Light Company*, 2009 WL 322883 at 1, Ohio PUC February 5, 2009 (Commission granted motion to intervene in light of policy to encourage participation, despite party’s failure to file within the deadline).

least risk portfolio of energy resources, implementation of Senate Bill 221 and the energy efficiency and renewable energy investments that it requires, the announced retirement of the Walter C. Beckjord generating station, how the Beckjord plant can be best replaced, and how an equitable transition can be provided for the employees and community that will be economically impacted by such retirement. The interest of NRDC and Sierra Club in this proceeding stems from the direct and indirect impacts it will have on the environment of the State of Ohio and surrounding areas, and on the electric bills of its members in Duke's service area.

Such interests in this proceeding are more than sufficient to establish NRDC and Sierra Club's right to intervene.⁷ O.A.C. 4901-1-11(A)(1);

IV. NRDC is entitled to intervene under §4903.221 because the organization and its members "may be adversely affected" by the outcome of this proceeding.

Movants may also intervene in this proceeding because they satisfy each of the four factors demonstrating that they "may be adversely affected" by the outcome.⁸

First, as described in Section II above, the nature and extent of Movants' interests in the proceeding is real and substantial,⁹ as the issues involved herein are directly related to Movants' interests in promoting energy efficiency and renewable energy, and will have direct economic, public health, and environmental impacts on NRDC and Sierra Club's members in Ohio.

Second, Movants' desire to promote energy efficiency, peak demand reduction, renewable energy, and cost-effective low carbon energy sources in Ohio is directly

⁷ R.C. 4935.04(E)(1) and Ohio Adm. Code 4901-1-11(A).

⁸ R.C. 4903.221

⁹ R.C. 4903.221(B)(1)

related to the issues of this case.¹⁰ The Integrated Resource Plan (“IRP”) process at issue is meant to identify a set of resources that meets Duke’s projected energy needs in a “cost effective and reasonable manner” that considers both “supply- and demand-side resources.” O.A.C. 4901:5-5-01(L). The Commission must determine the “reasonableness” of the IRP, including the “adequacy, reliability, and cost-effectiveness” of the plan. O.A.C. 4901:5-5-06(B)(3)(d). Among other potential issues, Movants intend to present evidence and argument that a portfolio involving aggressive implementation of energy efficiency and renewable energy sources, combined heat and power, and other low carbon generation sources such as natural gas combined cycle generation would satisfy Duke’s energy needs in a cost effective and reasonable manner. Such arguments are plainly related to the issues of this proceeding.

Third, Movants’ intervention will not unduly prolong or delay the proceeding,¹¹ as this motion is being filed very early in the proceeding and Movants are able to comply with all case management deadlines established by the Commission and/or agreed to by the parties.

Fourth, intervention by Movants will significantly contribute to the full development of the record in this proceeding,¹² as NRDC and Sierra Club will bring significant expertise to bear in these proceedings. NRDC’s staff and consultants have extensive experience in resource planning, analyzing the potential for cost effective energy efficiency, and in the laws and regulations regulating energy production. Further, NRDC has intervened and/or provided testimony on these issues in similar proceedings in a number of states including Illinois, Kentucky, Wisconsin, New York, Oregon,

¹⁰ R.C. 4903.221(B)(2)

¹¹ R.C. 4903.221(B)(3)

¹² R.C. 4903.221(B)(4)

California, New Jersey, and Iowa, and has been granted intervention in numerous cases before the Commission. NRDC has regularly presented testimony before the U.S. Congress and various state legislatures related to the electric utility industry, including: energy efficiency, renewable energy, nuclear energy, and coal generation. The Sierra Club has intervened in similar cases in many states, and has been involved in over thirty-five matters before the Commission.

As such, Movants should be permitted to intervene pursuant to Ohio Revised Code 4903.221.

V. NRDC and Sierra Club may intervene because Movants and their members have a “real and substantial interest” in the proceeding as presented in Ohio Administrative Code 4901-1-11(B).

Movants may also intervene in this proceeding because they satisfy each of the five factors demonstrating that they have a “real and substantial interest” in the proceeding. O.A.C. 4901-1-11(B). The first four factors are identical to those set forth under O.R.C. 4903.221(B) and, therefore, Movants should be permitted to intervene for the same reasons as set forth in Section III above.

As for the fifth factor, Movants’ interests in this proceeding will not be fully represented by other parties, O.A.C. 4901-1-11(B)(5), because none of the other parties can adequately represent the Movants’ interests as national environmental organizations that are interested in both environmental protection and promotion of energy efficiency, renewable energy, combined heat and power, and other low carbon generation sources as the least cost, least risk plan for Duke satisfying its customers’ energy needs.

VI. Conclusion

For the foregoing reasons, NRDC and the Sierra Club respectfully request that their Motions to Intervene be granted, and that the Movants be authorized to participate as full parties to this proceeding.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Chris J. Allwein", is written over a horizontal line.

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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing Motion to Intervene and Memorandum in Support has been filed with the Public Utilities Commission of Ohio and has been served upon the following parties via U.S. Mail, postage prepaid, on August 9, 2011.


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