

**In the Matter of the Review of the)
Alternative Energy Rider Contained in the)
Tariffs of the Ohio Edison Company, The) Case No. 11-5201-EL-RDR
Cleveland Electric Illuminating Company,)
and The Toledo Edison Company.)**

For the reasons set forth in the accompanying Memorandum in Support, the Sierra Club moves the Public Utilities Commission of Ohio for leave to intervene in the above-captioned case pursuant to Ohio Revised Code 4903.221 and Ohio Administrative Code 4901-1-11, and to grant to the Sierra Club the full powers and rights specifically authorized by statute or by the provisions of the Ohio Administrative Code.

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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Review of the)	
Alternative Energy Rider Contained in the)	
Tariffs of the Ohio Edison Company, The)	Case No. 11-5201-EL-RDR
Cleveland Electric Illuminating Company,)	
and The Toledo Edison Company.)	

**MEMORANDUM IN SUPPORT OF MOTION TO INTERVENE OF THE
SIERRA CLUB**

I. Introduction

The Sierra Club seeks intervention in this proceeding where a review of the Alternative Energy Resource Rider (“Rider AER”) of the Cleveland Electric Illuminating Company, the Toledo Edison Company and the Ohio Edison Company (collectively “FirstEnergy” or “Companies”) is pending. Sierra Club seeks to participate in this proceeding because Sierra Club and its members may be adversely affected by the Public Utilities Commission of Ohio (“PUCO” or “Commission”) rulings in these matters. This review presents important issues regarding FirstEnergy’s previous efforts to meet its customers’ energy needs, its costs of implementation of Senate Bill 221, and its compliance with Ohio law. These and other issues which are a part of this proceeding may directly impact Sierra Club’s interests in promoting alternative energy sources, and the interests of their members who reside in the Companies’ service territories. As such, Sierra Club is 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 Commission has consistently maintained a policy to “encourage the broadest possible participation” in its

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.

proceedings, even under extenuating circumstances.⁶ Sierra Club satisfies these liberal intervention standards and respectfully requests that its intervention be granted in these cases.

III. Sierra Club is entitled to intervene under §4903.221 because the organization and its members “may be adversely affected” by the outcome of this proceeding.

Sierra Club is entitled to intervene in this proceeding because Sierra Club satisfies each of the four statutory factors demonstrating that the organization and its members “may be adversely affected” by the outcome. First, the nature and extent of Sierra Club’s interests in the proceeding is real and substantial,⁷ as the issues involved herein are directly related to Sierra Club’s interests in promoting alternative energy and utility compliance with Ohio’s renewable benchmarks, and will have direct economic, public health, and environmental impacts on Sierra Club’s members and mission in Ohio.

In particular, Sierra Club states that it is the world's oldest and largest grassroots environmental organization. It has 1.4 million members and supporters in 65 Chapters, over 400 local groups nationwide 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.

The Sierra Club's statement of purpose is "To explore, enjoy and protect the wild places of the Earth, to practice and promote the responsible use of the Earth's ecosystem and resources; to educate and enlist humanity to protect and restore the quality of the natural and human environment; and to use all lawful means to carry out these objectives." The Sierra Club actively

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).

⁷ R.C. 4903.221(B)(1)

promotes responsible energy policy. Sierra Club has been granted intervention in numerous Ohio cases.⁸

These proceedings present issues that are directly relevant to the interests of Sierra Club and its members. For example, the Commission indicated its review includes procurement of renewable energy credits for compliance with Ohio's renewable benchmarks.⁹ This and other issues raised in this proceeding could play a significant role in determining the extent of the Companies' efforts to comply with statutory alternative and advanced energy benchmarks which are supported by Sierra Club. As such, the interests of Sierra Club in this proceeding stems from the direct and indirect impacts specific issue outcomes will have on the environment of the State of Ohio and surrounding areas and the electric bills of their members in FirstEnergy's service territories.

Second, the desire of Sierra Club to promote renewable energy in Ohio is directly related to the issues of this case.¹⁰ The Companies' efforts to procure renewable energy credits, including the employed procedures and associated costs, have an impact on whether compliance is achieved in the most cost-effective manner. This is important because these costs are collected from the Companies' customers through Rider AER. Sierra Club may assert that the Companies' efforts could be modified in a way that would benefit customers, the environment and Ohio's economy. Such arguments are plainly related to the issues of this proceeding.

⁸ See, for example, *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Authority to Establish A Standard Service Offer*, Case No 08-935-EL-SSO, Entry at ¶3 (October 20, 2008).

⁹ *In the Matter of the Review of the Alternative Energy Rider Contained in the Tariffs of Ohio Edison Company, et al*, Case No. 11-5201-EL-RDR, Attorney Examiner Entry at 1 (December 15, 2011).

¹⁰ R.C. 4903.221(B)(2)

Third, Sierra Club's intervention will not unduly prolong or delay the proceeding,¹¹ as this motion is being filed before any deadline set for intervention.¹² The Sierra Club is able to comply with all case management deadlines established by the Commission and/or agreed to by the parties.

Fourth, intervention by Sierra Club will significantly contribute to the full development of the record in this proceeding.¹³ Sierra Club will bring significant expertise to bear in these proceedings. Sierra Club's staff and consultants have extensive experience in resource planning, analyzing the potential for renewable energy, reviewing energy related costs, and in the laws and regulations regulating energy production. The Sierra Club has intervened in energy efficiency, renewable energy and coal generation cases in many states, and has been involved in over thirty-five matters before this Commission. As such, Sierra Club should be permitted to intervene pursuant to Ohio Revised Code §4903.221.

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

Sierra Club may also intervene in this proceeding because they satisfy each of the five factors listed in the PUCO rules demonstrating that they have a “real and substantial interest” in the proceeding.¹⁴ The first four factors are identical to those set forth under §4903.221(B) and, therefore, Sierra Club should be permitted to intervene for the same reasons as set forth in Section III above.

¹¹ R.C. 4903.221(B)(3)

¹² Ohio Adm. Code 4901-1-11(E)

¹³ R.C. 4903.221(B)(4)

¹⁴ Ohio Adm.Code 4901-1-11(B)

As for the fifth factor, Sierra Club's interests in this proceeding will not be fully represented by other parties¹⁵ because none of the other parties can adequately represent Sierra Club's interests as a national environmental organization that is interested in both environmental protection and promotion of renewable energy as an alternative electric generation resource. These alternative resource requirements are an important part of encouraging the development of renewable electric generating facilities in Ohio.¹⁶

V. Conclusion

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

Respectfully submitted,

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¹⁵ Ohio Adm. Code 4901-1-11(B)(5)

¹⁶ R.C. 4928.02(K) states: "It is the policy of this state...to encourage implementation of distributed generation across customer classes...."

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 electronic mail on January 10, 2012.

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This foregoing document was electronically filed with the Public Utilities

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in

Case No(s). 11-5201-EL-RDR

Summary: Motion Motion to Intervene electronically filed by Mr. Christopher J Allwein on behalf of The Sierra Club