

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

<b>In the Matter of the Commission's</b>	)	
<b>Review of Time-Differentiated and</b>	)	<b>Case No. 12-150-EL-COI</b>
<b>Dynamic Pricing Options for Retail</b>	)	
<b>Electric Services</b>	)	

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**MOTION TO INTERVENE  
BY THE  
OHIO BUSINESS COUNCIL FOR A CLEAN ECONOMY**

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For the reasons set forth in the accompanying Memorandum in Support, the Ohio Business Council for a Clean Economy 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 Ohio Business Council for a Clean Economy the full powers and rights specifically authorized by statute and by the provisions of the Ohio Administrative Code.

Respectfully submitted,

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**MEMORANDUM IN SUPPORT OF MOTION TO INTERVENE  
BY THE  
OHIO BUSINESS COUNCIL FOR A CLEAN ECONOMY**

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**I. Introduction**

The Ohio Business Council for a Clean Economy (“OBCCE” or “Business Council”) seeks intervention in this proceeding. The Public Utilities Commission of Ohio (“PUCO” or “Commission”) initiated this proceeding to solicit comments from interested parties regarding issues surrounding dynamic pricing and other options for generation customers. The OBCCE seeks to participate in this proceeding because the interests of Business Council members may be adversely affected by the Commission’s rulings in this matter. The case presents an opportunity for interested parties to assist the Commission in its goal of “assur[ing] that the pricing options available to consumers for competitive retail electric service are consistent with state policy.”<sup>1</sup> The PUCO intends to seek information and opinions from interested parties on the issued presented in its Entry dated January 11, 2012. This case may significantly affect in-state investment in the technology and equipment associated with time-differentiated and dynamic pricing options. These and other issues, which are a part of this proceeding, may directly impact the OBCCE’s interests in positioning Ohio as a world-leader in the development and manufacturing of clean energy and associated technologies, and the interests of Business Council

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<sup>1</sup> Commission Entry at 1 (January 11, 2012).

members engaged in these industries. As such, OBCCE 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.”<sup>2</sup> 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.<sup>3</sup>

The Commission’s rules similarly provide that any person may intervene where “[t]he person has a real and substantial interest in the proceeding.”<sup>4</sup> 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.”<sup>5</sup>

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

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<sup>2</sup> R.C. 4903.221

<sup>3</sup> R.C. 4903.221(B)

<sup>4</sup> Ohio Adm. Code 4901-1-11(A)(2)

<sup>5</sup> Ohio Adm. Code 4901-1-11(B).

interest in the proceedings can be considered by the [Commission].”<sup>6</sup> The Commission has consistently maintained a policy to “encourage the broadest possible participation” in its proceedings, even under extenuating circumstances.<sup>7</sup> OBCCE satisfies these intervention standards and respectfully requests that its intervention be granted in this case.

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

OBCCE is entitled to intervene in this proceeding because the Business Council 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 the Business Council’s interests in the proceeding are real and substantial,<sup>8</sup> as the issues involved herein are directly related to OBCCE’s interest in promoting dynamic and time-differentiated technology and equipment.

OBCCE is an Ohio-based organization representing a wide range of advanced energy businesses, with some members involved directly in clean energy and related industries. OBCCE is the premier network of businesses and business leaders advancing renewable energy, energy efficiency and clean energy technology through effective communications, broad advocacy and business development.<sup>9</sup> Business Council members have a financial interest in the development and expansion of the technology and equipment employed in time-differentiated and dynamic pricing.

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<sup>6</sup> *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.

<sup>7</sup> 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).

<sup>8</sup> R.C. 4903.221(B)(1)

<sup>9</sup> For more information, please see the OBCCE website at: <http://ohiobusinesscouncil.com/>

This proceeding presents issues that are directly relevant to the interests of OBCCE and its members. For example, the comments seek information on the preference of two different types of meters,<sup>10</sup> field testing,<sup>11</sup> and barriers of employing the pricing options mentioned. The interest of OBCCE in this proceeding stems from the direct and indirect impacts that will occur as the Commission decides how to proceed on these and other issues.

Second, the desire of the OBCCE to promote practical solutions to the significant hurdles Ohio faces in meeting the growing energy needs of Ohio customers through clean energy and related technologies and pricing options is directly related to the issues of this case.<sup>12</sup> OBCCE representatives will attend the technical conference and provide comments in the proceeding which will include recommendations that align the PUCO's decisions with state policies and requirements.<sup>13</sup> These recommendations are directly related to the issues in this proceeding.

Third, the Business Council's intervention will not unduly prolong or delay the proceeding<sup>14</sup> as this motion and future comments will be filed by the set deadlines.<sup>15</sup>

Fourth, intervention by OBCCE will significantly contribute to the full development of the record in this proceeding.<sup>16</sup> The Business Council will bring significant expertise to bear in this case. OBCCE's members have extensive experience in all aspects of clean energy and energy efficiency technology, equipment and deployment. Therefore, the Business Council should be permitted to intervene pursuant to Ohio Revised Code §4903.221.

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

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<sup>10</sup> Entry at 2-3 (January 11, 2012).

<sup>11</sup> Id.

<sup>12</sup> R.C. 4903.221(B)(2)

<sup>13</sup> R.C. 4928.02

<sup>14</sup> R.C. 4903.221(B)(3)

<sup>15</sup> Entry at 5(January 11, 2012).

<sup>16</sup> R.C. 4903.221(B)(4)

The OBCCE may also intervene in this proceeding because the Business Council satisfies each of the five factors listed in the PUCO rules demonstrating that they have a “real and substantial interest” in the proceeding.<sup>17</sup> The first four factors are identical to those set forth under §4903.221(B) and, therefore, the OBCCE should be permitted to intervene for the same reasons as set forth in Section III above.

As for the fifth factor, the Business Council’s interests in this proceeding will not be fully represented by other parties<sup>18</sup> because none of the other parties can adequately represent OBCCE’s interests as an Ohio organization representing businesses involved in every aspect of the advanced energy industry. Therefore, the OBCCE respectfully requests that its intervention and participation be granted in this case.

## **V. Conclusion**

For the foregoing reasons, the Ohio Business Council for a Clean Economy respectfully request that their Motion to Intervene be granted, that the OBCCE be authorized to participate as a party in this proceeding, and that the Commission consider and adopt the Business Council’s recommendations as submitted.

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<sup>17</sup> Ohio Adm. Code 4901-1-11(B)

<sup>18</sup> Ohio Adm. Code 4901-1-11(B)(5)

Respectfully submitted,

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**Attorneys for the Ohio Business Council for a Clean  
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### **CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of the foregoing *Motion to Intervene* has been filed with the Public Utilities Commission of Ohio and has been served upon the following parties via electronic mail on February 2, 2011.

/s/ Christopher J. Allwein  
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Summary: Motion Motion to Intervene by the Ohio Business Council for a Clean Economy  
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Clean Economy