

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of)	
The Dayton Power and Light Company for)	Case No. 13-833-EL-POR
Approval of Its Energy Efficiency and Peak)	Case No. 13-837-EL-WVR
Demand Reduction Program Portfolio Plan)	
For 2013 through 2015)	

**MOTION TO INTERVENE
BY THE
SIERRA CLUB**

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 cases 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.

Respectfully submitted,

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

I. Introduction

The Sierra Club seeks intervention in these proceedings where a utility application for approval of energy efficiency and peak demand reduction programs is pending. Sierra Club seeks to participate in these cases before the Public Utilities Commission of Ohio (“PUCO” or “Commission”) because Sierra Club and its members’ interests may be adversely affected by rulings in these matters. The Dayton Power and Light Company’s (“DP&L” or “Company”) Application presents important issues regarding the implementation of energy efficiency and peak demand reduction utility-scale programs in Ohio. These and other issues which are a part of these proceedings may directly impact Sierra Club’s interests in promoting and maximizing the potential of energy efficiency and the interests of their members who reside in the Companies’ service territories. As such, Sierra Club is entitled to intervene in these proceedings.

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 these proceedings.

Sierra Club is entitled to intervene in these proceedings 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 interest in the proceedings is real and substantial,⁷ as the issues involved herein are directly related to Sierra Club’s interests in promoting energy efficiency and its related benefits. The utilization of these resources 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 has

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)

been involved in promotion of responsible energy policy almost since its first year. Sierra Club has also 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, DP&L indicated in its application that it seeks approval of a shared savings mechanism.⁹ These and other issues raised in these proceedings could play a significant role in determining the amount and type of energy efficiency that DP&L will choose to employ. The proliferation of energy efficiency resources is supported by Sierra Club. As such, the interests of Sierra Club in these proceedings 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 Ohio members.

Second, the desire of Sierra Club to promote energy efficiency in Ohio is directly related to the issues of these cases.¹⁰ The issues surrounding the types of programs employed by DP&L and the Company's participation in the PJM market may affect program participation and the costs paid by customers. Sierra Club may assert that the Commission must exercise its statutory authority in this area in a way that would benefit customers, the environment and Ohio's economy. Such arguments are plainly related to the issues of these proceedings.

Third, Sierra Club's intervention will not unduly prolong or delay the proceedings¹¹ as this motion is being filed by the deadline set for participation in the cases¹² and in accordance

⁸ See, for example, *In the Matter of the Application of The Dayton Power and Light Company For Approval of its Electric Security Plan*, Case Nos. 08-1094-EL-SSO, et al, Entry at ¶4 (February 5, 2009); and: *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Approval of Their Energy Efficiency and Peak Demand Reduction Program Portfolio Plans for 2013 through 2015*; Case Nos. 12-2190-EL-POR, et al, Entry at ¶4 (October 16, 2012).

⁹ DP&L Application at 5-6 (April 15, 2013).

¹⁰ R.C. 4903.221(B)(2)

¹¹ R.C. 4903.221(B)(3)

¹² Attorney Examiner Entry at 2 (January 24, 2013).

with Rule 4901-1-11. 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 these proceedings.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, energy efficiency 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 these proceedings because they satisfy each of the five factors listed in the PUCO rules demonstrating that they have a “real and substantial interest” in the proceedings.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.

As for the fifth factor, Sierra Club's interests in these proceedings 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 environmental protection, promotion of energy efficiency as an alternative resource, and maximizing the

¹³ R.C. 4903.221(B)(4)

¹⁴ Ohio Adm.Code 4901-1-11(B)

¹⁵ Ohio Adm. Code 4901-1-11(B)(5)

benefits of energy efficiency resources. These energy efficiency and peak demand reduction resource requirements are an important part of ensuring the diversity of electricity supplies and suppliers 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 a full party to these proceedings.

Respectfully submitted,

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¹⁶ R.C. 4928.02(C) states: “It is the policy of this state...to ensure the diversity of electricity supplies and suppliers....”

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 or regular mail on May 20, 2013.

/s/Christopher J. Allwein
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Summary: Motion to Intervene electronically filed by Mr. Christopher J Allwein on behalf of
THE SIERRA CLUB