

**PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke )  
Energy Ohio, Inc. for Authority to Establish )  
a Standard Service Offer Pursuant to Section ) Case No. 14-841-EL-SSO  
4928.143 Revised Code, in the Form of an )  
Electric Security Plan, Accounting )  
Modifications and Tariffs for Generation  
Service.

)  
In the Matter of the Application of Duke )  
Energy Ohio, Inc. for Authority to Amend ) Case No. 14-842-EL-ATA  
its Certified Supplier Tariff, P.U.C.O. No. )  
20. )

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**MOTION TO INTERVENE BY  
THE NATURAL RESOURCES DEFENSE COUNCIL**

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Pursuant to Ohio Revised Code (“ORC”) § 4903.221 and Ohio Administrative Code (“OAC”) 4901-1-11, the Natural Resources Defense Council (“NRDC”) respectfully moves to intervene in the above-captioned proceedings with the full powers and rights granted to intervening parties. As explained more thoroughly in the attached Memorandum in Support, NRDC has a real and substantial interest in the above-captioned proceedings. Additionally, the interests of NRDC are not adequately represented by any other party to this matter, and its participation in these proceedings will contribute to a just and expeditious resolution of the issues and questions presented. Further, NRDC’s participation will not unduly delay the proceeding or prejudice any other party.

NRDC respectfully requests that this Commission grant its motion to intervene for these reasons and those set forth in more detail in the attached Memorandum in Support.

Dated: July 8, 2014

Respectfully submitted,

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Form Of An Electric Security Plan, )  
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**MEMORANDUM IN SUPPORT OF THE MOTION TO INTERVENE BY  
THE NATURAL RESOURCES DEFENSE COUNCIL**

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**I. Introduction**

Ohio Revised Code (“ORC”) § 4903.221 states that “[a]ny other person who may be adversely affected by a public utilities commission proceeding may intervene in such proceeding” provided the Public Utilities Commission of Ohio (“Commission”) makes certain determinations. The Natural Resources Defense Council (“NRDC”) seeks intervention in these proceedings regarding Duke Energy Ohio, Inc.’s (“Duke”) application to establish a standard service offer in the form of an electric security plan (“Application”). The Commission’s rulings on the issues presented as part of these proceedings may directly impact NRDC’s interests in protecting public health and the environment, and the interests of its members who reside in Duke’s service territories and/or live near Duke’s power generation sources. NRDC and its members’ interests are not adequately represented by the other parties hereto. As such, NRDC is entitled to intervene in the above-captioned 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.”<sup>1</sup> In determining whether a party may be adversely affected for purposes of intervention, the Ohio Revised Codes require the Commission 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; [and]
- (4) Whether the prospective intervenor will significantly contribute to full development and equitable resolution of the factual issues.<sup>2</sup>

The Commission’s own rules similarly provide that any person may intervene where “[t]he person has a real and substantial interest in the proceeding.”<sup>3</sup> These rules 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 add a fifth factor regarding “the extent to which the person’s interest is represented by existing parties.”<sup>4</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 interest in the proceedings can be considered by the [Commission].”<sup>5</sup> The Commission has consistently maintained a policy to “encourage the broadest possible participation” in its proceedings, even under extenuating circumstances.<sup>6</sup> NRDC satisfies these liberal intervention

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<sup>1</sup> R.C. 4903.221.

<sup>2</sup> R.C. §4903.221(B)

<sup>3</sup> Ohio Adm. Code 4901-1-11(A)(2).

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

<sup>5</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>6</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).

standards, as well as the four factors identified in the Ohio Revised Codes and the five factors in the Commission's rules, and thus respectfully requests that it be granted intervention in the above-captioned proceedings.

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

NRDC is entitled to intervene in these proceedings because NRDC satisfies each of the four statutory factors demonstrating that the organization and its members “may be adversely affected” by the outcome.

First, as is required by Ohio state law,<sup>7</sup> the nature and extent of NRDC's interest in these proceedings is real and substantial, because the issues involved herein are directly related to NRDC's interests in promoting energy efficiency, and will have direct economic, public health, and environmental impacts on NRDC's mission in Ohio and on its members. In particular, NRDC is a national, 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 10,600 members in Ohio, many of whom reside in Duke's service area and/or live near its power generating facilities. NRDC's interest in these proceedings is to ensure that Duke's Application adequately protects and promotes cost-effective clean and efficient energy in Ohio.

NRDC is also interested in the effective implementation of Am. Sub. SB No. 221 (“SB 221”), which sets out energy efficiency and alternative energy requirements for electric distribution utilities. Duke's Application addresses issues regarding its responsibilities under SB 221 and programs administered by Duke pursuant to that law. NRDC's interest in these

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<sup>7</sup> R.C. 4903.221(B)(1).

proceedings is to ensure that the environment and consumers are adequately protected through the implementation of the energy efficiency and alternative energy standards set out in SB 221.

Further, Duke proposes in its Application to continue its Distribution Decoupling Rider (“Rider DDR”), and indicates its intent to propose straight fixed variable rate design in its next distribution rate case. NRDC has a substantial interest in representing its members in Ohio who are customers of Duke, specifically in ensuring that Duke’s rates encourage customers to use their energy efficiently and spur investment in cost-effective energy efficiency and renewable resources. The interests of these members will be impacted by the Commission’s disposition on the Rider DDR, and its relation to any future proposal for straight fixed variable rate design. In addition, one of NRDC’s core missions is to promote smart energy policy in state and federal decision making, including maximizing energy efficiency achievements. Thus, the Commission’s disposition on the rate design issues in Duke’s Application will directly and materially affect these interests.

Second,<sup>8</sup> because of the potential impacts on NRDC and its members in Ohio, NRDC wants to ensure that Duke’s Application meets the applicable legal requirements and advances state policies by adequately protecting customers and the environment and by promoting energy efficiency, demand-side management, renewable energy, and reliable electric service. NRDC intends to present evidence and argument in support of policies that would promote aggressive implementation of cost-effective energy efficiency and peak demand reductions for Duke’s customers. Such arguments are plainly related to the issues of these proceedings, particularly those addressing Duke’s responsibilities under SB 221, and its proposals on rate design issues that will impact customer propensity to conserve energy.

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<sup>8</sup> R.C. 4903.221(B)(2).

Third,<sup>9</sup> NRDC's intervention will not unduly prolong or delay these proceedings, as this motion is being filed by the deadline set for intervention. NRDC is also committed to complying with all case management deadlines established by the Commission and/or agreed to by the parties, as well as to the efficient disposition of the issues raised in these proceedings.

Fourth, intervention by NRDC will greatly contribute to the full development of the record in these proceedings.<sup>10</sup> NRDC will bring significant expertise to bear, including staff and consultants who 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, Minnesota, Wisconsin, New York, Oregon, California, New Jersey, and Iowa, and has been granted intervention in numerous cases before this 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. As such, NRDC should be permitted to intervene pursuant to Ohio Revised Code §4903.221.

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

NRDC may also intervene in these proceedings because it satisfies each of the five factors listed in the PUCO rules demonstrating that it has a “real and substantial interest” in these cases.<sup>11</sup> The first four factors are identical to those set forth under §4903.221(B) and, therefore, NRDC should be permitted to intervene for the same reasons as set forth in Section III above.

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<sup>9</sup> R.C. 4903.221(B)(3).

<sup>10</sup> R.C. 4903.221(B)(4).

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

As for the fifth factor, NRDC's interests in these proceedings will not be fully represented by other parties.<sup>12</sup> No other parties can adequately represent NRDC's interests as a national environmental organization that is interested in environmental protection, clean energy, and the promotion of energy efficiency and renewable energy as the most reasonable and prudent way for Duke to maintain and diversify essential electric services.<sup>13</sup> Because no other party to these proceedings advocates from a national platform on these issues, and no other party speaks for NRDC's 10,600 members in Ohio, no other party can represent NRDC's interests.

## **V. Conclusion**

For the foregoing reasons, NRDC respectfully requests that its motion be granted, and that it be authorized to participate as a full party in the above-captioned proceedings.

Dated: July 8, 2014

Respectfully submitted,

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<sup>12</sup> Ohio Adm. Code 4901-1-11(B)(5).

<sup>13</sup> R.C. 4928.02 states: "It is the policy of this state...to ensure diversity of electricity supplies and suppliers..."



## CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing *Motion to Intervene and Memorandum in Support*, submitted on behalf of the Natural Resources Defense Council, was served by electronic mail, upon the following Parties of Record, this 8<sup>th</sup> day of July, 2014.

/s/ Samantha Williams

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**This foregoing document was electronically filed with the Public Utilities**

**Commission of Ohio Docketing Information System on**

**7/8/2014 2:32:25 PM**

**in**

**Case No(s). 14-0841-EL-SSO**

Summary: Motion to Intervene by the Natural Resources Defense Council electronically filed by Samantha Williams on behalf of Natural Resources Defense Council