

PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Duke) Case No. 14-1580-EL-RDR
Energy Ohio, Inc., for Approval to Continue)
Cost Recovery Mechanism for Energy)
Efficiency Programs through 2016.)

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

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 proceeding 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 proceeding. Additionally, the interests of NRDC are not adequately represented by any other party to this matter, and its participation in this proceeding 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: November 21, 2014

Respectfully submitted,

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PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Duke) Case No. 14-1580-EL-RDR
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**MEMORANDUM IN SUPPORT OF THE MOTION TO INTERVENE BY
THE NATURAL RESOURCES DEFENSE COUNCIL**

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 the proceeding regarding Duke Energy Ohio, Inc.’s (“Duke”) application for approval to continue its cost-recovery mechanism for energy efficiency programs through 2016 (“Application”). The Commission’s rulings on the issues presented as part of the proceeding 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 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 determining whether a

¹ R.C. 4903.221.

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.²

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."³ 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."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 proceedings, even under extenuating circumstances.⁶ NRDC satisfies these liberal intervention 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 proceeding.

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.

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).

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

NRDC is entitled to intervene in the proceeding 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,⁷ the nature and extent of NRDC’s interest in the proceeding 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 the proceeding 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”), as amended by SB 310, which sets out energy efficiency and alternative energy requirements for electric distribution utilities. Duke’s Application addresses issues regarding programs administered by Duke pursuant to that law. NRDC’s interest in the proceeding 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 cost-recovery mechanism that would include program cost recovery and shared savings for programs designed to achieve

⁷ R.C. 4903.221(B)(1).

energy efficiency and peak demand reduction. NRDC was a party to Case No. 11-4393-EL-RDR and the stipulation in that docket in which these cost-recovery issues were originally established.⁸ NRDC has a substantial interest in representing its members in Ohio who are customers of Duke, specifically in ensuring that Duke's programs 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 Duke's cost recovery in 2016 associated with its energy efficiency and peak demand reduction programs. 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 issues in Duke's Application will directly and materially affect these interests.

Second,⁹ 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 this proceeding, particularly those addressing Duke's responsibilities under SB 221, and its request for cost recovery of energy efficiency and demand response programs.

⁸ *In the Matter of the Application of Duke Energy Ohio, Inc., for an Energy Efficiency Cost Recovery Mechanism and for Approval of Additional Programs for Inclusion in its Existing Portfolio*, Case No. 11-4393-EL-RDR, Opinion and Order, (August 15, 2012).

⁹ R.C. 4903.221(B)(2).

Third,¹⁰ NRDC's intervention will not unduly prolong or delay this proceeding, 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 the proceeding.

Fourth, intervention by NRDC will greatly contribute to the full development of the record in the proceeding.¹¹ NRDC was a party to Case No. 11-4393-EL-RDR and to the stipulation in that docket in which these cost-recovery issues were established, and submitted substantial testimony and briefing in that docket. Thus, NRDC will bring significant expertise to bear on the issues raised in the present proceeding, 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.

¹⁰ R.C. 4903.221(B)(3).

¹¹ R.C. 4903.221(B)(4).

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 the proceeding because it satisfies each of the five factors listed in the PUCO rules demonstrating that it has a “real and substantial interest” in this case.¹² 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.

As for the fifth factor, NRDC’s interests in the proceeding will not be fully represented by other parties.¹³ 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.¹⁴ Because no other party to this proceeding 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 proceeding.

Dated: November 21, 2014

Respectfully submitted,

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¹² Ohio Adm.Code 4901-1-11(B).

¹³ Ohio Adm. Code 4901-1-11(B)(5).

¹⁴ 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 21st day of November, 2014.

/s/ Samantha Williams

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