

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

**In the Matter of the Application of)
Ohio Power Company to Establish a)
Standard Service Offer Pursuant to Section) Case No. 13-2385-EL-SSO
4928.143, Revised Code, in the Form of an)
Electric Security Plan)**

**In the Matter of the Application of)
Ohio Power Company for Approval of) Case No. 13-2386-EL-AAM
Certain Accounting Authority)**

MOTION TO INTERVENE BY SIERRA CLUB

For the reasons set forth in the accompanying Memorandum in Support, Sierra Club moves the Public Utilities Commission of Ohio for leave to intervene in the above-captioned dockets pursuant to Ohio Revised Code 4903.221 and Ohio Administrative Code 4901-1-11, and asks that the Commission grant it the full powers and rights of intervention.

Dated: June 2, 2016

Respectfully submitted,

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

I. Introduction

Sierra Club seeks to intervene in this proceeding in which the Ohio Power Company (“AEP Ohio”) has submitted, on May 13, 2016, an Application to Amend its Electric Security Plan (“ESP”). In this ESP amendment proceeding, AEP Ohio seeks an increase in the fixed monthly customer charge and an offsetting reduction in energy charges.¹ Sierra Club seeks to participate in these proceedings because Sierra Club and its members may be adversely affected by the rulings of the Public Utilities Commission of Ohio (“Commission”) regarding the proposed increase to the fixed customer charge. Specifically, as described below, Sierra Club’s and its members’ interests in encouraging energy efficiency may be adversely affected by the rulings of the Commission in this proceeding.

¹ Ohio Power Company’s Application to Amend its Electric Security Plan, pp. 12, 14.

Sierra Club is the country's oldest and largest grassroots environmental organization. It has millions of members and supporters nationwide and thousands of members in Ohio.² Sierra Club has promoted responsible local, state, and national energy policy for decades, and has been actively concerned with electric utility issues. Sierra Club routinely participates in proceedings before the Commission and other public utility commissions around the country. Sierra Club has been granted intervention in numerous Ohio electric utility cases.³

As it has done in the FirstEnergy ESP and AEP Ohio power purchase agreement rider proceedings, Case Nos. 14-1297-EL-SSO and 14-1693-EL-RDR, respectively, Sierra Club expects to assist the Commission in deciding these cases by working to build

² 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."

³ See, e.g., *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company for Authority to Provide for a Standard Service Offer Pursuant to R.C. 4928.143 in the Form of an Electric Security Plan*, Case No. 14-1297-EL-SSO, Attorney Examiners' Entry, p. 18 (Dec. 1, 2014); *In the Matter of the Application Seeking Approval of Ohio Power Company's Proposal to Enter into an Affiliate Power Purchase Agreement for Inclusion in the Power Purchase Agreement Rider*, Case No. 14-1693-EL-RDR, Attorney Examiners' Entry, p. 7 (Sept. 15, 2015); *In the Matter of the Application of Duke Energy Ohio, Inc. for Authority to Establish a Standard Service Offer in the form of an Electric Security Plan*, Case No. 14-0842-EL-ATA, Attorney Examiners' Entry, p. 2 (Aug. 5, 2014).

a thorough record. For these reasons and as set forth below, Sierra Club is entitled to intervene in these proceedings.

II. Legal Standard for Intervention in Commission Proceedings.

The Ohio Revised Code provides that a party may intervene in a Commission proceeding if that party “may be adversely affected by a public utilities commission proceeding.”⁴ To determine whether a party may be adversely affected for purposes of intervention, the Commission evaluates:

- (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.⁵

The Commission’s rules similarly provide that any person may intervene where “[t]he person has a real and substantial interest in the proceeding.”⁶ The Commission’s regulations set forth the same four standards that are established in R.C. 4903.221(B) for determining whether a party may be “adversely affected,” and also purport to add a fifth

⁴ R.C. 4903.221.

⁵ R.C. 4903.221(B).

⁶ Ohio Adm. Code 4901-1-11(A)(2).

factor regarding “the extent to which the person’s interest is represented by existing parties.”⁷

As the Ohio Supreme Court has 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].”⁸ The Commission has consistently maintained a policy to “encourage the broadest possible participation” in its proceedings.⁹ Sierra Club easily satisfies these liberal intervention standards and respectfully requests that its intervention be granted in this case.

III. Sierra Club is Entitled to Intervene Under R.C. 4903.221 Because Sierra Club 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 this proceeding are real and substantial,¹⁰ as the issues involved are directly related to Sierra Club’s interests in

⁷ Ohio Adm. Code 4901-1-11(B).

⁸ *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.

⁹ 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).

¹⁰ R.C. 4903.221(B)(1).

promoting energy efficiency.¹¹ Increasing the monthly fixed charge for electric service, along with an offsetting reduction in the energy charge, will decrease incentives for energy efficiency. Related, such decreased incentives for energy efficiency will, all else equal, encourage Ohio's continued reliance on large, otherwise uneconomic, coal-burning power plants. Thus, Sierra Club's and its members' interests in promoting energy efficiency—often our cheapest and always our cleanest source of energy—and in reducing reliance on coal-burning plants are both implicated by AEP Ohio's proposal, and a Commission ruling in this proceeding may adversely affect those interests. Similarly, the positions advanced by Sierra Club will bear directly on the merits of these proceedings. Among other environmental concerns, Sierra Club is focused on the deployment of clean-energy resources, including energy efficiency, that will create economic, public health, and environmental benefits throughout Ohio, including for Sierra Club's Ohio members.

Second, Sierra Club's intervention will not unduly prolong or delay the proceedings¹² as this motion is timely filed¹³ and Sierra Club is able to and will comply

¹¹ Because the first and second prongs of the test established in R.C. 4903.221 are closely related, we address those prongs together.

¹² R.C. 4903.221(B)(3).

¹³ Ohio Adm. Code 4901-1-11(E). As yet, no procedural schedule has been set for these proceedings. AEP Ohio has proposed a procedural schedule that provides an intervention deadline of June 6, 2016. *See* Ohio Power Company's Application to Amend its Electric Security Plan, p. 17.

with all case management deadlines established by the Commission or agreed to by the parties.

Third, intervention by Sierra Club will significantly contribute to the full development of the record in these proceedings.¹⁴ Sierra Club will bring significant expertise to bear in these proceedings. Sierra Club's staff and consultants have extensive experience in electric resource planning, analyzing electric-market and economic forecasts, and in the laws and policies of energy efficiency. Sierra Club has intervened in energy efficiency dockets in many states. Of particular note in Ohio, Sierra Club played a significant role in the FirstEnergy ESP (Case No. 14-1297-EL-SSO) and AEP PPA Rider (Case No. 14-1693-EL-RDR) proceedings in terms of assisting the Commission with the development of a factual record. In those proceedings, Sierra Club conducted written discovery, noticed depositions of company witnesses, filed expert testimony, and otherwise contributed significantly to the development of the record. As such, Sierra Club should be permitted to intervene pursuant to R.C. 4903.221.

IV. Sierra Club May Intervene Because Sierra Club and Its Members Have a “real and substantial interest” in These Proceedings Under Ohio Administrative Code 4901-1-11(B).

Sierra Club may also intervene in these proceedings because it satisfies each of the five factors listed in the Commission rules demonstrating that Sierra Club and its members have a “real and substantial interest” in the proceeding.¹⁵ The first four factors

¹⁴ R.C. 4903.221(B)(4).

¹⁵ Ohio Adm. Code 4901-1-11(B).

are identical to those set forth under R.C. 4903.221 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,¹⁶ Sierra Club's interests in these proceedings will not be fully or adequately represented by other parties. Sierra Club's interests do not always align with other environmental organizations or consumer-protection organizations and, accordingly, Sierra Club's interests are not be adequately protected by the participation of other such organizations in these proceedings.

V. Conclusion

For the foregoing reasons, Sierra Club respectfully request that this Motion to Intervene be granted, and Sierra Club be authorized to participate as a full party to these proceedings.

Dated: June 2, 2016

Respectfully submitted,

/s/ Richard C. Sahli
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¹⁶ Ohio Adm. Code 4901-1-11(B)(5).

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing *Motion to Intervene* by *Sierra Club* has been filed with the Public Utilities Commission of Ohio and has been served upon the following parties via electronic mail on June 2, 2016.

/s/Richard C. Sahli

Richard C. Sahli

Service List

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Summary: Motion to Intervene by the Sierra Club electronically filed by Mr. Richard C. Sahli
on behalf of Sierra Club