

**BEFORE
THE 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)	
4928.143, Revised Code, in the Form of an)	Case No. 17-1263-EL-SSO
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 its)	Case No. 17-1264-EL-ATA
Certified Supplier Tariff, P.U.C.O. No. 20)	
In the Matter of the Application of Duke)	
Energy Ohio, Inc., for Authority to Defer)	Case No. 17-1265-EL-AAM
Vegetation Management Costs)	

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 (“Commission”) 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 that are authorized by statute or by the provisions of the Ohio Administrative Code.

Dated: November 16, 2017

Respectfully submitted,

/s/ Richard C. Sahli .
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MEMORANDUM IN SUPPORT OF SIERRA CLUB’S MOTION TO INTERVENE

I. Introduction

Sierra Club seeks to intervene in these proceedings in which Duke Energy Ohio, Inc. (“Duke”) has filed an Application for a Standard Service Offer in the form of an Electric Security Plan (“ESP Proceeding”). Sierra Club has already moved to intervene in a separate proceeding in which Duke has submitted an Application seeking approval for cost recovery via a modified Price Stabilization Rider that would allow it to recover the net costs of its ownership of two coal-burning power plants operated by the Ohio

Valley Electric Corporation (“Rider PSR Proceeding”).¹ In the Duke Rider PSR Proceeding, Duke has filed testimony purporting to show that its continuing involvement in the Ohio Valley Electric Corporation (“OVEC”) contract will benefit customers. Sierra Club seeks to participate here in the Duke ESP Proceeding because, based on information and belief, Duke is now seeking the same relief here—cost recovery related to its OVEC contract—in this proceeding for which it established the Duke Rider PSR Proceeding. Based on this apparent change in Duke’s procedural approach to seeking OVEC cost recovery, Sierra Club and its members may be adversely affected by the rulings of the Commission in these proceedings. These proceedings present an issue of interest to Sierra Club, specifically, Duke’s cost recovery for its OVEC contract under the Price Stabilization Rider that would allow it to recover the net costs of its ownership share of the Clifty Creek and Kyger Creek power plants. The issues related to OVEC cost recovery may directly impact Sierra Club’s and its members’ interests in promoting clean energy, reducing reliance on coal-burning generation, and encouraging energy efficiency. Sierra Club’s members who reside in Duke’s service area have a direct interest in assuring reasonable energy prices. As it has done in the previous Duke ESP proceeding, Case No. 14-842-EL-SSO—in which Duke first proposed this Price Stabilization Rider—and in the FirstEnergy ESP and AEP Ohio PPA Rider proceedings,

¹ In the Matter of the Application of Duke Energy Ohio, Inc., for Approval to Modify Rider PSR Case No. 17-872-EL-RDR et al. Sierra Club moved to intervene in the Duke Rider PSR Proceeding on June 28, 2017.

Case Nos. 14-1297-EL-SOO and 14-1693-EL-RDR, Sierra Club expects to assist the Commission in deciding these cases by working to build a thorough record. As such, Sierra Club is entitled to intervene in these proceedings.

II. Legal Standard

The Ohio Code provides that a party may intervene in a Commission proceeding if that party “may be adversely affected by a public utilities commission proceeding.”² 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.³

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

² R.C. 4903.221.

³ R.C. 4903.221(B).

⁴ Ohio Adm. Code 4901-1-11(A)(2).

factor regarding “the extent to which the person’s interest is represented by existing parties.”⁵

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].”⁶ The Commission has consistently maintained a policy to “encourage the broadest possible participation” in its proceedings.⁷ Sierra Club easily satisfies these liberal intervention standards and respectfully requests that its intervention be granted in these cases.

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 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 interests in these proceedings are real and substantial,⁸ as the issues involved are directly related to Sierra Club’s interests in reducing reliance on aging coal-burning generation, promoting clean-energy resources,

⁵ Ohio Adm. Code 4901-1-11(B).

⁶ *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.

⁷ 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).

⁸ R.C. 4903.221(B)(1).

and assuring that its members pay reasonable prices for electric generation.⁹ 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 addressing the pressing environmental and health problems associated with the mining, burning, and disposal of coal. Further, Sierra Club has an interest in the appropriate deployment of clean-energy resources that will create economic, public health, and environmental benefits throughout Ohio, including for Sierra Club's Ohio members.

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. 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." Sierra Club has promoted responsible local, state, and national energy policy for decades.

Sierra Club has been actively concerned with electric utility issues for decades and routinely participates in proceedings before the Commission and other public utility commissions around the country. Sierra Club has been granted intervention in numerous

⁹ Because the first and second prongs of the test established in R.C. 4903.221 are closely related, these prongs are addressed together.

Ohio electric utility cases, including in Duke's previous ESP proceeding in which the Price Stabilization Rider was first proposed.¹⁰

The instant Duke ESP Proceedings present issues that are directly relevant to the interests of Sierra Club and its members. On information and belief, Duke is now proposing to recover the net costs of its ownership share of the two 1950s-era OVEC coal-burning plants. If approved, this cost recovery would increase customer bills and lock in subsidies that would promote the continued operation of these generation plants potentially for over two decades. Absent such subsidy, these plants may not be economically viable. Sierra Club's interest in reducing reliance on coal-burning generation would, therefore, be directly and adversely impacted if the Duke's OVEC cost recovery were approved in this proceeding.

Second, Sierra Club's intervention will not unduly prolong or delay the proceedings.¹¹ Sierra Club acknowledges that the formal deadline for intervention has passed, but asserts that this motion is nevertheless timely filed. Sierra Club learned after

¹⁰ 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).

¹¹ R.C. 4903.221(B)(3).

the deadline for intervention that Duke is now seeking cost recovery in this ESP Proceeding for OVEC, even though it had established a separate proceeding for this specific purpose (in which Sierra Club timely intervened). Accordingly, Sierra Club's intervention is timely because Duke has apparently changed the nature of this proceeding. In any event, no party would be prejudiced by Sierra Club's intervention at this time and Sierra Club is able to comply 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.¹² 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, assessing the costs of environmental compliance for coal-burning power plants, and in the laws and regulations of energy production. Sierra Club has intervened in coal generation cases in many states. Of particular note, Sierra Club played an important 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, as well in the Duke's previous ESP proceeding, Sierra Club conducted written discovery, 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.

¹² R.C. 4903.221(B)(4).

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.¹³ 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,¹⁴ Sierra Club’s interests in these proceedings will not be fully or adequately represented by other parties. Sierra Club’s interests do not always fully 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.

¹³ Ohio Adm. Code 4901-1-11(B).

¹⁴ Ohio Adm. Code 4901-1-11(B)(5).

Dated: November 16, 2017

Respectfully submitted,

/s/ Richard C. Sahli

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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 this 16th day of November, 2017.

/s/ Richard C. Sahli

Richard C. Sahli

Service List

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