

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of The
Ohio Edison Company and PCC Airfoils
LLC For Approval of a Special
Arrangement Agreement With A
Mercantile Customer.

Case No. 09-1200-EL-EEC

**MOTION TO INTERVENE
BY
THE OHIO ENVIRONMENTAL COUNCIL**

The Ohio Environmental Council (“OEC”) moves to intervene in this case in which The Ohio Edison Company (“Company”) and PCC Airfoils LLC, (“Customer”)(collectively, “Applicants”) seek joint approval of a special arrangement under Ohio Admin. Code 4901:1-39-08(B). Approval of this arrangement will allow Customer to opt-out of paying Company for the costs collected under Rider DSE2, and allow Company to attribute the energy reductions associated with the projects undertaken by Customer to the energy efficiency and demand reduction achievements required under Senate Bill 221 (R.C. 4928.66).

As more fully discussed in the accompanying memorandum, the Ohio Environmental Council (“OEC”) has a real and substantial interest in this proceeding, and the disposition of this case may impede its ability to protect that interest. The interests of OEC, Ohio’s largest non-profit environmental advocacy organization, are not currently represented by any existing party, and its participation in this proceeding will contribute to a just and expeditious resolution of the issues involved. OEC’s participation will not unduly delay the proceeding or unjustly prejudice any existing party. Accordingly, OEC hereby moves to intervene in this proceeding pursuant to R.C. 4903.221 and O.A.C. 4901-1-11.

WHEREFORE, OEC respectfully requests that the Commission grant its motion to intervene.

Respectfully Submitted,

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MEMORANDUM IN SUPPORT

I. MOTION TO INTERVENE

R.C. Section 4903.221 provides that any “person who may be adversely affected by a public utilities commission proceeding may intervene in such proceeding.” The OEC is a non-profit, charitable organization comprised of a network of over 100 affiliated group members whose mission is to secure a healthier environment for all Ohioans. Throughout its 40-year history, OEC has been a leading advocate for fresh air, clean water, and sustainable land and energy use. OEC was an active participant in the effort that led to the inclusion of demand reduction and energy efficiency requirements in S.B. 221. OEC has a real and substantial interest in assuring that the Applicant’s proposal will result in sufficient energy savings to justify Customer’s opt-out of Rider DSE2. If the energy savings prove to be insufficient there is a danger that Company will not meet the energy savings required under R.C. 4928.66, nor will it have the benefit of the inclusion of Customer under Rider DSE2 to afford measures which would result in compliance with the statutory requirements. Thus, there can be no question that OEC has an interest in and may be adversely affected by the disposition of this case.

R.C. 4903.221(B) outlines four factors that the Commission shall consider when ruling on a motion to intervene in a proceeding. First, pursuant to R.C. 4903.221(B)(1), the

Commission shall consider “The nature and extent of the prospective intervenor’s interest.” OEC is interested in ensuring that the energy efficiency and demand reduction benchmarks are met in a manner which comports with the letter and intent of S.B. 221. OEC, as an environmental advocacy organization, has a special interest in the outcome of this case as the implementation of this special arrangement directly impacts the nature and extent of programs by which Company intends to meet the energy efficiency and demand response benchmarks required under R.C. § 4928.66.

Second, pursuant to R.C. 4903.221(B)(2), the Commission shall consider “The legal position advanced by the prospective intervenor and its probable relation to the merits of the case.” This case involves the review of the reasonableness and lawfulness of the request for approval of a special arrangement between Customer and Company filed pursuant to Ohio Admin. Code 4901:1-39-08(B). OEC does not outline its full legal argument in this section. OEC maintains that the approval of such special arrangements, while allowed under R.C. §4928.66(A)(2)(c), should be undertaken only after a thorough review of the proposed energy efficiency projects undertaken by a mercantile customer. Failure of any such project to produce the stated energy efficiency savings could result in failure of the electric distribution utility in complying with the statutory energy efficiency and demand reduction benchmarks. This will create hardship on the environment, and the electric distribution utility.

Third, pursuant to R.C. 4903.221(B)(3), the Commission shall consider “Whether the intervention by the prospective intervenor will unduly prolong or delay the proceedings.” OEC has significant experience dealing with electric utilities questions before the Commission and will not seek to delay the proceeding. OEC’s intervention will not unduly prolong or delay these proceedings.

Fourth, pursuant to R.C. 4903.221(B)(4), the Commission shall consider “Whether the prospective intervenor will significantly contribute to full development and equitable resolution of the factual issues.” OEC has actively participated in the implementation of the efficiency and peak demand reduction benchmarks established by S.B. 221. As an active participant in cases before the Commission, the OEC has developed expertise that will contribute to the full development of the legal questions involved in this proceeding.

OEC also satisfies the intervention requirements outlined in the Commission’s rules. The criteria for intervention established by O.A.C. 4901-1-11(A) are identical to those provided by R.C. 4903.221, with the exception that the rules add a fifth factor that the Commission shall consider when ruling on a motion to intervene. Pursuant to O.A.C. 4901-1-11(A)(5), the Commission shall consider “The extent to which the [intervenor’s] interest is represented by existing parties.” OEC’s interest is not fully represented by the existing parties. OEC is the leading advocate for Ohio’s environment. No other party to this proceeding has the mission of securing healthy air for all Ohioans, and no other party has been a continuous participant in cases before the Commission for the purpose of furthering this mission.

Finally, it is the Commission’s stated policy “to encourage the broadest possible participation in its proceedings” (*see, e.g., Cleveland Elec. Illum. Co.*, Case No. 85-675-EL-AIR, Entry dated January 14, 2986, at 2). The Commission should not apply its intervention criteria in a manner that would favor one environmental or consumer advocate to the exclusion of others.

OEC meets all the criteria established by R.C. 4903.221 and O.A.C. 4901-1-11(A)(5) and therefore should be granted intervenor status in this proceeding.

WHEREFORE, OEC respectfully requests that the Commission grant its motion to intervene.

Respectfully Submitted,

s/Todd M. Williams

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing has been served upon the following parties by first class mail, postage prepaid, this 31st s day of August, 2009.

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