

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Dayton)	Case No. 09-0891-EL-REN
Power and Light Company for Certification)	
as an Eligible Ohio Renewable Energy)	
Resource Facility)	
)	
In the Matter of the Application of Dayton)	Case No. 09-0892-EL-REN
Power and Light Company for Certification)	
as an Eligible Ohio Renewable Energy)	
Resource Facility)	

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

This case concerns the alternative energy portfolio requirements established by Senate Bill 221 (“S.B. 221”). R.C. 4928.64(B)(2) provides that electric utilities shall generate at least half of their alternative energy “from renewable energy resources.” Pursuant to its Application for Certification as an Eligible Ohio Renewable Energy Resource Generating Facility, Dayton Power & Light (“DP&L”) is requesting that the Commission certify its Killen Station facility as a renewable generation facility utilizing a biomass fuel type, which would make the facility eligible for a higher Renewable Energy Credit (“REC”) unit rate pursuant to R.C. 4928.65. As more fully discussed in the accompanying memorandum, the Ohio Environmental Council (“OEC”) has a real and substantial interest in this proceeding to ensure that the RECs are properly calculated based on renewable energy generated and that this Application is properly scrutinized in light of the letter and intent of S.B. 221. The interests of OEC, Ohio’s largest non-profit environmental advocacy organization, are not 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 in the above captioned matter.

Respectfully Submitted,

s/Will Reisinger (Counsel of Record)

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MEMORANDUM IN SUPPORT

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 member groups 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 passage of S.B. 221, including the inclusion of energy efficiency and renewable generation requirements. OEC has a real and substantial interest in assuring that the renewable generation benchmarks established by R.C. 4928.64(B)(2) are properly calculated and that robust, long-term sources of renewable electricity generation are sited in Ohio. The attainment or non-attainment of these benchmarks will have a direct effect on the air quality within Ohio and the amount of renewable generation distributed in the state. 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 has several distinct interests in the disposition of this case. First, OEC is interested in the proper calculation of utility RECs to ensure that those calculations comport with the letter and intent of S.B. 221. DP&L’s represents one of the first applications for renewable energy credit for biomass-based generation in Ohio, and consequently the disposition of this case will inform how future applications are considered by the Commission. Pursuant to R.C. 4928.65, this facility would also be eligible for a higher REC unit level. The higher value of the potential RECs for biomass based generation demands higher scrutiny of DP&L’s Application. Conceptually, each biomass-based REC displaces other renewable generation. OEC, as an environmental advocacy organization, has a special interest in the outcome of this case because of the direct impact that decisions on the calculation of these benchmarks will have on the current and future implementation and effectiveness of S.B. 221, and thus, the further deployment of cleaner sources of electricity in Ohio.

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.” Although OEC does not outline detailed legal arguments in this section, OEC maintains that DP&L’s request for certification pursuant to R.C. 4928.64 should be subject to high scrutiny because of the higher REC unit rate that is at issue. As stated above, R.C. 4928.65 allows a utility to receive RECs at a higher REC rate for biomass-based generation than for other sources of renewable energy. Further, it is not clear from DP&L’s Application whether the Killen facility is one that may qualify for renewable credit pursuant to R.C. 4928.64(A)(1). R.C.

4928.64(A)(1) provides that an “advanced energy resource or renewable energy resource” is one that “has a placed-in-service date of January 1, 1998, or after.” DP&L’s Application does not state that the facility had a placed-in-service date of January 1, 1998, or after, nor does it state that the plant has been modified subsequent to that date.¹ Therefore, there is a legitimate question as to whether this plant may qualify as a renewable energy resource facility pursuant to R.C. 4928.64(A)(1).

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 has been consistently involved in the development and enactment of S.B. 221 and the associated rules, including as a party in numerous cases before the Commission. OEC’s intervention will not unduly prolong or delay these proceedings; to the contrary, OEC’s expertise and unique interest will add value to the development of this case.

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, peak demand reduction, and renewable energy 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. Finally, as Ohio’s leading environmental advocate, OEC will be able to assure that the environmental impacts of benchmark calculations are fully developed.

¹ Application at 7.

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 specific purpose of furthering this mission.

Finally, we point out that 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 in the above captioned matter.

Respectfully Submitted,

s/Will Reisinger (Counsel of Record)

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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 this 18th day of November, 2009.

s/Will Reisinger

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Summary: Motion Motion to Intervene electronically filed by Mr. Will Reisinger on behalf of Ohio Environmental Council