

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of)		
Ohio Edison Company, The Cleveland)	Case Nos.	09-1004-EL-EEC
Electric Illuminating Company, and)		09-1005-EL-EEC
The Toledo Edison Company to Amend)		09-1006-EL-EEC
Their Energy Efficiency Benchmarks)		

**MOTION TO INTERVENE BY
THE ENVIRONMENTAL LAW AND POLICY CENTER**

Pursuant to Ohio Revised Code (ORC) §4903.221 and Ohio Administrative Code (OAC) §4901-1-11, the Environmental Law and Policy Center (ELPC) respectfully moves to intervene in the above-captioned proceedings. As explained more thoroughly in the attached Memorandum in Support, ELPC has a real and substantial interest in this proceeding. Additionally, the interests of ELPC 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. Further, ELPC's participation will not unduly delay the proceedings or prejudice any other party thereto.

Consequently, ELPC respectfully requests this Commission grant its motion to intervene in the above captioned matter for these reasons and those set forth in more detail in the attached Memorandum in Support.

Respectfully submitted,

/s/ Michael E. Heintz
Michael E. Heintz (0076264)
Environmental Law & Policy Center
1207 Grandview Ave.
Suite 201

Columbus, Ohio 43204
Telephone: 614-488-3301
Fax: 614-487-7510
E-mail: mheintz@elpc.org

Attorney for the Environmental Law &
Policy Center

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of)		
Ohio Edison Company, The Cleveland)	Case Nos.	09-1004-EL-EEC
Electric Illuminating Company, and)		09-1005-EL-EEC
The Toledo Edison Company to Amend)		09-1006-EL-EEC
Their Energy Efficiency Benchmarks)		

**MEMORANDUM IN SUPPORT OF
THE ENVIRONMENTAL LAW & POLICY CENTER’S
MOTION TO INTERVENE**

Ohio Revised Code (ORC) §4903.221 provides, “Any other person who may be adversely affected by a public utilities commission proceeding may intervene in such proceeding,” provided the Public Utility Commission of Ohio (PUCO or “the Commission”) makes certain determinations. The Environmental Law & Policy Center (ELPC) is a non-profit environmental advocacy organization whose mission is to improve the Midwest’s environmental quality and economic development. ELPC is an advocate for both environmental health and sustainable economic development. As a regional organization with a presence and members in Ohio, ELPC and its members may be adversely affected by the outcome of this proceeding and is not adequately represented by the other parties hereto.

Ohio Revised Code §4903.221 requires the Commission to consider four factors when presented with a motion to intervene. In addition, PUCO’s procedural rules at Ohio Administrative Code (OAC) §4901-11-1 similarly provides it shall consider five factors when weighing a motion to intervene. ELPC’s motion meets each of the factors required by statute or rule.

Pursuant to ORC §4903.221, the Commission must consider:

- (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.

O.R.C. §4903.221(B). As to the first factor, ELPC's interest in the case is to ensure the effective and thorough implementation of Am. Sub. SB No. 221 (SB 221), the requirements for utilities to provide energy efficiency programs in Ohio, reflected at ORC §4928.66. ELPC's interest in this proceeding is to ensure that those utilities subject to the requirements of SB 221 are held to reasonable expectations of fulfillment. As to the second factor, ELPC maintains the Commission should carefully consider Applications for waivers in relation to the necessary requirements for seeking a waiver and the future precedent that may be set. Under the third factor, ELPC's inclusion will not unduly delay or prolong the proceeding. ELPC is committed to working within the schedule set by this Commission to achieve the efficient and orderly disposition of the questions presented. Finally, ELPC will significantly contribute to the full development and resolution of the proceeding by bringing its unique perspective to bear. ELPC has expertise and experience regarding energy efficiency regulation that will contribute to resolving the pending issues.

Similarly, ELPC meets the requirements set forth in OAC §4901-11-1:

- (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; [and]
- (5) The extent to which the person's interest is represented by existing parties.

Ohio Admin. Code §4901-11-1(B). The first four factors mirror those in ORC §4903.221 and for the same reasons as stated above, ELPC meets those factors. As to the fifth, ELPC maintains that no other party can adequately represent its interests as a regional environmental advocacy organization that also focuses on “green” economic development, including new manufacturing and job creation.

Finally, this Commission’s policy is 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, 1986, at 2). ELPC’s inclusion in this proceeding will contribute to this goal of broad participation in PUCO proceedings.

Because ELPC meets the criteria set forth in both ORC §4903.221 and OAC §4901-11-1, it respectfully asks this Commission to grant its motion to intervene in the above-captioned proceedings.

Respectfully submitted,

/s/ Michael E. Heintz
Michael E. Heintz (0076264)
Environmental Law & Policy Center
1207 Grandview Ave.
Suite 201
Columbus, Ohio 43204
Telephone: 614-488-3301
Fax: 614-487-7510
E-mail: mheintz@elpc.org

Attorney for the Environmental Law &
Policy Center

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing Motion to Intervene has been served upon the following parties, via regular U.S. mail, postage prepaid, this 17th day of November, 2009.

Harvey L. Wagner
Ohio Edison Company
76 S. Main Street
Akron OH, 44308

Gregory J. Poulos
Ohio Consumers' Counsel
10 West Broad St. Suite 1800
Columbus, OH 43215-3485

Henry W. Eckhart
Natural Resources Defense Council
50 West Broad Street, #2117
Columbus, OH 43215

James Lang
Calfee, Halter & Griswold LLP
1400 McDonald Investment Center
800 Superior Avenue
Cleveland, OH 44114-2688

David C. Rinebolt
Ohio Partners for Affordable Energy
231 West Lima St.
Findlay, OH 45839-1793

Will Reisinger
Ohio Environmental Council
1207 Grandview Avenue Suite 201
Columbus, OH 43212-3449

/s/ Michael E. Heintz

Michael E. Heintz

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

11/17/2009 4:00:37 PM

in

Case No(s). 09-1004-EL-EEC, 09-1005-EL-EEC, 09-1006-EL-EEC

Summary: Motion to Intervene and Memorandum in Support by the Environmental Law and Policy Center electronically filed by Mr. Michael E Heintz on behalf of Environmental Law and Policy Center