

In the Matter of the Application of)
Columbus Southern Power Company)
For Certification of Conesville Station) Case No. 09-1860-EL-REN
Unit 3 as an Eligible Ohio Renewable)
Energy Resource Generating Facility.)

The Office of the Ohio Consumers' Counsel ("OCC") moves to intervene¹ and files comments in this case in which the development of diverse electricity supplies for consumers may be constrained and costly additions to plant may result with potential requests later for consumers to pay the associated costs without receiving adequate benefits. OCC is filing on behalf of the residential electric utility consumers in Ohio. The Columbus Southern Power Company ("Applicant" or "CSP"), seeks certification for its Conesville Generating Station Unit 3 as an eligible Ohio renewable energy resource generating facility under R.C. 4928.01(A)(35).² The Public Utilities Commission of Ohio ("Commission" or "PUCO") should deny the Applicant a renewable certificate because the Application, as currently framed, does not meet the requirements of R.C. 4928.64.

2 The granting of this certificate would allow the Applicant to register the power production of its facilities as a renewable energy resource and to produce and sell renewable energy credits (“RECs”) under R.C. 4928.65 or use the renewable power to meet its benchmarks. Electric distribution utilities or electric services companies that need to meet the renewable energy benchmarks under R.C. 4928.64 can purchase RECs from certified renewable energy resources as a means of meeting these benchmarks.

The reasons the Commission should grant OCC's Motion to Intervene ("Motion") and deny the Applicant its certificate (until and unless the Applicant meets the statutory standards that include identifying its source of biomass materials) are further set forth in the attached Memorandum in Support.

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER
CONSUMERS' COUNSEL

/s/ Christopher J. Allwein
Ann M. Hotz, Counsel of Record
Christopher J. Allwein
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485
Telephone: (614) 466-8574
hotz@occ.state.oh.us
allwein@occ.state.oh.us

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of)	
Columbus Southern Power Company)	
For Certification of Conesville Station)	Case No. 09-1860-EL-REN
Unit 3 as an Eligible Ohio Renewable)	
Energy Resource Generating Facility)	
Facility.)	

MEMORANDUM IN SUPPORT

I. INTRODUCTION

This case involves the review of the reasonableness and lawfulness of the Applicant's request for approval of its Application filed under R.C.4928.01(A)(35) and R.C. 4928.65. OCC has authority under law to represent the interests of the residential electric utility customers of Ohio, pursuant to R.C. Chapter 4911. The Applicant is requesting certification of the Conesville Generating Station Unit 3 as a renewable energy resource generating facility that will sell the power it produces to electric distribution utilities.

Under certain circumstances electric utilities can charge residential customers for the extra costs of electric distribution utilities or electric services companies to produce renewable energy or to purchase renewable energy credits ("RECs") to meet their renewable energy benchmarks. Residential customers cannot be required, under Ohio law, to contribute to the extra costs of producing and/or purchasing RECs unless the certified renewable sources or RECs actually represent power generated from renewable sources. Residential customers are not obligated to pay extra costs for the Applicant's

power that is generated with nonrenewable resources because such power will not provide long-term benefits of decreased demand for nonrenewable sources, nor will it promote the development of a diversity of electric supplies and suppliers.³

The Commission should not grant the certificate until the Applicant demonstrates that it has a sustainable source of renewable fuel.

II. INTERVENTION

R.C. 4903.221 provides, in part, that any person “who may be adversely affected” by a PUCO proceeding is entitled to seek intervention in that proceeding. The interests of Ohio’s residential consumers may be “adversely affected” by this case, especially if the consumers were unrepresented in a proceeding that results in the certification of a power generating facility as an eligible renewable energy resource when it may not meet the requirements under R.C. 4928.01(A)(35) and R.C. 4928.64. Such a certification could result in residential electric customers paying the extra costs of a renewable resource without receiving the long-term benefits of renewable resources as contemplated under R.C. 4928.01(A)(35) and R.C. 4928.64.

R.C. 4903.221(B) requires the Commission to consider the following criteria in ruling on motions to intervene:

- (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 proceeding; and

³ R.C.4928.02(C)

- (4) Whether the prospective intervenor will significantly contribute to the full development and equitable resolution of the factual issues.

First, the nature and extent of OCC's interest is representing the residential consumers of Ohio to ensure that when they pay a premium for a renewable resource, that renewable resource will provide the long-term benefits in reduced energy costs as contemplated under R.C. 4928.64 and R.C. 4928.01(A)(35). This interest is different than that of any other party and especially different than that of the Applicant whose advocacy includes its financial interests.

Second, OCC's advocacy for consumers will include advancing the position that residential customers should not have to pay a premium for renewable energy resources that do not actually provide the long-term benefits in reduced energy costs as contemplated under R.C. 4928.01(A)(35). This position ensues from the requirement that utilities must meet specific benchmarks in using renewable resources and the fact that renewable resources are limited in supply. The position results from the likelihood that utilities will have to pay a premium for power from those resources and will collect the premium from all customers, including residential customers. In other words, residential customers should pay rates that are no more than what is reasonable and lawful under Ohio law, for service that is adequate under Ohio law. OCC's position is therefore directly related to the merits of this case that is pending before the PUCO, the authority with regulatory control of the terms under which public utilities provide their services.

Third, OCC's intervention will not unduly prolong or delay the proceedings. OCC, with its longstanding expertise and experience in PUCO proceedings, will duly allow for the efficient processing of the case with consideration of the public interest.

Fourth, OCC's intervention will significantly contribute to the full development and equitable resolution of the factual issues, consistent with any matters that OCC determines to be issues for PUCO consideration and for deciding the case in the public interest.

OCC also satisfies the intervention criteria in the Ohio Administrative Code (which are subordinate to the criteria that OCC satisfies in the Ohio Revised Code). To intervene, a party should have a "real and substantial interest" according to Ohio Adm. Code 4901-1-11(A)(2). As the residential utility consumer advocate, OCC has a very real and substantial interest in this case where rates for service to residential customers are at issue. In addition, OCC meets the criteria of Ohio Adm. Code 4901-1-11(B)(1)-(4). These criteria mirror the statutory criteria in R.C. 4903.221(B) that OCC already has addressed and that OCC satisfies.

Ohio Adm. Code 4901-1-11(B)(5) states that the Commission shall consider the "extent to which the person's interest is represented by existing parties." While OCC does not concede the lawfulness of this criterion, OCC satisfies this criterion in that it uniquely has been designated as the state representative of the interests of Ohio's residential utility consumers. That interest is different from, and not represented by, any other entity in Ohio.

Moreover, the Supreme Court of Ohio confirmed OCC's right to intervene in PUCO proceedings, in ruling on an appeal in which OCC claimed the PUCO erred by denying its intervention. The Court found that the PUCO abused its discretion in denying OCC's intervention and that OCC should have been granted intervention.⁴

⁴ See *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶¶13-20 (2006).

OCC's Motion is timely under R.C. 4903.221(A). In this regard, the Application was filed on November 30, 2009, prior to the effective date (December 10, 2009) of Ohio Adm. Code 4901-1-40-04(F)(1). This new Administrative Code rule requires filing for intervention within twenty days of the filing of an Application. but the rule was not in effect and therefore was inapplicable for the twenty days to run from the filing date of the Application.⁵

III. COMMENTS

The Applicant is requesting the certification of a combustion facility as a renewable resource. But under the definition of a renewable resource at R.C. 4928.01(A)(35), a combustion facility such as the one at issue in this case, is not a renewable resource. Only the energy produced by a renewable resource, such as “energy derived from non-treated by-products of the pulping process or wood manufacturing process” is a renewable resource.⁶ Therefore, a combustion facility should not be certified unless the Applicant is able to demonstrate that it has sustainable access to the fuel necessary to produce the renewable energy.

The Applicant indicates that it intends to use a variety of solid biomass fuels as fuel for up to 100% of its generation.⁷ The facility includes a generating unit with a

⁵ Even if Ohio Adm. Code 4901-1-40-04(F)(1) had been in effect, there would be “good cause” under R.C. 4903.221(A) to intervene past the deadline. The problem of the sustainability of biomass fuel as a renewable resource was not as evident when the first applicants began to file their applications. But when successive applicants filed for biomass renewable energy certificates for their very large base load plants such as Zimmer, the sustainability of the biomass fuel for production of a renewable resource came in to question.

⁶ R.C.4928.01(A)(35).

⁷ Application at Section G 10.

nameplate capacity of 165 megawatts.⁸ In order to use 100% solid biomass to produce the power generated, the Applicant will need a massive amount of solid biomass material. The Applicant does not identify its source of biomass material. If the Commission grants this Applicant a certificate for a renewable source, the Applicant may commence with costly modifications on the generating unit identified in its application. If the Applicant is unable to obtain the huge supply of wood waste it claims it may employ to produce renewable power in this plant, any potential retrofit will not provide the benefits intended and consumers should not bear the costs associated with these potential retrofits or modifications. In order to prevent such a wasteful project, the Applicant should be required to identify its source of solid biomass before receiving a certificate.

Additionally, under R.C. 4928.64(A)(1) a renewable energy resource must have a “placed-in-service date of January 1, 1998, or after.” The Application does not indicate that the Conesville Generating Station Unit 3 was placed in service after January 1, 1998. Nor does the application state that a retrofit will be necessary.⁹ Accordingly under the law, the Applicant’s facility is simply not eligible to be a renewable energy resource. The Commission should not grant the Applicant a certificate for a renewable energy resource.

⁸Application, Section II.

⁹ Application, Section H.

IV. CONCLUSION

OCC meets the criteria set forth in R.C. 4903.221, Ohio Adm. Code 4901-1-11, and the precedent established by the Supreme Court of Ohio for intervention. On behalf of residential consumers, the Commission should grant OCC's Motion to Intervene. The Commission should not grant the Applicant a certificate unless it can show that a modification or retrofit occurred after January 1, 1998 to allow the renewable source to be used and should require the Applicant to identify its source of biomass materials before granting the Applicant certification.

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER
CONSUMERS' COUNSEL

/s/ Christopher J. Allwein
Ann M. Hotz, Counsel of Record
Christopher J. Allwein
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485
Telephone: (614) 466-8574
hotz@occ.state.oh.us
allwein@occ.state.oh.us

CERTIFICATE OF SERVICE

I hereby certify that a copy of this *Motion to Intervene and Comments* was served on the persons stated below by regular U.S. Mail, postage prepaid, on this 30th day of December, 2009.

/s/ Christopher J. Allwein
Christopher J. Allwein
Assistant Consumers' Counsel

SERVICE LIST

Duane W. Luckey
Assistant Attorney General
Public Utilities Commission of Ohio
180 E. Broad St., 6th Fl
Columbus, OH 43215

Steven T. Nourse
American Electric Power Service Corp.
1 Riverside Plaza 29th Fl
Columbus, OH 43215

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Summary: Motion Motion to Intervene and Comments by the Office of the Ohio Consumers' Counsel electronically filed by Patti Mallarnee on behalf of Allwein, Christopher J. Mr.