

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

This case concerns the alternative energy 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, the Columbus Southern Power Company is requesting that the Commission certify its Conesville facility as a renewable generation facility utilizing a biomass fuel type. 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 and that this Application is properly scrutinized in light of the letter and intent of the statute’s renewable energy requirements. Among the factors that should be considered in awarding REC credit are the source(s), transportation, and type of the biomass material used and the net carbon output of the biomass-generation cycle. 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/ Nolan Moser (Counsel of Record)

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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

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 addition of energy efficiency and renewable generation requirements. OEC has a real and substantial interest in assuring that renewable energy credit for biomass-based generation is awarded only for properly sourced and properly evaluated projects. The attainment or non-attainment of the renewable energy benchmarks established by R.C. 4928.64 will have a direct effect on the air quality within Ohio, the amount of renewable generation distributed in the state, and the attendant air pollution. 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. 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. As one of the first applications for RECs for biomass-based generation in Ohio, the disposition of this case will inform how future applications are considered by the Commission. 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 RECs will have on the current and future 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 Columbus Southern Power Company’s request for certification pursuant to R.C. 4928.64 should be subject to high scrutiny. RECs must not be granted for non-renewable generation. Additionally, the OEC has significant concerns regarding the sustainability, both from an economic and environmental perspective, of the biomass procured to supply this plant.

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 efficient 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.

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 Cleveland Elec. Illum. Co.*, Case No. 85-675-EL-AIR, Entry dated January 14, 1986, 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/ Nolan Moser (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 or electronic mail this 6th day of January, 2010.

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This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

1/5/2010 4:34:07 PM

in

Case No(s). 09-1860-EL-REN

Summary: Motion Motion to Intervene and Memorandum in Support electronically filed by Mr. Nolan M Moser on behalf of The Ohio Environmental Council