



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

Respectfully Submitted,

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**/s/ Will Reisinger (Counsel of Record)**

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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 because the implementation of this special arrangement directly impacts the quality of programs by which FirstEnergy intends to meet the energy efficiency 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 Elyria Foundry and FirstEnergy filed pursuant to Ohio Admin. Code 4901:1-39-08(B). 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 to be undertaken by a mercantile customer. The current application does not provide sufficient detail about the programs to determine whether approval is appropriate. Failure of any mercantile project to produce the stated energy efficiency savings could result in a failure of the electric distribution utility to comply with the statutory energy efficiency benchmarks. This would create hardship on Ohio’s air quality and on its consumers and economy.

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, renewable energy, 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(B) 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(B)(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 sole 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, 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(B)(5) and therefore should be granted intervenor status in this proceeding.

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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 and electronic mail this 5<sup>th</sup> day of February, 2010.

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/s/ Will Reisinger

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