

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

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**MOTION TO INTERVENE WITH MEMORANDUM IN SUPPORT  
BY THE  
BUCKEYE FOREST COUNCIL**

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This Application by Columbus Southern Power Company (“Columbus Southern” or “Company”) concerns the implementation of the alternative energy standards codified by S.B. 221. R.C. 4928.64(B)(2) mandates that electric utilities must provide a portion—12.5 percent—of their power supplies from “renewable” energy sources. Pursuant to this Application, Columbus Southern is requesting certification of its Conesville Generating Station Unit 3 as a renewable energy resource generating facility utilizing a biomass fuel type. Certification by the Commission would allow Columbus Southern to receive renewable energy (“REC”) credit for the electricity produced. The Company could then sell RECs to other utilities or use the power generated to satisfy a portion of its renewable energy benchmark obligations under R.C. 4928.64(B)(2).

As explained more fully in the accompanying memorandum, the Buckeye Forest Council (“BFC”) is Ohio’s leading grassroots organization dedicated to protecting Ohio’s native forests. BFC has a significant interest in the outcome of this proceeding because of its potential impact on forest resources and the environment. Columbus Southern’s Application proposes to utilize biomass fuel, including woody biomass resources such as “wood pellets” and “raw wood

chips.”<sup>1</sup> However, the Application provides no information regarding the amount of woody biomass to be used, the location of the fuel source, or any sourcing or harvesting protocol to be used in the procurement process. The large-scale use of woody biomass as a fuel source could result in the exploitation and destruction of forests. As the leading advocate for Ohio’s forests, BFC’s interest is in assuring that the implementation of Ohio’s renewable energy standards does not burden Ohio’s woodlands. BFC’s unique interest in this case is not, and could not be, adequately represented by existing parties. There can be no question that BFC has a substantial interest in the outcome of this proceeding and that BFC and its members could be adversely affected by the disposition of this case.

Therefore, BFC hereby moves to intervene in this proceeding pursuant to R.C. 4903.221 and O.A.C. 4901-1-11.

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

Respectfully Submitted,

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<sup>1</sup> Application, unnumbered at 8.

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**MEMORANDUM IN SUPPORT**

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The Commission’s intervention criteria are codified in R.C.4903.221, which provides that any “person who may be adversely affected by a public utilities commission proceeding may intervene in such proceeding.” BFC is Ohio’s preeminent grassroots organization dedicated to protecting Ohio’s native forests and their inhabitants, with over 200 members statewide. BFC uses education, advocacy and organizing to prioritize forest preservation and low-impact recreation above logging and resource extraction. BFC has a real and substantial interest in assuring that renewable energy credit for biomass-based generation is awarded only for projects that are sustainable and carbon neutral, and not for projects that may result in the degradation and destruction of forests and forests’ ability to deliver ecosystem services, including carbon sequestration.

R.C. 4903.221(B) provides that the Commission, in ruling on a motion to intervene, shall consider the following factors:

- (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.

At the outset, BFC wishes to point out that the Commission's twenty day time limit for intervention, adopted in O.A.C. 4901-1-40-04(F)(1), was not in effect at the time of this Application filing. Therefore, BFC's intervention is not untimely pursuant to R.C. 4903.221(A).<sup>2</sup>

Pursuant to R.C. 4903.221(B)(1), the Commission shall consider the nature and extent of BFC's interest. BFC has a substantial interest in the resolution of this case. As explained above, BFC is the leading non-profit advocate for Ohio's forests. BFC uses advocacy, education, and organization to help preserve Ohio's forests. The use of woody biomass as a fuel would pose a threat to woodlands in Ohio, including those adjacent to the Conesville facility, that BFC seeks to protect. Further, BFC, as a conservation advocacy organization, has an interest in assuring that the statute is not interpreted in a manner that would allow utilities to receive RECs for a non-renewable, CO<sub>2</sub>-generative, power generation cycle.

Pursuant to R.C. 4903.221(B)(2), the Commission shall consider the legal position advanced by BFC. BFC does not use this memorandum to advance detailed legal arguments. However, BFC believes that electric utilities should not obtain RECs or be able to meet their renewable benchmark obligations by undertaking programs that result in deforestation and that they should not receive credit for programs that are not carbon neutral. In BFC's opinion, such a scenario would conflict with the legislative intent of the statute. Columbus Southern has not provided sufficient detail regarding how its facility will qualify as a renewable energy resource. Columbus Southern does not describe the source of its woody biomass material or any of the sustainable standards or protocol that it will use. Based on the Company's Application, there is no way to know whether the Company's Conesville facility should receive certification as a

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<sup>2</sup> Columbus Southern filed its Application on November 10, 2009. O.A.C. 4901-1-40-04(F)(1) went into effect on December 10, 2009, and applies only to applications filed after that date.

renewable energy generating facility. BFC believes that REC applications such as these should be carefully scrutinized by the Commission and by interested parties.

Pursuant to R.C. 4903.221(B)(3), the Commission shall consider whether BFC's intervention will unduly delay the proceedings. BFC has no desire to delay these proceedings, and there is no reason to suggest that BFC's participation will unduly delay or prolong these proceedings.

Pursuant to R.C. 4903.221(B)(3), the Commission shall consider whether BFC will significantly contribute to the development of the case. BFC is Ohio's leading grassroots advocate for the Ohio's forests, and BFC's participation will allow the potential impact on Ohio's public and private forests to be considered and fully developed.

BFC also satisfies the intervention criteria codified in Ohio Administrative Code 4901-1-11(A). Those rules are identical to those provided by R.C. 4903.221, except that O.A.C. 4901-1-11(A)(5) adds a fifth factor that the Commission shall consider: "The extent to which the [intervenor's] interest is represented by existing parties." As explained previously, BFC's interest is not represented by the existing parties. No other party has the primary mission of protecting the health and integrity of Ohio's forests.

Finally, BFC notes that it is the policy of the Commission "to encourage the broadest possible participation in its proceedings."<sup>3</sup> The Supreme Court of Ohio has stated that the Commission's intervention criteria "ought to be liberally allowed so that the positions of all persons with a real and substantial interest in the proceedings can be considered by the PUCO."<sup>4</sup> The Commission should not apply its intervention criteria in a manner that would favor one environmental or consumer advocate to the exclusion of others.

BFC satisfies the criteria established by R.C. 4903.221 and O.A.C. 4901-1-11(A)(5).

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<sup>3</sup> *Cleveland Elec. Illum. Co.*, Case No. 85-675-EL-AIR, Entry dated January 14, 1986, at 2.

<sup>4</sup> *Ohio Consumers' Counsel v. PUC*, 111 Ohio St. 3d. 384, 387 (2006).

WHEREFORE, BFC respectfully requests that the Commission grant its motion to intervene in the above captioned matter.

Respectfully Submitted,

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## CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing has been served upon the following individuals by first class or electronic mail this 12<sup>th</sup> day of February, 2010.

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