

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of Duke Energy Retails,)	
Sales, LLC's Annual Alternative Energy)	
Portfolio Status Report)	Case No. 10-508-EL-ACP
)	
)	
In the Matter of Duke Energy Retails,)	Case No. 10-509-EL-ACP
Sales, LLC's Request for Force Majeure)	
Determination)	

**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 proceeding. 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 43212
Telephone: 614-488-3301
Fax: 614-487-7510
E-mail: mheintz@elpc.org

Attorney for the Environmental Law &
Policy Center

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**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 Commission) makes certain determinations. The Environmental Law & Policy Center (ELPC) is a non-profit 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 an office 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), including the requirements for utilities to obtain alternative and renewable energy resources reflected at ORC §4928.64. Duke Energy Retail Sales, LLC's (DERS's) submission addresses these requirements under SB 221. ELPC's interest in this proceeding is to ensure that the Commission holds those utilities subject to requirements in SB 221 accurately and completely report their renewable energy accomplishments. Further, ELPC has members in Ohio, and has an office in Ohio that focuses on Ohio energy and environmental issues. As to the second factor, and because utilities are submitting their first alternative energy compliance reports, ELPC maintains the Commission should carefully consider the information being provided and the information that is reasonably necessary for Staff to evaluate the alternative energy compliance reports. Because of the potential impacts on ELPC and its Ohio members, ELPC wants to ensure DERS's Annual Alternative Energy Portfolio Status Report meets the applicable legal requirements, and if not, recommend appropriate solutions. These annual reports will set the tone for renewable energy efforts in the coming years. Similarly, DERS is seeking a force majeure determination for its 2009 solar energy resources benchmark requirement. Because the benchmarks impact both

ELPC members and Ohio's economy, ELPC has an interest in ensuring DERS meets the statutory requirements. Under the third factor, ELPC's inclusion will not unduly delay or prolong the proceeding. ELPC is intervening before the 30-day deadline to file comments and expects to file such comments within the procedural schedule contained in the Ohio Administrative Code. 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 alternative energy regulation, including efforts in recent cases before this Commission, which 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. ELPC is interested in how the programs to encourage renewable energy development will affect Ohio and the Midwest. No other party focuses its efforts on environmental health and economic development. ELPC is interested in both the environmental health of Ohio and that SB 221 is used as an economic development tool. Ohio is positioned to be a leader in the region for economic gain through renewable energy technologies. However, those

economic benefits will only materialize through a utility's effective and successful programs, as evaluated by the annual status reports. ELPC wants to ensure that Ohio receives the economic and job creation benefits promised by SB 221, while protecting the area's environmental health. Because no other party advocates at the intersection of environmental health and economic development in Ohio, no other party can adequately represent ELPC's interests.

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). The Supreme Court of Ohio, in a 2006 case addressing motions to intervene before the PUCO, reinforced this "inclusive" standard. In that case, the Ohio Consumer's Counsel's appealed the PUCO's decision to deny intervention under O.R.C. §4903.221 and O.A.C. §4901-1-11-01. In reversing the PUCO, and granting OCC's motion to intervene, the Court held, "intervention 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." *Ohio's Consumer Counsel v. PUCO*, (2006) 111 Ohio St. 3d 384, 388. The Court determined that the OCC showed the necessary facts needed to meet the statutory and regulatory requirements:

The Consumers' Counsel explained her interest in the cases in her motions to intervene and also explained that her views would not be adequately represented by the existing parties. In the absence of some evidence in the record calling those claims into doubt or showing that intervention would unduly prolong or delay the proceedings, intervention should have been granted.

Id. ELPC's inclusion in this case 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 43212
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 14th day of May, 2010.

/s Michael E. Heintz

Michael E. Heintz

Michael D. Dortch
Kravitz, Brown, & Dortch, LLC
65 East State St.
Suite 200
Columbus, Oh 43215
mdortch@kravitzllc.com

Attorney for Duke Energy Retail Sales, LLC

Duane Luckey
Assistant Attorney General
Chief, Public Utilities Section
Public Utilities Commission of Ohio
180 E. Broad St., 6th Floor
Columbus, OH 43215
duane.luckey@puc.state.oh.us

Counsel for the Public Utilities Commission of
Ohio

Nolan Moser, Counsel of Record
Will Reisinger
Trent A. Dougherty
Megan De Lisi
Ohio Environmental Council
1207 Grandview Avenue, Suite 201
Columbus, Ohio 43212-3449
nolan@theoec.org
will@theoec.org
trent@theoec.org
megdelisi@yahoo.com

Attorneys for the Ohio Environmental Council

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