

In the Matter of the Application of)
Ohio Power Company for)
Certification as an Eligible Ohio) Case No. 10-911-EL-REN
Renewable Energy Resource Generating)
Facility.)

The Ohio Revised Code allows the Commission discretion to grant an untimely

motion to intervene, for “good cause shown.”¹ OP claims inaccurately that OCC has not identified good cause for filing its motion to intervene out of time.² Additionally OP wrongly argues that OCC’s and BFC’s motions to intervene will “most certainly delay the proceedings.”³

First, R.C. 4903.221(B)(3) directs the Commission to consider whether the applicants intervention will “unduly ... delay the proceedings,” and not “certainly delay” as OP’s argument implies. The statutes reliance on the phrase “unduly ... delay” recognizes that there are circumstances where delay is appropriate. For example, a delay in the proceeding is appropriate to allow parties “ample” opportunity to conduct discovery.⁴

Secondly, OCC’s and BFC’s motions for late filed intervention will not unduly delay the proceedings because under Ohio Adm. Code 4901:1-40-04(F)(2) the application will be automatically granted after sixty days unless suspended or denied by the Commission. Although OCC’s motion to intervene was eight days later than the 20 days granted under the rule, the Commission still has over a month to make a decision as to whether to suspend or deny the application. In any case, OP’s certification of the Muskingum plant will be automatic within sixty days, if the Commission does not make a decision.

The OCC clearly meets the criteria for intervention in this case under R.C. 4903.221 because the Commission has granted OCC’s intervention in numerous previous

¹ R.C.4903.221(A)(2).

² OP Memo Contra at 2.

³ Id.

⁴ R.C. 4903.082.

biomass applications.⁵ And the Supreme Court of Ohio has held that statutes and rules governing intervention should be “generally liberally constructed in favor of intervention.”⁶ Moreover, the Commission has granted late-filed motions to intervene in the past.⁷ For these reasons, contrary to OP’s claims, OCC has identified good cause for the Commission to grant OCC’s late filed motion to intervene.

III. CONCLUSION

The Commission should not grant OP’s memorandum contra OCC’s motion for leave to intervene late. Contrary to OP’s claims OCC has provided the Commission good cause to grant OCC intervention.

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER
CONSUMERS’ COUNSEL

/s/ Ann M. Hotz
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

⁵ See PUCO Case Nos. 09-1042-EL-REN, 09-1043-EL-REN, 09-1860-EL-REN, and 09-1940-EL-REN.

⁶ *Ohio Consumers’ Counsel v. Pub. Util. Comm.* (2006), 111 Ohio St.3d 384, 2006 Ohio 5853, 856 N.E.2d 940, at ¶16 (quoting *State ex rel. Polo v. Cuyahoga Cty. Bd. Of Elections* (1995), 74 Ohio St.3d. 143, 144).

⁷See eg., *In the Matter of the Regulation of the Electric Fuel Component Contained within the Rate Schedules of the Dayton Power and Light company and Related Matters*, Case No. 89-105-EL-EFC, Entry (December 28, 1989).

CERTIFICATE OF SERVICE

I hereby certify that a copy of this *Reply to Ohio Power Company's Memorandum Contra Motion for Leave to Intervene Late by the Office of the Ohio Consumers' Counsel*, was electronically filed and served on the persons stated below by regular U.S. Mail, postage prepaid, on this 12th day of August 2010.

/s/ Ann M Hotz
Ann M. Hotz
Assistant Consumers' Counsel

SERVICE LIST

William Wright
Attorney General's Office
Public Utilities Commission of Ohio
180 E. Broad St., 6th Floor
Columbus, Ohio 43215
william.wright@puc.state.oh.us

Steven T. Nourse
AEP Service Corporation
1 Riverside Plaza, 29th Floor
Columbus, Ohio 43215
stnourse@aep.com

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

Nathan G. Johnson
5474 Foxhound Lane
Westerville, Ohio 43081
ngj660@gmail.com

Attorney for Buckeye Forest Council

Attorneys for the OEC

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Summary: Reply Reply to Ohio Power Company's Memorandum Contra Motion for Leave to Intervene Late by the Office of the Ohio Consumers' Counsel electronically filed by Mrs. Mary V. Edwards on behalf of Hotz, Ann M. Ms. and Office of the Ohio Consumers' Counsel