

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

**REPLY TO OHIO POWER COMPANY’S MEMORANDUM CONTRA MOTION
FOR LEAVE TO INTERVENE LATE
BY
BUCKEYE FOREST COUNCIL**

I. INTRODUCTION

Buckeye Forest Council (“BFC”) files this reply to Ohio Power Company’s (“OPCo” or “Company”) memorandum contra to BFC’s and the Office of the Ohio Consumers’ Counsel’s (“OCC”) motions to intervene out of time. OPCo filed an application for certification of its Muskingum River plant as an eligible Ohio renewable energy resource generating facility under R.C. 4928.01(A)(35) on June 29, 2010. Under Ohio Adm. Code 4901:1-40- 04(F)(1) “any interested person may file a motion to intervene and file comments to any application filed under this rule within twenty days of the date of the filing of the application. The deadline was therefore twenty days after OPCo’s application date, or July 19, 2010. BFC filed its motion to intervene four days later, on July 23, 2010. OPCo filed its memorandum contra on August 6, 2010.

**II. THE COMMISSION HAS GOOD CAUSE TO ACCEPT BFC’S LATE
FILED MOTION TO INTERVENE.**

The Ohio Revised Code allows the Commission discretion to grant an untimely motion to intervene, for “good cause shown.”¹ OPCo claims inaccurately that BFC has not

¹ R.C.4903.221(A)(2).

identified good cause for filing its motion to intervene out of time.² Additionally OPCo wrongly argues that BFC's and OCC'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 OPCo's argument implies. The statute's use of 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, BFC's and OCC'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 BFC's motion to intervene was four days later than the 20 days granted under the rule, the Commission still has, as of this filing, the majority of the current month of August to make a decision as to whether to suspend or deny the application. In any case, OPCo's certification of the Muskingum plant will be automatic within sixty days if the Commission does not make a decision.

In addition, BFC clearly meets the criteria for intervention in this case under R.C. 4903.221, because the Commission has recently granted BFC's intervention in previous biomass applications.⁵ Furthermore, the Supreme Court of Ohio has held that statutes and rules governing intervention should be "generally liberally constructed in favor of

² OPCo Memo Contra at 2.

³ Id.

⁴ R.C. 4903.082.

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

intervention.”⁶ Moreover, the Commission has granted late-filed motions to intervene in the past.⁷ For these reasons, contrary to OPCo’s claims, BFC has identified good cause for the Commission to grant BFC’s late filed motion to intervene.

III. CONCLUSION

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

Respectfully submitted,

BUCKEYE FOREST COUNCIL

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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).

⁷ See 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 true copy of the foregoing has been served upon the following individuals by first class or electronic mail this 13th of August, 2010.

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Summary: Reply Buckeye Forest Council's Reply to Ohio Power Company's Memorandum Contra Motion for Leave to Intervene Late electronically filed by Mr. Nathan G. Johnson on behalf of Buckeye Forest Council