

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application for)	Case No. 10-2777-EL-AEC
Establishment of a Reasonable Arrangement)	
Between Marathon Petroleum Company LP)	
and Ohio Power Company.)	

**MOTION TO INTERVENE WITH MEMORANDUM IN SUPPORT AND
COMMENTS
BY THE
OHIO ENVIRONMENTAL COUNCIL**

The Ohio Environmental Council (“OEC”) hereby moves to intervene in this case in which Marathon Petroleum Company LP (“Marathon”) seeks approval of a reasonable arrangement with the Ohio Power Company (“AEP” or “Company”) under Ohio Admin. Code 4901:1-38-05(B). Approval of this arrangement will allow Marathon to opt-out of paying AEP for the costs collected under AEP’s EE/PDR Rider and receive an annual payment from AEP equal to 5% of Marathon’s total annual electricity bill¹. In exchange, AEP will attribute the energy reductions associated with the projects undertaken by Marathon to the energy efficiency achievements required under R.C. 4928.66.

As more fully discussed in the accompanying memorandum, the Ohio Environmental Council (“OEC”) has a real and substantial interest in this proceeding. The interests of the OEC, Ohio’s largest non-profit environmental advocacy organization, are not currently represented by any existing party, and its participation in this proceeding will contribute to a just and expeditious resolution of the issues involved. The OEC’s participation will not unduly delay the proceeding or unjustly prejudice any existing party. Accordingly, the OEC

¹Marathon will dedicate this annual payment to funding additional customer-sited capabilities that will be included in Marathon’s continuous improvement plan.

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

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

Respectfully Submitted,

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MEMORANDUM IN SUPPORT

I. INTRODUCTION

R.C. Section 4903.221 provides that any “person who may be adversely affected by a public utilities commission proceeding may intervene in such proceeding.” The OEC is a non-profit, charitable organization comprised of a network of over 100 affiliated group members whose mission is to secure a healthier environment for all Ohioans. Throughout its 40-year history, the OEC has been a leading advocate for fresh air, clean water, and sustainable land and energy use. The OEC was an active participant in the effort that led to the inclusion of renewable energy and solar energy requirements in S.B. 221.

This case involves the approval of a reasonable arrangement between Marathon and AEP, whereby Marathon will commit their energy savings to AEP. The application also incorporates a plan for “continuous improvement,” whereby Marathon will use the funding it receives from the reasonable arrangement to develop additional efficiency projects at the Canton Refinery. The OEC has a real and substantial interest in assuring that this arrangement is reasonable, consistent with statute, and will likely result in the renewable energy production intended by the passage of S.B. 221. After review of the application the OEC believes that the application is just, reasonable, and will advance the economic and

environmental goals of S.B. 221 and the energy policies of this state. The OEC requests the Commission to promptly approve the application.

II. ARGUMENT

R.C. 4903.221(B) outlines four factors that the Commission shall consider when ruling on a motion to intervene in a proceeding. First, pursuant to R.C. 4903.221(B)(1), the Commission shall consider “The nature and extent of the prospective intervenor’s interest.” As a general proposition, the OEC is interested in the achievement of maximum cost-effective energy efficiency and renewable energy implementation. The OEC is also interested in ensuring that the renewable energy benchmarks are met in a manner which comports with the letter and intent of S.B. 221. As an environmental advocacy organization, the OEC has a special interest in the approval of this reasonable arrangement, as it will set a precedent for similar arrangements in the future.

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.” The OEC maintains that Marathon’s reasonable arrangement with AEP should be properly scrutinized by interested parties, and timely approved by the Commission to facilitate innovation and implementation of mercantile customer sited energy efficiency, peak demand reduction and advanced energy technologies.

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.” The OEC has significant experience dealing with electric utilities questions before the Commission and will not seek to delay the proceeding. The OEC’s intervention will not unduly prolong or delay these proceedings. The OEC has been consistently involved in the

development and enactment of S.B. 221 and the associated rules, including as a party in numerous cases before the Commission. The OEC's intervention will not unduly prolong or delay these proceedings; to the contrary, the OEC's expertise and unique interest will add value to the development of this case. Additionally, the OEC is intervening in this case for the primary purpose of supporting Marathon's reasonable arrangement with AEP.

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." The 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.

The 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." The OEC's interest is not fully represented by the existing parties. The 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.

III. CONCLUSION

The 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.

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

Respectfully Submitted,

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COMMENTS IN SUPPORT OF THE REASONABLE ARRANGEMENT

I. INTRODUCTION

Ohio Revised Code Section 4905.31 authorizes the Commission to approve reasonable arrangements between mercantile customers and public utilities. Ohio Adm. Code Section 4901:1-38-05 sets out the standard for Commission approval of reasonable arrangements, including the structure and content arrangements must contain. After thorough review of the filing, OEC believes that Marathon’s proposed reasonable arrangement with AEP meets the requirements of Ohio Adm. Code 4901:1-38-05(B) and should be approved by the Commission. Importantly, the arrangement includes a “continuous improvement” plan which will allow for increased investment in efficiency resources at the Canton refinery. The OEC believes that the application is just, reasonable, and will advance the economic and environmental goals of S.B. 221 and the energy policies of this state. The OEC requests the Commission to promptly approve the application.

The following Comments explain the OEC’s rationale for supporting the Marathon arrangement.

II. BACKGROUND

When the S.B. 221 benchmarks went into effect on January 1, 2009, electric distribution utilities (“utilities”) began implementing programs in an effort to meet their

EE/PDR benchmarks. One technique utilities use to meet their benchmarks is by obtaining commitments of energy savings from mercantile customers in exchange for allowing the mercantile customers to opt-out of the utilities' EE/PDR rider. The use of these special mercantile customer arrangements has been contested by the OEC in some circumstances, often where so-called "historic" improvements are at issue. The OEC has argued that the Commission's approval requirements for special arrangements between mercantile customers and utilities have been unclear and inexact. The lack of a clear standard has led to the uncertainty of the mercantile arrangements approval process. This uncertainty has resulted in lengthy litigation at the Commission, and a protracted review period with many applications waiting for Commission approval or denial for several months, causing uncertainty among mercantile customers and intervenors regarding the efficacy of special arrangements.

In contrast, the reasonable arrangement model between mercantile customers and utilities offer a simple, straight forward approach for customers to commit their energy savings to utilities in exchange for reasonable incentives. Significantly, reasonable arrangements like the Marathon arrangement are structured to commit historical savings as well as future new energy savings to AEP. The Commission's prompt approval of the Marathon arrangement will instill confidence in the mercantile customer community that this type of arrangement will be approved, and encourage innovation and implementation of energy saving measures. Additionally, prompt approval of this application will help all stakeholders find a new mechanism that recognizes historical achievement, while creating real investment, savings, and economic development for the future.

III. ARGUMENT

A. The Arrangement is Structured to Improve Competitiveness.

The Marathon arrangement is structured to increase Marathon's competitiveness in the refinery business and in the EE/PDR and advanced energy market. The arrangement requires Marathon to meet or exceed the same percentage energy saving requirements that apply to utilities. As these requirements increase over time, Marathon will be incentivized to develop new strategies and programs to meet the requirements. By spurring Marathon to develop innovative approaches for saving energy at their refinery, Marathon will not only receive the incentives provided by the reasonable arrangement with AEP, but Marathon will also be more competitive with other refineries, lowering energy costs and improving infrastructure. Such actions will result in valuable economic development for our state.

B. The Arrangement is Structured to Increase Investment in Efficiency.

Another benefit of reasonable arrangements like the Marathon arrangement is the increased investment in EE/PDR that they will create. The Marathon arrangement incentivizes Marathon to its commitment of energy efficiency savings, electric and non-electric, to AEP via a continuous improvement program. The arrangement proposes that, in exchange for its commitment of energy savings, Marathon will receive an annual payment equal to 5% of Marathon's total annual electricity bill. Marathon will then use this annual payment to invest in innovation and additional energy saving programs at the refinery. Requiring Marathon to use the annual payment incentive to fund additional energy saving projects automatically increases Marathon's investment EE/PDR and advanced energy investments. In turn, to keep up with Marathon's advancements in EE/PDR and advanced energy, Marathon's competitors will be motivated to increase their investments in EE/PDR and advanced energy programs. Because the OEC is interested in the achievement of maximum cost-effective energy efficiency and renewable energy implementation, the OEC supports this reasonable arrangement and its investment-inducing structure. The OEC also has an interest in a robust

manufacturing and industrial sector in Ohio, which utilizes energy efficiency investments as a method to increase productivity, improve competitiveness, and create jobs. The application that is the subject of this case will achieve those important results.

C. The Arrangement Will Encourage the Continuous Innovation and Implementation of EE/PDR and Advanced Energy Projects.

R.C. 4928.64(B) requires utilities use alternative energy sources to supply 25% of the total number of kWh of electricity sold by the utility to retail consumers by 2025. R.C. 4928.64 (A)(1) (a) and (b) explicitly recognizes the saving and use of waste heat or thermal energy as an “advanced energy resource” for the purpose of compliance with 4928.64(B). 4928.64 (A)(1)(a) and (b) read as follows: “(a) A resource that has the effect of improving the relationship between real and reactive power; (b) A resource that makes efficient use of waste heat or other thermal capabilities owned or controlled by a mercantile customer.” This opportunity to utilize heat efficiency as a qualifying advanced energy resource is unique to mercantile customers. This is a clear indication that, at least with regard to mercantile customers, btu and heat savings were contemplated as qualifying resources under the advanced energy portion of S.B. 221.

The Marathon arrangement provides Marathon and AEP with an effective vehicle for committing Marathon’s advanced energy savings to AEP. The Marathon arrangement’s continuous improvement plan that calls for electric energy saving programs as well as non-electric energy efficiencies resulting from customer-sited advanced energy projects will encourage Marathon’s increased investment and innovation in advanced energy programs. The Marathon arrangement adopts a proactive approach for achievement of the advanced energy benchmarks. This proactive will benefit ratepayers, as ratepayer stability will not be adversely affected in 2024 because AEP will not be scrabbling at the last minute to meet these

benchmarks, flooding the marketplace with expensive last minute measures to comply with the law. The OEC believes that the proactive approach to advanced energy used in the Marathon arrangement is positive step forward, and that other mercantile customers should be encouraged to enter into similar arrangements with their respective utilities.

IV. CONCLUSION

The application submitted by Marathon Petroleum Company and Ohio Power Company is unique because it provides for a continuous improvement plan whereby Marathon will re-invest funds to support new energy efficiency savings projects. It is precisely this type of program that is contemplated by the statute and code—and the type of program that the OEC and the manufacturing and industrial community of Ohio can enthusiastically support. The OEC believes that the application is just, reasonable, and will advance the economic and environmental goals of S.B. 221 and the energy policies of this state. Therefore, the OEC urges other customers to employ similar, mutually beneficial, arrangements with utilities and requests the Commission to promptly approve this application.

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 parties by first class and/or electronic mail this 24th day of November, 2010.

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