

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Annual Alternative)	
Energy Status Report of Ohio Edison)	
Company, The Cleveland Electric)	
Illuminating Company and the Toledo)	
Edison Company)	Case No. 11-2479-EL-ACP
)	
In the Matter of the Application of Ohio)	
Edison Company, The Cleveland Electric)	
Illuminating Company and The Toledo)	
Edison Company for a Force Majeure)	
Determination for Their In-State Solar)	
Resources Benchmark Pursuant to R.C. §)	
4928.64(C)(4)(a))	

**THE ENVIRONMENTAL LAW & POLICY CENTER'S
MOTION TO INTERVENE**

Pursuant to Ohio Revised Code §4903.221 and Ohio Administrative Code §4901-1-11, the Environmental Law and Policy Center (“ELPC”) moves to intervene in the above-captioned proceeding. As explained in the attached Memorandum in Support, ELPC has a real and substantial interest in this proceeding. 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.

Accordingly, ELPC respectfully requests the Public Utilities Commission of Ohio grant its motion.

Respectfully submitted,

/s/ Tara C. Santarelli

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**MEMORANDUM IN SUPPORT OF
THE ENVIRONMENTAL LAW & POLICY CENTER’S
MOTION TO INTERVENE**

On January 24, 2011, Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company (collectively referred to as “FirstEnergy”), filed an Application for Approval of a Force Majeure Determination for a Portion of the 2010 Solar Energy Resources Benchmark Requirement (“First Application”).¹ Generally, FirstEnergy requested that the Public Utility Commission of Ohio (PUCO or “Commission”) reduce FirstEnergy’s solar benchmark requirement. ELPC intervened in that case and filed joint comments.² Then, on April 11, 2011, FirstEnergy filed a Notice of Withdrawal of their First

¹ See *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company for Approval of a Force Majeure Determination for a Portion of the 2010 Solar Energy Resources Benchmark Requirement*, Docket. No. 11-0411-EL-ACP.

² See “Entry ordering the motions to intervene...” and “Comments in Opposition to FirstEnergy’s Application for a Force Majeure Determination”, Docket. No. 11-0411-EL-ACP.

Application, claiming, among other things, that they were withdrawing in order to file a revised Application with more current information.

On April 15, FirstEnergy filed their annual report and application for a force majeure determination (“Revised Application”) and this case was opened. In the Revised Application, FirstEnergy again requests that the PUCO reduce FirstEnergy’s 2010 solar benchmark requirement. FirstEnergy claims that they obtained 1,629 in-state solar renewable energy credits (“SREC”s). FirstEnergy was required to obtain 3,206 in-state SRECs. ELPC notes that FirstEnergy’s Revised Application reflects greater benchmark achievements than their First Application. FirstEnergy, however, is still approximately 50% deficient in obtaining in-state SRECs, and FirstEnergy’s Revised Application fails to demonstrate that FirstEnergy is entitled to a force majeure determination.

ELPC seeks to intervene in this case and is an interested party pursuant to Ohio Revised Code (“ORC”) §4903.221 and Ohio Administrative Code (“OAC”) §4901-1-11. 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 Commission makes certain determinations. ELPC is a non-profit environmental 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 a presence and members in Ohio, ELPC and its members may be adversely affected by the outcome of this proceeding. ELPC is not adequately represented by the other parties in this case.

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 OAC §4901-1-11

similarly provide that 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(B), 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.

ORC §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), which establishes requirements for utilities to provide energy efficiency programs in Ohio. Specifically, ELPC has an interest in ensuring that utilities comply with solar energy resources benchmarks, codified in ORC § 4928.64 and OAC § 4901:1-40. As to the second factor, those utilities subject to the requirements of SB 221 should be held to reasonable expectations of fulfillment. ELPC maintains the PUCO should carefully consider applications for waivers in relation to the necessary requirements for seeking a waiver and the future precedent that may be set. In its Revised Application, FirstEnergy failed to demonstrate that it is entitled to a force majeure determination and that it pursued all reasonable compliance options, as required under OAC § 4901:1-40-06(A).

Under the third factor, ELPC's inclusion will not unduly delay or prolong the proceeding. ELPC is committed to working within any schedule this Commission sets to achieve the efficient and orderly disposition of the questions presented. Finally, ELPC will significantly contribute to the full development and resolution of the proceeding by bringing its unique perspective. ELPC

has expertise and experience regarding renewable energy and energy efficiency regulation that will contribute to resolving the pending issues.

Similarly, ELPC meets the requirements set forth in OAC §4901-1-11:

- (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.

OAC §4901-11-1(B). The first four factors mirror those in ORC §4903.221 and for the reasons 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.

Finally, the 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). ELPC's inclusion in this proceeding will contribute to the goal of broad participation in PUCO proceedings.

Because ELPC meets the criteria set forth in both ORC §4903.221 and OAC §4901-1-11, it respectfully asks this Commission to grant its motion to intervene in the above-captioned case.

Respectfully submitted,

/s/ Tara C. Santarelli
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Attorney for the Environmental Law &
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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing Motion to Intervene and Memorandum in Support have been served upon the following party, via electronic mail, this 28th day of April, 2011.

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/s/ Tara C. Santarelli
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This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

4/28/2011 2:39:32 PM

in

Case No(s). 11-2479-EL-ACP

Summary: Motion to Intervene electronically filed by Tara Santarelli on behalf of
Environmental Law & Policy Center