

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of The)	Case No. 11-2212-EL-EEC
Cleveland Electric Illuminating Company and)	
American Tank and Fabricating Company to)	
Commit Energy Efficiency/Peak Demand)	
Reduction Programs)	

**MOTION TO INTERVENE
BY THE
OHIO ENVIRONMENTAL COUNCIL**

The Ohio Environmental Council (“OEC”) hereby moves to intervene in this case in which the Cleveland Electric Illuminating Company (“Cleveland Electric”) and American Tank and Fabricating Company (“American Tank”) seek integration of their mercantile customer energy efficiency or peak-demand reduction programs under Ohio Admin. Code 4901:1-39-05(G). Approval of this arrangement will allow American Tank to opt-out of paying Cleveland Electric for the costs collected under the rider, and allow FirstEnergy to attribute the energy reductions associated with the projects undertaken by American Tank to the energy efficiency achievements required under R.C. 4928.66.

As more fully discussed in the accompanying memorandum, the OEC has a real and substantial interest in this proceeding, and the disposition of this case may impede its ability to protect that interest. 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 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,

/s/ E. Camille Yancey
E. Camille Yancey, Counsel of Record
Nolan Moser
Trent A. Dougherty
Ohio Environmental Council
1207 Grandview Avenue, Suite 201
Columbus, Ohio 43212-3449
(614) 487-7506 – Telephone
(614) 487-7510 – Fax
camille@theoec.org
nolan@theoec.org
trent@theoec.org

Attorneys for the OEC

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of The)	Case No. 11-2212-EL-EEC
Cleveland Electric Illuminating Company and)	
American Tank and Fabricating Company to)	
Commit Energy Efficiency/Peak Demand)	
Reduction Programs)	

MEMORANDUM IN SUPPORT

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 demand reduction and energy efficiency requirements in S.B. 221. The OEC has a real and substantial interest in assuring that the applicants’ proposal will result in sufficient energy savings and that the applicants are eligible for a rider exemption under Ohio law. If the energy savings prove to be insufficient, there is a danger that Cleveland Electric will not meet the energy savings required under R.C. 4928.66, nor will it have the benefit of the inclusion of American Tank under the rider to support measures which would result in compliance with the statutory requirements. Thus, there can be no question that the OEC has an interest in and may be adversely affected by the disposition of this case.

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.” The OEC is interested in ensuring that the energy efficiency and demand reduction benchmarks are met in a manner which comports with the letter and intent of S.B. 221. The OEC, as an environmental advocacy organization, has a special interest in the outcome of this case because the implementation of this special arrangement directly impacts the quality of programs by which Cleveland Electric intends to meet the energy efficiency benchmarks required under R.C. § 4928.66.

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.” This case involves the review of the reasonableness and lawfulness of the request for approval of a special arrangement between American Tank and Cleveland Electric filed pursuant to Ohio Admin. Code 4901:1-39-08(B). The OEC maintains that the approval of such special arrangements, while allowed under R.C. §4928.66(A)(2)(c), should be undertaken only after a thorough review of the proposed energy efficiency projects to be undertaken by a mercantile customer. The current application does not provide sufficient detail about the programs to determine whether approval is appropriate. Failure of any mercantile project to produce the stated energy efficiency savings could result in a failure of the electric distribution utility to comply with the statutory energy efficiency benchmarks. This would create hardship on Ohio’s air quality and on its consumers and economy.

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.

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.

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 leave to intervene in this proceeding.

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

Respectfully submitted,

/s/ E. Camille Yancey
E. Camille Yancey, Counsel of Record
Nolan Moser
Trent A. Dougherty
Ohio Environmental Council
1207 Grandview Avenue, Suite 201
Columbus, Ohio 43212-3449
(614) 487-7506 – Telephone
(614) 487-7510 – Fax
camille@theoec.org
nolan@theoec.org
trent@theoec.org

Attorneys for the OEC

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing has been served upon the following parties by first class or electronic mail this 1st day of June, 2011.

Shannon, Kevin P. Mr.
Calfee, Halter & Griswold LLP
1400 KeyBank Center 800 Superior Avenue
Cleveland, OH 44114-2688
Phone: 216-622-8852
Fax: 216-241-0816

Cadotte, Dan Mr.
American Tank & Fabricating Co.
12314 Elmwood Ave.
Cleveland, OH 44111
Phone: 216-688-3148
Fax: 216-252-9343
cadotted@atfco.com

Respectfully Submitted,

/s/ E. Camille Yancey
E. Camille Yancey, Counsel of Record
Nolan Moser
Trent A. Dougherty

Attorneys for the OEC

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

6/1/2011 11:09:05 AM

in

Case No(s). 11-2212-EL-EEC

Summary: Motion Motion to Intervene electronically filed by Ms. Elizabeth Camille Yancey on behalf of Ohio Environmental Council