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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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PUCO

**In the Matter of the Application of Duke
Energy Ohio, Inc. for Authority to
Establish A Standard Service Offer
Pursuant to Section 4928.143, Revised
Code, in the Form of an Electric Security
Plan, Accounting Modifications and
Tariffs for Generation Service.**)

Case No. 11-3549-EL-SSO

**In the Matter of the Application of Duke
Energy Ohio, Inc. for Authority to
Amend its Certified Supplier Tariff,
P.U.C.O. No. 20.**)

Case No. 11-3550-EL-ATA

**In the Matter of the Application of Duke
Energy Ohio, Inc. for Authority to
Amend its Corporate Separation Plan**)

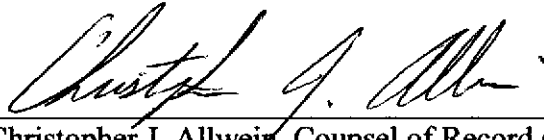
Case No. 11-3551-EL-UNC

**MOTION TO INTERVENE
BY THE
NATURAL RESOURCES DEFENSE COUNCIL**

For the reasons set forth in the accompanying Memorandum in Support, the Natural Resources Defense Council moves the Public Utilities Commission of Ohio for leave to intervene in the above-captioned cases pursuant to Ohio Revised Code 4903.221 and Ohio Administrative Code 4901-1-11 and 4901:1-35-06(B), and to grant to the Natural Resources Defense Council the full powers and rights specifically authorized by statute or by the provisions of the Ohio Administrative Code.

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Respectfully submitted,

A handwritten signature in black ink, appearing to read "Christopher J. Allwein". The signature is written in a cursive style with a horizontal line underneath it.

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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke Energy Ohio, Inc. for Authority to Establish A Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan, Accounting Modifications and Tariffs for Generation Service.)	Case No. 11-3549-EL-SSO
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In the Matter of the Application of Duke Energy Ohio, Inc. for Authority to Amend its Corporate Separation Plan)	Case No. 11-3551-EL-UNC
)	

**MEMORANDUM IN SUPPORT OF MOTION TO INTERVENE OF THE
NATURAL RESOURCES DEFENSE COUNCIL**

I. Introduction

The Natural Resources Defense Council (“NRDC”) seeks intervention in these proceedings regarding the Duke Energy Ohio, Inc. (“Duke”) proposed Standard Service Offer/Electric Security Plan (“SSO/ESP”), the proposed amendment of its Certified Supplier Tariff and the proposed amendment of its Corporate Separation Plan. NRDC seeks to participate in these proceedings because NRDC and its members may be adversely affected by the Public Utilities Commission of Ohio (“PUCO” or “Commission”) rulings in these matters. The SSO/ESP process presents critical questions regarding Duke’s pursuit of economic development, capacity resources and a modified scheme of riders (some of which are non-bypassable for customers within the Duke service territory), which may affect customer investment in energy

efficiency and renewable energy, demand response penetration, Duke's investment in its existing fleet of generators (for commercial or regulatory reasons), and the potential construction of new generation. These and other issues which are a part of these proceedings may directly impact NRDC's interests in protecting public health and the environment, and the interests of their members who reside in Duke's service territory and/or live near Duke's power generation sources. As such, NRDC is entitled to intervene in this proceeding.

II. Legal Standard

Ohio law states that a party may intervene in a Commission proceeding if that party "may be adversely affected by a public utilities commission proceeding."¹ In the determination of whether a party may be adversely affected for purposes of intervention, the Commission is required to evaluate:

- (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.²

The Commission's rules similarly provide that any person may intervene where "[t]he person has a real and substantial interest in the proceeding."³ The PUCO regulations set forth the same four standards that are established in Ohio Revised Code 4903.221(B) for determining

¹ R.C. 4903.221

² R.C. 4903.221(B)

³ Ohio Adm. Code 4901-1-11(A)(2)

whether a party may be “adversely affected,” and also purport to add a fifth factor regarding “the extent to which the person’s interest is represented by existing parties.”⁴

As the Ohio Supreme Court recently held, intervention in Commission proceedings “ought to be liberally allowed so that the positions of all persons with a real and substantial interest in the proceedings can be considered by the [Commission].”⁵ The Commission has consistently maintained a policy to “encourage the broadest possible participation” in its proceedings, even under extenuating circumstances.⁶ NRDC satisfies these liberal intervention standards and respectfully requests that its intervention be granted in these cases.

III. NRDC is entitled to intervene under §4903.221 because the organization and its members “may be adversely affected” by the outcome of this proceeding.

NRDC is entitled to intervene in this proceeding because NRDC satisfies each of the four statutory factors demonstrating that the organization and its members “may be adversely affected” by the outcome. First, the nature and extent of NRDC’s interests in the proceeding is real and substantial,⁷ as the issues involved herein are directly related to NRDC’s interests in promoting energy efficiency and renewable energy, and will have direct economic, public health, and environmental impacts on NRDC’s members in Ohio.

In particular, NRDC is a nationwide, non-profit environmental organization that has worked for its 40 year history to, among other things, promote energy efficiency and renewable energy sources, and to protect air and water quality. NRDC has more than 10,600 members in Ohio, many of whom reside in Duke’s service area and/or live near Duke’s existing power generating facilities. NRDC has been granted intervention on numerous occasions in

⁴ Ohio Adm. Code 4901-1-11(B).

⁵ *Ohio Consumers’ Counsel v. Pub. Util Comm’n of Ohio* (2006), 111 Ohio St. 3d 384, 388, 2006 Ohio 5853, 856 N.E.2d 940.

⁶ See e.g. *In the Matter of the Application of The Dayton Power and Light Company*, 2009 WL 322883 at 1, Ohio PUC February 5, 2009 (Commission granted motion to intervene in light of policy to encourage participation, despite party’s failure to file within the deadline).

⁷ R.C. 4903.221(B)(1)

proceedings before the Commission, including in Duke's first ESP case (08-920-EL-SSO, et al).⁸

NRDC has been an active member of the Duke Energy Community Partnership, which is the Company's ongoing energy efficiency collaborative.

These proceedings present numerous issues that are directly relevant to the interests of NRDC and its members. For example, Duke seeks approval of cost recovery mechanisms for renewable energy and distribution system investment, which includes a feature that would break the link between recovery of fixed distribution costs and sales. In addition, Duke seeks the ability to collect as non-bypassable charges cost recovery for the long-term supply of capacity from the Company's current electric generating units. This cost may include the installation of pollution controls or new generation. The Company further proposes to supply its standard service offer obligation through a series of auctions which will, according to Duke, "include a variety of product offerings, so as to attract as many prospective and diverse bidders as possible."⁹ These and other issues raised in these proceedings could play a significant role in determining the resource mix of Duke's electric utility operations. As such, the interests of NRDC in these proceedings stems from the direct and indirect impacts these issue outcomes will have on the environment of the State of Ohio and surrounding areas, and on the electric bills of their members in Duke's service area.

Second, the desire of NRDC to promote energy efficiency, peak demand reduction, renewable energy, and cost-effective low carbon energy sources in Ohio is directly related to the issues of this case.¹⁰ The SSO/ESP process at issue is meant to produce a set of "just and

⁸ *In the matter of the application of Duke Energy Ohio for approval of an Electric Security Plan*, PUCO Case No. 08-920-EL-SSO, et al, Entry at 5 (September 17, 2008).

⁹ Duke ESP Application at 13 (June 20, 2011).

¹⁰ R.C. 4903.221(B)(2)

reasonable” policies¹¹ and to “maintain essential electric service to consumers.”¹² The resulting ESP is to “include provisions relating to the supply and pricing of electric generation services,” and may provide for recovery of various costs if they are “reasonable” or “prudently incurred.”¹³ NRDC intends to present evidence and argument in support of policies that would promote aggressive implementation of energy efficiency and renewable energy sources, combined heat and power, and other low carbon generation sources as the most reasonable and prudent manner for Duke to “maintain essential electric services.” In addition, NRDC, through its participation in these proceedings, will encourage the retirement of existing generation sources where appropriate and cost-effective. Such arguments are plainly related to the issues of this proceeding.

Third, NRDC’s intervention will not unduly prolong or delay the proceeding¹⁴ as this motion is being filed by the deadline set for intervention¹⁵ and NRDC is able to comply with all case management deadlines established by the Commission and/or agreed to by the parties.

Fourth, intervention by NRDC will significantly contribute to the full development of the record in this proceeding.¹⁶ NRDC will bring significant expertise to bear in these proceedings. NRDC’s staff and consultants have extensive experience in resource planning, analyzing the potential for cost effective energy efficiency, and in the laws and regulations regulating energy production. Further, NRDC has intervened and/or provided testimony on these issues in similar proceedings in a number of states including Illinois, Wisconsin, New York, Oregon, California, New Jersey, and Iowa, and has been granted intervention in numerous cases before the

¹¹ Ohio Adm. Code. 4901:1-35-06(A)

¹² R.C. 4928.141(A); Ohio Adm. Code 4901:1-35-02(A).

¹³ R.C. 4928.143(B)(1) and (2)(a)-(b).

¹⁴ R.C. 4903.221(B)(3)

¹⁵ Attorney Examiner Entry at 2 (June 21, 2011).

¹⁶ R.C. 4903.221(B)(4)

Commission. NRDC has regularly presented testimony before the U.S. Congress and various state legislatures related to the electric utility industry, including: energy efficiency, renewable energy, nuclear energy, and coal generation. As such, NRDC should be permitted to intervene pursuant to Ohio Revised Code §4903.221.

IV. NRDC may intervene because NRDC and its members have a “real and substantial interest” in the proceeding as presented in Ohio Administrative Code 4901-1-11(B).

NRDC may also intervene in this proceeding because they satisfy each of the five factors listed in the PUCO rules demonstrating that they have a “real and substantial interest” in the proceeding.¹⁷ The first four factors are identical to those set forth under §4903.221(B) and, therefore, NRDC should be permitted to intervene for the same reasons as set forth in Section III above.

As for the fifth factor, NRDC’s interests in this proceeding will not be fully represented by other parties¹⁸ because none of the other parties can adequately represent NRDC’s interests as national environmental organizations that are interested in both environmental protection and promotion of energy efficiency, renewable energy, combined heat and power, and other low carbon generation sources as the most reasonable and prudent way for Duke to maintain and diversify essential electric services.¹⁹

V. Conclusion

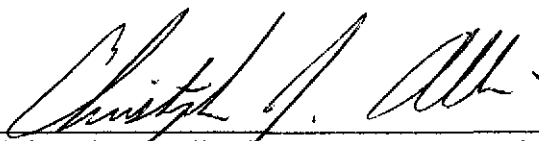
For the foregoing reasons, the Natural Resources Defense Council respectfully request that their Motion to Intervene be granted, and NRDC be authorized to participate as full parties to this proceeding.

¹⁷ Ohio Adm.Code 4901-1-11(B)

¹⁸ Ohio Adm. Code 4901-1-11(B)(5)

¹⁹ R.C. 4928.02 states: “It is the policy of this state...to ensure diversity of electricity supplies and suppliers...”

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Christopher J. Allwein". The signature is fluid and cursive, with a horizontal line drawn underneath it.

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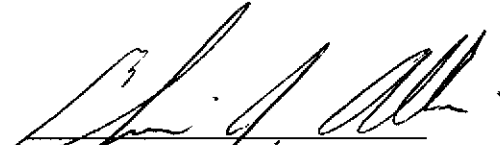
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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing *Motion to Intervene and Memorandum in Support* has been filed with the Public Utilities Commission of Ohio and has been served upon the following parties via electronic mail on July 6, 2011.



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