

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Joint Application of)	
Columbus Southern Power Company, Ohio)	
Power Company, The Dayton Power and)	Case No. 11-4627-EL-WVR
Light Company, and Duke Energy Ohio,)	
Inc., for a Waiver with Regard to Rule)	
4901:1-39-05(C), Ohio Administrative Code.)	

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

The Environmental Law and Policy Center (ELPC) respectfully moves to intervene in the above-captioned proceeding. In this filing, Ohio Edison Company, the Cleveland Electric Illuminating Company, the Toledo Edison Company, Columbus Southern Power Company, Ohio Power Company, the Dayton Power and Light Company, and Duke Energy Ohio, Inc. filed an application requesting an extension of the filing deadline for the annual portfolio status reports. As explained in the attached Memorandum in Support, ELPC meets the requirements for intervention contained in Ohio Revised Code §4903.221 and Ohio Administrative Code §4901-1-11.

Accordingly, ELPC respectfully requests the Public Utilities Commission of Ohio grant its Motion to Intervene.

Respectfully submitted,

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Policy Center

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

The Ohio Administrative Code requires that all EDU’s file an annual status report by March 15 that 1) demonstrates compliance with energy efficiency and peak demand reduction (“EE/PDR”) benchmarks, and 2) demonstrates whether the company has successfully implemented EE/PDR programs contained in the EDU’s portfolio plan. On August 1, 2011, Ohio Edison Company, the Cleveland Electric Illuminating Company, the Toledo Edison Company, Columbus Southern Power Company, Ohio Power Company, the Dayton Power and Light Company, and Duke Energy Ohio, Inc. (collectively referred to as “electric distribution utilities” or “EDU’s”) filed an application requesting an extension of the filing deadline for the annual portfolio status reports (“Application”). In their Application, the EDU’s state that a two month extension (lengthening the deadline from March 15 until May 15) would enable the EDU’s to provide a more thorough analysis of program impacts.¹

ELPC seeks to intervene in this case. ORC §4903.221 provides, “Any other person who may be adversely affected by a public utilities commission proceeding may intervene in such

¹ In the Matter of the Joint Application of Columbus Southern Power Company, Ohio Power Company, The Dayton Power and Light Company and Duke Energy Ohio Inc., for a Waiver with Regard to Rule 4901:1-39-05(C) , Ohio Administrative Code, Case No. 11-4627-EL-WVR, page 2.

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 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 factors, ELPC’s interest in the case is to ensure that Ohio’s EDU’s comply with Ohio Revised Code and Ohio Administrative Code provisions. ELPC actively reviews the annual status reports and benefits from thorough and accurate reports describing EE/PDR programs and efforts. ELPC intervenes in and litigates cases involving EDU’s portfolio plans as well as benchmark compliance. ELPS has an interest in ensuring that the annual status reports are thorough, accurate, and timely.

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 is an active participant in cases involving energy efficiency in Ohio and throughout the Midwest. Further, ELPC has expertise and experience regarding energy efficiency program implementation 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 factor, 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,

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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 individuals, via electronic mail, this 8th day of August, 2011.

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