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ENVIRONMENTAL LAW & POLICY CENTER

Protecting the Midwest's Environment and Natural Heritage

August 10, 2011

PUCO Docketing
180 E. Broad St.
10th Floor
Columbus, OH 43215

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Re: PUCO Case No. 11-4393-EL-RDR

Dear Sir/Madam:

Please find attached 11 copies of the Environmental Law & Policy Center's Motion to Intervene for filing in Case No. 11-4393-EL-RDR. A faxed copy was sent today at approximately 3:25pm Eastern Time. Please don't hesitate to contact me with any question or concerns.

Sincerely,

Michael Brod
Legal Assistant
Environmental Law & Policy Center
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mbrod@elpc.org

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Harry W. Drucker, Chairperson • Howard A. Learner, Executive Director

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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke)
Energy Ohio, Inc. for an Energy Efficiency) Case No. 11-4393-EL-RDR
Cost Recovery Mechanism and for Approval of)
Additional Programs for Inclusion in its)
Existing Portfolio.)

**MOTION TO INTERVENE OF
THE ENVIRONMENTAL LAW & POLICY CENTER**

The Environmental Law and Policy Center (“ELPC”) respectfully moves to intervene in the above-captioned proceeding. As explained in the attached Memorandum in Support, ELPC meets the criteria for intervention set forth in Ohio Revised Code §4903.221 and Ohio Administrative Code §4901-1-11. Accordingly, ELPC respectfully requests this Commission 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**

Ohio Revised Code (“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 Public Utility Commission of Ohio (“PUCO” or “the Commission”) makes certain determinations. The Environmental Law & Policy Center (“ELPC”) is a non-profit environmental advocacy organization whose mission is to improve the Midwest’s environmental quality and promote 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 and ELPC is not adequately represented by the other parties.

On July 20, 2011, Duke Energy Ohio, Inc. (“Duke”) filed an application captioned “In the Matter of the Application of Duke Energy Ohio, Inc. for an Energy Efficiency Cost Recovery Mechanism and for Approval of Additional Programs for Inclusion in its Existing Portfolio” (“Application”).¹ The Application addresses Duke’s cost recovery of energy efficiency/peak demand reduction (“EE/PDR”) program costs, avoided costs and the addition of new programs

¹ See Case No. 11- 4393-EL-RDR.

for specific customer classes. Duke seeks to obtain approval of its Application in order to comply with Am. Sub. Senate Bill 221 (S.B. 221), contained in part at ORC §4928.66. ELPC has a strong interest in assuring the effective and timely implementation of S.B. 221.

ORC §4903.221 requires that the Commission consider four factors when presented with a motion to intervene. In addition, the Commission's procedural rules at Ohio Administrative Code ("OAC") §4901-1-11 similarly provides 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, 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.

O.R.C. §4903.221(B). As to the first factor, ELPC's interest is to ensure that the design and implementation of Duke's energy efficiency and peak demand reduction programs comply with O.R.C. §4928.66. ELPC has members in Ohio and has an office in Ohio that focuses on Ohio energy and environmental issues. ELPC was involved in Duke's portfolio planning case that was in effect from 2009-2011.² ELPC is also an active participant in the Duke Collaborative and is working with the utility and other members on this case.

Duke's programs will affect ELPC members through energy efficiency opportunities and electricity costs. In addition, emissions from Duke's generating stations affect ELPC members. Effective energy efficiency programs directly impact the operating time of power plants. If Duke's programs to reduce electricity consumption are not efficient or effective, this will lead to

² See *In the Matter of the Report of Duke Energy Ohio, Inc. Concerning its Energy Efficiency and Peak-Demand Reduction Programs and Portfolio Planning*, Case No. 09-1999.

increased plant operations and emissions affecting the health of ELPC members. Moreover, Duke plants' air emissions travel throughout the Midwest, including Indiana, Michigan, and Illinois, where additional ELPC members reside.

As to the second factor, the Commission should carefully consider the programs and calculations Duke proposes. Although this motion is the wrong venue to discuss legal theories, Duke puts forth these programs and calculations as complying with statutory requirements. Because of the impacts on ELPC and its members in Ohio, ELPC wants to ensure Duke's proposals meet the applicable legal requirements, and if not, suggest modifications to achieve compliance. Further, because Duke's efficiency and peak demand reduction portfolio will be in effect for three years, the Commission should closely analyze the proposals to ensure effective and correct implementation.

Under the third factor, ELPC's inclusion will not unduly delay or prolong the proceeding. ELPC'S Motion to Intervene is timely. Further, ELPC is committed to working within the schedule set by the Commission to achieve the efficient and orderly disposition of issues presented.

Finally, ELPC will significantly contribute to the full development and resolution of the proceeding by bringing its unique perspective to the case. ELPC has expertise and experience throughout the Midwest regarding energy efficiency programs and implementation that will contribute to resolving the pending issues. ELPC has been involved in the development of energy efficiency efforts around the Midwest over the past decade. Since 2008, ELPC has intervened in energy efficiency proceedings in Ohio, Illinois, Iowa and Michigan, submitting expert testimony analyzing efficiency programs and making recommendations regarding improvement of the programs. ELPC currently participates in stakeholder processes in those

states. ELPC's expert witness Geoff Crandall has analyzed efficiency programs and served as an expert witness in efficiency cases around the country for the past 25 years.

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

- (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.

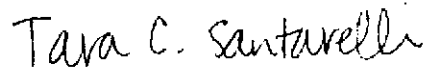
OAC §4901-11-1(B).

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, 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. ELPC is interested in how the programs will affect Ohio, and how they will affect the Midwest. ELPC is interested in both Ohio's environmental health and ELPC wants to ensure that the renewable energy standard is used as an economic development tool. Ohio is positioned to be a leader in the region for economic gain through efficiency and renewable energy technologies. However, those economic benefits will only materialize if utilities implement effective and successful programs. ELPC wants to ensure that Ohio receives the economic and job creation benefits promised by the energy standard. Because no other party advocates at the intersection of environmental health and economic development in Ohio, no other party can adequately represent ELPC's interests.

Finally, this Commission's policy is to "encourage the broadest possible participation in its proceedings." *Cleveland Elec. Illum. Co.*, Case No. 85-675-EL-AIR, (January 14, 1986) at 2. The Supreme Court of Ohio, in a 2006 case addressing motions to intervene before the PUCO, reinforced this "inclusive" standard. In that case, the Court held that "intervention 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 PUCO." *Ohio's Consumer Counsel v. PUCO*, (2006) 111 Ohio St. 3d 384, 388. ELPC's inclusion in this proceeding will contribute to this goal of broad participation in PUCO proceedings.

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

Respectfully submitted,



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Attorney for the Environmental Law &
Policy Center

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 10th day of August, 2011.

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