

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

**In the Matter of the Application of )  
Columbus Southern Power Company for ) Case No. 11-5568-EL-POR  
Approval of its Program Portfolio Plan )  
and Request for Expedited Consideration.)**

**)  
In the Matter of the Application of Ohio )  
Power Company for Approval of its ) Case No. 11-5569-EL-POR  
Program Portfolio Plan and Request for )  
Expedited Consideration. )**

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

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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 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.

Respectfully submitted,

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<b>Columbus Southern Power Company for</b>	)	<b>Case No. 11-5568-EL-POR</b>
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**MEMORANDUM IN SUPPORT OF MOTION TO INTERVENE OF THE  
NATURAL RESOURCES DEFENSE COUNCIL**

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**I. Introduction**

The Natural Resources Defense Council (“NRDC”) seeks intervention in these proceedings regarding the Columbus Southern Power Company and Ohio Power Company (collectively “AEP” or “Companies”) application seeking approval of the Companies’ 2012-2014 Energy Efficiency and Peak Demand Reduction (“EE/PDR”) Portfolio of Programs (“Application”). 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 Application presents important questions regarding AEP’s recovery of EE/PDR program costs, avoided costs and the consideration of new programs for specific customer classes. 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 AEP’s service territories and/or live near AEP’s power generation sources. As such, NRDC is entitled to intervene in these proceedings.

## 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.”<sup>1</sup> 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.<sup>2</sup>

The Commission’s rules similarly provide that any person may intervene where “[t]he person has a real and substantial interest in the proceeding.”<sup>3</sup> The PUCO regulations set forth the same four standards that are established in Ohio Revised Code 4903.221(B) for determining 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.”<sup>4</sup>

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].”<sup>5</sup> The Commission has consistently maintained a policy to “encourage the broadest possible participation” in its

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<sup>1</sup> R.C. 4903.221

<sup>2</sup> R.C. 4903.221(B)

<sup>3</sup> Ohio Adm. Code 4901-1-11(A)(2)

<sup>4</sup> Ohio Adm. Code 4901-1-11(B).

<sup>5</sup> *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.

proceedings, even under extenuating circumstances.<sup>6</sup> 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 these proceedings.**

NRDC is entitled to intervene in these proceedings 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 interest in these proceedings is real and substantial,<sup>7</sup> as the issues involved herein are directly related to NRDC’s interests in promoting energy efficiency, and will have direct economic, public health, and environmental impacts on NRDC’s members and mission 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 AEP’s service area and/or live near AEP’s existing power generating facilities. NRDC has been granted intervention on numerous occasions in proceedings before the Commission, including in AEP’s previous EE/PDR portfolio cases (09-1089-EL-POR and 09-1090-EL-POR).<sup>8</sup> NRDC is a signatory to the stipulation submitted along with the Application on November 29, 2010,<sup>9</sup> and NRDC is an active member of the AEP Ohio Collaborative.<sup>10</sup>

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<sup>6</sup> 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).

<sup>7</sup> R.C. 4903.221(B)(1)

<sup>8</sup> *In the matter of the Matter of the Application of Columbus Southern Power Company for Approval of its Program Portfolio Plan and Request for Expedited Consideration*, et al, PUCO Case Nos. 09-1089-EL-POR, et al, Attorney – Examiner Entry at ¶5 (January 21, 2010).

<sup>9</sup> 11-5568-EL-POR, et al, Stipulation at 17 (November 29, 2011).

<sup>10</sup> Noted on page 2 at ¶7 of the Application (November 29, 2010).

These proceedings present numerous issues that are directly relevant to the interests of NRDC and its members. For example, AEP seeks approval of cost recovery of program costs and shared savings.<sup>11</sup> These and other issues raised in these proceedings could play a significant role in determining the extent of the Companies' efforts to comply with statutory energy efficiency and peak demand reduction benchmarks which are supported by NRDC. As such, the interests of NRDC in these proceedings stems from the direct and indirect impacts specific issue outcomes will have on the environment of the State of Ohio and surrounding areas, the electric bills of their members in the Companies' service areas and customer participation in the proposed programs.

Second, the desire of NRDC to promote energy efficiency and peak demand reduction measures in Ohio is directly related to the issues of these cases.<sup>12</sup> The EE/PDR programs are meant to encourage customer participation and result in significant energy savings. NRDC intends to present evidence and argument in support of policies that would promote aggressive implementation of cost-effective energy efficiency and peak demand reduction programs for AEP's customers. Such arguments are plainly related to the issues of these proceedings.

Third, NRDC's intervention will not unduly prolong or delay these proceedings<sup>13</sup> as this motion is being filed by the deadline set for intervention<sup>14</sup> 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 these proceedings.<sup>15</sup> NRDC will bring significant expertise to bear in these proceedings. NRDC's staff and consultants have extensive experience in resource planning,

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<sup>11</sup> 11-5568-EL-POR, et al, Application at 3 (November 29, 2011).

<sup>12</sup> R.C. 4903.221(B)(2)

<sup>13</sup> R.C. 4903.221(B)(3)

<sup>14</sup> Ohio Adm. Code 4901-1-11(E).

<sup>15</sup> R.C. 4903.221(B)(4)

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 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 these proceedings because they satisfy each of the five factors listed in the PUCO rules demonstrating that they have a “real and substantial interest” in these cases.<sup>16</sup> 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 these proceedings will not be fully represented by other parties<sup>17</sup> 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 and peak demand reduction as the most reasonable and prudent way for AEP to maintain and diversify essential electric services.<sup>18</sup>

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<sup>16</sup> Ohio Adm.Code 4901-1-11(B)

<sup>17</sup> Ohio Adm. Code 4901-1-11(B)(5)

<sup>18</sup> R.C. 4928.02 states: “It is the policy of this state...to ensure diversity of electricity supplies and suppliers...”

**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 a full party in these proceedings.

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* has been filed with the Public Utilities Commission of Ohio and has been served upon the following parties via electronic mail on January 11, 2011.

/s/ Christopher J. Allwein  
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Summary: Motion Motion to Intervene electronically filed by Mr. Christopher J Allwein on behalf of Natural Resources Defense Council