

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

**In the Matter of the Application of The)
Dayton Power and Light Company to)
Supplement its Energy Efficiency and Peak) Case No. 11-6010-EL-POR
Demand Reduction Program Portfolio with)
Additional Program.)**

**MOTION TO INTERVENE
BY THE
SIERRA CLUB**

For the reasons set forth in the accompanying Memorandum in Support, the Sierra Club moves the Public Utilities Commission of Ohio for leave to intervene in the above-captioned case pursuant to Ohio Revised Code 4903.221 and Ohio Administrative Code 4901-1-11, and to grant to the Sierra Club the full powers and rights specifically authorized by statute or by the provisions of the Ohio Administrative Code.

Respectfully submitted,

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**MEMORANDUM IN SUPPORT OF MOTION TO INTERVENE OF THE
SIERRA CLUB**

I. Introduction

The Sierra Club seeks intervention in this proceeding where the application of a proposed, additional utility energy efficiency program is pending. The Dayton Power and Light Company (“DP&L” or “Company”) intends to add the conversion of a distribution line to its existing energy efficiency and peak demand reduction (“EE/PDR”) portfolio of programs.¹ Sierra Club seeks to participate in this proceeding because Sierra Club and its members may be adversely affected by the Public Utilities Commission of Ohio (“PUCO” or “Commission”) rulings in these matters. This application and review presents important issues regarding DP&L’s efforts to meet future EE/PDR benchmarks and comply with Ohio law. These and other issues which are a part of this proceeding may directly impact Sierra Club’s interests in promoting and encouraging effective, utility-sponsored EE/PDR programs on behalf of its members, some of whom reside in the Company’s service territory. As such, Sierra Club is entitled to intervene in this proceeding.

II. Legal Standard

¹ DP&L Application at 1 (December 20, 2011).

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.”² 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.³

The Commission’s rules similarly provide that any person may intervene where “[t]he person has a real and substantial interest in the proceeding.”⁴ 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.”⁵

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].”⁶ The Commission has consistently maintained a policy to “encourage the broadest possible participation” in its

² R.C. 4903.221

³ R.C. 4903.221(B)

⁴ Ohio Adm. Code 4901-1-11(A)(2)

⁵ Ohio Adm. Code 4901-1-11(B).

⁶ *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.⁷ Sierra Club satisfies these liberal intervention standards and respectfully requests that its intervention be granted in this case.

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

Sierra Club is entitled to intervene in this proceeding because Sierra Club 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 Sierra Club’s interests in the proceeding is real and substantial,⁸ as the issues involved herein are directly related to Sierra Club’s interests in promoting energy efficiency/ peak demand reduction programs and utility compliance with Ohio’s renewable benchmarks. EE/PDR programs that produce substantive results will have direct economic, public health, and environmental impacts on Sierra Club’s Ohio members.

In particular, Sierra Club states that it is the world's oldest and largest grassroots environmental organization. It has 1.4 million members and supporters in 65 Chapters, over 400 local groups nationwide and over 25,000 members and supporters in Ohio. Sierra Club was founded in 1892 and has been actively concerned with electric utility issues since it first engaged in protection of America’s scenic resources from hydropower development.

The Sierra Club's statement of purpose is "To explore, enjoy and protect the wild places of the Earth, to practice and promote the responsible use of the Earth's ecosystem and resources; to educate and enlist humanity to protect and restore the quality of the natural and human environment; and to use all lawful means to carry out these objectives." The Sierra Club actively

⁷ 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).

⁸ R.C. 4903.221(B)(1)

promotes responsible energy policy. Sierra Club has been granted intervention in numerous Ohio cases.⁹

This proceeding presents issues that are directly relevant to the interests of Sierra Club and its members. For example, the Company indicated its project will result in an estimated efficiency savings of 58,900Mwh¹⁰ which will be utilized by DP&L to satisfy a portion of their EE/PDR benchmarks. This and other issues raised in this proceeding could play a significant role in determining the extent of the Company's efforts to comply with statutory energy efficiency and peak demand reduction benchmarks which are supported by Sierra Club. As such, the interests of Sierra Club in this proceeding stems from the direct and indirect impacts specific issue outcomes will have on the environment of the State of Ohio and surrounding areas and the electric bills of their members in DP&L's service territory.

Second, the desire of Sierra Club to promote energy efficiency in Ohio is directly related to the issues of this case.¹¹ The Company's efforts to achieve future EE/PDR targets, including the employed procedures and associated costs, have an impact on whether compliance is achieved in the most cost-effective manner. Sierra Club may assert that DP&L's efforts could be calculated differently in a way that would benefit customers, the Company, the environment and Ohio's economy. Such arguments are plainly related to the issues of this proceeding.

Third, Sierra Club's intervention will not unduly prolong or delay the proceeding,¹² as this motion is being filed before any deadline set for intervention.¹³ The Sierra Club is able to

⁹ See, for example, *In the Matter of the Application of The Dayton Power and Light Company For Approval of its Electric Security Plan*, Case No 08-1094-EL-SSO, Attorney-Examiner Entry at ¶4 (February 5, 2009).

¹⁰ DP&L Application at ¶8 (December 20, 2011).

¹¹ R.C. 4903.221(B)(2)

¹² R.C. 4903.221(B)(3)

¹³ Ohio Adm. Code 4901-1-11(E)

comply with all case management deadlines established by the Commission and/or agreed to by the parties.

Fourth, intervention by Sierra Club will significantly contribute to the full development of the record in this proceeding.¹⁴ Sierra Club will bring significant expertise to bear in this proceeding. Sierra Club's staff and consultants have extensive experience in resource planning, analyzing the potential for energy efficiency and peak demand reduction programs, and in the laws and regulations related to energy production. The Sierra Club has intervened in energy efficiency cases in many states, is a participant in the DP&L energy efficiency collaborative, and has been involved in over thirty-five matters before this Commission. As such, Sierra Club should be permitted to intervene pursuant to Ohio Revised Code §4903.221.

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

Sierra Club 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.¹⁵ The first four factors are identical to those set forth under §4903.221(B) and, therefore, Sierra Club should be permitted to intervene for the same reasons as set forth in Section III above.

As for the fifth factor, Sierra Club's interests in this proceeding will not be fully represented by other parties¹⁶ because none of the other parties can adequately represent Sierra Club's interests as a national environmental organization that is interested in both environmental protection and promotion of energy efficiency as an offset for more expensive new electric

¹⁴ R.C. 4903.221(B)(4)

¹⁵ Ohio Adm.Code 4901-1-11(B)

¹⁶ Ohio Adm. Code 4901-1-11(B)(5)

generation resources. Energy efficiency and peak demand reduction are an important part of Ohio's energy future.

V. Conclusion

For the foregoing reasons, the Sierra Club respectfully request that their Motion to Intervene be granted, and Sierra Club be authorized to participate as full parties to this proceeding.

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 March 20, 2012.

/s/ Christopher J. Allwein

Christopher J. Allwein

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