

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio)	
Edison Company, The Cleveland Electric)	
Illuminating Company and The Toledo)	Case No. 12-1230-EL-SSO
Edison Company for Authority to Provide)	
for a Standard Service Offer Pursuant to)	
R.C. § 4928.143 in the Form of an Electric)	
Security Plan)	

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

I. Introduction

The Natural Resources Defense Council (“NRDC”) seeks intervention in this proceeding where an application for a standard service offer by the Cleveland Electric Illuminating Company, the Toledo Edison Company and the Ohio Edison Company (collectively “FirstEnergy” or “Companies”) is pending. NRDC seeks to participate in this proceeding 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 and subsequent proceedings will present several issues regarding FirstEnergy’s standard service offer, including the Companies’ participation in PJM auctions, and its compliance with Ohio law. These and other issues which are a part of this proceeding may directly impact NRDC’s interests in promoting energy efficiency and peak demand reduction programs, and the interests of their members who reside in the Companies’ service territories. 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 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

¹ R.C. 4903.221

² R.C. 4903.221(B)

³ Ohio Adm. Code 4901-1-11(A)(2)

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.

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 utility compliance with Ohio’s benchmarks, 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 FirstEnergy’s service areas. NRDC has been granted intervention on numerous occasions in proceedings before the Commission, including in FirstEnergy’s most recent Standard Service Offer Case (10-388-EL-SSO),⁸ which this application now purports to extend.⁹

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)

⁸ *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Authority to Establish A Standard Service Offer*, Case No 10-388-EL-SSO, Entry at ¶5 (March 24, 2010).

⁹ FirstEnergy Application at 1 (April 13, 2012).

This proceeding presents issues that are directly relevant to the interests of NRDC and its members. For example, the Companies indicated they plan to bid energy efficiency and demand response into the PJM capacity auction, if the application is quickly approved.¹⁰ These and other issues raised in this proceeding could play a significant role in shaping the Companies' upcoming Energy Efficiency and Peak Demand Reduction Portfolio filing.¹¹ This will definitely affect 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 this proceeding stems from the direct and indirect impacts specific issue outcomes will have on the energy capacity of the State of Ohio and surrounding areas and the electric bills of their members in FirstEnergy's service areas.

Second, the desire of NRDC to promote energy efficiency in Ohio is directly related to the issues of this case.¹² The Companies' attempt to collect lost distribution revenues, including the employed procedures and associated costs, have an impact on whether compliance is achieved in the most cost-effective manner. This is important because these costs are recovered through Rider DSE from customers. NRDC may assert that the Companies' lost revenue collection should be limited or modified to comply with recent Commission directives in order to benefit customers, the environment and Ohio's economy. Such arguments are plainly related to the issues of this proceeding.

¹⁰ FirstEnergy Application at 2.

¹¹ *In the matter of the Commission's review of the participation of The Cleveland Electric Illuminating Company, the Ohio Edison Company, and The Toledo Edison Company in May 2012 PJM Reliability Pricing Model Auction*, Case No. 12-814-EL-UNC, Commission Entry at ¶10 (February 29, 2012).

¹² R.C. 4903.221(B)(2)

Third, NRDC's intervention will not unduly prolong or delay the proceeding¹³ as this motion is being filed by the deadline set for intervention¹⁴ 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.¹⁵ NRDC will bring significant expertise to bear in this proceeding. NRDC's staff and consultants have extensive experience in resource planning, analyzing the potential for 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 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.¹⁶ 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.

¹³ R.C. 4903.221(B)(3)

¹⁴ Ohio Adm. Code 4901-1-11(E)

¹⁵ R.C. 4903.221(B)(4)

¹⁶ Ohio Adm.Code 4901-1-11(B)

As for the fifth factor, NRDC's interests in this proceeding will not be fully represented by other parties¹⁷ because none of the other parties can adequately represent NRDC's interests as a national environmental organization that is interested in both environmental protection and promotion of energy efficiency as a capacity resource.

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.

Respectfully submitted,

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¹⁷ Ohio Adm. Code 4901-1-11(B)(5)

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 April 17, 2012.

/s/ Christopher J. Allwein
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This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

4/16/2012 7:27:02 PM

in

Case No(s). 12-1230-EL-SSO

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