

**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
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 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. 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. 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 Sierra Club’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, Sierra Club 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 Sierra Club satisfies these liberal intervention standards and respectfully requests that its intervention be granted in these cases.

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,⁷ as the issues involved herein are directly related to Sierra Club’s interests in promoting energy efficiency as a new generation offset and utility compliance with Ohio’s renewable benchmarks, and will have direct economic, public health, and environmental impacts on Sierra Club’s members and mission in Ohio.

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 has

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)

been involved in promotion of responsible energy policy almost since its first year. Sierra Club has also been granted intervention in numerous Ohio cases.⁸

These proceedings present issues that are directly relevant to the interests of Sierra Club and its members. For example, FirstEnergy states that one of the benefits of its proposed ESP is that it would possibly enable “the Companies to bid demand response resources and energy efficiency resources into the PJM 2015-2016 Base Residual Auction...”⁹ 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 benchmarks, which are supported by Sierra Club, and whether FirstEnergy’s efforts to bid in Energy Efficiency savings and Peak Demand reduction will be real and substantial, and result in savings for customers. 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 FirstEnergy’s service areas.

Second, the desire of Sierra Club to promote energy efficiency in Ohio is directly related to the issues of this case.¹⁰ The Companies’ efforts to bid in energy efficiency and peak demand savings have an impact on whether compliance is achieved in the most cost-effective manner and will shape the kinds of programs offered by FirstEnergy to its customers. This may significantly affect the costs of the programs offered, which will be collected from customers. Sierra Club may assert that the Companies’ auction revenues should be re-invested into energy efficiency and peak demand reduction program expansion. Such arguments are plainly related to the issues of this proceeding.

⁸ See, for example, *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 08-935-EL-SSO, Entry at ¶3 (October 20, 2008).

⁹ FirstEnergy Application at 2 (April 13, 2012).

¹⁰ R.C. 4903.221(B)(2)

Third, Sierra Club's intervention will not unduly prolong or delay the proceeding¹¹ as this motion is being filed by the deadline set for intervention¹² and Sierra Club is able to 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.¹³ Sierra Club will bring significant expertise to bear in these proceedings. 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 regulating energy production. The Sierra Club has intervened in energy efficiency, renewable energy and coal generation cases in many states, 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.¹⁴ 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.

¹¹ R.C. 4903.221(B)(3)

¹² Attorney Examiner Entry at 2, para. 5 (April 19, 2012).

¹³ R.C. 4903.221(B)(4)

¹⁴ Ohio Adm.Code 4901-1-11(B)

As for the fifth factor, Sierra Club's interests in this proceeding will not be fully represented by other parties¹⁵ because none of the other parties can adequately represent Sierra Club's interests as a national environmental organization that is interested in environmental protection, the promotion and increase of energy efficiency as an offset to expensive, new generation and increasing the scope of existing and new energy efficiency programs through re-investment of auction revenue into such programs.

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,

/s/ Christopher J. Allwein

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¹⁵ 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 23, 2012.

/s/ Christopher J. Allwein
Christopher J. Allwein

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The Sierra Club