

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

<b>In the Matter of the Application of Ohio</b>	)		
<b>Edison Company, The Cleveland Electric</b>	)	<b>Case Nos.</b>	<b>12-2190-EL-POR</b>
<b>Illuminating Company, and The Toledo</b>	)		<b>12-2191-EL-POR</b>
<b>Edison Company For Approval of Their</b>	)		<b>12-2192-EL-POR</b>
<b>Energy Efficiency and Peak Demand</b>	)		
<b>Reduction Portfolio Plans for 2013 through</b>	)		
<b>2015</b>	)		

---

**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,

/s/ Todd M. Williams  
Todd M. Williams, Counsel of Record (0083647)  
*Williams Allwein and Moser, LLC*  
Two Maritime Plaza, Third Floor  
Toledo, Ohio 43604  
Telephone: (567) 225-3330  
Fax: (567) 225-3329  
E-mail: [toddm@wamenergylaw.com](mailto:toddm@wamenergylaw.com)

Christopher J. Allwein (0084914)  
*Williams Allwein and Moser, LLC*  
1373 Grandview Ave., Suite 212  
Columbus, Ohio 43212  
Telephone: (614) 429-3092  
Fax: (614) 670-8896  
E-mail: [callwein@wamenergylaw.com](mailto:callwein@wamenergylaw.com)

**Attorneys for the Natural Resources Defense Council**

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

<b>In the Matter of the Application of Ohio</b>	)		
<b>Edison Company, The Cleveland Electric</b>	)	<b>Case Nos.</b>	<b>12-2190-EL-POR</b>
<b>Illuminating Company, and The Toledo</b>	)		<b>12-2191-EL-POR</b>
<b>Edison Company For Approval of Their</b>	)		<b>12-2192-EL-POR</b>
<b>Energy Efficiency and Peak Demand</b>	)		
<b>Reduction Portfolio Plans for 2013 through</b>	)		
<b>2015</b>	)		

---

**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 the Cleveland Electric Illuminating Company, the Toledo Edison Company and the Ohio Edison Company (collectively “FirstEnergy” or “Companies”) have submitted energy efficiency program plans for implementation over the 2013-2015 period. 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 portfolio plan and subsequent proceedings will present several issues regarding FirstEnergy’s interaction with customers and the provision to customers of energy efficiency services. These and other issues which are a part of this proceeding may directly impact NRDC’s interests in promoting strong, nationally leading 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.”<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 has 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 proceedings, even

---

<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.

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 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,<sup>7</sup> 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 (12-1230-EL-SSO).<sup>8</sup> Additionally, NRDC was granted intervention in the most recent FirstEnergy Portfolio Plan case, or POR.<sup>9</sup>

---

<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 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 12-1230-EL-SSO et al., Entry at 4, July 18th, 2012).

<sup>9</sup> *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Approval of Their Energy Efficiency and Peak Demand Reduction Program for 2010 through 2012 and Associated Cost Recovery Mechanism*, Case No 09-1947-EL-POR et al., Entry at 4, March 23<sup>rd</sup> 2011.

This proceeding presents issues that are directly relevant to the interests of NRDC and its members. For example, the Companies will be proposing a host of energy efficiency programs to be implemented over the next 3 years. These programs, as discussed in the most recent FirstEnergy energy efficiency collaborative meeting, include a mix of tried and true programs, and programs that are inconsistent with national models. Ensuring that FirstEnergy programs are soundly constructed and developed will have a direct impact on the amount and effectiveness of energy efficiency measures in FirstEnergy's service territory. 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. Specifically, this case directly involves energy efficiency program development over a period of three years. Additionally, this case is likely to concern the creation of various incentive and profit alignment mechanisms. Such mechanisms have the potential to build a relationship between company profits and strong, effective energy efficiency programming.

Third, NRDC's intervention will not unduly prolong or delay the proceeding<sup>10</sup> as this motion is being filed by the deadline set for intervention<sup>11</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 this proceeding.<sup>12</sup> NRDC will bring significant expertise to bear in this proceeding. NRDC's staff and consultants have extensive experience in resource planning, analyzing the

---

<sup>10</sup> R.C. 4903.221(B)(3)

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

<sup>12</sup> R.C. 4903.221(B)(4)

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.<sup>13</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 this proceeding will not be fully represented by other parties<sup>14</sup> 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.

---

<sup>13</sup> Ohio Adm.Code 4901-1-11(B)

<sup>14</sup> Ohio Adm. Code 4901-1-11(B)(5)

**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,

/s/ Todd M. Williams

Todd M. Williams, Counsel of Record (0083647)

*Williams Allwein and Moser, LLC*

Two Maritime Plaza, Third Floor

Toledo, Ohio 43604

Telephone: (567) 225-3330

Fax: (567) 225-3329

E-mail: [toddm@wamenergylaw.com](mailto:toddm@wamenergylaw.com)

Christopher J. Allwein (0084914)

*Williams Allwein and Moser, LLC*

1373 Grandview Ave., Suite 212

Columbus, Ohio 43212

Telephone: (614) 429-3092

Fax: (614) 670-8896

E-mail: [callwein@wamenergylaw.com](mailto:callwein@wamenergylaw.com)

**Attorneys for the Natural Resources Defense Council**

**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 August 1, 2012.

/s/ Todd M. Williams  
Todd M. Williams

Kathy J. Kolich  
FirstEnergy Corp.  
76 South Main Street  
Akron, Ohio 44308  
[kjkolich@firstenergycorp.com](mailto:kjkolich@firstenergycorp.com)

Carrie M. Dunn  
FirstEnergy Corp.  
76 Main Street S  
Akron, Ohio 44308  
[cdunn@firstenergycorp.com](mailto:cdunn@firstenergycorp.com)

**This foregoing document was electronically filed with the Public Utilities**

**Commission of Ohio Docketing Information System on**

**8/1/2012 11:38:21 AM**

**in**

**Case No(s). 12-2190-EL-POR, 12-2191-EL-POR, 12-2192-EL-POR**

Summary: Motion Motion to Intervene by the Natural Resources Defense Council electronically filed by Mr. Todd M Williams on behalf of Natural Resources Defense Council