

**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 Edison Company For Approval of Their Energy Efficiency and Peak Demand Reduction Portfolio Plans for 2013 through 2015)	Case Nos.	12-2190-EL-POR
)		12-2191-EL-POR
)		12-2192-EL-POR

**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,

/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

Christopher J. Allwein, Counsel of Record (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

Attorney for the Sierra Club

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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 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. 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 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 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 and utility compliance with Ohio’s 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 been involved in promotion of responsible energy policy almost since its first year.

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)

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, 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 Sierra Club 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 Sierra Club 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, Sierra Club's intervention will not unduly prolong or delay the proceeding⁹ as this motion is being filed by the deadline set for intervention¹⁰ and Sierra Club is able to comply with all case management deadlines established by the Commission and/or agreed to by the parties.

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 R.C. 4903.221(B)(3)

¹⁰ Attorney Examiner Entry at 1 (July 28, 2011).

Fourth, intervention by Sierra Club will significantly contribute to the full development of the record in this proceeding.¹¹ 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 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.¹² 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 parties¹³ 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 a capacity resource

V. Conclusion

¹¹ R.C. 4903.221(B)(4)

¹² Ohio Adm.Code 4901-1-11(B)

¹³ Ohio Adm. Code 4901-1-11(B)(5)

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/ 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

Christopher J. Allwein, Counsel of Record (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@williamsandmoser.com

Attorney for the Sierra Club

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 01, 2012.

/s/ Todd M. Williams
Todd M. Williams

Kathy J. Kolich
FirstEnergy Corp.
76 South Main Street
Akron, Ohio 44308
kjkolich@firstenergycorp.com

Carrie M. Dunn
FirstEnergy Corp.
76 Main Street S
Akron, Ohio 44308
cdunn@firstenergycorp.com

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Summary: Motion Motion to Intervene by Sierra Club electronically filed by Mr. Todd M Williams on behalf of Sierra Club