

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

**In the Matter of the Application of Duke)
Energy Ohio, Inc. for Approval of its) Case No. 13-0431-EL-POR
Energy Efficiency and Peak Demand)
Reduction Portfolio Programs.)**

**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 Duke Energy Ohio, Inc. (“Duke”) proposes and seeks approval of years of energy efficiency and peak demand reduction programs and rate adjustments. 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. In addition, Ohio Administrative Code 4901:1-39-06(A) provides that: “Any person may file comments regarding an electric utility's initial benchmark report or annual portfolio status report filed pursuant to this chapter within thirty days of the filing of such report.”

This portfolio plan presents millions of dollars in energy efficiency and peak demand investments and discusses Duke compliance with Ohio law. These and other issues which are featured in the plan directly impact NRDC’s interests in promoting energy efficiency and peak demand reduction programs, and the interests of NRDC members residing in the Duke’s service territory. 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 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].”⁵ The Commission has consistently maintained a policy to “encourage the broadest possible participation” in its proceedings, even

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.

under extenuating circumstances.⁶ NRDC satisfies these liberal intervention standards and respectfully requests that its intervention be granted in this case.

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 Duke’s Ohio service area. NRDC has been granted intervention on numerous occasions in similar proceedings before the Commission, including in Duke’s most recent Distribution Decoupling Rider Case (11-5905-EL-RDR).⁸

This proceeding presents issues that are directly relevant to the interests of NRDC and its members. For example, Duke Energy proposes a one year extension of its current cost recovery and shared savings plan.⁹ The NRDC has demonstrated a history of focus on utility incentives

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 Duke Energy Ohio, Inc. for Approval of a Distribution Decoupling Rider*, Case No. 11-5905-EL-RDR, Finding and Order at ¶4 (May 30, 2012).

⁹ For example, See: Application page 3.

for energy efficiency deployment, and has worked with Duke as well as other utilities in Ohio, like AEP, to deploy de-coupling mechanisms that promote energy efficiency deployment as the lowest cost resource option. Aligning incentives is directly relevant to NRDC's mission, as clearer market signals to utilities to focus on the lowest cost supply option, energy efficiency, will result in fewer emissions of pollutants from traditional generation sources. NRDC's record of effective advocacy for rate mechanisms that align consumer interests with utility needs is an example of the positive contribution the organization can make to a proceeding.

Second, the desire of NRDC to promote energy efficiency in Ohio is directly related to the issues of this case.¹⁰ Duke's plan lays out years of investments in energy efficiency, the rate mechanisms to be utilized to collect costs for those investments, and the details of those programs. NRDC has wide ranging program development experience from across the country, and will and has effectively worked to improve program offerings as part of participation in proceedings in Ohio and in other jurisdictions.

Third, NRDC's intervention will not unduly prolong or delay the proceeding¹¹ as this motion is being filed by the deadline set for intervention¹² 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.¹³ As mentioned above, NRDC will bring significant expertise to bear in this case. 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

¹⁰ R.C. 4903.221(B)(2)

¹¹ R.C. 4903.221(B)(3)

¹² See the Attorney Examiner's Entry at ¶6(b) – Motions to Intervene are due by July 1, 2013 (June 13, 2013).

¹³ R.C. 4903.221(B)(4)

proceedings in a number of states including Illinois, Wisconsin, New York, Oregon, California, New Jersey, and Iowa, and has actively participated in numerous cases before this 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 this 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.¹⁴ 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 parties¹⁵ 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 a full party to this proceeding.

¹⁴ Ohio Adm.Code 4901-1-11(B)

¹⁵ Ohio Adm. Code 4901-1-11(B)(5)

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 June 27, 2013.

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