

**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
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 Duke Energy Ohio, Inc. (“Duke” or “Company”) is proposing its next three-year portfolio plan (“Plan”) of energy efficiency and peak demand reduction programs and rate adjustments. 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. 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.”

The Plan presents Duke’s implementation of significant energy efficiency and peak demand activities and discusses the Company’s compliance with Ohio law. These and other issues which are featured in the Plan directly impact Sierra Club’s interests in promoting energy efficiency and peak demand reduction programs, and the interests of Sierra Club members residing in the Duke’s service territory. 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 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

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.

maintained a policy to “encourage the broadest possible participation” in its proceedings, even under extenuating circumstances.⁶ Sierra Club satisfies these liberal intervention standards and respectfully requests that its intervention be granted in this case.

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 encouraging increased utility-scale energy efficiency activity 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

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)

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.

Sierra Club has been granted intervention on numerous occasions in similar proceedings before the Commission, including the most recent FirstEnergy energy efficiency and peak demand reduction portfolio plan cases (12-2190-EL-POR, et al).⁸

This proceeding presents issues that are directly relevant to the interests of Sierra Club and its members. For example, Duke Energy "plans to file for Commission approval of a new pilot program that will create a mechanism to capture all the costs and benefits of PJM auction participation."⁹ The Sierra Club has demonstrated a history of focus on utility bidding of energy efficiency resources into the PJM capacity auctions - in order to maximize the amount of energy efficiency benefit to consumers - and has worked with other utilities in Ohio on similar issues. Aligning incentives is directly relevant to Sierra Club'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. Sierra Club's record of effective advocacy for activities 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 Sierra Club to promote increased utility energy efficiency activities 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. Sierra Club has wide ranging program development experience from across the country, and will and has effectively worked to promote energy

⁸ *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 Portfolio Plans for 2013 through 2015*, Case No. 12-2190-EL-POR, et al, Entry at ¶4 (October 16, 2012).

⁹ Duke POR Application, Timothy J. Duff Direct Testimony at 16 (April 15, 2013).

¹⁰ R.C. 4903.221(B)(2)

efficiency as an alternative resource as part of participation in proceedings in Ohio and in other jurisdictions.

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 As mentioned above, Sierra Club will bring significant expertise to bear in this case. 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-six matters before this Commission. Sierra Club 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, 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 this 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

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)

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.

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 both environmental protection and promotion of energy efficiency as a capacity resource.

V. Conclusion

For the foregoing reasons, the Sierra Club respectfully request that their Motion to Intervene be granted, and that the Sierra Club be authorized to participate as a full party to this proceeding.

Respectfully submitted,

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¹⁴ Ohio Adm.Code 4901-1-11(B)

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 July 1, 2013.

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