

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application Seeking)	
Approval of Ohio Power Company's)	
Proposal to Enter into an Affiliate)	Case No. 14-1693-EL-RDR
Power Purchase Agreement for)	
Inclusion in the Power Purchase)	
Agreement Rider)	
)	
In the Matter of the Application of)	
Ohio Power Company for Approval of)	Case No. 14-1694-EL-AAM
Certain Accounting Authority)	

MOTION TO INTERVENE BY SIERRA CLUB

For the reasons set forth in the accompanying Memorandum in Support, Sierra Club moves the Public Utilities Commission of Ohio for leave to intervene in the above-captioned cases pursuant to Ohio Revised Code 4903.221 and Ohio Administrative Code 4901-1-11, and to grant to 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 SIERRA CLUB'S MOTION TO INTERVENE

I. Introduction

Sierra Club seeks intervention in these proceedings in which the Ohio Power Company ("AEP" or "Company") has submitted an Application seeking approval of a power purchase agreement with its unregulated affiliate to include in its Power Purchase Agreement Rider ("Application"). The PPA Rider is pending in a separate set of cases and has not been approved by the Commission.¹ Sierra Club seeks to participate in these proceedings 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 of interest to Sierra Club, including but not limited to the effect on ratepayers of the

¹ The PPA Rider is pending in PUCO Case No. 13-2385-EL-SSO, et al. (*In the Matter of the Application of Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to §4928.143, Revised Code, in the Form of an Electric Security Plan; et al*).

inclusion of four additional coal-fired plants in the Company's PPA Rider and the future environmental impacts that may result from such an arrangement. These and other issues, which are a part of these proceedings, may directly impact Sierra Club's and its members' interests in promoting alternative energy, reducing reliance on coal-fired generation, and encouraging energy diversification. Sierra Club's members' who reside in the Company's service area have a direct interest in assuring reasonable energy prices. As such, Sierra Club is entitled to intervene in these proceedings.

II. Legal Standard

Ohio law provides that a party may intervene in a Commission proceeding if that party "may be adversely affected by a public utilities commission proceeding."² To determine whether a party may be adversely affected for purposes of intervention, the Commission evaluates:

- (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.³

The Commission's rules similarly provide that any person may intervene where "[t]he person has a real and substantial interest in the proceeding."⁴ The PUCO

² R.C. 4903.221.

³ R.C. 4903.221(B).

⁴ Ohio Adm. Code 4901-1-11(A)(2).

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.”⁵

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].”⁶ The Commission has consistently maintained a policy to “encourage the broadest possible participation” in its proceedings.⁷ Sierra Club easily 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 Sierra Club and its members “may be adversely affected” by the outcome of this proceeding.

Sierra Club is entitled to intervene in these proceedings because Sierra Club satisfies each of the four statutory factors demonstrating that the organization and its members “may be adversely affected” by the outcome.

⁵ Ohio Adm. Code 4901-1-11(B).

⁶ *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.

⁷ 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).

First, the nature and extent of Sierra Club's interests in the proceedings are real and substantial,⁸ as the issues involved are directly related to Sierra Club's interests in promoting advanced and alternative energy resources and reducing reliance on aging coal-fired generation.⁹ Similarly, the positions advanced by Sierra Club will bear directly on the merits of these proceedings. Among other environmental concerns, Sierra Club is focused on addressing the pressing environmental and health problems associated with the mining, burning, and disposal of coal. Further, Sierra Club has an interest in the appropriate deployment of alternative energy resources that will create economic, public health, and environmental benefits throughout Ohio, including for Sierra Club's Ohio members.

Sierra Club is the country's oldest and largest grassroots environmental organization. It has 2.4 million members and supporters nationwide and over 25,000 members and supporters in Ohio. 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." Sierra Club has promoted responsible local, state, and national energy policy for decades.

Sierra Club has been actively concerned with electric utility issues for decades and routinely participates in proceedings before the Commission and other public utility

⁸ R.C. 4903.221(B)(1).

⁹ Because the first and second prongs of the test established in R.C. 4903.221 are closely related, we address those prongs together.

commissions around the country. Sierra Club has been granted intervention in numerous Ohio electric utility cases.¹⁰

The instant proceedings present issues that are directly relevant to the interests of Sierra Club and its members. AEP is proposing an agreement to source energy from four coal-fired generation facilities owned by its affiliate through the next several decades.¹¹ If approved, this agreement would subsidize the continued operation of these generation plants for decades. Absent such subsidy, these plants may not be economically viable and may be forced to retire.¹² Sierra Club's interest in reducing reliance on coal-fired generation would, therefore, be directly and adversely impacted if the Company's proposal were approved.

Second, Sierra Club's intervention will not unduly prolong or delay the proceedings¹³ as this motion is timely filed¹⁴ and Sierra Club is able to comply with all case management deadlines established by the Commission and/or agreed to by the parties.

¹⁰ See, e.g., *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, Entry at ¶4 (May 15, 2012).

¹¹ Direct Testimony of Kelly D. Pearce, Exhibit KDP 1 at page 7 (October 3, 2014).

¹² Application at ¶6, page 3 (October 3, 2014).

¹³ R.C. 4903.221(B)(3) .

¹⁴ Ohio Adm. Code 4901-1-11(E).

Third, intervention by Sierra Club will significantly contribute to the full development of the record in these proceedings.¹⁵ Sierra Club will bring significant expertise to bear in these proceedings. Sierra Club's staff and consultants have extensive experience in electric resource planning, analyzing electric-market and economic forecasts, assessing the costs of environmental compliance for coal-fired power plants, and in the laws and regulations of energy production. Sierra Club has intervened in energy efficiency, renewable energy, and coal generation cases in many states. 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 under Ohio Administrative Code 4901-1-11(B).

Sierra Club may also intervene in these proceedings because it satisfies each of the five factors listed in the PUCO rules demonstrating that Sierra Club and its members have a “real and substantial interest” in the proceeding.¹⁶ 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 these proceedings will not be fully represented by other parties¹⁷ because none of the other parties can adequately represent Sierra Club's interests as a national environmental organization that is focused

¹⁵ R.C. 4903.221(B)(4).

¹⁶ Ohio Adm.Code 4901-1-11(B).

¹⁷ Ohio Adm.Code 4901-1-11(B)(5).

both on environmental protection and on the promotion of alternative sources of generation over coal generation.

V. Conclusion

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

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing *Motion to Intervene* by *Sierra Club* has been filed with the Public Utilities Commission of Ohio and has been served upon the following parties via electronic mail on October 16, 2014.

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Summary: Motion to Intervene and Memorandum in Support electronically filed by Mr. Christopher J. Allwein on behalf of SIERRA CLUB