

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the matter of the Application Duke Energy    )  
Ohio for Tariff Approval                            )     Case No. 14-2209-EL-ATA  
  )

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**JOINT MOTION FOR LEAVE TO FILE OUT OF TIME AND MOTION TO  
INTERVENE BY THE ENVIRONMENTAL DEFENSE FUND & OHIO  
ENVIRONMENTAL COUNCIL**

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Pursuant to Ohio Rev. Code § 4903.221 and Ohio Admin. Code § 4901-1-11, Environmental Defense Fund (“EDF”) and the Ohio Environmental Council (“OEC”), respectfully move for leave to intervene, out of time, in the above captioned case, in which Duke Energy Ohio (“Duke” or “the Company”) submits its Application for Tariff Approval (“Application”). This Application, specifically, requests an amended tariff that specifies the terms, conditions, and charges associated with Customer Energy Usage Data, based upon the Company’s capabilities and cost considerations.<sup>1</sup> As more fully discussed in the accompanying memorandum, EDF and OEC have a real and substantial interest in this proceeding. The interests of EDF and OEC are not represented by any existing party; participation in this proceeding will contribute to a just and expeditious resolution of the issues involved without unduly delaying the proceeding or unjustly prejudicing any existing party; and thereby move to intervene in this proceeding pursuant to R.C. 4903.221 and O.A.C. 4901-1-11.

WHEREFORE, EDF and OEC respectfully request that the Public Utilities Commission of Ohio grant EDF and OEC’s motion to intervene for these reasons and those set forth in the attached Memorandum in Support.

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<sup>1</sup> See *In the matter of the Application Duke Energy Ohio for Tariff Approval*. PUCO Case No. 14-2209-EL-ATA, Duke Energy Ohio, Inc.’s Application for Tariff Approval at p. 1 (December 16, 2014).

Respectfully Submitted,



Trent Dougherty, **Counsel of Record**  
(0079817)  
1145 Chesapeake Avenue, Suite I  
Columbus, Ohio 43212-3449  
(614) 487-7506 - Telephone  
(614) 487-7510 - Fax  
[tdougherty@theOEC.org](mailto:tdougherty@theOEC.org)

/s/ John Finnigan

John Finnigan (0018689)  
Senior Regulatory Attorney  
Environmental Defense Fund  
128 Winding Brook Lane  
Terrace Park, Ohio 45174  
(513) 226-9558  
[jfinnigan@edf.org](mailto:jfinnigan@edf.org)

**Counsel for the Ohio Environmental  
Council and Environmental Defense  
Fund**

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**MEMORANDUM IN SUPPORT OF ENVIRONMENTAL DEFENSE FUND &  
OHIO ENVIRONMENTAL COUNCIL’S  
MOTION FOR LEAVE TO FILE OUT OF TIME AND MOTION TO INTERVENE**

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EDF and OEC move the Commission for Leave to Intervene, out of time, in the above captioned case regarding Duke’s Tariff Application. EDF and OEC accept the record and docket in this proceeding as it exists on the date of filing this motion to intervene, and are only requesting to participate from this point forward as the case proceeds.

On December 16, 2014, Duke filed an Application for an amended tariff that specified the terms, conditions, and charges associated with Customer Energy Usage Data. On January 30, 2015, the Attorney Examiner in this proceeding set a schedule for Motions to Intervene and Initial Comments to be filed on the Docket by March 6, 2015, and Reply Comments on March 27, 2015. Previous to the filing of this Application, OEC<sup>2</sup> provided testimony in Duke’s Electric Security Plan case recommending an Open Data Access framework.<sup>3</sup> In the decision in Duke’s ESP case, the Commission recommended that “in light of the fact that the issues regarding the Company’s usage data and, specifically, the definition of an interval meter are being addressed In re Duke Energy Ohio, Inc., Case No. 14-2209-EL-ATA, we [the Commission] find that it is

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<sup>2</sup> While EDF did not intervene in Duke’s ESP, OEC retained EDF staff as its Witness in the proceeding.  
<sup>3</sup> See *In the Matter of the Application of Duke Energy Ohio for Authority to Establish a Standard Service Offer Pursuant to §4928.143, Ohio Rev. Code, in the Form of an Electric Security Plan, Accounting Modifications and Tariffs for Generation Service*. PUCO Case No. 14-0841-EL-SSO et al.

more appropriate.”<sup>4</sup> This is when OEC and EDF learned of the Application. EDF and OEC now seek intervention in this proceeding.

Revised Code § 4903.221 provides that any “person who may be adversely affected by a public utilities commission proceeding may intervene in such proceeding.” EDF is a national non-profit membership organization engaged in linking science, economics and law to create innovative, equitable and cost-effective solutions to society’s most urgent environmental problems. EDF has over 300,000 members nationwide and has 9,590 members in Ohio. EDF has been active in Ohio working on environmental policies including smart power, climate change, natural gas fracking and sustainable agriculture. EDF also supports state energy policies that reduce greenhouse gas emissions. The OEC is a non-profit, charitable organization comprised of a network of over 100 affiliated member groups whose mission is to secure healthy air, land, and water for all who call Ohio home. Throughout its 46-year history, OEC has been a leading advocate for fresh air, clean water, and sustainable energy use in Ohio. OEC was an active participant in the effort that led to the passage of S.B. 221, and has intervened in scores of cases before this Commission to secure proper implementation of Ohio’s clean energy law.

As discussed below, EDF and OEC have an interest in and may be adversely affected by the disposition of this case. Revised Code § 4903.221(B) outlines four factors that the Commission shall consider when ruling on a motion to intervene in a proceeding. First, pursuant to R.C. § 4903.221(B)(1), the Commission shall consider “the nature and extent of the prospective intervenor’s interest.” EDF and OEC have a real and substantial interest in ensuring that customers have access to data relating to demand, power quality, availability, voltage, frequency, current, power factor, or other information generated by their meter and allowed to make that data available to other service providers, and believe that such access would allow

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<sup>4</sup> *Id.* Opinion and Order (April 2, 2015) at p. 90.

customers, and third parties with authorization, to better analyze their energy usage and to spark innovation that will help reduce energy consumption.

As environmental advocacy organizations, EDF and OEC have a special interest in the outcome of this case because of the direct impact that decisions on the Application and its included tariffs and riders will have on the current and future implementation and effectiveness of alternative energy resources, renewable energy generation, energy efficiency and demand response in the state. Accordingly, EDF and OEC's interest in this proceeding arise from the direct and indirect impacts that the issues presented will have on the environment of the state of Ohio and the region, and the electricity costs and data access of their members in the Duke service territory.

Second, pursuant to R.C. § 4903.221(B)(2), the Commission shall consider “[t]he legal position advanced by the prospective intervenor and its probable relation to the merits of the case.” Although EDF and OEC do not outline detailed legal arguments in this section, we maintain that the Application should be properly scrutinized by interested parties to ensure that it complies with the letter and intent of the state's energy law and stated state energy policy.

Third, pursuant to R.C. § 4903.221(B)(3), the Commission shall consider “Whether the intervention by the prospective intervenor will unduly prolong or delay the proceedings.” As stated above, EDF and OEC accept the docket as it is, and understand that comments and reply comments have already been submitted, and wish only to participate as the case proceeds, for example, to hearing or further considerations. EDF and OEC have significant experience dealing with electric utilities questions before the Commission and will not seek to delay the proceeding. OEC has been consistently involved in the development and enactment of S.B. 221 and the associated rules, including as a party in numerous cases before the Commission, and EDF has

litigated such cases in Ohio as well as in other Public Utility Commissions around the United States. Thus, intervention will not unduly prolong or delay these proceedings, but will add value to the development of this case.

Fourth, pursuant to R.C. § 4903.221(B)(4), the Commission shall consider “Whether the prospective intervenor will significantly contribute to full development and equitable resolution of the factual issues.” EDF and OEC have developed expertise that will contribute to the full development of the legal questions involved in this proceeding. Further, as Ohio’s leading environmental advocates, EDF and OEC will be able to assure that the environmental impacts of the Company’s proposal are fully developed.

EDF and OEC also satisfy the intervention requirements outlined in the Commission’s rules. The criteria for intervention established by O.A.C. § 4901-1-11(A) are identical to those provided by R.C. § 4903.221, with the exception that the rules add a fifth factor that the Commission shall consider when ruling on a motion to intervene. Pursuant to O.A.C. § 4901-1-11(A)(5), the Commission shall consider “The extent to which the [intervenor’s] interest is represented by existing parties.” EDF and OEC’s interest is not fully represented by the existing parties.

Finally, we point out that it is the Commission’s stated policy “to encourage the broadest possible participation in its proceedings.”<sup>5</sup> The Commission should not apply its intervention criteria in a manner that would favor one environmental or consumer advocate to the exclusion of others.

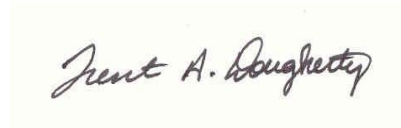
EDF and OEC meet all the criteria established by R.C. § 4903.221 and O.A.C. § 4901-1-11(A)(5) and therefore should be granted intervenor status in this proceeding.

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<sup>5</sup> *Cleveland Elec. Illum. Co.*, Case No. 85-675-EL-AIR, Entry dated January 14, 1986, at 2.

WHEREFORE, EDF and OEC respectfully request that the Commission grant its motion to intervene in the above captioned matter.

Respectfully Submitted,

A handwritten signature in black ink on a light yellow background, reading "Trent A. Dougherty".

Trent Dougherty, Counsel of Record  
(0079817)  
1145 Chesapeake Avenue, Suite I  
Columbus, Ohio 43212  
(614) 487-7506 - Telephone  
(614) 487-7510 - Fax  
[tdougherty@theOEC.org](mailto:tdougherty@theOEC.org)

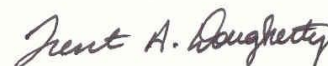
/s/ John Finnigan

John Finnigan (0018689)  
Senior Regulatory Attorney  
Environmental Defense Fund  
128 Winding Brook Lane  
Terrace Park, Ohio 45174  
(513) 226-9558  
[jfinnigan@edf.org](mailto:jfinnigan@edf.org)

**Counsel for the Ohio Environmental  
Council and Environmental Defense  
Fund**

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing has been served upon the following parties by electronic mail this 9th day of July, 2015.



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Trent Dougherty

Amy B. Spiller  
Elizabeth Watts  
Assistant General Counsel  
Duke Energy Ohio, Inc.  
155 East Broad Street, 21<sup>st</sup> Floor  
Columbus, Ohio 43215  
[Amy.spiller@duke-energy.com](mailto:Amy.spiller@duke-energy.com)  
[Elizabeth.Watts@duke-energy.com](mailto:Elizabeth.Watts@duke-energy.com)

Katie L. Johnson  
Attorney General's Office  
Public Utilities Commission of Ohio  
180 E. Broad St., 6th Fl.  
Columbus, OH 43215  
[Katie.Johnson@puc.state.oh.us](mailto:Katie.Johnson@puc.state.oh.us)

Jodi Bair  
Office of the Ohio Consumers' Counsel  
10 West Broad Street, Suite 1800  
Columbus, Ohio 43215  
[jbair@occ.ohio.gov](mailto:jbair@occ.ohio.gov)

Colleen L. Mooney  
Ohio Partners for Affordable Energy  
231 West Lima Street  
Findlay, OH 45839-1793  
[cmooney@ohiopartners.org](mailto:cmooney@ohiopartners.org)

Jennifer Spinosi  
Joseph M. Clark  
21 East State Street, 19th Floor  
Columbus, Ohio 43215  
[Jennifer.spinosi@directenergy.com](mailto:Jennifer.spinosi@directenergy.com)  
[joseph.clark@directenergy.com](mailto:joseph.clark@directenergy.com)

Joseph Oliker  
Matthew White  
IGS Energy  
6100 Emerald Parkway  
Dublin, Ohio 43016  
[joliker@igsenergy.com](mailto:joliker@igsenergy.com)  
[mwhite@igsenergy.com](mailto:mwhite@igsenergy.com)

Attorney Examiners:  
[Christine.Pirik@puc.state.oh.us](mailto:Christine.Pirik@puc.state.oh.us)



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**Case No(s). 14-2209-EL-ATA**

Summary: Motion JOINT MOTION FOR LEAVE TO FILE OUT OF TIME AND MOTION TO INTERVENE BY THE ENVIRONMENTAL DEFENSE FUND & OHIO ENVIRONMENTAL COUNCIL AND MEMO IN SUPPORT electronically filed by Mr. Trent A Dougherty on behalf of Environmental Defense Fund and Ohio Environmental Council