

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of)	
The Dayton Power and Light Company)	Case No. 16-395-EL-RDR
for Approval of its Electric Security Plan)	

In the Matter of the Application of)	
The Dayton Power and Light Company)	Case No. 16-396-EL-ATA
for Approval of Revised Tariffs)	

In the Matter of the Application of)	
The Dayton Power and Light Company)	
for Approval of Certain Accounting)	Case No. 16-397-EL-AAM
Authority Pursuant to Ohio Rev.)	
Code § 4904.13)	

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 dockets pursuant to Ohio Revised Code 4903.221 and Ohio Administrative Code 4901-1-11, and asks that the Commission grant it the full powers and rights of intervention that are 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 to intervene in these proceedings in which the Dayton Power and Light Company (“DP&L”) has submitted an Application seeking approval of a “Reliable Electricity Rider” that would allow it to recover the net costs of a power purchase agreement with its unregulated generation affiliate. Sierra Club seeks to participate in these proceedings because Sierra Club and its members may be adversely affected by the rulings of the Public Utilities Commission of Ohio (“Commission”) in these proceedings. These proceedings present several issues of interest to Sierra Club, including but not limited to the effect on electric customers of DP&L’s Reliable Electricity Rider proposal that would allow it to recover the net costs of DP&L’s ownership share of six coal-burning power plants—Killen, Miami Fort, Stuart, Zimmer, and the two Ohio Valley Electric Corporation plants, Clifty Creek and Kyger Creek—for

a term of ten years. These and other issues, which are a part of these proceedings, may directly impact Sierra Club's and its members' interests in promoting clean energy, reducing reliance on coal-burning generation, and encouraging energy efficiency. Sierra Club's members who reside in DP&L's service area have a direct interest in assuring reasonable energy prices. As it has done in the FirstEnergy ESP and AEP PPA Rider proceedings, Case Nos. 14-1297-EL SOO and 14-1693-EL-RDR, Sierra Club expects to assist the Commission in deciding these cases by working to build a thorough record. As such, Sierra Club is entitled to intervene in these proceedings.

II. Legal Standard

The Ohio Code provides that a party may intervene in a Commission proceeding if that party "may be adversely affected by a public utilities commission proceeding."¹ 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.²

¹ R.C. 4903.221.

² R.C. 4903.221(B).

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 Commission's regulations set forth the same four standards that are established in R.C. 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.⁶ 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 R.C. 4903.221 because Sierra Club and its members "may be adversely affected" by the outcome of these proceedings.

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.

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.

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).

First, the nature and extent of Sierra Club's interests in the proceeding are real and substantial,⁷ as the issues involved are directly related to Sierra Club's interests in promoting clean-energy resources and reducing reliance on aging coal-burning generation.⁸ 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 clean-energy resources, including energy efficiency, 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 millions of members and supporters nationwide and over 17,000 members 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.

⁷ R.C. 4903.221(B)(1).

⁸ Because the first and second prongs of the test established in R.C. 4903.221 are closely related, we address those prongs together.

Sierra Club has been actively concerned with electric utility issues for decades and routinely participates in proceedings before the Commission and other public utility commissions around the country. Sierra Club has been granted intervention in numerous Ohio electric utility cases.⁹

The instant proceedings present issues that are directly relevant to the interests of Sierra Club and its members. DP&L is proposing a “Reliable Electricity Rider” to cover the net costs of its ownership share of six coal-fired generation facilities that will soon be owned by its affiliate.¹⁰ If approved, this rider would subsidize the continued operation of these generation plants for ten years. Absent such subsidy, these plants may not be economically viable.¹¹ 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.

⁹ 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 Provide for a Standard Service Offer Pursuant to R.C. 4928.143 in the Form of an Electric Security Plan*, Case No. 14-1297-EL-SSO, Attorney Examiners’ Entry, p. 18 (Dec. 1, 2014); *In the Matter of the Application Seeking Approval of Ohio Power Company’s Proposal to Enter into an Affiliate Power Purchase Agreement for Inclusion in the Power Purchase Agreement Rider*, Case No. 14-1693-EL-RDR, Attorney Examiners’ Entry, p. 7 (Sept. 15, 2015); *In the Matter of the Application of Duke Energy Ohio, Inc. for Authority to Establish a Standard Service Offer in the form of an Electric Security Plan*, Case No. 14-0842-EL-ATA, Attorney Examiners’ Entry, p. 2 (Aug. 5, 2014).

¹⁰ Application of the Dayton Power and Light Company for Approval of its Electric Security Plan (“Application”), pp. 1-7 (Feb. 22, 2016).

¹¹ See Application, p. 1 (referring to these plants as “at risk”).

Second, Sierra Club's intervention will not unduly prolong or delay the proceedings¹² as this motion is timely filed¹³ and Sierra Club is able to comply with all case management deadlines established by the Commission or agreed to by the parties.

Third, intervention by Sierra Club will significantly contribute to the full development of the record in these proceedings.¹⁴ 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. Of particular note, Sierra Club played a leading role in the FirstEnergy ESP (Case No. 14-1297-EL-SSO) and AEP PPA Rider (Case No. 14-1693-EL-RDR) proceedings in terms of assisting the Commission with the development of a factual record. In those proceedings, Sierra Club conducted written discovery, noticed depositions of company witnesses, filed expert testimony, and otherwise contributed significantly to the development of the record. As such, Sierra Club should be permitted to intervene pursuant to R.C. 4903.221.

¹² R.C. 4903.221(B)(3) .

¹³Ohio Adm. Code 4901-1-11(E). As yet, no procedural schedule has been set for these proceedings.

¹⁴ R.C. 4903.221(B)(4).

IV. Sierra Club may intervene because Sierra Club and its members have a “real and substantial interest” in these proceedings 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.¹⁵ 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,¹⁶ Sierra Club’s interests in these proceedings will not be fully or adequately represented by other parties. Sierra Club’s interests do not always align with other environmental organizations or consumer-protection organizations and, accordingly, Sierra Club’s interests are not be adequately protected by the participation of other such organizations in these proceedings.

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.

¹⁵ Ohio Adm. Code 4901-1-11(B).

¹⁶ 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* 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 April 6, 2016.

/s/Richard C. Sahli

Richard C. Sahli

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Summary: Motion Motion To Intervene of Sierra Club electronically filed by Mr. Richard C. Sahli on behalf of Sierra Club