

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke)
Energy Ohio, Inc., for Recovery of)
Program Costs, Lost Distribution Revenue) Case No. 18-397-EL-RDR
and Performance Incentives Related to its)
Energy Efficiency and Demand Response)
Programs.)

**MOTION TO INTERVENE BY
THE OHIO ENVIRONMENTAL COUNCIL, ENVIRONMENTAL DEFENSE FUND,
AND NATURAL RESOURCES DEFENSE COUNCIL**

Pursuant to Ohio Rev. Code § 4903.221 and Ohio Admin. Code § 4901-1-11, the Ohio Environmental Council (“OEC”), Environmental Defense Fund (“EDF”), and Natural Resources Defense Council (“NRDC”) respectfully move to intervene, jointly, in the above-captioned case, in which Duke Energy Ohio (“Duke” or “the Company”) submits its Application seeking approval from the Public Utilities Commission of Ohio for its Energy Efficiency and Peak Demand Reduction Program Portfolio Status Report for 2016. As explained more thoroughly in the attached Memorandum in Support, OEC, EDF, and NRDC have a real and substantial interest in this proceeding. Additionally, the interests of these organizations are not adequately represented by any other party to this matter and their 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 the parties 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 OEC, EDF, and NRDC's motion to intervene for these reasons and those set forth in the attached Memorandum in Support.

April 30, 2018

Respectfully submitted,

/s/ Trent Dougherty

Miranda Leppla (0086351) **Counsel of Record**

Trent Dougherty (0079817)

1145 Chesapeake Ave., Suite I

Columbus, OH 43212

(614) 487-7506

mleppla@theoec.org

tdougherty@theoec.org

Counsel for the OEC and EDF

/s/ Madeline Fleisher

Madeline Fleisher

21 West Broad St., 8th Floor

Columbus, OH 43215

(614) 569-3827

mfleisher@elpc.org

Counsel for NRDC

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**MEMORANDUM IN SUPPORT OF MOTION TO INTERVENE BY
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Ohio Rev. Code § 4903.221 provides that any “person who may be adversely affected by a public utilities commission proceeding may intervene in such proceeding.”

The OEC is a non-profit, charitable organization comprised of a network of affiliated member groups and thousands of individual members. OEC’s mission is to secure healthy air, land, and water for all who call Ohio home. Founded in 1969, 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.

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.

NRDC is a national, 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 service area and/or live near its power generating facilities. NRDC's interest in the proceeding is to ensure that Duke's Application adequately protects and promotes cost effective clean and efficient energy in Ohio.

As discussed below, the OEC, EDF, and NRDC have an interest in and may be adversely affected by the disposition of this case.

Ohio Rev. 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." OEC, EDF, and NRDC have a real and substantial interest in the stability of retail electricity service and competitive energy markets, and the positive effect both have on the further deployment of cost-effective clean and efficient energy in Ohio. As environmental advocacy organizations, OEC, EDF, and NRDC have a special interest in the outcome of this case because of the direct impact that Duke's energy efficiency cost recovery filing affects the proper implementation and effectiveness of energy efficiency and demand response in the state. Accordingly, OEC, EDF, and NRDC'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 of their members in the Duke service territory.

Second, pursuant to Ohio Rev. Code § 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 OEC, EDF, and NRDC do not outline detailed legal arguments in this section, OEC, EDF, and NRDC maintain that Duke’s 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 Ohio Rev. Code § 4903.221(B)(3), the Commission shall consider “[w]hether the intervention by the prospective intervenor will unduly prolong or delay the proceedings.” OEC, EDF, and NRDC have significant experience dealing with electric utilities questions before the Commission and will not seek to delay the proceeding. OEC, EDF, and NRDC each have 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 and NRDC have litigated similar issues 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 Ohio Rev. Code § 4903.221(B)(4), the Commission shall consider “[w]hether the prospective intervenor will significantly contribute to full development and equitable resolution of the factual issues.” OEC, EDF, and NRDC have developed expertise that will contribute to the full development of the legal questions involved in this proceeding.

OEC, EDF, and NRDC 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 Ohio Rev. Code § 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." OEC, EDF, and NRDC'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."¹ The Commission should not apply its intervention criteria in a manner that would favor one environmental or consumer advocate to the exclusion of others.

OEC, EDF, and NRDC 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.

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

Respectfully submitted,

/s/ Trent Dougherty
Miranda Leppla (0086351) **Counsel of Record**
Trent Dougherty (0079817)
1145 Chesapeake Ave., Suite I
Columbus, OH 43212

¹ *Cleveland Elec. Illum. Co.*, Case No. 85-675-EL-AIR, Entry dated January 14, 1986, at 2.

(614) 487-7506

mleppla@theoec.org

tdougherty@theoec.org

Counsel for the OEC and EDF

/s/ Madeline Fleisher

Madeline Fleisher

21 West Broad St., 8th Floor

Columbus, OH 43215

(614) 569-3827

mfleisher@elpc.org

Counsel for NRDC

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was served by electronic mail, upon the following Parties of Record on April 30, 2018.

/s Trent Dougherty
Trent Dougherty

rocco.dascenzo@duke-energy.com
elizabeth.watts@duke-energy.com
christopher.healey@occ.ohio.gov
Bryce.mckenney@occ.ohio.gov
William.wright@ohioattorneygeneral.gov

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Summary: Motion Motion to Intervene and Memorandum in Support by the Ohio Environmental Council, Environmental Defense Fund, and Natural Resources Defense Council electronically filed by Mr. Trent A Dougherty on behalf of Ohio Environmental Council and Environmental Defense Fund and Natural Resources Defense Council