

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of	)	
Ohio Power Company for Authority to	)	
Establish a Standard Service Offer	)	Case No. 23-0023-EL-SSO
Pursuant to §4928.143, Ohio Rev. Code,	)	
In the Form of an Electric Security Plan	)	

In the Matter of the Application of	)	
Ohio Power Company for Approval of	)	Case No. 23-0024-EL-AAM
Certain Accounting Authority	)	

---

**MOTION TO INTERVENE AND MEMORANDUM IN SUPPORT  
OF CALPINE RETAIL HOLDINGS LLC**

---

For the reasons set forth in the accompanying Memorandum in Support, Calpine Retail Holdings, LLC (“Calpine”) respectfully moves the Public Utilities Commission of Ohio (the “Commission”) for leave to intervene in the above-captioned case pursuant to Ohio Revised Code 4903.221, Ohio Administrative Code 4901-1-11 and 4901-1-12, and to grant to the Calpine the full powers and rights specifically authorized by statute or by the provisions of the Ohio Administrative Code.

As set forth in the attached Memorandum in Support, Calpine submits that it has a direct, real, and substantial interest in the issues and matters involved in this proceeding. Calpine is situated such that the disposition of this proceeding without Calpine’s participation may, as a practical matter, impair or impede Calpine’s ability to protect its interests. Additionally, Calpine’s interests are not adequately represented by any other party to this matter.

Therefore, Calpine respectfully requests that this Commission grant its Motion to Intervene for the reasons set forth in more detail in the attached Memorandum in Support.

/s/ Robert Dove

Robert Dove (0092019)  
Kegler Brown Hill + Ritter Co., L.P.A.  
65 E State St., Ste. 1800  
Columbus, OH 43215-4295  
Office: (614) 462-5443  
rdove@keglerbrown.com

(Willing to accept service by Email)  
**Attorney for Calpine Retail Holdings,  
LLC**

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of	)	
Ohio Power Company for Authority to	)	
Establish a Standard Service Offer	)	Case No. 23-0023-EL-SSO
Pursuant to §4928.143, Ohio Rev. Code,	)	
In the Form of an Electric Security Plan	)	

In the Matter of the Application of	)	
Ohio Power Company for Approval of	)	Case No. 23-0024-EL-AAM
Certain Accounting Authority	)	

---

**MOTION TO INTERVENE AND MEMORANDUM IN SUPPORT  
OF CALPINE RETAIL HOLDINGS LLC**

---

**I. Introduction**

Ohio Revised Code (“ORC”) § 4903.221 states that “[a]ny other person who may be adversely affected by a public utilities commission proceeding may intervene in such proceeding” provided the Public Utilities Commission of Ohio (“Commission”) makes certain determinations. Calpine seeks intervention in this proceeding in which Ohio Power Company (“AEP”) filed an application for approval of its fifth electric security plan (“ESP V”) pursuant to R.C. 4928.143. AEP’s application proposes changes to the Distribution Investment Rider, Enhanced Service Reliability Rider, and Smart City Rider while also creating several new riders including an Energy Efficiency Rider, and a Rural Access Rider.

Calpine subsidiaries include independent, national providers of retail electric service across 20 states. Calpine is actively serving competitive retail electric services to all classes of Ohio customers, and is also a Load Serving Entity (“LSE”) and member of PJM Interconnection LLC. Calpine currently offers a wide variety of efficiency and energy-related products and services beyond simple energy procurement, including transmission, load and risk management,

and sustainability and green energy solutions to even the smallest of customers – all designed to meet the individualized needs and demands of Calpine’s customers and capture the benefits of the existing competitive wholesale energy environment to bring those benefits forward into to Ohio’s competitive retail electric market.

## **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.”<sup>1</sup> 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.<sup>2</sup>

Revised Code 4903.221 (A) authorizes the Commission to establish a deadline for intervention or to allow intervention up to five days before a hearing if no deadline was set. The statute also authorizes the Commission to grant motions to intervene filed after either of the aforementioned deadlines upon a showing of good cause.<sup>3</sup> Finally, Ohio Admin. Code Chapter 4901-1-11 states the Commission should only grant an untimely intervention under extraordinary circumstances.

---

<sup>1</sup> R.C. 4903.221.

<sup>2</sup> R.C. 4903.221(B).

<sup>3</sup> R.C. 4903.221(A)(2).

The Commission's rules also provide that any person may intervene where "[t]he person has a real and substantial interest in the proceeding."<sup>4</sup> 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."<sup>5</sup>

As the Ohio Supreme Court recently 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]."<sup>6</sup> The Commission has consistently maintained a policy to "encourage the broadest possible participation" in its proceedings, even under extenuating circumstances.<sup>7</sup> Calpine satisfies these liberal intervention standards and respectfully requests that its intervention be granted in these proceedings.

**III. Calpine is entitled to intervene under §4903.221 because Calpine and its subsidiaries "may be adversely affected" by the outcome of this proceeding.**

Calpine is entitled to intervene in this proceeding because Calpine 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 Calpine's interests in the proceeding is real and substantial,<sup>8</sup> as the issues involved herein are directly related to Calpine's interests in protecting its and its subsidiaries interests within AEP's service territory and the competitive market as a whole. Some of AEP's proposals may have a deleterious effect on Ohio's energy

---

<sup>4</sup> Ohio Adm. Code 4901-1-11(A)(2).

<sup>5</sup> Ohio Adm. Code 4901-1-11(B).

<sup>6</sup> *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.

<sup>7</sup> 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).

<sup>8</sup> R.C. 4903.221(B)(1).

market including creating an anti-competitive market. Calpine has a real and substantial interest in ensuring AEP's application is not approved in a manner which would negatively impact the competitive market.

Second<sup>9</sup>, because of the potential impacts on Calpine and the competitive market in which Calpine operates, Calpine wants to ensure that AEP has fully complied with Ohio's laws and regulations to ensure a fair and nondiscriminatory energy market.

Third, Calpine's intervention will not unduly prolong or delay the proceeding<sup>10</sup> as this motion is being filed before a procedural schedule has been set and Calpine agrees to comply with all future deadlines.

Fourth, intervention by Calpine will significantly contribute to the development, and ultimate resolution, of the facts and issues in this case because Calpine intends to play a constructive role in this case and provide information that will assist the Commission. As such, Calpine should be permitted to intervene pursuant to Ohio Revised Code §4903.221.

**IV. Calpine may intervene because Calpine and its members have a “real and substantial interest” in the proceeding as presented in Ohio Administrative Code 4901-1-11(B).**

Calpine may also intervene in these proceedings because it satisfies each of the five factors listed in the PUCO rules demonstrating that it has a “real and substantial interest” in these cases.<sup>11</sup> The first four factors are identical to those set forth under §4903.221(B) and, therefore, Calpine should be permitted to intervene for the same reasons as set forth in Section III above.

---

<sup>9</sup> R.C. 4903.221(B)(2).

<sup>10</sup> R.C. 4903.221(B)(3).

<sup>11</sup> Ohio Adm.Code 4901-1-11(B).

As for the fifth factor, Calpine's interests in these proceedings will not be fully represented by other parties.<sup>12</sup> No other parties can adequately represent Calpine's interests because no other party has the same goals or serves the same entities and customers as Calpine.

## **V. Conclusion**

For the foregoing reasons, Calpine respectfully requests that its Motion to Intervene and be granted, and Calpine be authorized to participate as a full party to this proceeding.

/s/Robert Dove  
Robert Dove (0092019)  
Kegler Brown Hill + Ritter Co., L.P.A.  
65 E State St., Ste. 1800  
Columbus, OH 43215-4295  
Office: (614) 462-5443  
Fax: (614) 464-2634  
[rdove@keglerbrown.com](mailto:rdove@keglerbrown.com)

(Willing to accept service by email)  
**Attorney for Calpine Retail Holdings,  
LLC**

---

<sup>12</sup> Ohio Adm. Code 4901-1-11(B)(5).

**CERTIFICATE OF SERVICE**

I certify that The Public Utilities Commission of Ohio's e-filing system will electronically serve notice of the filing of this document on the parties referenced on the service list of the docket card who have electronically subscribed to the case.

/s/ Robert Dove  
Robert Dove



**This foregoing document was electronically filed with the Public Utilities  
Commission of Ohio Docketing Information System on**

**1/27/2023 2:06:34 PM**

**in**

**Case No(s). 23-0023-EL-SSO, 23-0024-EL-AAM**

Summary: Motion to Intervene electronically filed by Mr. Robert Dove on behalf of  
Calpine Retail Holdings, LLC