

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of The)	
Dayton Power and Light Company for)	Case No. 18-1875-EL-GRD
Approval of Its Plan to Modernize Its)	
Distribution Grid.)	

In the Matter of the Application of The)	
Dayton Power and Light Company for)	
Approval of a Limited Waiver of Ohio)	Case No. 18-1876-EL-WVR
Adm.Code 4901:1-18-06(A)(2).)	

In the Matter of the Application of The)	
Dayton Power and Light Company for)	Case No. 18-1877-EL-AAM
Approval of Certain Accounting Methods.)	

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 (“Commission”) 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.

Dated: February 27, 2019

Respectfully submitted,

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MEMORANDUM IN SUPPORT OF SIERRA CLUB’S MOTION TO INERVENE

I. Introduction

Sierra Club seeks to intervene in these proceedings that were established by the Dayton Power and Light Company (“DP&L”) for approval of its Distribution Modernization Plan (“DMP”). These proceedings present issues of interest to Sierra Club regarding deployment of electric vehicle infrastructure and the potential development of a cleaner electric grid and renewable energy resources in Ohio. Sierra Club and its Ohio members have a strong interest in promoting electric vehicles and clean energy development in Ohio. In addition, 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 previous Commission proceedings 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

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

¹ R.C. 4903.221.

² R.C. 4903.221(B).

³ Ohio Adm. Code 4901-1-11(A)(2).

⁴ Ohio Adm. Code 4901-1-11(B).

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.

First, the nature and extent of Sierra Club’s interests in these proceedings are real and substantial,⁷ as the issues involved are directly related to Sierra Club’s and its members’ interests in promoting clean-energy resources, including the deployment of electric vehicles, community solar projects, and energy storage.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

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).

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, these prongs are addressed together.

environmental and health problems associated with as yet inadequate deployment of electric vehicles, renewable energy resources, and energy storage in Ohio. Sierra Club has an interest in the appropriate deployment of clean-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 millions of members and supporters nationwide and thousands of 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.

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

⁹ See, e.g., *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 et al., Attorney Examiners' Entry (Sept. 14, 2015); *In the Matter of the Application of Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to R.C. 4928.143, In the Form of An Electric Security Plan*, Case No. 16-1852-EL-SSO, Attorney Examiners' Entry (Mar. 22, 2017).

The instant DP&L proceedings present issues that are directly relevant to the interests of Sierra Club and its members. Working to assure deployment of electric vehicles, energy storage, and renewable generation resources is a core goal of Sierra Club in Ohio and around the country. Expanded reliance on clean energy in Ohio would displace dirtier forms of energy and thus further Sierra Club's environmental and public-health interests.

Second, Sierra Club's intervention will not unduly prolong or delay these proceedings.¹⁰ No procedural schedule has yet been established by the Commission for these proceedings. Sierra Club will 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.¹¹ Sierra Club will bring significant expertise to bear in these proceedings. Sierra Club's staff and consultants have extensive experience in electric vehicles deployment, electric resource planning, and in the laws and regulations of energy production. Sierra Club has intervened in many utility proceedings before this Commission. As such, Sierra Club should be permitted to intervene pursuant to R.C. 4903.221.

¹⁰ R.C. 4903.221(B)(3).

¹¹ 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 Commission rules demonstrating that Sierra Club and its members have a “real and substantial interest” in the proceeding.¹² 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,¹³ Sierra Club’s interests in these proceedings will not be fully or adequately represented by other parties. Sierra Club’s interests do not always fully 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.

¹² Ohio Adm. Code 4901-1-11(B).

¹³ Ohio Adm. Code 4901-1-11(B)(5).

Dated: February 27, 2019

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 this 27th day of February 2019.

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