

**BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio)	
Edison Company, The Cleveland Electric)	
Illuminating Company, and The Toledo)	Case Nos. 09-1947-EL-POR
Edison Company For Approval of Their)	09-1948-EL-POR
Energy Efficiency and Peak Demand)	09-1949-EL-POR
Reduction Program Portfolio Plans for 2010)	
through 2012 and Associated Cost Recovery)	
Mechanisms.)	
)	
In the Matter of the Application of Ohio)	
Edison Company, The Cleveland Electric)	Case Nos. 09-1942-EL-EEC
Illuminating Company, and The Toledo)	09-1943-EL-EEC
Edison Company For Approval of Their)	09-1944-EL-EEC
Initial Benchmark Reports.)	
)	
In the Matter of the Energy Efficiency and)	
Peak Demand Reduction Program Portfolio of)	Case Nos. 09-580-EL-EEC
Ohio Edison Company, The Cleveland)	09-581-EL-EEC
Electric Illuminating Company, and The)	09-582-EL-EEC
Toledo Edison Company.)	

**MEMORANDUM CONTRA THE MOTION TO INTERVENE OF THE
ENVIRONMENTAL LAW AND POLICY CENTER**

I. Introduction

Pursuant to OAC 4901-1-12(B)(1), and for the reasons more fully discussed below, Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (the “Companies”) hereby respectfully ask the Commission to deny the Motion to Intervene filed on December 29, 2009 by the Environmental Law and Policy Center (“ELPC”).

II. Background

ELPC requests leave to intervene in the three proceedings captioned above, including the Companies’ portfolio plan application and the Companies’ initial benchmark report filing. However, ELPC’s Memorandum in Support makes clear that its interest is limited to the

Companies’ three-year energy efficiency and peak demand reduction (“EE&PDR”) portfolio plan. ELPC’s motion regurgitates the statutory requirements for intervention, but makes no effort to demonstrate that it actually satisfies these requirements.

Indeed, ELPC describes its interest in these proceedings as a mere bystander encouraging the Commission to review the Companies’ portfolio plans to ensure they satisfy legal requirements. Memo. in Supp. at pp. 4-5. Yet the Commission’s review is a given, and ELPC has not shown how it will efficiently assist the Commission in that review. ELPC made no effort to demonstrate that it satisfies the prerequisites to intervention, instead relying on blanket assertions and generic statements that tell the reader nothing. Accordingly, the Companies respectfully request that the Commission deny ELPC’s Motion.

III. Argument

As ELPC states, R.C. 4903.221 provides in part that any person “who may be adversely affected” by a Commission proceeding is entitled to seek intervention in that proceeding. Division (B) of this same statute requires that the Commission consider the following criteria when ruling on motions to intervene:

- 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 proceeding; and
- 4) Whether the prospective intervenor will significantly contribute to the full development and equitable resolution of the factual issues.

R.C. 4903.221(B). And, O.A.C. 4901-1-11 sets forth an additional Commission requirement: “the extent to which the [intervenor’s] interest is represented by existing parties.” ELPC’s motion and related memorandum are devoid of any details on which the Commission can make

such an assessment. Accordingly, ELPC fails to meet the standards for intervention and its motion must be denied.

A. ELPC has not shown that it may be adversely affected by the Companies' portfolio plan proceeding.

ELPC states that it is an environmental advocacy organization that operates regionally in the Midwest and has members in Ohio. Mem. in Supp. at pp. 3-4. This general description of its purpose is insufficient to demonstrate that ELPC will be adversely affected by the Commission's order in Case Nos. 09-1947-EL-POR *et seq.* ELPC has not stated that it actually has any members within the Companies' service territories, and it may not know whether it does. Nor has ELPC explained why the nature and extent of its general interest in "environmental health and sustainable economic development" would result in it being adversely affected by a Commission order approving the Companies' portfolio plans. Although ELPC professes to have a general interest in the outcome of these proceedings, it has made no showing that it will be adversely affected by the outcome of these proceedings.

B. ELPC has not explained its legal position and its probable relation to the merits of these proceedings.

ELPC describes its legal position as encouraging the Commission to consider carefully the Companies' portfolio plans. Mem. in Supp. at p. 4. Encouraging the Commission to follow its own rules – in particular, O.A.C. 4901:1-39-04 – is not a legal position. It is cheerleading. Regardless, ELPC has not explained how this position relates to the merits of these proceedings.

C. Because ELPC's motion lacks any detail regarding its legal positions, the Commission cannot determine whether ELPC's intervention would unduly prolong or delay these proceedings.

ELPC states that it is committed to working within the schedule established by the Commission "to achieve the efficient and orderly disposition of the questions presented." Mem. in Opp. at p. 5. However, ELPC does not provide the Commission with even a hint of what

ELPC believes the “questions presented” are. Without this information, the Commission cannot determine whether ELPC will unduly prolong or delay these proceedings.

D. ELPC’s motion lacks any detail regarding whether it will significantly contribute to the full development and equitable resolution of the factual issues.

ELPC claims to possess “expertise” and a “unique perspective” that will allow it to significantly contribute to the full development and resolution of these proceedings. Mem. in Supp. at p. 5. However, ELPC provides the Commission with no actual facts upon which the Commission can conclude that ELPC may satisfy the statutory standard it repeats, nearly verbatim, in its motion. What unique expertise and perspective does ELPC bring to the proceeding? What factual issues is ELPC interested in fully developing and equitably resolving? We are left guessing.

E. ELPC has not shown the extent to which its interests are represented by existing parties.

ELPC professes to be different than other environmental policy advocacy groups. Memo. in Supp. at p. 5.¹ Yet, again, ELPC has failed to explain how this professed difference results in it having an interest that will not be represented by other intervenors. The Companies presume that all intervenors have an interest in having the Commission carefully consider the Companies’ portfolio plans. ELPC has not explained how its particular advocacy viewpoint will differ from other parties.

In sum, ELPC fails to provide any inkling of how it may be adversely affected by the outcome of these proceedings. All individuals within and without the Companies’ service territories could have a general interest in the Commission’s review of the Companies’ EE&PDR

¹ The Companies note that ELPC has the same address as the Ohio Environmental Council, although they do not appear to agree on the correct zip code for this address.

portfolio plan. In the same way, all individuals could have a general interest in a court proceeding involving an environmental issue. However, intervention is not justified in either case simply because an individual or organization has an interest in the environment or has “expertise” with regard to environmental issues. For intervention to be justified, the intervenor must demonstrate that it has a unique interest that will be affected directly by the proceeding. ELPC has not made that showing.

IV. Conclusion

For the reasons set forth above, the Companies respectfully request that the Commission deny ELPC’s motion.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of this *Memorandum Contra* was served on the persons stated below by regular U.S. Mail, postage prepaid, on this 7th day of January, 2010.

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Summary: Memorandum Contra the Motion to Intervene of the Environmental Law and Policy Center electronically filed by Mr. James F Lang on behalf of Ohio Edison Company and The Cleveland Electric Illuminating Company and The Toledo Edison Company