

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Review of the Ohio)	
Edison Company, The Cleveland Electric)	
Illuminating Company and The Toledo)	Case No. 17-974-EL-UNC
Edison Company's Compliance with R.C.)	
4928.17 and the Ohio Adm. Code Chapter)	
4901:1-37)	

**OHIO EDISON COMPANY, THE CLEVELAND ELECTRIC ILLUMINATING
COMPANY AND THE TOLEDO EDISON COMPANY'S MEMORANDUM CONTRA
INTERSTATE GAS SUPPLY, INC.'S MOTION TO INTERVENE**

I. INTRODUCTION

On March 26, 2014, the Commission issued a Finding and Order in *In re the Commission's Investigation of Ohio's Retail Electric Service Market*, Case No. 12-3151-EL-COI ("RMI Proceeding"). In that Finding and Order, the Commission directed that each of the Ohio electric distribution utilities would be subject to an audit to ensure their compliance with R.C. 4928.17 and Ohio Adm. Code Chapter 4901:1-37.¹ On May 17, 2017, the Commission issued an Entry directing Staff to issue a request for proposal for audit services to assist with this review. That Entry directed that the final audit report be filed by March 14, 2018. On July 5, 2017, the Commission issued an Entry choosing Sage Management Consultants, LLC as the auditor. On August 30, 2017, Interstate Gas Supply Inc. ("IGS") moved to intervene in this docket ("Motion"). For the reasons described below, the Commission should deny IGS's Motion.

¹ Case No. 12-3151-EL-COI, Finding and Order at 16-17 (March 26, 2014).

II. THE COMMISSION SHOULD DENY IGS'S MOTION TO INTERVENE

R.C. § 4903.221 permits intervention only by persons who may be “adversely affected” by proceedings. Likewise, the Commission’s intervention rule authorizes intervention only when:

[t]he person has a real and substantial interest in the proceeding, and the person is so situated that the disposition of the proceeding may, as a practical matter, impair or impede his or her ability to protect that interest, unless the person’s interest is adequately represented by existing parties.²

In considering a motion to intervene, the Commission’s rule directs that the Commission should consider: (1) the nature and extent of the intervenor’s interest; (2) the legal position advanced by the intervenor and its probable relation to the merits of the case; (3) whether intervention will unduly prolong or delay the proceedings; (4) whether the intervenor will significantly contribute to full development and equitable resolution of the factual issues; and (5) the extent to which the intervenor’s interest is represented by existing parties.³

A. IGS Has No Real or Substantial Interest In this Proceeding That Will Be Impaired.

In its Motion, IGS does not assert any real or substantial interest in this proceeding. Instead, IGS generically asserts that as a competitive retail electric service (“CRES”) provider, it is entitled to intervention simply because it operates in the competitive market.⁴ If that were the case, every CRES provider, utility, and wholesale supplier would be permitted to intervene. Moreover, the Commission has routinely found that that “the fact that a company is a competitor of a regulated utility does not, of itself, constitute ‘a real and substantial interest’ sufficient to

² O.A.C. 4901-1-11(A).

³ See O.A.C. 4901-1-11(B)(1)-(5); see also R.C. 4903.221(B)(1)-(4).

⁴ IGS Motion at 5.

automatically entitle it to participate in a Commission proceeding.”⁵ “The Commission has also stated that its primary interest is in securing the best possible service for the public....not in refereeing a contest between competitors.”⁶ IGS’s assertion that intervention is warranted simply because it is a competitor is not sufficient. IGS has not met its burden of demonstration of a real or substantial interest in this proceeding that will be impaired.

Moreover, IGS should not be permitted to intervene simply because they want to “ensure” that “FirstEnergy complies with Ohio’s corporate separation laws and rules as required by the General Assembly when it restructured the Ohio electric market.”⁷ Put simply, it is not IGS’s role to ensure the Companies are complying with the law – it is the Commission’s role – and the Commission (and its Staff) is quite capable of making these determinations without IGS’s assistance. This proceeding was opened by the Commission to do just that. The Commission has also found that if the only potential contribution an intervenor can bring is to argue issues that the Commission, Applicant or Staff can address, that alone is not enough to permit intervention.⁸

Finally, it is in the Commission’s discretion to decide the next steps in this proceeding. After the final audit report is issued, to the extent the Commission finds it necessary, the Commission may give IGS the opportunity to voice its concerns without intervention. As IGS and other participants already made comments in the RMI Proceeding, such an opportunity has

⁵ *In the Matter of the Application of Akron Thermal, Limited Partnership for an Increase in its Rates for Steam and Hot Water Service*, Case No. 05-5-HT-AIR, Entry at 3 (June 14, 2005).

⁶ *Id.*

⁷ IGS Motion at 5.

⁸ *See e.g.* Case No. 05-05-HT-AR, Entry at 2-3 (“The only potential contribution FSG can bring to the instant rate increase proceeding is to argue that Akron Thermal’s regulated rates should cover its cost of providing service, an interest that can be adequately represented by Akron Thermal. Further, Akron Thermal states in its application to increase rates that its present rates and charges are unjust and unreasonable but that the proposed rates are just and reasonable...Pursuant to Chapter 4909, Revised Code, the staff of the Commission is investigating Akron Thermal to determine the cost of service for its regulated utility service and will file a report of that investigation.”)

already been given and further comments are not necessary. For those reasons, the Commission should deny IGS's intervention in this case.

B. IGS's intervention will unduly prolong and delay this proceeding.

Allowing IGS to intervene in this matter will provide it with the opportunity to serve discovery on the Companies even while the audit is still ongoing. It is a distinct possibility that IGS will seek premature discovery from the Companies prior to the final audit report being issued in this case. This is inappropriate and will require the Commission to engage in lengthy motion practice and discovery disputes as the Companies will resist any premature discovery and any requirement that the Companies produce information that is protected by R.C. 4901.16. The Commission should deny IGS's intervention because it will unduly delay and prolong this proceeding. However, if the Commission were to grant intervention, it should be under the condition that IGS is not permitted to serve discovery until after a final audit report is issued.⁹

⁹ O.A.C. 4901-1-11(D)(1) (The Commission may “[g]rant limited intervention, which permits a person to participate with respect to one or more specific issues, if the person has no real and substantial interest with respect to the remaining issues or the person's interest with respect to the remaining issues is adequately represented by existing parties.”)

III. CONCLUSION

For the foregoing reasons, the Commission should deny IGS's Motion to Intervene.

Respectfully submitted,

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CERTIFICATE OF SERVICE

On September 14, 2017, the foregoing document was filed on the Public Utilities Commission of Ohio's Docketing Information System. The PUCO's e-filing system will electronically serve notice of the filing of this document and the undersigned has served courtesy copies to the following parties:

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*/s/ Carrie M. Dunn-Lucco
One of the Attorneys for Ohio Edison
Company, The Cleveland Electric Illuminating
Company and The Toledo Edison Company*

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Summary: Memorandum Contra Interstate Gas Supply Inc.'s Motion to Intervene electronically filed by Ms. Carrie M Dunn-Lucco on behalf of The Toledo Edison Company and The Cleveland Electric Illuminating Company and Ohio Edison Company