

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Review of the Political)
and Charitable Spending by Ohio Edison)
Company, The Cleveland Electric) Case No. 20-1502-EL-UNC
Illuminating Company, and The Toledo)
Edison Company)

**MEMORANDUM CONTRA OF OHIO EDISON COMPANY, THE CLEVELAND
ELECTRIC ILLUMINATING COMPANY AND THE TOLEDO EDISON COMPANY
TO THE MOTION TO INTERVENE BY THE ENVIRONMENTAL LAW & POLICY
CENTER**

I. INTRODUCTION

The Motion to Intervene (“Motion”) filed by Environmental Law and Policy Center (“ELPC”) should be denied because ELPC fails to establish a real and substantial interest in this case. ELPC also has failed to show how the disposition of this proceeding will impair or impede its ability to protect its claimed interest, or how it will significantly contribute to development of the factual issues in this case. Indeed, no intervention is necessary given that the Commission’s review involves only the filing of initial and reply comments by interested parties. Accordingly, ELPC’s Motion should be denied.

II. ARGUMENT

To be granted intervention, the person seeking intervention must show it “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.” O.A.C. 4901-1-11(A)(2). ELPC has not met this standard. Indeed, the Motion does not directly address the

requirements of O.A.C. 4901-1-11(A) and, instead, discusses only the considerations in O.A.C. 4901-1-11(B). ELPC's Motion should be denied.

A. ELPC has not shown it has a real and substantial interest in this case.

ELPC states in its Motion that it has an interest in promoting “cost-effective clean and efficient energy in the state,” that its “work focuses on Ohio energy environmental issues,” that it participated in hearings involving Am. Sub. H.B. 6 (“H.B.6”), and that it sees itself as a “watchdog for corruption and malfeasance in the Midwest’s energy sector.” Mem. in Supp. of Motion, p. 2. None of these interests is sufficient to be granted intervention here. ELPC has confused having interests in the environment generally with having a “real and substantial interest in the proceeding” as required by O.A.C. 4901-1-11(A)(2).

This case was not initiated to permit interested parties to discuss clean energy and H.B. 6. Instead, it was initiated to confirm that the costs of any political or charitable spending in support of H.B. 6 are not in the rates and charges paid by retail customers of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company (the “Companies”). While ELPC may have several interests, it has not shown that it has a real and substantial interest **in this case**. *See, e.g., In the Matter of the Application of the Dayton Power & Light Co. for Auth. to Amend Its Filed Tariffs to Increase the Rates & Charges for Elec. Serv.*, 1991 WL 11811072, Case No. 91-414-EL-AIR (Dec. 6, 1991) (denying City of Cincinnati’s motion to intervene because it did not have an interest in the rates at issue in proceeding). To the extent ELPC wants to espouse its environmental policy positions, there are other venues available to it. But it has not shown that its environmental policy interests give it a real and substantial interest justifying intervention in this case.

Moreover, ELPC’s involvement in Energy Harbor’s bankruptcy proceeding does not warrant intervention. *See* Mem. in Supp. of Motion, p. 2. If generalized interests of the sort

claimed by ELPC were sufficient to warrant intervention, then essentially anyone would be entitled to seek intervention in any case they so desired. The possibility that this proceeding could affect another proceeding (whether another Commission proceeding or otherwise) is insufficient to justify intervention, and “[t]o grant intervention on this basis would render the Commission’s rule on intervention meaningless.” *In the Matter of the Application of FirstEnergy Corp. on Behalf of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Approval of Their Transition Plans and for Authorization to Collect Transition Revenues*, Case No. 99-1212-EL-ETP, *et al.*, Entry (Mar. 23, 2000). Plus, there is a substantial disconnect between ELPC’s claimed interest and this case. ELPC asserts that this Commission review could influence decommissioning of nuclear plants in this case, which ELPC says is central to its participation in the Energy Harbor bankruptcy proceeding. *See* Mem. in Supp. of Motion, pp. 2-3. However, any such assertions are irrelevant in this case, which involves whether a specific category of costs is included in the Companies’ rates and charges. ELPC has not shown that it is entitled to intervene in this case.

B. ELPC has not shown that the disposition of this proceeding may, as a practical matter, impair or impede its ability to protect its claimed interest.

ELPC makes no showing that the Commission’s disposition of this proceeding will impair or impede its ability to protect its claimed environmental interests. None. Instead, ELPC simply expresses its desire for an investigation that addresses the impact the Companies’ past spending may have had on clean energy in Ohio. Mem. in Supp. of Motion, p. 3. There are two obvious problems.

First, it is not for ELPC to decide how the Companies spend their funds in the best interests of the utilities as determined by their management. *See Elyria Tel. Co. v. Pub. Util. Comm.*, 158 Ohio St. 441, 447-448, 110 N.E.2d 59 (1953). Nor can ELPC show that a utility’s discretion to

make political and charitable spending is within the Commission's jurisdiction. *See Cleveland Elec. Illuminating Co. v. Pub. Util. Comm.*, 69 Ohio St.2d 258, 431 N.E.2d 683 (1982), syllabus; *In re Chapter 4901:1-20, Ohio Adm. Code*, 2004 WL 1950732, Case No. 04-48-EL-ORD, Finding and Order at p. 14 (July 28, 2004) (political contributions or donations are "a matter outside of our jurisdiction."). Regardless, the limited rates review being conducted in this case will not impact ELPC.

Second, and more practically, ELPC has not shown how the disposition of this case will prevent ELPC from protecting its professed interest in clean energy. The stated purpose of this case is to confirm that the costs of any political or charitable spending in support of H.B. 6 are not in the rates and charges paid by the Companies' retail customers. The ultimate disposition of this case will not affect ELPC's claimed interests in any way, let alone impair or impede ELPC's ability to protect its interests. Plus, because the Attorney Examiner has set a schedule for comments and reply comments regarding the Companies' September 30 response to the show cause entry, denial of the Motion will not impair or impede ELPC's ability to express its views.

Because ELPC has not shown that the disposition of this case may, as a practical matter, impair or impede its ability to protect its claimed interest, it is not entitled to intervene as a party.

C. ELPC has not shown how it will significantly contribute to development of factual issues in this case.

Given that ELPC has not satisfied the requirements of O.A.C. 4901-1-11(A)(2), its discussion of the factors in O.A.C. 4901-1-11(B) is largely inconsequential. It is notable, however, that ELPC asserts it can satisfy O.A.C. 4901-1-11(B)(4) by "bring[ing] its unique perspective to bear." Mem. in Supp. of Motion, p. 3. The focus of O.A.C. 4901-1-11(B)(4) is on the development and resolution of factual issues. Yet there is no evidentiary hearing scheduled or necessary in this proceeding and, thus, ELPC will have no need to develop or resolve factual issues. Indeed, ELPC's

perspective will have no impact on consideration of the Companies' September 30 response to the show cause entry. ELPC's perspective does not overcome ELPC's inability to justify intervention under O.A.C. 4901-1-11(A)(2).

III. CONCLUSION

The Companies respectfully request that the Commission deny ELPC's Motion to Intervene.

Respectfully Submitted,

/s/ James F. Lang

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CERTIFICATE OF SERVICE

I certify that the foregoing was filed electronically through the Docketing Information System of the Public Utilities Commission of Ohio on this 5th day of October 2020. The PUCO's e-filing system will electronically serve notice of the filing of this document on counsel for all parties.

/s/ James F. Lang
One of the Attorneys for Ohio Edison
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Summary: Memorandum Contra Motion to Intervene by ELPC electronically filed by Mr. James F Lang on behalf of Ohio Edison Company and The Cleveland Electric Illuminating Company and The Toledo Edison Company