

**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 OHIO ENVIRONMENTAL COUNCIL**

I. INTRODUCTION

The Motion to Intervene (“Motion”) filed by the Ohio Environmental Council (“OEC”) should be denied because OEC fails to establish a real and substantial interest in this case. OEC 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 the development of the factual issues in this case. Indeed, even if OEC had a real and substantial interest in this proceeding, intervention would not be necessary for OEC to represent such interest because the Commission’s review involves only the filing of initial and reply comments, for which intervention is unnecessary. Accordingly, OEC’s Motion should be denied.

II. ARGUMENT

To be granted intervention, a person must show that it may be adversely affected by the proceeding in which it requests intervention. R.C. 4903.221. To satisfy this standard, 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). The Commission must consider the criteria in R.C. 4903.221(B) and O.A.C. 4901-1-11(B) when ruling upon applications to intervene, but the overarching standard is that a person have a real and substantial interest that may be adversely affected by the proceeding. Because OEC has not met this standard, the Motion should be denied.

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

OEC states in its Motion that its interest in protecting Ohio’s environment and ensuring clean energy for all of Ohio’s citizens will somehow assist the Commission in this proceeding. Mem. in Supp., p. 4. According to OEC, its advocacy for “reducing air pollution coming from the electric power sector and ensuring Ohioans’ money is spent in a cost-effective manner” gives it a real and substantial interest in this proceeding. Mem. in Supp., p. 5. However, this proceeding was not opened by the Commission for the purpose of giving parties a forum to advance their environmental policies.

OEC’s purpose for intervening in this proceeding is to argue that the Commission should direct the Companies to spend their money “to support a clean energy future that mitigates the causes of climate change.” Mem. in Supp., p. 5. OEC does not explain what this means, but, regardless, OEC’s policy choices are irrelevant here. This proceeding is not an open forum for environmental groups to discuss clean energy incentives. Instead, it was initiated to confirm that the costs of any political or charitable spending in support of H.B. 6 or the referendum effort 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”). OEC has not shown that its interest in clean energy gives it 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); *In the Matter of the Application of Akron Thermal, Limited Partnership for an Increase in Rates for Steam and Hot Water Service*, Case No. 05-05-HT-AIR, Entry at p. 3 (June 14, 2005) (denying intervention because person's interest was not related to the purposes of the proceeding in a manner that "assist the Commission's primary interest of securing the best possible service for the public under a just and reasonable rate structure."). To the extent OEC wants to espouse its environmental policy positions, there are other venues available to it. But it has not shown that its clean energy advocacy gives it a real and substantial interest justifying intervention as required by O.A.C. 4901-1-11(A)(2).

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

OEC asserts that its "members may be adversely affected by the outcome of the Commission's review of FirstEnergy's spending." Mem. in Supp., p. 5. It fails to explain how this might be the case. Plus, it fails to explain how this satisfies the second part of O.A.C. 4901-1-11(A)(2).

The Commission's rule requires a person to show that "the disposition of the proceeding may, as a practical matter, impair or impede his or her ability to protect that interest," with "that interest" referring back to the "real and substantial interest" the person has in the proceeding. Because OEC's claimed interest is in supporting clean energy, it must show that the Commission's disposition of this proceeding may impair or impede its ability to support clean energy. It has not done so and it cannot do so. The stated purpose of this case is to confirm that the costs of any political or charitable spending in support of H.B. 6 – either supporting enactment of the bill or opposing the H.B. 6 referendum – are not in the rates and charges paid by the Companies' retail

customers. The purpose of this case and OEC's claimed interest do not intersect. Regardless of the outcome of this proceeding, OEC will retain the ability to advocate its policy positions.

Plus, it is not for OEC 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 OEC 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 review being conducted in this case will not impact OEC.

Because OEC 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. OEC's Motion does not satisfy the factors in O.A.C. 4901-1-11(B).

Given that OEC 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)(2)-(5) is inconsequential. Indeed, OEC invests little effort in satisfying those factors. Instead, it generally claims that it will "add value" and "assist in the just and expeditious resolution of the issues." Mem. in Supp., pp. 5-6.

Notably, while the second factor requires that OEC show the probable relation of its legal position to the merits of this proceeding (O.A.C. 4901-1-11(B)(2)), OEC simply claims that its legal position is "support for clean energy." Mem. in Supp., p. 5. This is a policy position, not a legal position, and it has no relation to the merits of this proceeding. OEC claims that its policy position relates to the merits of this case because OEC wants to encourage the Companies to spend their funds "to support a clean energy future that mitigates the causes of climate change." Mem. in Supp., p. 5. This is not, however, a proceeding in which the Commission will be instructing the

Companies how to spend dollars to mitigate climate change. Nor, given the lack of any statutory authority, can it be that proceeding. Instead of satisfying O.A.C. 4901-1-11(B)(2), OEC is attempting to intervene in this proceeding for the unrelated purpose of advancing its clean energy policy positions.

While O.A.C. 4901-1-11(B)(4) requires a showing that “the prospective intervenor will significantly contribute to full development and equitable resolution of the factual issues” (O.A.C. 4901-1-11(B)(4)), OEC mentions no factual issues that it will significantly contribute to developing. And because there is no evidentiary hearing scheduled or necessary in this proceeding, OEC will have no need to develop or resolve factual issues. OEC has not shown how its participation in this proceeding will have any impact on the Commission’s consideration of the Companies’ September 30 response to the show cause entry.

OEC has not justified its intervention in this review proceeding.

III. CONCLUSION

The Companies respectfully request that the Commission deny OEC’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 14th 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 of OEC electronically filed by Mr. James F Lang on behalf of Ohio Edison Company and The Cleveland Electric Illuminating Company and The Toledo Edison Company