

**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 INTERSTATE GAS SUPPLY, INC.**

I. INTRODUCTION

The Motion to Intervene (“Motion”) filed by Interstate Gas Supply, Inc. (“IGS”) should be denied because IGS fails to establish a real and substantial interest in this case. IGS 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 IGS had a real and substantial interest in this proceeding, intervention would not be necessary for IGS to represent such interest because the Commission’s review involves only the filing of initial and reply comments, for which intervention is unnecessary. Accordingly, IGS’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 IGS has not met this standard, the Motion should be denied.

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

As IGS correctly states in its Motion, the Commission “opened this proceeding in order to determine whether any of FirstEnergy’s¹ political and charitable spending in support of Am. Sub. H.B. 6 was included, directly or indirectly, in any of the rates or charges paid by ratepayers in this state.” Mem. in Supp., p. 4. IGS then asserts two interests that it believes entitle it to intervene in this proceeding: (1) it provides competitive retail electric service (“CRES”) to customers in the Companies’ service territories; and (2) a purported beneficiary of Am. Sub. H.B. 6 (“H.B. 6”) is a competitor of IGS. Mem. in Supp., p. 5. Neither of these interests entitle IGS to intervene in this proceeding.

The status of IGS as a CRES provider does not give it a real and substantial interest justifying intervention. IGS does not represent its retail customers in this proceeding (other intervenors claim that role). It is simply a supplier to the Companies’ customers. This proceeding will not address the Companies’ relationship with CRES providers. Instead, as clearly stated by IGS, 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 the Companies’ retail customers. IGS’s status as a CRES provider does not give it a real and substantial interest in the Companies’ retail rates and charges.

¹ IGS defines “FirstEnergy” to mean Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, the “Companies”). Motion, p. 2.

Nor does IGS's status as a competitor of Energy Harbor justify intervention in this proceeding. The Commission has "stated in several cases 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 automatically entitle it to participate in a Commission 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). IGS's interest in this proceeding is even more attenuated because the proceeding concerns the Companies' rates and charges, not the claimed competitor. Thus, IGS has not shown that its interest in the impact of H.B. 6 on one of its competitors 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).

IGS has not shown that its status as a CRES provider gives it a real and substantial interest justifying intervention as required by O.A.C. 4901-1-11(A)(2).

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

IGS does not explain how the disposition of the Commission's review of the Companies' rates and charges specific to H.B. 6 costs could adversely affect IGS's claimed interests. IGS is not being investigated, and IGS's rates and charges are not at issue. IGS speculates that, if the Companies spent money to support the passage of H.B. 6, that could be interpreted as "utilizing distribution funds to subsidize a competitive service." Mem. in Supp., p. 5. However, as IGS's Motion states, the purpose of this proceeding is to determine whether the cost of H.B. 6 spending was included in the Companies' rates and charges, not whether the Companies spent money in

support of H.B. 6. Motion, p. 2. Plus, any money spent in support of H.B. 6 cannot be considered “subsidies flowing from a noncompetitive retail electric service to a competitive retail electric service” as described in R.C. 4928.02(H) because, under the scenario imagined by IGS, no money flowed from the Companies’ distribution service to a competitive retail electric service. Regardless, IGS has not made any attempt to show how the disposition of this proceeding may adversely affect its interests as a CRES provider.

Additionally, it is not for IGS 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 IGS 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 IGS.

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

Given that IGS has not satisfied the requirements of O.A.C. 4901-1-11(A)(2), the factors in O.A.C. 4901-1-11(B)(2)-(5) are inconsequential. It is notable, however, that IGS makes no attempt to satisfy those factors, other than to state that its intervention will not unduly delay the proceeding. Mem. in Supp., p. 6.

While the second factor requires that IGS show the probable relation of its legal position to the merits of this proceeding (O.A.C. 4901-1-11(B)(2)), IGS does not identify its legal position

or explain its probable relation to the merits of this proceeding. Further, 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)), IGS mentions no factual issues that it will significantly contribute to developing. And because there is no evidentiary hearing scheduled or necessary in this proceeding, IGS will have no need to develop or resolve factual issues. IGS 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.

IGS has not justified its intervention in this review proceeding.

III. CONCLUSION

The Companies respectfully request that the Commission deny IGS’s Motion to Intervene.

Respectfully Submitted,

/s/ James F. Lang

Brian J. Knipe (0090299)
FirstEnergy Service Company
76 South Main Street
Akron, OH 44308
(330) 384-5795
bknipe@firstenergycorp.com

James F. Lang (0059668)
Kari D. Hehmeyer (0096284)
CALFEE, HALTER & GRISWOLD LLP
The Calfee Building
1405 East Sixth Street
Cleveland, Ohio 44114
(216) 622-8200
(216) 241-0816 (fax)
jlang@calfee.com
khehmeyer@calfee.com

*Attorneys for Ohio Edison Company, The
Cleveland Electric Illuminating Company, and
The Toledo Edison Company*

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
Company, The Cleveland Electric
Illuminating Company, and The Toledo
Edison Company

4831-6258-2734, v. 1

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

10/14/2020 4:37:29 PM

in

Case No(s). 20-1502-EL-UNC

Summary: Memorandum Contra Motion to Intervene of Interstate Gas Supply, Inc.
electronically filed by Mr. James F Lang on behalf of Ohio Edison Company and The
Cleveland Electric Illuminating Company and The Toledo Edison Company