

**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 OHIO PARTNERS FOR AFFORDABLE  
ENERGY**

---

**I. INTRODUCTION**

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

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

OPAE briefly states in its Motion that its interest in this proceeding is to “explore how FirstEnergy’s<sup>1</sup> political and charitable spending has impacted the OPAE’s members within FirstEnergy’s service territory.” Mem. in Supp., p. 3. In other words, OPAE is an interested bystander that is curious about the impact of the Companies’ spending on Am. Sub. H.B. 6 (“H.B. 6”). Simply being interested in a case is not the type of “real and substantial” interest that justifies intervention. If this were true, anyone would be entitled to intervene in any Commission proceeding.

Additionally, this proceeding is not a forum for OPAE to “explore” whether the Companies caused the General Assembly to amend R.C. 4928.66 or any other provision in H.B. 6. 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 the Companies’ retail customers. OPAE 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); *In the Matter of the Application of Akron Thermal, Limited Partnership for*

---

<sup>1</sup> OPAE defines “FirstEnergy” to mean Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, the “Companies”). Mem. in Supp., p. 1.

*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.”).

Moreover, OPAE’s claimed interest – to determine whether the Companies’ political and charitable spending may have impacted H.B. 6 – is not within the Commission’s jurisdiction. The Commission is not the venue for OPAE to question 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 OPAE show that the Companies’ exercise of management 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.”). Thus, as a matter of law, OPAE’s claimed interest cannot be a “real and substantial” interest in this proceeding.

OPAE has not shown that it has a real and substantial interest in this case that justifies intervention as required by O.A.C. 4901-1-11(A)(2).

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

OPAE does not say how the disposition of this proceeding “may, as a practical matter, impair or impede” its ability to protect its claimed real and substantial interest. Instead, it erroneously confuses the four factors in R.C. 4903.221(B) with the “adversely affected” test in R.C. 4903.221(A). *Mem. in Supp.*, pp. 2, 3-4. While the factors in R.C. 4903.221(B) are to be considered by the Commission, the Commission must also determine under R.C. 4903.221(A) and

O.A.C. 4901-1-11(A)(2) whether OPAE has a real and substantial interest that could be adversely affected by the outcome of this proceeding. Yet OPAE makes no effort to show how the disposition of this proceeding may impair or impede its claimed interest in the proceeding.

OPAE asserts that it and its members may be adversely affected by the outcome of this proceeding. Mem. in Supp., p. 3. But it fails to explain how this might be the case. OPAE's purpose, according to the Motion, is "advocating for affordable energy policies for low-and moderate-income Ohioans." Mem. in Supp., p. 1. This is not, however, a case in which affordable energy policies will be discussed. Instead, 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. Regardless of the outcome of this proceeding, OPAE will retain the ability to advocate for affordable energy policies.

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

Given that OPAE 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. However, OPAE also fails to satisfy these factors.

Most importantly, OPAE makes no effort to show the probable relation of its legal position to the merits of this proceeding. *See* O.A.C. 4901-1-11(B)(2). In reference to this factor, OPAE simply states that it wants to "participate in a robust investigation in FirstEnergy's political and charitable spending and its impact on Ohio's energy policy and OPAE's members." Mem. in Supp., p. 3. This is not a legal position, and it has no relation to the merits of this proceeding.

OPAE also fails to show how it “will significantly contribute to full development and equitable resolution of the factual issues” in this proceeding. O.A.C. 4901-1-11(B)(4). OPAE claims expertise as an advocate for low-income consumers (Mem. in Supp., p. 4), but the Commission will not be approving programs for low-income consumers in this proceeding. OPAE mentions no factual issues in this case that it will significantly contribute to developing. And because there is no evidentiary hearing scheduled or necessary in this proceeding, OPAE will have no need to develop or resolve factual issues. OPAE 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.

OPAE has not justified its intervention in this review proceeding.

### **III. CONCLUSION**

The Companies respectfully request that the Commission deny OPAE’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

**This foregoing document was electronically filed with the Public Utilities**

**Commission of Ohio Docketing Information System on**

**10/14/2020 4:38:45 PM**

**in**

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

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