

**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 )

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**MEMORANDUM CONTRA OF OHIO EDISON COMPANY, THE CLEVELAND  
ELECTRIC ILLUMINATING COMPANY AND THE TOLEDO EDISON COMPANY  
TO THE MOTION TO INTERVENE BY THE OHIO MANUFACTURERS’  
ASSOCIATION ENERGY GROUP**

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**I. INTRODUCTION**

The Motion to Intervene (“Motion”) filed by the Ohio Manufacturers’ Association Energy Group (“OMAEG”) should be denied because OMAEG fails to show how the disposition of this proceeding will impair or impede its ability to protect a real and substantial interest it has in this case. OMAEG also fails to show that it intends to advance a legal position that is related to the merits of this case, and it does not show that its intervention will significantly contribute to development of the factual issues in this case. Indeed, even if OMAEG had a real and substantial interest in this proceeding, intervention would not be necessary for OMAEG to represent such interest because the Commission’s review involves only the filing of initial and reply comments, for which intervention is unnecessary. Accordingly, OMAEG’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 OMAEG has not met this standard, the Motion should be denied.

**A. Only one of OMAEG's two claimed interests is a real and substantial interest in this case.**

OMAEG offers two interests it asserts justify its intervention in this proceeding: (1) ensuring that costs incurred by its members are just, reasonable, and consistent with Ohio law; and (2) ensuring that its members did not “fund any political or charitable spending efforts in support of HB 6 or the subsequent referendum effort through rates and charges paid by to the FirstEnergy distribution companies.” Mem. in Supp., p. 5. The second interest does not qualify as a real and substantial interest in this proceeding.

This proceeding is not a forum for OMAEG to review how Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company (the “Companies”) may have used funds from their revenues. Instead, it was initiated to confirm that the costs of any political or charitable spending in support of Am. Sub. H.B. 6 (“H.B. 6”) are not in the rates and charges paid by the Companies' retail customers. Thus, while OMAEG's first claimed interest is properly focused on charges paid by customers, OMAEG's second claimed interest is not 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.").

Moreover, OMAEG's interest in investigating the Companies' political and charitable spending in support of H.B. 6 is not within the Commission's jurisdiction. The Commission is not the venue for OMAEG 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 OMAEG 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."). While the Commission does have jurisdiction over the Companies' rates and their provision of adequate service, how the Companies use the funds from their revenues is not the subject of Commission review.

Thus, as a matter of law, OMAEG's claimed second interest cannot be a "real and substantial" interest in this proceeding.

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

OMAEG 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 OMAEG's claimed interests. OMAEG's Motion asserts that "the disposition of these proceedings [sic] may, as a

practical matter, impair or impede its ability to protect that interest” (Mem. in Supp., pp. 5-6), but it offers no reason as to why that may be the case.

Presumably, OMAEG believes that the outcome of this case could affect the costs paid by its members. However, OMAEG has not shown how the outcome of this case could adversely affect the interest of its members in having just and reasonable rates. 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 ultimate disposition of this case will not affect OMAEG’s claimed interests in any way, let alone impair or impede OMAEG’s ability to protect its interests. Regardless of the outcome of this proceeding, OMAEG’s members will continue to have just and reasonable rates. 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 OMAEG’s ability to express its views.

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

Given that OMAEG 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 OMAEG makes no attempt to satisfy those factors.

While the second factor requires that OMAEG show the probable relation of its legal position to the merits of this proceeding (O.A.C. 4901-1-11(B)(2)), OMAEG 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)), OMAEG mentions no factual issues that it will significantly contribute to developing. And because there is no evidentiary hearing scheduled or necessary in this proceeding, OMAEG will have no need to develop or resolve factual issues. OMAEG 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.

OMAEG has not justified its intervention in this review proceeding.

### **III. CONCLUSION**

The Companies respectfully request that the Commission deny OMAEG'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 15th 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 Memorandum Contra of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company to the Motion to Intervene by the Ohio Manufacturers' Association Energy Group electronically filed by Ms. Kari D Hehmeyer on behalf of Ohio Edison Company and The Cleveland Electric Illuminating Company and The Toledo Edison Company