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 Illuminating Company, and the Toledo Edison Company.	))))))	Case No. 20-1502-EL-UNC

REPLY IN SUPPORT OF THE OHIO ENVIRONMENTAL COUNCIL'S MOTION TO INTERVENE

I. Introduction

The Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company's (collectively, "the FirstEnergy Utilities") are scrambling to avoid and subvert a duly deserved review of their spending by the Public Utilities Commission of Ohio (the "PUCO" or "Commission") and participation from stakeholders. Following the reveal of the alleged bribery scandal involving then Speaker of the House Larry Householder, GenerationNow, and the purported contributions from "Company A" (generally acknowledged to be FirstEnergy and its affiliates), the Commission has exercised its statutory authority of investigation to consider the financial transactions of its regulated entities. Contrary to the assertion of the FirstEnergy Utilities, parties like the Ohio Environmental Council (the "OEC") have a right of intervention and our membership is directly impacted by the outcomes of this investigation. Any illegal or inappropriate spending by the FirstEnergy Utilities on political and charitable contributions related to H.B. 6 would not only have diverted spending that could otherwise have been spent on funds available for clean energy transition in cases heard at the Commission, but was possibly used in a manner that led to passage of a bill that tore down

Ohio's clean energy standards--both of which directly impact OEC's membership. The arguments made in the FirstEnergy Utilities' memorandum contra are hollow.

Contrary to assertions contained in the FirstEnergy Utilities' Memorandum Contra to the OEC's Motion to Intervene in this proceeding, the OEC has a real and substantial interest in the Commission's review of the political and charitable spending of the FirstEnergy Utilities, and should be granted intervention in this proceeding. The OEC has satisfied the criteria required to intervene in the case, which it set forth step by step in its motion to intervene, as explained below. Further, the FirstEnergy Utilities have made it clear they do not want *any* parties intervening in the Commission's investigation of their political and charitable spending connected with the controversy surrounding House Bill 6, not just OEC.[1] The arguments pursued by the FirstEnergy Utilities as to why OEC (and other parties) need not intervene are also unconvincing, and the OEC's motion to intervene should be granted.

II. Argument

The FirstEnergy Utilities' cursory argument hinges upon claiming the OEC has failed to prove it has a real and substantial interest in the proceeding, and a claim that OEC fails to satisfy the criteria contained in Ohio Admin. Code 4901-1-11(B), without much, if any, elaboration. FirstEnergy also claims the OEC has failed to prove the organization cannot protect its interests without intervening. However, the FirstEnergy Utilities' arguments hold no merit. The OEC has established a real and substantial interest in the case, and should be permitted to participate to properly protect that interest.

[1] In addition to filing memorandum contra to the Ohio Environmental Council's Motion to Intervene, the FirstEnergy Utilities have (to date) opposed the intervention of Environmental Law & Policy Center (ELPC), Natural Resources Defense Council (NRDC), Interstate Gas Supply (IGS), Ohio Partners for Affordable Energy (OPAE), Ohio Hospital Association (OHA), Northwest Ohio Aggregation Coalition (NOAC), and Ohio Manufacturers' Association Energy Group (OMA). The only parties (to date) FirstEnergy hasn't opposed are Ohio Consumers' Counsel and Ohio Energy Group, and Industrial Energy Users-Ohio who only just filed to intervene on October 16th.

A. The OEC has a real and substantial interest in this case.

The FirstEnergy Utilities summarize the OEC's interest as an effort to assert policy positions "to support a clean energy future that mitigates the causes of climate change." Mem. Contra, at 2. In their memorandum contra, the FirstEnergy Utilities conveniently ignore the additional portion of the OEC's interest: many of the OEC's members are electricity customers in FirstEnergy territory. Those customers, along with OEC members who are electricity customers across the state, have a direct interest in the potentially corrupt and illegal spending of their ratepayer dollars implicated by the Commission's investigation, because the use of those dollars, as a result of the passage of House Bill 6, impacts rates for customers across the state as a whole, most especially the rates of FirstEnergy Utilities' customers.

The FirstEnergy Utilities argue that the OEC's interest in clean energy doesn't give the organization a "real and substantial interest in this case." *Id*. However, it misrepresents and minimizes the OEC's purpose and intent in intervening in Case No. 20-1502-EL-UNC. As a regular party in many of the Commission's electric distribution utility cases, the OEC regularly advocates on behalf of Ohioans for a clean energy future.[2] The Commission has proposed to review the spending of companies whose distribution footprint covers significant portions of the northern parts of Ohio related to a bill that affects energy customers across the entire state. The spending is being reviewed to determine whether any FirstEnergy money was spent in support of one of the largest corruption scandals in Ohio's history—alleged bribery that supported the passage of legislation that directly impacts the entire state's clean energy future and electricity rates paid by Ohioans.

[2] The OEC has intervened in dozens of cases over the past two decades, including SSOs, Smart Grid cases, and energy efficiency cases where the FirstEnergy Utilities were the applicant: 19-0361-EL-RDR, 16-0743-EL-POR, , 12-1230-EL-SSO, 09-1949-EL-POR, 14-1297-EL-SSO, and others, to name just a few.

The FirstEnergy Utilities acknowledge this in their memorandum contra: "[this proceeding] 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 [the Companies.]" Any political or charitable expenditure by the FirstEnergy Utilities related to H.B. 6 directly affects how much money the utilities have to spend on clean energy efforts, and on what rates are ultimately paid by OEC members in their respective territories, giving OEC a substantial interest in the outcome of this investigation. Additionally, the OEC and its affiliated organizations regularly engage in advocacy surrounding energy policy at the statehouse (including H.B. 6), and thus has a substantial interest in the outcome of a proceeding investigating the political and charitable spending of a distribution utility in support of energy legislation that affects the clean energy future of Ohioans. OAC 4901-1-11(A)(2) requires a party seeking intervention to show it "has a real and substantial interest in the proceeding." Given the target of the investigation at hand—spending in support of a bill directly impacting Ohio's energy policy and the rates paid by Ohio energy customers—organizations like the OEC are the exact parties who should be intervening in the proceeding.

B. The disposition of the Commission's investigation could adversely impact the ability of the OEC to protect its interests.

The OEC, as a statewide environmental advocacy organization with members in FirstEnergy's territory and other electric distribution utility territories across the state, will have its interests directly impacted by the outcome of the Commission's investigation. The FirstEnergy Utilities claim the OEC "must show that the Commission's disposition of this proceeding may impair or impede its ability to support clean energy." Mem. Contra, p. 3. It further states that the OEC "has not done so and it cannot do so." FirstEnergy bases its argument on conclusory statements without actually defending them.

As the Commission investigates the charitable and political spending of the FirstEnergy Utilities, it may uncover information directly impacting the interests of the OEC, including spending directly against the interests of the OEC and its members. Similarly, the OEC and ELPC have filed a Motion to Expand the Scope of the Commissions' Review, a motion the parties can only pursue if they are intervened in the case. The spending of the FirstEnergy Utilities—and the implication that customer funds may have been used to support passage of H.B. 6—also directly impacts the OEC's interests in other electric utility cases. If the FirstEnergy Utilities improperly used ratepayer funds, that use implicates issues in other proceedings before the Commission regarding rates (to which the OEC has been an intervening party for many years). FirstEnergy can claim its political and charitable spending doesn't impact the OEC and its membership, but making the claim doesn't make it true.

C. The OEC satisfies the factors in OAC 4901-1-11(B).

The FirstEnergy Utilities also include a brief statement arguing that OEC fails to satisfy the factors contained in OAC 4901-1-11(B). However, the OEC's Motion to Intervene covers each of the five requirements of 4901-1-11(B), and those factors are how the Commission reaches its conclusion on whether or not the party requesting intervention has a real and substantial interest. OEC Motion to Intervene at 4-6.

Of note, and in response to the FirstEnergy Utilities' argument, the OEC will significantly contribute to a full development and equitable resolution of the issues, as required by OAC 4901-1-11(B)(4) precisely because the investigation is looking into spending on issues to which the OEC has direct knowledge. Part of the Commission's review includes considering how the FirstEnergy Utilities may have spent money to subvert the efforts of a ballot initiative to overturn H.B. 6. The OEC actively supported the referendum effort, including filing an amicus

brief in support of the referendum's effort to receive additional days to gather signatures due to the signature blocking efforts allegedly funded by the FirstEnergy Utilities or their parent corporation. The OEC will ask different, yet relevant, questions regarding the investigation into the FirstEnergy Utilities' spending based on the organization's experience during the referendum and other involvement throughout the course of the H.B. 6 saga.

D. The Commission's intervention standard encourages the broadest possible standard for intervention in its proceedings.

The Commission has historically permitted a broad standard for intervention in its proceedings to ensure a proper disposition of the issues presented before it. *See Cleveland Elec. Illum. Co*., Case No. 85-675-EL-AIR, Entry dated January 14, 1986, at 2. The Supreme Court has further upheld the liberal construction of the Commission's intervention standard. *See Ohio Consumers' Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, 856 N.E.2d 940, ¶ 20. FirstEnergy ignores the Commission's own words on intervention, instead proposing an overly strict interpretation of the intervention regulations in order to eliminate any potential opposition in a proceeding regarding its political and charitable spending. The allegations against former Speaker Householder, if true, implicate FirstEnergy in participating in a scheme to defraud Ohioans of over a billion dollars. The Ohio Attorney General has filed a lawsuit in Franklin County Common Pleas Court against FirstEnergy making multiple claims regarding its activities, all of which implicate the relationship between FirstEnergy, the FirstEnergy Utilities, and Energy Harbor in connection with the alleged bribery to support the passage of H. B. 6. As one of the largest corruption scandals in Ohio's history, an investigation into the implicated companies should likewise include a broad array of interests and parties capable of representing the diversity Ohio has to offer.

Instead of accepting FirstEnergy's attempt at stifling intervention during review of its spending, the Commission should continue its long-standing approach to permissive intervention. A broad standard for intervention in proceedings ensures robust public participation in Ohio's public utility policy. While the FirstEnergy Utilities states that it is "not for OEC to decide how the Companies spend their funds," it is, however, the OEC's right to participate in the proceedings that impact the OEC and its membership as the case does here, a continuation of OEC's work with all intervening parties and the Commission on ratemaking, energy efficiency programs, and other related cases that affect the spend of customer dollars. The OEC's intervention in a proceeding investigating the potential political and charitable spending of FirstEnergy's Utilities on energy legislation is a natural and appropriate extension of the OEC's historical intervention at the Commission.

E. Parties are expected to intervene to fully participate in the investigation.

The OEC intervened in this proceeding out of an abundance of caution to ensure the ability to fully participate in the proceeding that affects the organization and its membership, and because of its filing, along with ELPC, to expand the investigation. Moreover, the Attorney Examiner's Entry directed "interested parties" to file comments by October 29, 2020,[3] not interested "persons". Under Commission rules then, it appears intervention is required to participate.[4]

As further indication that parties were expected to intervene in order to fully participate, following the Commission's announcement regarding its review of the FirstEnergy Utilities' political and charitable spending regarding H.B. 6 and the associated referendum, Commission Chair Sam Randazzo appeared before the Ohio House Select Committee on Energy Policy and

[3] Entry at ¶ 6, Sept. 15, 2020.

[4] Ohio Admin. Code 4901-1-10(A)(4) defines "parties" as "[a]ny person granted leave to intervene under rule 4901-1-11 of the Administrative Code."

Oversight and testified regarding H.B. 6. During the Chair's testimony, Representative David Leland asked about this proceeding, Case No. 20-1502-EL-UNC. Rep. Leland asked questions clarifying the scope, who can participate, and more. Chairman Randazzo responded, saying:

> [The Commission] required FirstEnergy to provide information demonstrating that money associated with the referendum and political charitable activities surrounding House Bill 6 is not included in rates. Once they provide that, other parties have the opportunity to provide comments. We will have other parties intervening in this case. Some may choose to do discovery, some may not choose to do discovery; it's a case. It's an investigation. So what happens after that, as I hope you would expect of us, will be a function of what the evidence shows and what our legal authority is and that's as much as I can say about.[5]

Chair Randazzo's words are in line with the broad understanding of intervention historically followed by the Commission, and indicate the Commission's assumption that parties would intervene and do discovery in a case of such importance. It is worth noting FirstEnergy predicates its argument on the belief that "the Commission's review involves only the filing of initial and reply comments, for which intervention is unnecessary," a description of the proceedings directly in conflict with how Chair Randazzo has described them. The investigation into the FirstEnergy Utilities' spending will include discovery, at the very least, and it appears that the Chair envisioned parties like the OEC and others having the opportunity for such discovery and participating because "it's a case".

III. Conclusion

FirstEnergy's filings so far in this docket have shown it does not want a full and transparent Commission review of its charitable and political spending in connection with H.B. 6 and the associated referendum effort. The Commission should see through the FirstEnergy Utilities' charade and accept the intervention of the OEC, and other parties who have met the

[5] https://ohiochannel.org/video/ohio-house-select-committee-on-energy-policy-and-oversight-9-16-2020, questions beginning at 1:11:00.

standards. The OEC has shown it has real and substantial interest in the case that will be adversely affected by the proceedings, has met all criteria required by statute and rule, and under the Commission and Ohio Supreme Court's broad standard, intervention will assist with the disposition of the case.

Respectfully Submitted,

/s/Miranda Leppla
Miranda Leppla (0086351)
Counsel of Record
Trent Dougherty (0079817)
Chris Tavenor (0096642)
1145 Chesapeake Avenue, Suite I
Columbus, Ohio 43212-3449
(614) 487-7506 - Telephone
mleppla@theOEC.org
tdougherty@theOEC.org
ctavenor@theOEC.org

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Counsel for the Ohio Environmental Council

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was served upon all parties of record via electronic mail on October 21, 2020.

/s/Miranda Leppla
Miranda Leppla (0086351)

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Summary: Reply in Support of Ohio Environmental Council's Motion to Intervene electronically filed by Ms. Miranda R Leppla on behalf of Ohio Environmental Council