

**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)	

**REPLY IN SUPPORT OF THE OHIO HOSPITAL ASSOCIATION’S
MOTION TO INTERVENE**

I. INTRODUCTION

Ratepayers deserve answers regarding the money trail behind Am. Sub. H.B.6 (“H.B. 6”). These ratepayers include the many Ohio Hospital Association (“OHA”) member hospitals served by the FirstEnergy Utilities.¹ However, in response to the legitimate ratepayer interests in this proceeding, the FirstEnergy Utilities unreasonably seek to block the participation of nearly all ratepayer groups requesting intervention, including OHA.²

In its Memorandum Contra OHA’s Motion to Intervene (“Memo Contra”), the FirstEnergy Utilities frivolously seek to silence hospitals harmed by its alleged misconduct. The FirstEnergy Utilities and its affiliates are at the epicenter of an unlawful enterprise in order to bribe public officials to support and pass H.B. 6. Federal prosecutors have charged former House Speaker Larry Householder, and four others, in an alleged conspiracy involving unlawful solicitation, bribery, and use of funds for the election of certain lawmakers, support the passage of H.B. 6 and defeat a ballot referendum aimed at overturning it.

¹ “FirstEnergy” refers to FirstEnergy Corp’s Ohio operating electric companies: Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company.

² Ohio Manufacturers’ Association Energy Group; Ohio Environmental Council and Environmental Law & Policy Center; Environmental Advocates; Interstate Gas Supply, Inc.; Natural Resources Defense Council; Ohio Partners for Affordable Energy; and Northwest Ohio Aggregation Coalition.

In response to the FirstEnergy Utilities’ alleged involvement in this unprecedented corruption and gross abuse of its monopoly franchise, the Public Utilities Commission of Ohio (“Commission”) initiated this review of the FirstEnergy Utilities’ political and charitable spending related to H.B. 6. Contrary to FirstEnergy’s claims, ratepayers, like OHA’s member hospitals, are entitled to participate in this proceeding.

The increased costs from H.B. 6 are being extracted from hospitals at the very moment when hospitals are enduring unparalleled financial hardships while working nonstop to protect our communities during the COVID-19 pandemic.³ These hospitals have a direct interest in the potentially corrupt and illegal spending of their ratepayer dollars. Despite the FirstEnergy Utilities’ shameless attempt to deny ratepayer participation, these hospitals have a real and substantial interest in this case.

II. ARGUMENT

As part of its effort to minimize participation in this proceeding and impede the full development of the record, FirstEnergy argues that OHA lacks a real and substantial interest in this proceeding. This is utter nonsense. The September 15, 2020 Entry establishing this case states that purpose of the proceeding is to determine whether “the costs of any political or charitable spending in support of Am. Sub. H.B. 6, or the subsequent referendum effort, were [...] included, directly or indirectly, in any rates or charges paid by ratepayers in this state.”⁴ OHA represents 86 hospitals that are FirstEnergy Utility customers. These FirstEnergy hospitals have,

³ Examples of layoffs, furloughs, and other financial hardship experienced by hospitals in the FirstEnergy Utilities’ territory include: St. Vincent Charity Center furloughed 70 employees (<https://www.beckershospitalreview.com/finance/cleveland-hospital-furloughs-70-staffers.html>), University Hospitals reduced pay and hours for 4,100 staff (<https://www.craigslist.com/health-care/uh-temporarily-reduces-hours-pay-employees-not-directly-involved-patient-care>); Summa St Thomas and Akron Hospitals furloughed 728 employees (<https://www.beaconjournal.com/story/news/local/2020/08/04/akron-area-ohio-hospitals-working-to-recover-from-coronavirus-financial-losses/113367918/>).

⁴ September 15, 2020 Entry, at ¶ 5.

collectively, paid millions of dollars to the FirstEnergy Utilities. There is no doubt that OHA and its ratepaying members have a real and substantial interest in this proceeding.

In addition, as a result of H.B. 6, additional costs were imposed on hospitals to support uneconomic nuclear and coal generation facilities. Even more costs are being incurred by hospitals as a result of the decoupling provisions benefitting the FirstEnergy Utilities that were tucked away in H.B. 6. All the more, H.B. 6 dismantled Ohio's energy efficiency standards, undercutting the utility programs that OHA members have utilized to manage their energy loads, thereby reducing costs and enhancing reliability. Ratepayer dollars that could have been used for grid modernization, and to improve service and reliability may have been diverted for illegal purposes. All of this may have occurred as a result of the FirstEnergy Utilities' misuse of ratepayer funds to support the passage of H.B. 6. Consequently, hospitals located within FirstEnergy Utilities' service territory may be adversely affected by the outcome of this proceeding.

A. OHA has real interest and substantial interest in whether FirstEnergy misused money collected from ratepayers—including hospitals—to fund the largest bribery scheme in Ohio history.

The FirstEnergy Utilities incorrectly conclude that, "OHA's only statement of interest is that it is 'keenly interested'" in the outcome of this proceeding. (Memo Contra p. 2). In doing so, the FirstEnergy Utilities blatantly ignore OHA's interest as ratepayers in this proceeding. As mentioned in its Motion to Intervene, OHA is a private, nonprofit trade association comprised of approximately 240 hospitals. Of these hospitals, 86 are served by FirstEnergy Utilities companies. These customers are directly impacted by potentially corrupt and unlawful spending of their ratepayers dollars.

The potential illegal use of ratepayer funds to support the passage of H.B. 6 resulted in additional costs on hospitals. First, H.B. 6 creates two additional charges for ratepayers: 1) a

charge for the Nuclear Generation Fund and Renewable Generation Fund, in order to provide support to the nuclear facilities owned by FirstEnergy Utilities' former affiliate and select; and 2) recovery for a "legacy generation resource" to provide support for two coal plants, one of which is located in Indiana, owned by the Ohio Valley Electric Corporation. Second, the passage of H.B. 6 resulted in the implementation of a decoupling mechanism by the FirstEnergy Utilities. Through decoupling, the FirstEnergy Utilities will be entitled to additional fixed revenue, despite the overall economic downturn. One analysis estimates that the FirstEnergy Utilities will collect an additional \$355 million through 2024 from ratepayers from the H.B. 6 decoupling provision.⁵

The FirstEnergy Utilities further argue, "this proceeding does not involve electric service reliability or grid modernization," and therefore conclude that OHA has not shown a real interest in this case. (Memo Contra p.2). Again the FirstEnergy Utilities misconstrue the nature of OHA's interest in the case and ignores the harm to ratepayers from H.B. 6. H.B. 6 effectively eliminated energy efficiency programs that OHA members relied upon to save money and enhance reliability.

The programs stemming from Ohio's energy efficiency standards (the "EE/PDR programs")—now dismantled as a result of H.B. 6—have been especially critical for jumpstarting investments in efficiency for hospitals. This investment has led to significant results for Ohio's hospitals. In the last four years, over \$42 million in economic benefit from EE/PDR programs have been realized by participating OHA members. Since the start of utility EE/PDR programs, Ohio has gone from 1 to 18 Energy Star Certified hospitals, with nearly all of the certified hospitals utilizing utility energy efficiency rebates.⁶

⁵ https://www.eenews.net/assets/2020/09/30/document_ew_03.pdf

⁶ An Energy Star Certified Hospitals is in the top 25% nationally for energy performance.

The efficiency programs were particularly crucial to rural and critical access hospitals, as they provide an accelerated return on investment for hospitals with smaller budgets.⁷ There are 13 such critical care hospitals in Ohio. Participating hospitals in the state have reduced their overall consumption 46% above the national average. These real and substantial benefits to critical care hospitals were trashed by H.B. 6. Hospitals deserve to know if their ratepayer dollars were improperly used by the FirstEnergy Utilities to pass H.B. 6.

These benefits to hospitals also impact their surrounding communities. Energy cost savings operates to free up resources for additional investments in patient care. Hospitals with lower energy demand are more resilient during extreme weather events and natural disasters when onsite back-up generation must be relied upon in order to provide critical lifesaving services. Energy efficiency projects also allow healthcare facilities to provide critical services for a longer period of time in the event of an outage caused by extreme weather.

The FirstEnergy Utilities also miss the mark by discounting OHA's interest in reliability and grid modernization. If the FirstEnergy Utilities did collect and misuse ratepayer funds to support an illegal bribery scheme, those funds were not properly being utilized as set forth in the companies' rate case and ESP cases. Some of these funds could have been used to improve and benefit the companies' distribution system for their customers. OHA's members need reliable electric service due to the nature of their care for patients. Reliability and grid modernization investments may have been a casualty of the alleged corruption.

OHA's members have been and will continue to be directly impacted by H.B. 6 and the FirstEnergy Utilities' potential misuse of ratepayer to support illegal activities around the passage

⁷ 82% of Critical Access Rural Hospitals in the state participate in energy efficiency benchmarking, compared to 60% of hospitals overall.

of H.B. 6. It is undeniable that OHA's members have a real and substantial interest in this proceeding.

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

The FirstEnergy Utilities assert that OHA has not shown how the Commission's review of its rates and charges will adversely impact OHA's members. The FirstEnergy Utilities offer no support for this position other than the conclusory statement that, "It is fair to assume that the review being conducted will not impact OHA." (Memo Contra p.3). This is an erroneous assumption on its face. The Commission's review of the FirstEnergy Utilities' may uncover additional information directly impacting the interests of OHA's members. 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 OHA'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 OHA has been an intervening party for many years) and OHA's posture in these proceedings.

Moreover, as noted in the Ohio Manufacturers' Association Energy Group's ("OMAEG") reply to the FirstEnergy Utilities' memo contra to the OMAEG's petition to intervene⁸ the scope of this proceeding is still being determined. (OMAEG Reply p. 13).

FirstEnergy also claims that "the Commission's review involves only the filing of initial and reply comments, for which intervention is unnecessary." (Memo Contra p. 1). In the September 15, 2020 Entry, initiating this proceeding, the Attorney Examiner directed "interested parties" to file comments by October 29, 2020. "Parties" is defined, in relevant part, under Ohio Administrative Code ("OAC") 4901-1-10(A)(4) as "[a]ny person granted leave to intervene under

⁸ The FirstEnergy Utilities apparently believe that the primary industry group representing the largest sector of Ohio's economy should not participate in this proceeding either.

rule 4901-1-11 of the Administrative Code.” Intervention is required to adhere the Attorney Examiner’s directive. In addition, FirstEnergy Utilities will very likely argue that participants in the proceeding lack the requisite intervenor status in the event this proceeding leads to an appeal. Given the gravity of the issues in this proceeding, OHA cannot be expected to risk its right to appeal simply because the FirstEnergy Utilities argue that intervention is not necessary to participate.

C. OHA’s Motion satisfies the Commission’s intervention standard and is consistent with the Commission’s encouraging the broadest possible participation in its proceeding.

OHA’s Motion addresses each of the factors in the intervention standard contained in OAC 4901-1-11(B). OHA refers its longstanding long-term objective of enhancing reliability and modernization of the electric grid, and the critical fact that OHA represents many ratepayers served by the FirstEnergy Utilities. OHA’s intervention is necessary to support these interests. OHA stated that it will not unnecessarily delay the proceeding and will enhance the proceeding as a whole. OHA represents a unique group of ratepayers that is not otherwise adequately represented by any other group that has submitted a motion to intervene in this proceeding. To the extent necessary, OHA requests that the Attorney Examiner incorporate the additional information provided in this Reply into its Motion.

Granting OHA’s Motion is also consistent with the Commission’s longstanding policy of “encourag[ing] the broadest possible participation in its proceedings.” *In Re Cleveland Electric Illuminating Company*, Case No. 85-675-EL-AIR, Entry at 1, (Jan. 14, 1986). The Ohio Supreme Court has explained that “whether or not a hearing is held, intervention ought to be liberally allowed so that the positions of all persons with real and substantial interest in the proceedings can be considered by the PUCO.” *Ohio Consumers’ Counsel v. Pub. Util. Comm.*, 111 Ohio St. 3d 384, 388 (2006).

III. CONCLUSION

OHA regularly participates in proceedings before the Commission, including proceedings involving the FirstEnergy Utilities and H.B. 6. OHA represents ratepayers within the monopoly territories of the FirstEnergy Utilities, and this proceeding squarely involves whether ratepayer funds were inappropriately or illegally misused. OHA, through its Motion and this Reply, has demonstrated its real and substantial interests in this proceeding.

Respectfully submitted on behalf of
THE OHIO HOSPITAL ASSOCIATION



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Reply was served upon the parties of record listed below this ____ day of October 2020 *via* electronic mail.



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Summary: Reply in Support of The Ohio Hospital Association's Motion to Intervene
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