

**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

---

**NORTHEAST OHIO PUBLIC ENERGY COUNCIL'S  
MOTION TO INTERVENE**

---

Pursuant to R.C. 4903.221, and O.A.C. 4901-1-11, the Northeast Ohio Public Energy Council (“NOPEC”) respectfully requests that the Public Utilities Commission of Ohio (“PUCO”) grant NOPEC’s motion to intervene in this proceeding. NOPEC has a real and substantial interest in this case, and the PUCO’s disposition of it may impair or impede NOPEC’s ability to protect that interest. NOPEC’s participation in this case will not unduly prolong or delay the proceeding, and NOEPC will contribute to the full development and equitable resolution of the issues presented. NOPEC’s interests also will not be adequately represented by other parties to this proceeding.

The reasons supporting NOPEC’s motion to intervene are contained in the accompanying Memorandum in Support.

Respectfully submitted,



---

Dane Stinson (0019101)  
BRICKER GRAYDON LLP  
100 South Third Street  
Columbus, OH 43215  
Telephone: (614) 227-2300  
Facsimile: (614) 227-2390  
Email: [dstinson@brickergraydon.com](mailto:dstinson@brickergraydon.com)

and

Glenn S. Krassen (0007610)  
General Counsel  
NORTHEAST OHIO PUBLIC ENERGY COUNCIL  
31360 Solon Road, Suite 33  
Solon, Ohio 44139  
Telephone: (440) 249-7831  
Facsimile: (440) 248-1986  
E-mail: [gkrassen@nopec.org](mailto:gkrassen@nopec.org)

*Attorneys for Northeast Ohio Public Energy Council*

**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

---

**MEMORANDUM IN SUPPORT**

---

**I. INTRODUCTION**

The Northeast Ohio Public Energy Council (“NOPEC”) is a regional council of governments established under R.C. Chapter 167, and is the largest governmental retail energy aggregator in Ohio. It is made up of approximately 240 member counties, townships and municipalities in nineteen (19) Ohio counties. NOPEC is a large-scale governmental aggregator that provides service to approximately 900,000 residential and small business retail customers in the state. It provides retail electric aggregation service to over 480,000 retail electric customers located primarily in the Cleveland Electric Illuminating Company and Ohio Edison Company (the “Companies”) service territories.

The Commission initiated this investigation to determine whether the costs of any political or charitable spending in support of House Bill 6 (“HB6”), or the subsequent referendum effort, were not included, directly or indirectly, in any rates or charges paid by ratepayers in this state.<sup>1</sup> NOPEC has intervened and actively participated in all of the Companies’ standard service offer

---

<sup>1</sup> See Entry (Sept. 15, 2020); Entry (May 4, 2022) at ¶ 14.

(“SSO”) cases that set its customers’ rates.<sup>2</sup> NOPEC has a vital interest that the funds its customers have paid and are paying pursuant to the orders in these SSO proceedings are used for their intended purposes and, if not, to have those funds returned.

Regrettably, recent events have cast considerable doubt as to the Companies’ proper use of the funds—the most recent event being the State of Ohio’s February 12, 2024, indictment of a former Commission Chair (“Former Chair”) and two former senior executives of the Companies’ parent, FirstEnergy Corp (“Former Executives”).<sup>3</sup> The indictment includes allegations that the Former Chair and Former Executives engaged in a pattern of corrupt activities from January 18, 2010 through January 22, 2021, that provided them (individually) and the Companies with undue benefits—including the misappropriation of millions of dollars ratepayer funds.

NOPEC appreciates the current Commission’s ongoing vigilance and transparency in its investigations of the potential misuse of consumers’ funds related to the alleged corrupt practices of the Former Chair and Former Executives. The current Commission’s diligence extends to three other cases, as well. The Commission is investigating the Companies’ collection and use of funds under its Distribution Modernization Rider and Delivery Capital Recovery Rider,<sup>4</sup> as well as the Companies’ compliance with corporate separation laws and regulations in Case No. 17-974-EL-UNC (the “Corporate Separation Case”).

---

<sup>2</sup> See *In re Ohio Edison Co., The Cleveland Elec. Illum. Co., and the Toledo Edison Co. for Authority to Establish a Std. Serv. Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Elec. Security Plan*, Case No. 10-388-EL-SSO, Opinion and Order (Aug. 25, 2010) (ESP II Case); *In re Ohio Edison Co., The Cleveland Elec. Illum. Co., and the Toledo Edison Co. for Authority to Provide for a Std. Serv. Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Elec. Security Plan*, Case No. 12-1230-EL-SSO, Opinion and Order (July 18, 2012) (ESP III Case); and *In re Ohio Edison Co., The Cleveland Elec. Illum. Co., and the Toledo Edison Co. for Authority to Provide for a Std. Serv. Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Elec. Security Plan*, Case No. 14-1297-EL-SSO, Opinion and Order (Mar. 31, 2016) (ESP IV Case).

<sup>3</sup> See <https://www.ohioattorneygeneral.gov/Files/Briefing-Room/News-Releases/St-vs-Randazzo-et-al-Indictment-2024-02-12.aspx>; see, also *United States of America v. FirstEnergy Corp.*, Case No. 1:21-cr-00086-TSB, *Deferred Prosecution Agreement* (S.D. Ohio) (Jul. 22, 2021).

<sup>4</sup> Case No. 17-2472-EL-RDR (the “DMR Rider Case”) and Case No. 20-1629-EL-RDR (the “DCR Rider Case”) (collectively, the “Rider Cases”). NOPEC has filed a separate motion to intervene in these consolidated cases.

NOPEC already has been granted intervention in the Corporate Separation Case. Indeed, it was in that case that NOPEC raised the specter of alleged corruption not only between FirstEnergy Corp executives and their subsidiary executives, but also with the Former Chair. In a joint motion with the Office of the Ohio Consumers' Counsel,<sup>5</sup> NOPEC requested a supplemental audit in the Corporate Separation Case based on an email exchange that the Companies' filed in a related certification case that raised corporate separation issues. The filing disclosed an email exchange between FirstEnergy Corp's CEO and the President of the affiliate that was seeking PUCO certification.<sup>6</sup> The exchange revealed the following discussion concerning securing the affiliate's PUCO certificate. The exchange now forms part of the allegations of corruption of the Former Chair:

Dennis Chack [President Ohio Utilities and Manager of FirstEnergy Advisors]:  
Any luck on talking with Sam on energy license we just received request for additional comments

Charles Jones [CEO/President Ohio Utilities and Director, FE Ohio EDUs]: He will get it done for us but cannot just jettison all process. Says the combination of overruling Staff and other Commissioners on decoupling, getting rid of SEET and burning the DMR final report has a lot of talk going on in the halls of PUCO about does he work there or for us? He'll move it as fast as he can. Better come up with a short term work around.

Dennis Chack: Ok thanks for discussing with him. \*\*\*

The Corporate Separation Case involves issues related to those in this proceeding—whether ratepayer funds approved in the SSO cases were misused, *i.e.* used in the Corporate Separation Case to advance the interests of its affiliates including the successor to FirstEnergy Solutions. As a result, NOPEC already has participated in significant discovery in the Corporate

---

<sup>5</sup> See Corporate Separation Case, Motion for Supplemental Audit (Nov. 5, 2021) ("Joint Motion").

<sup>6</sup> See *In re Suvon, LLC d/b/a FirstEnergy Advisors*, Case No. 20-103-EL-AGG.

Separation Case, much of which is germane to the issues in this case. Indeed, the Attorney Examiner has recognized that discovery obtained in one of these four investigatory cases may be presented in the other cases (with admissibility subject to rules of evidence) to avoid the need for duplicative discovery requests. See *Rider Cases*, et al. (Entry, Aug. 24, 2022), ¶ 4.

NOPEC has a real and substantial interest that its customers' funds paid under the SSO cases be used for their intended purposes. NOPEC seeks intervention on behalf of its customers to protect those interests.

## **II. LAW & ARGUMENT**

NOPEC moves to intervene in this proceeding. R.C. 4903.221(B) and O.A.C. Rule 4901-11(A)(2) govern intervention in Commission proceedings. Substantially similar, these provisions provide that the Commission may consider the following in determining whether to grant intervention:

- (1) The nature and extent of the person's interest;<sup>7</sup>
- (2) The legal position of the person seeking intervention and its relation to the merits of the case;<sup>8</sup>
- (3) Whether intervention would unduly delay the proceeding or unjustly prejudice any existing party;<sup>9</sup>
- (4) The person's potential contribution to full development and equitable resolution of the issues involved in the proceeding;<sup>10</sup> and
- (5) The extent to which the person's interest is represented by existing parties.<sup>11</sup>

NOPEC has a real and substantial interest in this proceeding in which the Commission is investigating whether ratepayer funds collected under the Companies' approved SSO cases were

---

<sup>7</sup> R.C. 4903.221(B)(1) and O.A.C. 4901-1-11(B)(1).

<sup>8</sup> R.C. 4903.221(B)(2) and O.A.C. 4901-1-11(B)(2).

<sup>9</sup> R.C. 4903.221(B)(3) and O.A.C. 4901-1-11(B)(3).

<sup>10</sup> R.C. 4903.221(B)(4) and O.A.C. 4901-1-11(B)(4).

<sup>11</sup> R.C. 4903.221(B)(5) and O.A.C. 4901-1-11(B)(5).

used for their intended purposes. NOPEC was a party to each of the Companies' SSO cases that approved the rates to be collected and has a vital interest that its customers' payments be used only for their intended purposes.

NOPEC's legal position is directly related to the merits of the case and consistent with the purpose of the PUCO's investigation—if the SSO funds were not used for their intended purposes they should be returned to customers through an adjustment to the riders or through other avenues.<sup>12</sup>

NOPEC's intervention would not unduly delay this proceeding. NOPEC already has engaged in discovery in the Corporate Separation Case that is germane to this proceeding. Discovery and other activities have been stayed since August 24, 2022, and have only restarted effective February 26, 2024, pursuant to the Attorney Examiner's Entry issued that same date. NOPEC accepts the state of record as it stands in this proceeding and will abide by the procedural schedule prescribed by the Attorney Examiner's February 26, 2024 Entry. The auditor's report ordered by Entry of May 4, 2022 (and stayed by Entry of August 24, 2022) has not been issued. No intervention deadline has been established in this proceeding and NOPEC's intervention is timely filed.

NOPEC's party status and participation in each of the Companies' SSO cases, its involvement and discovery in the Corporation Separation Case, and its experience in regulatory matters related to the Companies demonstrate that it will contribute to the full development of the

---

<sup>12</sup> See Entry (March 9, 2022) ¶ 14 ("The auditor's investigation shall determine whether...the cost of any political or charitable spending in support of Am. Sub. H.B. 6, or the subsequent referendum effort, were not included, directly or indirectly, in any rates or charges paid by ratepayers in this state.") Entry (Sept. 15, 2020) at ¶ 5; see, also, DMR Case, Entry (Dec. 30, 2021) at ¶ 23 (An audit is to be conducted "in order to ensure funds collected from ratepayers through Rider DMR were only used for the purposes established in ESP IV. ESP IV Case, Fifth Entry on Rehearing (Oct. 12, 2016) at ¶282"); and DCR Case, Entry (Mar. 10, 2021) at ¶ 8 ("In this case, a focused investigation will ensure that any funds which should be returned to ratepayers are returned as expeditiously as possible.").

issues involved in this proceeding. NOPEC will work cooperatively with others in the case in order to maximize case efficiency, where practical, to reach an equitable resolution of all issues.

Finally, no existing party to this proceeding adequately represents NOPEC's interests and the pecuniary interests of its customers. Disposition of this proceeding without its participation will impair or impede NOPEC's ability to protect those interests.

### **III. CONCLUSION**

Based on the foregoing, NOPEC respectfully request that its motion to intervene be granted.

Respectfully submitted,



---

Dane Stinson (0019101)  
BRICKER GRAYDON LLP  
100 South Third Street  
Columbus, OH 43215  
Telephone: (614) 227-2300  
Facsimile: (614) 227-2390  
Email: [dstinson@brickergraydon.com](mailto:dstinson@brickergraydon.com)

and

Glenn S. Krassen (0007610)  
General Counsel  
NORTHEAST OHIO PUBLIC ENERGY COUNCIL  
31360 Solon Road, Suite 33  
Solon, Ohio 44139  
Telephone: (440) 249-7831  
Facsimile: (440) 248-1986  
E-mail: [gkrassen@nopec.org](mailto:gkrassen@nopec.org)

*Attorneys for Northeast Ohio Public Energy Council*



## **CERTIFICATE OF SERVICE**

In accordance with O.A.C. 4901-1-05, the PUCO's e-filing system will electronically serve notice of the filing of this document upon the following parties. In addition, I hereby certify that a service copy of the foregoing *Motion to Intervene* was sent by, or on behalf of, the undersigned counsel to the following parties of record this 4<sup>th</sup> day of March 2024.



Dane Stinson (0019101)

[werner.margard@ohioAGO.gov](mailto:werner.margard@ohioAGO.gov);  
[thomas.lindgren@OhioAGO.gov](mailto:thomas.lindgren@OhioAGO.gov);  
[trhayslaw@gmail.com](mailto:trhayslaw@gmail.com);  
[leslie.kovacik@toledo.oh.gov](mailto:leslie.kovacik@toledo.oh.gov);  
[evan.betterton@igs.com](mailto:evan.betterton@igs.com);  
[joe.oliker@igs.com](mailto:joe.oliker@igs.com);  
[michael.nugent@igs.com](mailto:michael.nugent@igs.com);  
[mkurtz@BKLawfirm.com](mailto:mkurtz@BKLawfirm.com);  
[kboehm@BKLawfirm.com](mailto:kboehm@BKLawfirm.com);  
[jkylercohn@BKLawfirm.com](mailto:jkylercohn@BKLawfirm.com);  
[bknipe@firstenergycorp.com](mailto:bknipe@firstenergycorp.com);  
[calee@jonesday.com](mailto:calee@jonesday.com);  
[mrgladman@jonesday.com](mailto:mrgladman@jonesday.com);  
[mdengler@jonesday.com](mailto:mdengler@jonesday.com);  
[radoringo@jonesday.com](mailto:radoringo@jonesday.com);  
[sgoyal@jonesday.com](mailto:sgoyal@jonesday.com);

[dparram@brickergraydon.com](mailto:dparram@brickergraydon.com);  
[dborchers@brickergraydon.com](mailto:dborchers@brickergraydon.com);  
[rmains@brickergraydon.com](mailto:rmains@brickergraydon.com);  
[ctavenor@theOEC.org](mailto:ctavenor@theOEC.org);  
[knordstrom@theoec.org](mailto:knordstrom@theoec.org);  
[rdove@keglerbrown.com](mailto:rdove@keglerbrown.com);  
[Bojko@carpenterlipps.com](mailto:Bojko@carpenterlipps.com);  
[mwise@mcdonaldhopkins.com](mailto:mwise@mcdonaldhopkins.com);  
[trent@hubaydougherty.com](mailto:trent@hubaydougherty.com);  
[mfleisher@dickinsonwright.com](mailto:mfleisher@dickinsonwright.com);  
[john.finnigan@occ.ohio.gov](mailto:john.finnigan@occ.ohio.gov);  
[mnugent@igsenergy.com](mailto:mnugent@igsenergy.com);  
[bethany.allen@igs.com](mailto:bethany.allen@igs.com);  
[joliker@igsenergy.com](mailto:joliker@igsenergy.com);  
[jweber@elpc.org](mailto:jweber@elpc.org);  
[rlazer@elpc.org](mailto:rlazer@elpc.org);  
[rkelter@elpc.org](mailto:rkelter@elpc.org);

**This foregoing document was electronically filed with the Public Utilities  
Commission of Ohio Docketing Information System on**

**3/4/2024 2:03:41 PM**

**in**

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

Summary: Motion of Northeast Ohio Public Energy Council to Intervene and  
Memorandum in Support electronically filed by Teresa Orahood on behalf of Dane  
Stinson.