

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of The East Ohio Gas Company)
d/b/a Dominion Energy Ohio for Approval of) Case No. 19-0468-GA-ALT
an Alternative Form of Regulation.)

**DOMINION ENERGY OHIO’S MEMORANDUM CONTRA
NORTHEAST OHIO PUBLIC ENERGY COUNCIL’S MOTION TO INTERVENE**

In this proceeding, The East Ohio Gas Company d/b/a Dominion Energy Ohio (DEO) seeks approval of its application for an alternative rate plan to establish a rider mechanism to recover the costs of its capital expenditure program (CEP). Northeast Ohio Public Energy Council (NOPEC), a governmental aggregator for buying natural gas and electricity in Ohio, seeks the Commission’s permission to intervene, claiming a substantial interest in ensuring that DEO’s rates for delivery service are just and reasonable for NOPEC’s supply customers.

NOPEC, however, does not show that it has a real and substantial interest that would be adversely affected by DEO’s application. DEO’s application proposes no change to *any* service affecting NOPEC’s role as an aggregator or affecting its customers’ interests in the acquisition of the natural gas commodity. Nor does NOPEC explain how its authority as a governmental aggregator for gas supply customers justifies its participation in a proceeding concerning DEO’s delivery rates. NOPEC has failed to meet its burden to demonstrate that it has standing to intervene or that it can otherwise satisfy the statutory criteria that the Commission must consider. Accordingly, the Commission must exercise its discretion to deny NOPEC’s motion to intervene.

I. BACKGROUND

Pursuant to R.C. 4929.111(A)(1), a natural gas company may file an application under R.C. 4909.18, 4929.05, or 4929.11 to implement a capital expenditure program (CEP). Beginning in 2011, DEO has been authorized to defer certain costs associated with its CEP, *see*,

e.g., Case No. 11-6024-GA-UNC, and on May 1, 2019, DEO filed an alternative rate plan application seeking to establish the CEP Rider.

The application proposes no changes to DEO's commodity sales services, to its transportation services, or to the Company's current role with respect to either. Rather, the application is solely concerned with distribution service. Specifically, the purpose of the proposed CEP Rider is to recover the PISCC, incremental depreciation expense, and property tax expense currently deferred under and associated with the CEP, as well as a return on the CEP rate base associated with the CEP regulatory asset and related capital investments for the period October 1, 2011, through December 31, 2018.

On June 25, 2019, NOPEC moved to intervene in this proceeding. NOPEC asserts that it provides energy aggregation service to approximately 900,000 residential and small business retail customers in Ohio, including retail natural gas customers in DEO's service territory. (NOPEC Mem. at 1.) NOPEC claims that it has "a real and substantial interest in this proceeding concerning that DEO seeks to collect CEP deferred costs and investments from NOPEC's natural gas aggregation customers located in DEO's territory." (*Id.* at 2.) NOPEC further alleges that its "substantial interest" is that "its customers are assessed only reasonable costs for natural gas distribution service." (*Id.*) NOPEC contends that "no current party represents its unique interests in assuring that rates to its natural gas aggregation customers are just and reasonable." (*Id.*) NOPEC argues that "[d]isposition of this proceeding without its participation will impair or impede NOPEC's ability to protect those interests." (*Id.*) NOPEC asserts that its intervention will not unduly delay this proceeding or unjustly prejudice any existing party. (*Id.*)

II. DISCUSSION

The Commission should deny NOPEC's motion. NOPEC has not articulated a cognizable interest in this case. On the contrary, the case does *not* affect its interests. This case is about distribution service, and NOPEC is an aggregator of natural gas commodity. The primary interest that NOPEC asserts (namely, its customers' interest in just and reasonable distribution rates) is fully represented by other parties.

A. The Commission routinely denies requests for intervention that do not satisfy the applicable standards.

The Commission is not compelled to grant any request for intervention; rather, the Commission has the discretion to grant or deny such a request. *In re Pike Natural Gas Co.*, Case No. 04-1339-GA-UEX, 2005 WL 605765, Entry on Rehearing (Mar. 16, 2005). R.C. 4903.221 and O.A.C. 4901-1-11 set forth the showing that a party seeking to intervene must meet. R.C. 4903.221(B) identifies four criteria that the Commission shall consider when judging whether a party may be adversely affected by a pending proceeding: (1) the nature and extent of the prospective intervenor's interest; (2) the legal position advanced by the prospective intervenor and its probable relation to the merits of the case; (3) whether the intervention by the prospective intervenor will unduly prolong or delay the proceedings; and (4) whether the prospective intervenor will significantly contribute to full development and equitable resolution of the factual issues. O.A.C. 4901-1-11(B) identifies a fifth criteria that the Commission must also consider: (5) the extent to which the prospective intervenor's interest is representing by existing parties.

O.A.C. 4901-1-11(A)(2) also provides the standard: the prospective intervenor must show that he or she "has a real and substantial interest in the proceeding, and . . . 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.” Thus, the Commission has held that “the prospective intervenor must be able to demonstrate that its present and immediate interests are affected by the proceeding,” before the Commission can grant intervention. *In re Northeast Ohio Public Energy Council*, Case No. 02-1688-GA-GAG , 2004 WL 256792, Entry (Sept. 8, 2004) (denying IEU-Ohio’s motion to intervene in renewal of NOPEC’s natural gas governmental aggregator certificate); *see also In re Akron Thermal*, Case No. 04-1298-HT-SLF, 2004 WL 2831837, Entry (Oct. 25, 2004) (“It would be inappropriate to allow an intervention for an entity that does not demonstrate a present and immediate interest in the proceeding or have a legal position that directly addresses the merits of the case.”).

When the prospective intervenor fails to demonstrate a real and substantial interest that would be adversely affected by the proceeding, the Commission routinely denies intervention. *See, e.g., In re Nova Telephone Co. and VNC Enterprises, LLC*, Case No. 10-849-TP-ACO, 2010 WL 3523730, Opin. & Order (Sept. 1, 2010) (prospective intervenor’s only real self-identified interest in interconnecting with applicant did not have any relevance or bearing on real issues at stake); *In re FirstEnergy Corp.*, Case No. 99-1212-EL-ETP, 2000 WL 35951672, Entry (Mar. 23, 2000) (AEP and FirstEnergy did not establish a real and substantial interest to intervene in transition plan cases of other electric utilities); *In re Akron Thermal*, Case No. 04-1298-HT-SLF, 2004 WL 2831837, Entry (Oct. 25, 2004) (denying Ohio Edison Company’s motion to intervene in applicant’s request for temporary fuel cost surcharge rider based on only interest in future recovery of amounts owed for service). *In re Intrado Communications Inc.*, Case No. 08-537-TP-ARB, 2008 WL 4058067, Entry (Aug. 26, 2008) (competitor failed to demonstrate a real and substantial interest at stake in proceeding concerning applicant’s interconnection agreement).

Moreover, the Commission has found that the prospective intervenor, who fails to meet its burden of showing a real and substantial interest adversely affected, does not have standing to intervene in the pending proceeding. *See, e.g., In re Intrado Communications Inc.*, Case No. 08-537-TP-ARB, 2008 WL 4058067, Entry (Aug. 26, 2008) (competitor failed to identify any authority that would vest it with standing); *In re MFS Intelenet of Ohio, Inc.*, Case No. 94-2019-TP-ACE, 1995 WL 18000597, Entry (May 4, 1995) (since applicant did not seek authority to operate in the areas served by prospective intervenors, they had no standing to intervene for purposes of challenging MFS' managerial, technical, and financial abilities to provide its proposed services.); *In re Ohio Edison Co.*, Case No. 89-04-EL-EFC, 1989 WL 1731757, Entry (Apr. 20, 1989) (since union had no legally cognizable interest in proceeding to set utility's EFC rate, it lacked standing to intervene); *see also In re The East Ohio Gas Co.*, Case No. 12-380-GA-GPS, 2012 WL 1439026, Entry (Apr. 20, 2012) (OCC did not have authority to participate in enforcement proceeding concerning DEO's compliance with gas pipeline safety rules).

B. NOPEC does not satisfy the standards for intervention.

In this case, NOPEC has failed to demonstrate that it has standing to intervene or that the Commission should exercise its discretion to grant intervention.

NOPEC claims that it has a substantial interest in ensuring that its supply customers have just and reasonable delivery rates. But that allegation does not show that DEO's application will cause NOPEC to suffer any concrete injury to its own legally protectable interest. Nor has NOPEC shown that its role, as a governmental aggregator for procuring natural gas *commodity*, authorizes it to represent the customers its supplies in a proceeding concerning DEO's *distribution* rates. DEO's application is to establish a CEP Rider—a rate for a distribution service—and DEO is not proposing any changes that would affect NOPEC's area of responsibility, *i.e.*, commodity and transportation services. To the extent NOPEC claims that any

charge affecting its customers also affects NOPEC, this theory of intervention is blatantly overbroad—it would justify intervention by every entity, of any type, doing business with DEO’s customers. The standards for intervention require much more than having customers in common.

NOPEC cannot establish a real and substantial interest, which is present and immediate, which NOPEC has authority to protect, and which will be adversely affected by this proceeding. *See, e.g., In re Nova Telephone Co. and VNC Enterprises, LLC*, Case No. 10-849-TP-ACO, 2010 WL 3523730, Opin. & Order (Sept. 1, 2010) (prospective intervenor’s claim that its participation was necessary to ensure applicant’s customers would be sufficiently served was unsupported by any allegations of fact). The fact that NOPEC is an active participant in Ohio’s competitive natural gas market, with supply customers in DEO’s service territory, does not give NOPEC standing to contest DEO’s proposed CEP rate. Without an actual legally cognizable interest at risk, NOPEC’s motion to intervene must fail.

NOPEC’s pleading also fails to offer any allegations of fact to satisfy the Commission’s other criteria under R.C. 4903.221 and O.A.C. 4901-1-11. NOPEC does not offer any specific “legal position” that it intends to advance and explain how that legal position relates to the merits of DEO’s application. NOPEC does not provide any factual assertions to support its claim that its intervention will not unduly prolong or delay the proceeding. NOPEC does not describe how it will significantly contribute to the full development and equitable resolution of the factual issues underlying DEO’s application. And NOPEC does not explain how its residential customers in DEO’s service territory will not be adequately represented by the Office of the Ohio Consumers’ Counsel, which has already intervened in the proceeding. That NOPEC’s pleading manages to properly identify the relevant criteria is not sufficient; there must be factual allegations to support

NOPEC's suggestion that its participation is vital and beneficial to the Commission's review of DEO's proposed CEP Rider and rate. Absent that showing, NOPEC's motion must be denied.

III. CONCLUSION

NOPEC does not have standing to intervene in this proceeding and cannot otherwise satisfy the Commission's criteria for intervention. For the reasons stated above, the Commission should exercise its discretion to deny NOPEC's motion to intervene.

Dated: July 10, 2019

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a courtesy copy of the foregoing document was served by electronic mail upon the following individuals on July 10, 2019:

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Summary: Memorandum Memorandum Contra Northeast Ohio Public Energy Council's Motion to Intervene electronically filed by Mr. Christopher T Kennedy on behalf of The East Ohio Gas Company d/b/a Dominion Energy Ohio