

**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.)	

**MOTION TO INTERVENE BY
THE ENVIRONMENTAL LAW & POLICY CENTER**

Pursuant to Ohio Revised Code 4903.221 and Ohio Administrative Code 4901-1-11, the Environmental Law & Policy Center (“ELPC”) respectfully moves to intervene in the above-captioned proceeding. As explained more thoroughly in the attached Memorandum in Support, ELPC has a real and substantial interest in this case, in which the Public Utilities Commission of Ohio has opened an investigation into the FirstEnergy utilities’ political and charitable spending in support of Amended Substitute House Bill 6 and the related referendum effort. Additionally, ELPC’s interests are not adequately represented by any other party to this matter, and its participation in this proceeding will contribute to a just and expeditious resolution of the issues and questions. Further, ELPC’s participation will not unduly delay the proceedings or prejudice any other party.

ELPC respectfully requests this Commission grant its motion to intervene for these reasons and those set forth in more detail in the attached Memorandum in Support.

September 18, 2020

Respectfully submitted,

/s/ Caroline Cox
Caroline Cox (0098175)
Counsel of Record
Environmental Law & Policy Center
21 W. Broad Street, 8th Floor
Columbus, OH 43215
(312) 795-3742

ccox@elpc.org

*Counsel for the Environmental Law
& Policy Center*

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Review of the)	
Political and Charitable Spending by the)	
Ohio Edison Company, the Cleveland)	Case No. 20-1502-EL-UNC
Electric Illuminating Company, and the)	
Toledo Edison Company.)	

**MEMORANDUM IN SUPPORT OF THE MOTION TO INTERVENE BY
THE ENVIRONMENTAL LAW & POLICY CENTER**

Ohio Revised Code 4903.221 states that “[a]ny other person who may be adversely affected by a public utilities commission proceeding may intervene in such proceeding” provided the Public Utilities Commission of Ohio (“Commission”) makes certain determinations. The Environmental Law & Policy Center (“ELPC”) is a non-profit environmental advocacy organization whose mission is to improve the Midwest’s environmental quality and economic development. ELPC is an advocate for both environmental health and sustainable economic development. As a regional organization with a presence and members in Ohio, ELPC and its members may be adversely affected by the outcome of this proceeding, and its interests are not adequately represented by the other parties in the case.

Ohio Revised Code 4903.221 requires the Commission to consider four factors when presented with a motion to intervene. In addition, the Commission’s procedural rules at Ohio Administrative Code 4901-11-1 similarly provide that it shall consider five factors when weighing a motion to intervene. ELPC’s motion meets all of the factors required by statute and rule.

Pursuant to Revised Code 4903.221, the Commission must consider:

- (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.

Ohio Rev. Code 4903.221(B).

With respect to the first factor, ELPC has a substantial interest in the investigation into the FirstEnergy utilities' political and charitable spending in support of Amended Substitute House Bill 6 ("HB6") and the later referendum effort. ELPC has an interest in ensuring the protection and promotion of cost-effective clean and efficient energy in the state, and ELPC's work focuses on Ohio energy environmental issues. ELPC participated in hearings on HB6 and led legislative education efforts, which the FirstEnergy utilities' political and charitable spending may have impacted. ELPC has also often acted as watchdog for corruption and malfeasance in the Midwest's energy sector, including the current Exelon bribery scandal in Illinois and litigating against energy groups that fail to meet environmental standards. Over the last decade, ELPC has participated in numerous cases and collaboratives involving FirstEnergy, *see, e.g.*, Case Nos. 19-1020-EL-EEC, 16-743, 14-1297, and has worked to educate lawmakers about energy efficiency, clean energy, and the impacts of proposed legislation.

In addition to our broad interest in the issues, ELPC also is participating in former FirstEnergy-affiliate FirstEnergy Solutions' bankruptcy proceedings and a related appeal. *See In re FirstEnergy Sols. Corp.*, No. 18-50757 (Bankr. N.D. Ohio). The Commission's review could impact ELPC's ongoing involvement in the FirstEnergy Solutions' bankruptcy proceedings because HB 6 provided substantial grants to the former FirstEnergy affiliate's nuclear power plants, the decommissioning of which is central to ELPC's involvement in the bankruptcy. *See*

Feasibility Objection of the Environmental Law & Policy Center et al., *In re FirstEnergy Sols. Corp.*, No. 18-50757 (Bankr. N.D. Ohio Aug. 2, 2019).

As to the second factor, because of the potential impacts on ELPC and its Ohio members, ELPC seeks to ensure the investigation proceeds fairly and addresses the impact of FirstEnergy utilities' political and charitable spending on addressing the need for clean and efficient energy in the state. Additionally, ELPC seeks the Commission's careful scrutiny of how the FirstEnergy utilities may have used their political and charitable spending to take positions contrary to the best interests of their captive customers.

Under the third factor, ELPC's inclusion will not unduly delay or prolong the proceeding. The Commission has not yet set a procedural schedule for the case, and ELPC is committed to working within any schedule that is imposed by this Commission to achieve the efficient and orderly disposition of the questions presented.

Finally, ELPC will significantly contribute to the full development and resolution of the proceeding by bringing its unique perspective to bear. ELPC has expertise and experience throughout the Midwest regarding clean energy policy that will contribute to resolving the pending issues.

Similarly, ELPC meets the requirements set forth in Ohio Admin. Code 4901-11-1(B):

- (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;
- (4) Whether the prospective intervenor will significantly contribute to full development and equitable resolution of the factual issues;
- [and]
- (5) The extent to which the person's interest is represented by existing parties.

The first four factors mirror those in R.C. 4903.221, and for the same reasons as stated above, ELPC meets those factors. As to the fifth, ELPC maintains that no other party can adequately represent its interests as a regional environmental advocacy organization that also focuses on “green” economic development, including new manufacturing and job creation.

Finally, this Commission’s policy is to “encourage the broadest possible participation in its proceedings.” *Cleveland Elec. Illum. Co.*, Case No. 85-675-EL-AIR, Entry at 2 (January 14, 1986). ELPC’s inclusion in this proceeding will contribute to this goal of broad participation in PUCO proceedings.

Because ELPC meets the criteria set forth in both R.C. 4903.221 and Ohio Adm. Code 4901-11-1, it respectfully asks this Commission to grant its motion to intervene in the above-captioned proceedings.

Respectfully submitted,

/s/ Caroline Cox
Caroline Cox (0098175)
Associate Attorney
Counsel of Record
Environmental Law & Policy Center
21 W. Broad Street, Floor 8
Columbus, OH 43215
(312) 795-3742
ccox@elpc.org

*Counsel for the Environmental Law &
Policy Center*

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Motion to Intervene submitted on behalf of the Environmental Law & Policy Center was filed electronically through the Docketing Information System of the Public Utilities Commission of Ohio on September 18, 2020. The PUCO's e-filing system will electronically serve notice of the filing of this document on counsel for all parties, and the parties listed below will also be served a copy of the filing via electronic mail.

/s/ Caroline Cox
Caroline Cox (0098175)
Counsel of Record
Environmental Law & Policy Center
21 W. Broad Street, Floor 8
Columbus, OH 43215
(312) 795-3742
ccox@elpc.org

Heather.chilcote@puco.ohio.gov

docketing@puco.ohio.gov

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

9/18/2020 3:50:22 PM

in

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

Summary: Motion to Intervene and Memorandum in Support of the Motion to Intervene
electronically filed by Ms. Caroline Cox on behalf of Environmental Law and Policy Center