

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio)	
Edison Company, The Cleveland Electric)	
Illuminating Company, and The Toledo)	Case No. 19-2121-EL-ATA
Edison Company for Approval of a New)	
Tariff.)	

**OHIO EDISON COMPANY, THE CLEVELAND ELECTRIC ILLUMINATING
COMPANY AND THE TOLEDO EDISON COMPANY’S MEMORANDUM CONTRA
THE MOTION TO INTERVENE BY THE CITIZENS’ UTILITY BOARD OF OHIO**

I. INTRODUCTION

The motion to intervene filed by the Citizens’ Utility Board of Ohio (“CUB Ohio”) is untimely and should be denied. CUB Ohio is intervening to seek amendments to the Rider LGR tariffs of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company (collectively, the “Companies”) that were approved in the Commission’s December 18, 2019 Finding and Order. CUB Ohio’s motion to intervene is untimely, as it comes nearly ten months after the Commission’s December 18, 2019 Finding and Order, which alone warrants denial. Although styled as a motion to intervene, in actuality, CUB Ohio’s filing is really an improper attempt to seek rehearing of the Commission’s December 18, 2019 Finding and Order. Because this request comes well after the statutory 30-day time period for filing applications for rehearing has passed, this too requires denial of CUB Ohio’s motion to intervene.

II. ARGUMENT

A. CUB Ohio’s intervention is not timely.

Ohio Administrative Code (“OAC”) Rule 4901-1-11(E) provides that a motion to intervene “will not be considered timely if it is filed later than five days prior to the scheduled date of hearing

or any specific deadline established by order of the commission.”¹ The Commission has previously denied a motion to intervene that was filed after the issuance of its order in a case. *See, e.g., In the Matter of the Commission-Ordered Investigation of Ameritech Ohio Relative to its Compliance with Certain Provisions of the Minimum Telephone Service Standards Set Forth in Chapter 4901:1-5, Ohio Administrative Code*, Case No. 99-938-TP-COI, Entry (Oct. 5, 2000) (denying motion to intervene as untimely because it was filed after the Commission’s opinion and order was issued in the case).

Here, CUB Ohio seeks to intervene almost ten months after the Commission’s December 18, 2019 Finding and Order, long after the time for intervention under OAC Rule 4901-1-11 has passed. Indeed, the Office of the Ohio Consumers’ Counsel (“OCC”) moved to intervene in this case on December 17, 2019, which motion was never ruled on by the Commission—and thereby implicitly denied—in its Finding and Order issued only one day later. Because CUB Ohio’s motion to intervene comes well after the Commission’s December 18, 2019 Finding and Order, it is not timely and therefore should be denied.

B. CUB Ohio’s untimely intervention is an improper attempt to file an untimely application for rehearing.

CUB Ohio claims it is intervening to seek a minor modification to the Companies’ Rider LGR tariffs to provide for customer refunds should H.B. 6 be repealed or modified because no other party to the case made this request.² What CUB Ohio is really attempting here is an untimely intervention to file an improper and untimely application for rehearing from the Commission’s

¹ OAC 4901-1-11(E). OAC Rule 4901-1-11(F) further provides that “[a] motion to intervene which is not timely will be granted only under extraordinary circumstances.” CUB Ohio has provided no extraordinary circumstances that warrant granting the motion. *See In re Ameritech Ohio*, Case No. 99-938-TP-COI, Entry (Oct. 5, 2000) (denying untimely motion to intervene where no extraordinary circumstances were provided by party seeking intervention).

² *See* CUB Ohio Mem. in Supp. at p. 3.

December 18, 2019 Finding and Order. R.C. 4903.10 requires that an application for rehearing be filed within thirty days of an order.³ The Commission has no power to entertain an application for rehearing—even one styled as a motion to intervene—filed after the expiration of the 30-day period in R.C. 4903.10. *See Greer v. Pub. Util. Comm.*, 172 Ohio St. 361, 362, 176 N.E.2d 416 (1961); *Pollitz v. Pub. Util. Comm.*, 98 Ohio St. 445, 121 N.E. 902 (1918). Accordingly, CUB Ohio’s untimely intervention is improper and should be denied.

III. CONCLUSION

For the foregoing reasons, the Companies respectfully request the Commission deny CUB Ohio’s untimely motion to intervene.

Respectfully Submitted,

/s/ Brian J. Knipe

Brian J. Knipe (0090299)
(Counsel of Record)
FirstEnergy Service Company
76 South Main Street
Akron, OH 44308
(330) 384-5795
bknipe@firstenergycorp.com

James F. Lang (0059668)
Kari D. Hehmeyer (0096284)
CALFEE, HALTER & GRISWOLD LLP
The Calfee Building
1405 East Sixth Street
Cleveland, Ohio 44114
(216) 622-8200
(216) 241-0816 (fax)
jlang@calfee.com
khehmeyer@calfee.com

*Attorneys for Ohio Edison Company, The
Cleveland Electric Illuminating Company,
and The Toledo Edison Company*

³ R.C. 4903.10.

CERTIFICATE OF SERVICE

I certify that the foregoing Memorandum Contra was filed electronically through the Docketing Information System of the Public Utilities Commission of Ohio on this 16th day of October 2020. The PUCO's e-filing system will electronically serve notice of the filing of this document on counsel for all parties.

/s/ James F. Lang

One of the Attorneys for Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company

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Case No(s). 19-2121-EL-ATA

Summary: Memorandum Contra Motion to Intervene of CUB Ohio electronically filed by Mr. James F Lang on behalf of Ohio Edison Company and The Cleveland Electric Illuminating Company and The Toledo Edison Company