

**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 )

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**MEMORANDUM CONTRA OF OHIO EDISON COMPANY, THE CLEVELAND  
ELECTRIC ILLUMINATING COMPANY AND THE TOLEDO EDISON COMPANY  
TO THE MOTION TO INTERVENE BY THE NORTHWEST OHIO AGGREGATION  
COALITION**

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**I. INTRODUCTION**

The Motion to Intervene (“Motion”) filed by The Northwest Ohio Aggregation Coalition (“NOAC”) should be denied because NOAC fails to establish a real and substantial interest in this case. NOAC also has failed to show how the disposition of this proceeding will impair or impede its ability to protect its claimed interest, or how it will significantly contribute to development of the factual issues in this case. Indeed, even if NOAC had a real and substantial interest in this proceeding, intervention would not be necessary for NOAC to represent such interest because the Commission’s review involves only the filing of initial and reply comments, for which intervention is unnecessary. Accordingly, NOAC’s Motion should be denied.

**II. ARGUMENT**

To be granted intervention, a person must show that it may be adversely affected by the proceeding in which it requests intervention. R.C. 4903.221. To satisfy this standard, the person seeking intervention must show it “has a real and substantial interest in the proceeding, and the person 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.” O.A.C. 4901-1-11(A)(2). The Commission must consider the criteria in R.C. 4903.221(B) and O.A.C. 4901-1-11(B) when ruling upon applications to intervene, but the overarching standard is that a person have a real and substantial interest that may be adversely affected by the proceeding. Because NOAC has not met this standard, the Motion should be denied.

**A. NOAC has not shown it has a real and substantial interest in this case.**

NOAC’s Motion is sparse, and it does not tie any of its arguments to any of the provisions of R.C. 4903.221 or O.A.C. 4901-1-11(A)(2) and (B). NOAC states that it is a coalition of governmental aggregators serving residential and small commercial customers, and that its members also are electricity customers. Mem. in Supp., p. 3. NOAC’s stated interest is “that the electric bills that our customers paid were not used by FirstEnergy”<sup>1</sup> to support Am. Sub. H.B. 6 (“H.B.6”) or defeat the H.B. 6 referendum. *Id.* This interest does not justify NOAC’s intervention.

This proceeding is about rates and charges, not the Companies’ spending. The Commission initiated this proceeding to confirm that the costs of any political or charitable spending in support of H.B. 6 and the subsequent referendum were not included in the rates and charges paid by the Companies’ retail customers. NOAC’s stated concern is not with rates and charges, but rather, with the Companies’ spending. Thus, NOAC has not shown that it has a real and substantial interest **in this case**. See, e.g., *In the Matter of the Application of the Dayton Power & Light Co. for Auth. to Amend Its Filed Tariffs to Increase the Rates & Charges for Elec. Serv.*, 1991 WL 11811072, Case No. 91-414-EL-AIR (Dec. 6, 1991) (denying City of Cincinnati’s motion to intervene because it did not have an interest in the rates at issue in proceeding); *In the Matter of*

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<sup>1</sup> NOAC does not define “FirstEnergy” in its Motion. For purposes of this memorandum contra, “FirstEnergy” is interpreted to mean Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company (collectively, the “Companies”).

*the Application of Akron Thermal, Limited Partnership for an Increase in Rates for Steam and Hot Water Service*, Case No. 05-05-HT-AIR, Entry at p. 3 (June 14, 2005) (denying intervention because person's interest was not related to the purposes of the proceeding in a manner that "assist the Commission's primary interest of securing the best possible service for the public under a just and reasonable rate structure.").

Moreover, NOAC's claimed interest in the Companies' spending in support of H.B. 6 is not within the Commission's jurisdiction. The Commission is not the venue for NOAC to question how the Companies spend their funds in their best interests as determined by their management. *See Elyria Tel. Co. v. Pub. Util. Comm.*, 158 Ohio St. 441, 447-448, 110 N.E.2d 59 (1953). Nor can NOAC show that the Companies' exercise of management discretion to make political and charitable spending is within the Commission's jurisdiction. *See Cleveland Elec. Illuminating Co. v. Pub. Util. Comm.*, 69 Ohio St.2d 258, 431 N.E.2d 683 (1982), syllabus; *In re Chapter 4901:1-20, Ohio Adm. Code*, 2004 WL 1950732, Case No. 04-48-EL-ORD, Finding and Order at p. 14 (July 28, 2004) (political contributions or donations are "a matter outside of our jurisdiction."). Thus, as a matter of law, NOAC's claimed interest cannot be a "real and substantial" interest in this proceeding.

NOAC has not shown that it has a real and substantial interest in this case that justifies intervention as required by O.A.C. 4901-1-11(A)(2).

**B. NOAC has not shown that the disposition of this proceeding may, as a practical matter, impair or impede its ability to protect its claimed interest.**

NOAC does not explain how the disposition of the Commission's review of the Companies' rates and charges specific to H.B. 6 costs could adversely affect NOAC's claimed interests. Thus, it is fair to assume that the review being conducted in this case will not impact

NOAC. Because NOAC has not shown that the disposition of this case may, as a practical matter, impair or impede its ability to protect its claimed interest, it is not entitled to intervene as a party.

**C. NOAC's Motion does not satisfy the factors in O.A.C. 4901-1-11(B).**

Given that NOAC has not satisfied the requirements of O.A.C. 4901-1-11(A)(2), the factors in O.A.C. 4901-1-11(B)(2)-(5) are inconsequential. It is notable, however, that NOAC makes no attempt to satisfy those factors.

While the second factor requires that NOAC show the probable relation of its legal position to the merits of this proceeding (O.A.C. 4901-1-11(B)(2)), NOAC does not identify its legal position or explain its probable relation to the merits of this proceeding. Further, while O.A.C. 4901-1-11(B)(4) requires a showing that "the prospective intervenor will significantly contribute to full development and equitable resolution of the factual issues" (O.A.C. 4901-1-11(B)(4)), NOAC mentions no factual issues that it will significantly contribute to developing. And because there is no evidentiary hearing scheduled or necessary in this proceeding, NOAC will have no need to develop or resolve factual issues. NOAC has not shown how its participation in this proceeding will have any impact on the Commission's consideration of the Companies' September 30 response to the show cause entry.

NOAC has not justified its intervention in this review proceeding.

**III. CONCLUSION**

The Companies respectfully request that the Commission deny NOAC's Motion to Intervene.

Respectfully Submitted,

/s/ James F. Lang

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**CERTIFICATE OF SERVICE**

I certify that the foregoing was filed electronically through the Docketing Information System of the Public Utilities Commission of Ohio on this 20th 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  
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Illuminating Company, and The Toledo  
Edison Company

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