

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the 2020 Review of the	)	
Delivery Capital Recovery Rider of the Ohio	)	Case No. 20-1629-EL-RDR
Edison Company, the Cleveland Electric	)	
Illuminating Company, and the Toledo	)	
Edison Company.	)	

---

**MOTION TO INTERVENE  
BY NATURAL RESOURCES DEFENSE COUNCIL**

---

For the reasons set forth in the accompanying Memorandum in Support, Natural Resources Defense Council (“NRDC”) respectfully moves the Public Utilities Commission of Ohio for leave to intervene in the above-captioned case pursuant to Ohio Revised Code 4903.221 and Ohio Administrative Code 4901-1-11, and to grant to the NRDC the full powers and rights specifically authorized by statute or by the provisions of the Ohio Administrative Code. Additionally, NRDC’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, NRDC’s participation will not unduly delay the proceedings or prejudice any other party.

NRDC respectfully requests that this Commission grant its Motion to Intervene for the reasons set forth in more detail in the attached Memorandum in Support.

Respectfully submitted,

/s/ Robert Dove  
Robert Dove (0092019)  
Kegler Brown Hill + Ritter Co., L.P.A.  
65 E State St., Ste. 1800  
Columbus, OH 43215-4295  
Office: (614) 462-5443  
[rdove@keglerbrown.com](mailto:rdove@keglerbrown.com)  
(Willing to accept service by email)  
**Attorney for NRDC**

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the 2020 Review of the	)	
Delivery Capital Recovery Rider of the Ohio	)	Case No. 20-1629-EL-RDR
Edison Company, the Cleveland Electric	)	
Illuminating Company, and the Toledo	)	
Edison Company.	)	

---

**MEMORANDUM IN SUPPORT OF THE MOTION TO INTERVENE  
BY NATURAL RESOURCES DEFENSE COUNCIL**

---

**I. Introduction**

Ohio Revised Code (“ORC”) § 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 Natural Resources Defense Council (“NRDC”) seeks intervention in this proceeding in which Commission has ordered an expanded audit into the Ohio Edison Company’s, the Cleveland Electric Illuminating Company’s, and the Toledo Edison Company’s (collectively, “FirstEnergy”) delivery capital recovery rider costs, including whether ratepayer funds were used in “certain transactions \* \* \* that were either improperly classified, misallocated \* \* \* or lacked supporting documentation.”<sup>1</sup>

NRDC is a national, non-profit environmental organization with thousands of members in Ohio. Many of those members reside within FirstEnergy’s service territory. NRDC's and its members' interests are not adequately represented by any other parties in this proceeding. As such, NRDC is entitled to intervene in the above captioned proceeding.

---

<sup>1</sup> Entry at ¶6 (March 10, 2021).

## II. Legal Standard

Ohio law states that a party may intervene in a Commission proceeding if that party “may be adversely affected by a public utilities commission proceeding.”<sup>2</sup> In the determination of whether a party may be adversely affected for purposes of intervention, the Commission is required to evaluate:

- (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.<sup>3</sup>

The Commission’s rules similarly provide that any person may intervene where “[t]he person has a real and substantial interest in the proceeding.”<sup>4</sup> The PUCO regulations set forth the same four standards that are established in Ohio Revised Code 4903.221(B) for determining whether a party may be “adversely affected,” and also purport to add a fifth factor regarding “the extent to which the person’s interest is represented by existing parties.”<sup>5</sup>

As the Ohio Supreme Court recently held, intervention in Commission proceedings “ought to be liberally allowed so that the positions of all persons with a real and substantial interest in the proceedings can be considered by the [Commission].”<sup>6</sup> The Commission has consistently maintained a policy to “encourage the broadest possible participation” in its

---

<sup>2</sup> R.C. 4903.221.

<sup>3</sup> R.C. 4903.221(B).

<sup>4</sup> Ohio Adm. Code 4901-1-11(A)(2).

<sup>5</sup> Ohio Adm. Code 4901-1-11(B).

<sup>6</sup> *Ohio Consumers’ Counsel v. Pub. Util Comm’n of Ohio* (2006), 111 Ohio St. 3d 384, 388, 2006 Ohio 5853, 856 N.E.2d 940.

proceedings, even under extenuating circumstances.<sup>7</sup> NRDC satisfies these liberal intervention standards and respectfully requests that its intervention be granted in these cases.

**III. NRDC is entitled to intervene under §4903.221 because the organization and its members “may be adversely affected” by the outcome of this proceeding.**

NRDC is entitled to intervene in this proceeding because NRDC satisfies each of the four statutory factors demonstrating that the organization and its members “may be adversely affected” by the outcome. First, the nature and extent of NRDC’s interests in the proceeding is real and substantial,<sup>8</sup> as the issues involved herein are directly related to NRDC’s interests in protecting its members’ interests within FirstEnergy’s service territory. NRDC seeks to ensure that the charges FirstEnergy collected from NRDC’s members were just, lawful, and reasonable. Therefore, NRDC has a real and substantial interest in this proceeding.

Second<sup>9</sup>, because of the impacts on NRDC and its members in Ohio, NRDC wants to ensure the money FirstEnergy collected from NRDC’s members was not used in an unjust, unlawful, or unreasonable manner. Therefore, no other party to the matter will adequately represent the interests of NRDC.

Third, NRDC’s intervention will not unduly prolong or delay the proceeding<sup>10</sup> as this motion is being filed by the deadline for intervention and NRDC is able to comply with all case management deadlines that will be established by the Commission and/or agreed to by the parties.

---

<sup>7</sup> See e.g. *In the Matter of the Application of The Dayton Power and Light Company*, 2009 WL 322883 at 1, Ohio PUC February 5, 2009 (Commission granted motion to intervene in light of policy to encourage participation, despite party’s failure to file within the deadline).

<sup>8</sup> R.C. 4903.221(B)(1).

<sup>9</sup> R.C. 4903.221(B)(2).

<sup>10</sup> R.C. 4903.221(B)(3).

Fourth, intervention by NRDC will significantly contribute to the full development of the record in this proceeding.<sup>11</sup> NRDC will bring significant expertise to bear in these proceedings. NRDC routinely intervenes and/or provides testimony before the Commission. As such, NRDC should be permitted to intervene pursuant to Ohio Revised Code §4903.221.

**IV. NRDC may intervene because NRDC and its members have a “real and substantial interest” in the proceeding as presented in Ohio Administrative Code 4901-1-11(B).**

NRDC may also intervene in these proceedings because it satisfies each of the five factors listed in the PUCO rules demonstrating that it has a “real and substantial interest” in these cases.<sup>12</sup> The first four factors are identical to those set forth under §4903.221(B) and, therefore, NRDC should be permitted to intervene for the same reasons as set forth in Section III above.

As for the fifth factor, NRDC’s interests in these proceedings will not be fully represented by other parties.<sup>13</sup> No other parties can adequately represent NRDC’s interests as a national environmental organization, with members in Ohio that is interested in environmental protection and the promotion of clean energy and energy efficiency. Because no other party to these proceedings advocates from a national platform at the intersection of these issues, and no other party represents the interests of NRDC’s members in Ohio, no other party can represent NRDC’s interests and the interests of its members.

**V. Conclusion**

For the foregoing reasons, NRDC respectfully request that its Motion to Intervene be granted, and NRDC be authorized to participate as full parties to this proceeding.

---

<sup>11</sup> R.C. 4903.221(B)(4).

<sup>12</sup> Ohio Adm.Code 4901-1-11(B).

<sup>13</sup> Ohio Adm. Code 4901-1-11(B)(5).

/s/Robert Dove

Robert Dove (0092019)

Kegler Brown Hill + Ritter Co., L.P.A.

65 E State St., Ste. 1800

Columbus, OH 43215-4295

Office: (614) 462-5443

Fax: (614) 464-2634

rdove@keglerbrown.com

(Willing to accept service by email)

**Attorney for NRDC**

**CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing has been served on all parties of record via the DIS system on April 6, 2021.

/s/ Robert Dove  
Robert Dove

**This foregoing document was electronically filed with the Public Utilities**

**Commission of Ohio Docketing Information System on**

**4/6/2021 2:25:35 PM**

**in**

**Case No(s). 20-1629-EL-RDR**

Summary: Motion to Intervene electronically filed by Mr. Robert Dove on behalf of Natural Resources Defense Council