



**Robert Dove**  
65 East State Street, Suite 1800  
Columbus, Ohio 43215  
rdove@keglerbrown.com

June 7, 2020

Docketing Division  
Public Utilities Commission of Ohio  
180 E Broad St., 11th Flr,  
Columbus, OH 43215

Re: Case No. 21-484-EL-ATA

Dear Ms. Troupe:

Attached please find Ohio Partners for Affordable Energy's ("OPAE") Motion to Intervene and Memorandum in Support. OPAE will not be filing initial comments. OPAE reserves the right to file reply comments.

Sincerely,

/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)

*Counsel for Ohio Partners for Affordable Energy*

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of the	)	
Ohio Edison Company, the Cleveland	)	
Electric Illuminating Company and the	)	Case No. 21-484-EL-ATA
Toledo Edison Company for Approval	)	
Of Tariff Amendments.	)	

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**MOTION TO INTERVENE  
BY OHIO PARTNERS FOR AFFORDABLE ENERGY**

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

OPAE 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)  
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**Attorney for OPAE**

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**MEMORANDUM IN SUPPORT OF THE MOTION TO INTERVENE  
BY OHIO PARTNERS FOR AFFORDABLE ENERGY**

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**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. Ohio Partners for Affordable Energy ("OPAE") seeks intervention in this proceeding in Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company (collectively, “FirstEnergy”) filed an application with the Commission requesting authority to modify its Conservation Support Rider (“Rider CSR”). Rider CSR is a decoupling mechanism that was instituted as part of Am. Sub. H.B. 6 (“HB 6”). FirstEnergy is seeing to refund the money collected through Rider CSR to customers pursuant to Am. Sub. H.B. 128.

OPAE is an Ohio non-profit corporation with a stated purpose of advocating for affordable energy policies for low-and moderate-income Ohioans. OPAE includes, as members non-profit organizations located in the service area that will be affect by FirstEnergy’s application. Moreover, many of OPAE’s members are Community Action Agencies. Under the federal legislation authorizing the creation and funding of these agencies, originally known as the

Economic Opportunity Act of 1964, Community Action Agencies are charged with advocating for low-income residents of their communities. OPAE's interests are not adequately represented by any other parties in this proceeding. As such, OPAE is entitled to intervene in the above captioned proceeding.

## **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>1</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>2</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>3</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>4</sup>

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<sup>1</sup> R.C. 4903.221.

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

<sup>3</sup> Ohio Adm. Code 4901-1-11(A)(2).

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

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>5</sup> The Commission has consistently maintained a policy to “encourage the broadest possible participation” in its proceedings, even under extenuating circumstances.<sup>6</sup> OP&E satisfies these liberal intervention standards and respectfully requests that its intervention be granted in these cases.

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

OP&E is entitled to intervene in this proceeding because OP&E 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 OP&E’s interests in the proceeding is real and substantial,<sup>7</sup> as the issues involved herein are directly related to OP&E’s interests in protecting it and its members’ interests within FirstEnergy’s service territory.

Second<sup>8</sup>, because of the direct impacts on OP&E and its members in Ohio, OP&E wants to participate in the review of FirstEnergy’s Application to ensure OP&E’s members, within FirstEnergy’s service territory, receive proper and full refunds. Therefore, OP&E’s position is directly related to the merits of the case. Additionally, the disposition of this matter may impair or impede the ability of OP&E to protect its interests. No other party to the matter will adequately represent the interests of OP&E.

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<sup>5</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.

<sup>6</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>7</sup> R.C. 4903.221(B)(1).

<sup>8</sup> R.C. 4903.221(B)(2).

Third, OPAE's intervention will not unduly prolong or delay the proceeding<sup>9</sup> as this motion is being filed before a deadline for intervention has been established and OPAE is able to comply with all case management deadlines that will be established by the Commission and/or agreed to by the parties.

Fourth, intervention by OPAE will significantly contribute to the full development of the record in this proceeding.<sup>10</sup> OPAE will bring significant expertise to bear in these proceedings. OPAE has been recognized by the Commission in the past as an advocate for consumers, and particularly low-income consumers, all of whom will be affected by the outcome of this case. As such, OPAE should be permitted to intervene pursuant to Ohio Revised Code §4903.221.

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

OPAE 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>11</sup> The first four factors are identical to those set forth under §4903.221(B) and, therefore, OPAE should be permitted to intervene for the same reasons as set forth in Section III above.

As for the fifth factor, OPAE's interests in these proceedings will not be fully represented by other parties.<sup>12</sup> No other parties can adequately represent OPAE's interests because OPAE is a rare organization that serves as an advocate and service provider for low-income customers as well as being a non-residential customer group. No other party represents this group of interests.

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<sup>9</sup> R.C. 4903.221(B)(3).

<sup>10</sup> R.C. 4903.221(B)(4).

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

<sup>12</sup> Ohio Adm. Code 4901-1-11(B)(5).

## **V. Conclusion**

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

/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](mailto:rdove@keglerbrown.com)

(Willing to accept service by email)  
**Attorney for OPAC**

**CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing has been served on all parties of record via the DIS system on June 7, 2021.

/s/ Robert Dove  
Robert Dove



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

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Summary: Text Motion to Intervene and Comment Letter electronically filed by Mr. Robert Dove on behalf of Ohio Partners for Affordable Energy